



**RM6100 Technology Services 3 Agreement
Lots 2, 3 and 5 Order Form**

Order Form

This Order Form is issued in accordance with the provisions of the Technology Services 3 Framework Agreement RM6100 dated 10th October 2024 between the ASC Supplier (as defined below) and the Minister for the Cabinet Office (the "**Framework Agreement**") and should be used by the Authority after making a direct award or conducting a further competition under the Framework Agreement.

The Contract, referred to throughout this Order Form, means the contract between the ASC Supplier and the Authority (as defined below) (entered into pursuant to the terms of the Framework Agreement) consisting of this Order Form, the Call Off Terms and any additional terms and conditions. The Call-Off Terms are substantially the terms set out in Annex 2 to Schedule 4 to the Framework Agreement and copies of which are available from the CCS website <http://ccs-agreements.cabinetoffice.gov.uk/contracts/rm1234>. The agreed Call-Off Terms for the Contract being set out as the Annex 1 to this Order Form.

The ASC Supplier shall provide the Services and/or Goods specified in this Order Form (including any attachments to this Order Form) to the Authority on and subject to the terms of the Contract for the duration of the Contract Period.

In this Order Form, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) of the Call-Off Terms.

This Order Form shall comprise:

1. This document headed "Order Form";
2. Attachment 1 – Services Specification;
3. Attachment 2 – Charges and Invoicing;
4. Attachment 3 – Implementation Plan;
5. Attachment 4 – Service Levels and Service Credits;
6. Attachment 5 – Key ASC Supplier Personnel and Key Sub-Contractors;
7. Attachment 6 – Software;
8. Attachment 7 – Financial Distress;
9. Attachment 8 - Governance
10. Attachment 9 – Schedule of Processing, Personal Data and Data Subjects;
11. Attachment 10 – Transparency Reports; and
12. Annex 1 – Call Off Terms and Additional/Alternative Schedules and Clauses.

The Order of Precedence shall be as set out in Clause 2.2 of the Call-Off Terms being:

1. the Framework, except Framework Schedule 18 (Tender);



2. the Order Form and Attachments 1 to 10;
3. the Call Off Terms;
4. the Additional/Alternative Schedules and Clauses; and
5. Framework Schedule 18 (Tender).

Section A

General information

Contract Details	
Contract Reference:	[REDACTED]
Contract Title:	Applications Service Contract – Modernisation Priority
Contract Description:	Application Services Contract - Modernisation Priority
Contract Anticipated Potential Value: this should set out the total potential value of the Contract	£100,947,710.00
Estimated Year 1 Charges:	£4,350,333.00
Implementation Commencement Date: this should be the date of the last signature on Section E of this Order Form	13 th November 2025

Authority details	
Authority organisation name	Secretary of State for Justice
Billing address	Ministry of Justice, 102 Petty France, London SW1H 9AJ
Authority Representative name	[REDACTED]
Authority Representative contact details	[REDACTED]
Authority Project Reference	[REDACTED]



ASC Supplier details

ASC Supplier name

The ASC Supplier organisation name, as it appears in the Framework Agreement
CGI IT UK Limited

ASC Supplier address

ASC Supplier's registered address
20 Fenchurch Street, 14th Floor, London, EC3M 3BY

ASC Supplier representative name

[REDACTED]

ASC Supplier representative contact details

[REDACTED]

Order reference number or the ASC Supplier's Catalogue Service Offer Reference Number

A unique number provided by the ASC Supplier at the time of the Further Competition Procedure. Please provide the order reference number, this will be used in management information provided by ASC Suppliers to assist CCS with framework management. If a Direct Award, please refer to the ASC Supplier's Catalogue Service Offer Reference Number.

[Click here to enter text.](#)

Guarantor details

Guarantor Company Name

The guarantor organisation name

CGI Inc

Guarantor Company Number

Guarantor's registered company number

N/a

Guarantor Registered Address

Guarantor's registered address

1350 René-Lévesque Boulevard West, 25th Floor, Montreal, Quebec H3G 1T4, Canada



Section B

Part A – Framework Lot

Framework Lot under which this Order is being placed

- | | |
|--|-------------------------------------|
| 1. TECHNOLOGY STRATEGY & SERVICES DESIGN | <input type="checkbox"/> |
| 2. TRANSITION & TRANSFORMATION | <input type="checkbox"/> |
| 3. OPERATIONAL SERVICES | |
| a: End User Services | <input type="checkbox"/> |
| b: Operational Management | <input type="checkbox"/> |
| c: Technical Management | <input type="checkbox"/> |
| d: Application and Data Management | <input checked="" type="checkbox"/> |
| 5. SERVICE INTEGRATION AND MANAGEMENT | <input type="checkbox"/> |

Part B – The Services Requirement

Implementation Commencement Date

See above in Section A. Operational Services are to be provided from the Phased Service Commencement Date.

Contract Period

Initial Term Months
36 Months

Extension Period (Optional) Months
2 x 12 Months

Minimum Notice Period for exercise of Termination Without Cause 90 Days
(Calendar days) (see Clause 35.1.9 of the Call Off Terms)

Sites for the provision of the Services

The ASC Supplier shall provide the Services from the following Sites:

Authority Premises:

N/a

ASC Supplier Premises:

N/a

**Third Party Premises:**

N/a

Authority Assets

See Annex 1: Asset List

Additional Standards

[REDACTED]

**Authority Security Policy
Overarching Information Security Management Policy**

Version 1.1 - 22 February 2022 (Redacted)

[REDACTED]

**Authority ICT Policy
Ministry of Justice Digital Strategy 2025**

Published 08 April 2022

<https://www.gov.uk/government/publications/ministry-of-justice-digital-strategy-2025>

Insurance

Third Party Public and Products Liability Insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in respect of any one occurrence and in the aggregate per annum.

Professional Indemnity Insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in respect of any one claim, and in the annual aggregate during the period of insurance

Insurances required by Law, including, United Kingdom employers' liability insurance and motor third party liability insurance.

The ASC Supplier shall upon the Implementation Commencement Date and within fifteen (15) Working Days after the renewal of each of the insurances listed above, 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 Contract. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the ASC Supplier of any of its liabilities and obligations under this Contract.



Authority Responsibilities

See Schedule S11 (Authority Responsibilities).

Goods

N/A

[REDACTED]

[REDACTED]

Section C

Part A - Additional and Alternative Authority Terms

Additional Schedules and Clauses *(see Annex 3 of Framework Schedule 4)*

Part A – Additional Schedules

Additional Schedules	Tick as applicable
S1: Implementation Plan	<input checked="" type="checkbox"/>
S2: Testing Procedures	<input checked="" type="checkbox"/>
S3: Security Requirements (either Part A or Part B)	Part A <input type="checkbox"/> or Part B <input checked="" type="checkbox"/>
S4: Staff Transfer	<input checked="" type="checkbox"/>
S5: Benchmarking	<input checked="" type="checkbox"/>
S6: Business Continuity and Disaster Recovery	<input checked="" type="checkbox"/>



S7: Continuous Improvement	<input checked="" type="checkbox"/>
S8: Guarantee	<input checked="" type="checkbox"/>
S9: MOD Terms	<input type="checkbox"/>

Part B – Additional Clauses

Additional Clauses	Tick as applicable
C1: Relevant Convictions	<input type="checkbox"/>
C2: Security Measures	<input type="checkbox"/>
C3: Collaboration Agreement	<input type="checkbox"/>

Where selected above the Additional Schedules and/or Clauses set out in document RM6100 Additional and Alternative Terms and Conditions Lots 2, 3 and 5 shall be incorporated into this Contract.

Part C - Alternative Clauses

The following Alternative Clauses will apply:

Alternative Clauses	Tick as applicable
Scots Law	<input type="checkbox"/>
Northern Ireland Law	<input type="checkbox"/>
Joint Controller Clauses	<input type="checkbox"/>

Where selected above the Alternative Clauses set out in document RM6100 Additional and Alternative Terms and Conditions Lots 2, 3 and 5 shall be incorporated into this Contract.

Part B - Additional Information Required for Additional Schedules/Clauses Selected in Part A

Additional Schedule S3 (Security Requirements)

See Annex 2 of Schedule S3 (Security Requirements)

Additional Schedule S4 (Staff Transfer)

Please see S4 (Staff Transfer) for applicable Part and Sections.

Additional Clause C1 (Relevant Convictions)

N/A

Additional Clause C3 (Collaboration Agreement)

Suppliers required will be identified post ITT and successful ASC Suppliers will be required to sign a collaboration agreement during the contract engrossment/signature period once contract has been awarded ("**Collaboration Agreement**").



An executed Collaboration Agreement shall be delivered from the ASC Supplier to the Authority within the stated number of Working Days from the Implementation Commencement Date:

N/A

Section D ASC Supplier Response

[REDACTED]





Section E Contract Award

This Call Off Contract is awarded in accordance with the provisions of the Technology Services 3 Framework Agreement RM6100.

SIGNATURES

For and on behalf of the ASC Supplier

Name	[REDACTED]
Job role/title	[REDACTED]
Signature	[REDACTED]
Date	[REDACTED]

For and on behalf of the Authority

Name	[REDACTED]
Job role/title	[REDACTED]
Signature	[REDACTED]
Date	[REDACTED]



Attachment 1 – Operational Services Specification

[REDACTED]



Attachment 2 – Charges and Invoicing

Part A – Milestone Payments and Delay Payments

See Annex A of Schedule 2 (Charges and Invoicing)

Part B – Service Charges

See Annex B of Schedule 2 (Charges and Invoicing)

Part C – ASC Supplier Personnel Rate Card for Calculation of Time and Materials Charges

See Annex D of Schedule 2 (Charges and Invoicing)

Part D – Risk Register

[REDACTED]

Part E – Early Termination Fee(s)

Any early termination fee(s) will be calculated in line with Part E Early Termination Fee(s) within Schedule 2 Charges and Invoicing



Attachment 3 – Outline Implementation Plan

See Schedule S1 (Implementation Plan)

[REDACTED]



Attachment 4 – Service Levels and Service Credits

Service Levels and Service Credits

See Schedule 3 - Service Levels, Service Credits and Performance Monitoring

Service Credit Cap

See Annex 3 (Service Credits) of Schedule 3 - Service Levels, Service Credits and Performance Monitoring

Critical Service Level Failure

See Part C of Schedule 3 - Service Levels, Service Credits and Performance Monitoring



Attachment 5 – Key ASC Supplier Personnel and Key Sub-Contractors

1. The Parties agree that they will update this Attachment 5 periodically to record any changes to Key ASC Supplier Personnel and/or any Key Sub-Contractors appointed by the ASC Supplier after the Implementation Commencement Date for the purposes of the delivery of the Services.

Part A – Key ASC Supplier Personnel

[REDACTED]

Part B – Key Sub-Contractors

Key Sub-contractor name and address (if not the same as the registered office)	Registered office and company number	Related product/Service description	Key Sub-contract price expressed as a percentage of total projected Charges over the Contract Period	Key role in delivery of the Services
N/a				

Part C – MDK Innovation Sub-Contract

[REDACTED]

Attachment 6 – Software

1. The Software below is licensed to the Authority in accordance with Clauses 20 (*Intellectual Property Rights*) and 21 (*Licences Granted by the Supplier*) of the Call Off Terms.
2. The Parties agree that they will update this Attachment 6 periodically to record any ASC Supplier Software or Third Party Software subsequently licensed by the ASC Supplier or third parties for the purposes of the delivery of the Services.

Part A – ASC Supplier Software

The ASC Supplier Software includes the following items:

[REDACTED]

Part B – Third Party Software

The Business Application List attached provides details of the software and operating systems used by the Business Applications.

Third Party Software is summarised below:

[REDACTED]



Crown
Commercial
Service

Attachment 7 – Financial Distress

For the purpose of Schedule 8 (Financial Distress) of the Call Off Terms, the following shall apply:

PART A – CREDIT RATING THRESHOLD

[REDACTED]

PART B – RATING AGENCIES

[REDACTED]

Attachment 8 – Governance

PART A – SHORT FORM GOVERNANCE

N/A – Long Form option chosen.

PART B – LONG FORM GOVERNANCE

Please refer to Schedule 7 (Governance) of the Call Off Terms.

Attachment 9 – Schedule of Processing, Personal Data and Data Subjects

This Attachment 9 shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Authority at its absolute discretion.

The contact details of the Authority's Data Protection Officer are: [REDACTED]

The contact details of the ASC Supplier's Data Protection Officer are: [REDACTED]

The Processor shall comply with any further written instructions with respect to processing by the Controller.

Any such further instructions shall be incorporated into this Attachment 9.

[REDACTED]

Annex 1 - Assets

[REDACTED]

Attachment 10 – Transparency Reports

See Schedule 6 – Transparency Reports

Annex 1 – Call Off Terms and Additional/Alternative Schedules and Clauses

RM6100 TECHNOLOGY SERVICES 3

LOTS 2, 3 AND 5 CALL OFF TERMS

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1. DEFINITIONS

- 1.1 In this Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in these Call Off Terms and in particular Schedule 1 (Definitions).
- 1.2 If no meaning is given to a capitalised expression in this Contract, it shall, in the first instance, be interpreted in accordance with the Order Form and related documents and otherwise in accordance with common interpretation within the relevant services sector/industry where appropriate.

2. INTERPRETATION

- 2.1 In this Contract, unless the context otherwise requires:
 - 2.1.1 the singular includes the plural and vice versa;
 - 2.1.2 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
 - 2.1.3 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 2.1.4 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**";
 - 2.1.5 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;
 - 2.1.6 references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of this Contract and references in any Schedule to paragraphs, parts, annexes and tables are, unless otherwise provided, references to the paragraphs, parts, annexes and tables of the Schedule or the part of the Schedule in which the references appear;
 - 2.1.7 the headings in this Contract are for ease of reference only and shall not affect the interpretation or construction of this Contract; and

2.1.8 any reference which immediately before Exit Day was 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 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.

2.2 In the event and to the extent only of a conflict between the Order Form, these Call Off Terms and the Additional/Alternative Schedules and Clauses and the provisions of the Framework, the conflict shall be resolved in accordance with the following descending order of precedence:

- 2.2.1 the Framework, except Framework Schedule 18 (Tender);
- 2.2.2 the Order Form (including Attachments 1 to 10);
- 2.2.3 these Call Off Terms; and
- 2.2.4 the Additional/Alternative Schedules and Clauses;
- 2.2.5 Framework Schedule 18 (Tender).

2.3 Where Framework Schedule 18 (Tender) contains provisions which are more favourable to the Authority in relation to this Contract such provisions of the Tender (as applicable) shall prevail. The Authority shall in its absolute and sole discretion determine whether any provision in the Tender and/or this Contract is more favourable to it in this context.

3. **GUARANTEE**

Where indicated in the Order Form, the Parties shall comply with the provisions of Schedule S8 (Guarantee).

4. **DUE DILIGENCE**

4.1 The ASC Supplier acknowledges that:

- 4.1.1 the Authority has delivered or made available to the ASC Supplier all of the information and documents that the ASC Supplier considers

necessary or relevant for the performance of its obligations under this Contract;

4.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;

4.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Implementation Commencement Date) of all relevant details, including but not limited to, details relating to the:

- (a) suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Implementation Commencement Date) future Operating Environment;
- (b) operating processes and procedures and the working methods of the Authority;
- (c) ownership, functionality, capacity, condition and suitability for use in the provision of the Services of the Authority Assets; and
- (d) existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the ASC Supplier under this Contract and/or which the ASC Supplier will require the benefit of for the provision of the Services; and

4.1.4 it has advised the Authority in writing of:

- (a) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
- (b) the actions needed to remedy each such unsuitable aspect; and
- (c) a timetable for and, to the extent that such costs are to be payable to the ASC Supplier, the costs of those actions,

and such actions, timetable and costs are fully reflected in this Contract, including the Services Specification and/or Authority Responsibilities, as applicable.

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

4.2.1 any unsuitable aspects of the Operating Environment; and/or

- 4.2.2 any failure by the ASC Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

5. WARRANTIES AND REPRESENTATIONS

5.1 Each Party warrants and represents that:

- 5.1.1 it has full capacity and authority to enter into and to perform this Contract;
- 5.1.2 this Contract is executed by its duly authorised representative;
- 5.1.3 here are no actions, suits or proceedings or regulatory investigation before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the ASC Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Contract; and
- 5.1.4 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).

5.2 The ASC Supplier warrants and represents that:

- 5.2.1 it is validly incorporated, organised and subsisting in accordance with the Law of its place of incorporation;
- 5.2.2 it has all necessary consents and regulatory approvals to enter into this Contract;
- 5.2.3 it has notified the Authority in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Contract;
- 5.2.4 its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- 5.2.5 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general

application (regardless of whether enforcement is sought in a proceeding in equity or Law);

- 5.2.6 all written statements and representations in any written submissions made by the ASC Supplier as part of the procurement process, including without limitation its Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the ASC Supplier has otherwise disclosed to the Authority in writing prior to the date of this Contract;
 - 5.2.7 it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the ASC Supplier Background IPRs and any other materials made available by the ASC Supplier (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the ASC Supplier's obligations under this Contract and/or the receipt of the Services by the Authority;
 - 5.2.8 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
 - 5.2.9 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 ASC 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 ASC Supplier's Assets or revenue; and
 - 5.2.10 within the previous 12 Months, no Financial Distress Events (as defined in Schedule 8 (Financial Distress)) have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Contract had this Contract been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.
- 5.3 Each of the representations and warranties set out in Clauses 5.1 and 5.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.
- 5.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 5.1 and 5.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in

sufficient detail to enable the other Party to make an accurate assessment of the situation.

- 5.5 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the ASC Supplier.
- 5.6 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

6. **CONTRACT PERIOD**

- 6.1 This Contract shall take effect on the Implementation Commencement Date specified in the Order Form and shall unless terminated earlier under the terms of this Contract, shall expire:
 - 6.1.1 at the end of the Initial Term (as specified in the Order Form); or
 - 6.1.2 if the Authority elects to extend the Initial Term by giving the ASC Supplier at least three (3) months' notice before the end of the Initial Term, at the end of the notified Extension Period.

7. **IMPLEMENTATION**

Quality Plans

- 7.1 The ASC Supplier shall develop, within 30 Working Days (or such other date as agreed between the Parties) of the Implementation Commencement Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").
- 7.2 The ASC Supplier shall obtain the Authority Representative's written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The ASC Supplier acknowledges and accepts that the Authority's approval shall not act as an endorsement of the Quality Plans and shall not relieve the ASC Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Contract.
- 7.3 Following the approval by the Authority of the Quality Plans:
 - 7.3.1 the ASC Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and
 - 7.3.2 any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

Implementation Plan

- 7.4 Where indicated in the Order Form, the Parties shall comply with the provisions of Schedule S1 (Implementation Plan) in relation to the agreement and maintenance of the Detailed Implementation Plan.
- 7.5 The ASC Supplier shall:
 - 7.5.1 comply with the Implementation Plan (if any);
 - 7.5.2 ensure that each Milestone (if any) is Achieved on or before the Milestone Date.

Delays and Delay Payments

- 7.6 If the ASC Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Call Off Contract:
 - 7.6.1 it shall:
 - (a) notify the Authority as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay; and
 - (b) include in its notification an explanation of the actual or anticipated impact of the Delay; and
 - (c) comply with the Authority's instructions in order to address the impact of the Delay or anticipated Delay; and
 - (d) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
 - 7.6.2 if the Delay or anticipated Delay relates to a Milestone, Clauses 7.7 and 7.8 below shall apply.
- 7.7 If a Milestone has not been Achieved by its relevant Milestone Date, the provisions of Paragraph 1 of Part C of Schedule 2 (Charges and Invoicing) shall apply in relation to the payment of Delay Payments.
- 7.8 Delay Payments shall be the Authority's exclusive financial remedy for the ASC Supplier's failure to Achieve a Milestone by its Milestone Date except where:
 - 7.8.1 the Authority is entitled to or does terminate this Contract pursuant to Clause 35.1 (Authority Termination Rights) except Clause 35.1.9 (Termination Without Cause); or
 - 7.8.2 the Delay exceeds the Delay Deduction Period.

Testing and Achievement of Milestones

- 7.9 Where indicated in the Order Form, the Parties shall comply with the provisions of Schedule S2 (Testing Procedures) in relation to the procedures to determine whether a Milestone or Test has been Achieved.

8. PROVISION AND RECEIPT OF THE SERVICES

Standards of Services

- 8.1 The ASC Supplier shall ensure:
- 8.1.1 Operational Services comply in all respects with the Services Specification set out or referred to in Attachment 1 (Services Specification) of the Order Form from the Phased Services Commencement Date for the relevant Business Application;
 - 8.1.2 the Implementation Services comply in all respects with the Implementation Plan;; and
 - 8.1.3 all Services are supplied in accordance with the provisions of this Contract.
- 8.2 The ASC Supplier shall perform the Services under this Contract in accordance with:
- 8.2.1 all applicable Laws;
 - 8.2.2 Good Industry Practice;
 - 8.2.3 the Standards;
 - 8.2.4 the Security Policy (if so required by the Authority);
 - 8.2.5 the ICT Policy (if so required by the Authority);
 - 8.2.6 the ASC Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 8.2.1 to 8.2.5.
- 8.3 The ASC Supplier shall take reasonable steps to ensure that the in the performance of its obligations under this Contract it does not disrupt the Authority's operations, employees or other contractor engaged by the Authority.
- 8.4 The Authority shall comply with its Authority Responsibilities set out in the Order Form.

ASC Supplier Covenants

8.5 The ASC Supplier shall:

- 8.5.1 at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Contract;
- 8.5.2 save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 49 (Change), obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- 8.5.3 ensure that:
 - (a) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the ASC Supplier Background IPRs and any other materials made available by the ASC Supplier (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the ASC Supplier's obligations under this Contract and/or the receipt of the Services by the Authority;
 - (b) the release of any new Software or Upgrade to any Software complies with the interface requirements of the Authority and (except in relation to new Software or Upgrades which are released to address Malicious Software) shall notify the Authority three (3) Months before the release of any new Software or Upgrade;
 - (c) all Software including Upgrades, Updates and New Releases used by or on behalf of the ASC Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification provided that, in respect of Software in use at the Implementation Commencement Date, such Software was then supported and performing in all material respects in accordance with the relevant specification;
 - (d) any products or services recommended or otherwise specified by the ASC Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the requirements of the Authority; and
 - (e) the ASC Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as

agreed in writing with the Authority) and will be Euro Compliant;

- 8.5.4 minimise any disruption to the Services, the IT Environment and/or the Authority's operations when carrying out its obligations under this Contract;
 - 8.5.5 ensure that any Documentation and training provided by the ASC Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
 - 8.5.6 co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier;
 - 8.5.7 to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the ASC Supplier;
 - 8.5.8 unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the ASC Supplier any such warranties and/or indemnities as are referred to in Clause 8.5.7;
 - 8.5.9 provide the Authority with such assistance as the Authority may reasonably require during the Contract Period in respect of the supply of the Services; and
 - 8.5.10 gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the ASC Supplier's compliance with its obligations under this Contract;
 - 8.5.11 ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission in relation to this Contract which is reasonably likely to diminish the trust that the public places in the Authority.
- 8.6 An obligation on the ASC Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the ASC Supplier to procure that all Sub-

Contractors and ASC Supplier Personnel also do, or refrain from doing, such act or thing.

8.7 Without prejudice to Clauses 23.2 and 23.3 (IPR Indemnity) and without prejudice to any other rights and remedies of the Authority howsoever arising the ASC Supplier shall:

8.7.1 remedy any breach of its obligations in Clauses 8.5.2 to 8.5.4 inclusive within three (3) Working Days of becoming aware of the breach or being notified of the breach by the Authority or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);

8.7.2 remedy any breach of its obligations in Clause 8.5.1 and Clauses 8.5.5 to 8.5.10 inclusive within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by the Authority;

8.7.3 meet all the costs of, and incidental to, the performance of such remedial work.

Specially Written Software

8.8 The ASC Supplier warrants to the Authority that all components of the Specially Written Software shall:

8.8.1 be free from material design and programming errors;

8.8.2 perform in all material respects in accordance with the relevant specifications contained in the Order Form and Documentation; and

8.8.3 not infringe any Intellectual Property Rights.

Continuing Obligation to Provide the Services

8.9 The ASC Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the supply of the Services, notwithstanding:

8.9.1 any withholding or deduction by the Authority of any sum due to the ASC Supplier pursuant to the exercise of a right of the Authority to such withholding or deduction under this Contract;

8.9.2 the existence of an unresolved Dispute; and/or

8.9.3 any failure by the Authority to pay any Charges,

unless the ASC Supplier is entitled to terminate this Contract under Clause 35.2 (Termination by the ASC Supplier) for failure to pay undisputed Charges.

9. SERVICE LEVELS, SERVICE CREDITS AND PERFORMANCE MONITORING

- 9.1 The Parties shall comply with the provisions of Part A (Service Levels and Service Credits) of Schedule 3 (Service Levels, Service Credits and Performance Monitoring).
- 9.2 The ASC Supplier shall at all times provide the Operational Services to meet or exceed the Service Level Performance Measure for each Service Level.
- 9.3 The ASC Supplier acknowledges that any Service Level Failure shall entitle the Authority to the rights set out in Part A (Service Levels and Service Credits) of Schedule 3 (Service Levels, Service Credits and Performance Monitoring), including the right to any Service Credits and that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Authority as a result of the ASC Supplier's failure to meet any Service Level Performance Measure.
- 9.4 The ASC Supplier shall send Performance Monitoring Reports to the Authority detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of Schedule 3 (Service Levels, Service Credits and Performance Monitoring).
- 9.5 A Service Credit shall be the Authority's exclusive financial remedy for a Service Level Failure except where:
 - 9.5.1 the ASC Supplier has over the previous (twelve) 12-Month period exceeded the aggregate of twelve (12) Months' worth of the Service Credit Cap; and/or
 - 9.5.2 the Service Level Failure:
 - (a) exceeds the relevant Service Level Threshold;
 - (b) has arisen due to a Prohibited Act or wilful Default by the ASC Supplier or any ASC Supplier Personnel;
 - (c) results in the corruption or loss of any Authority Data; and/or
 - (d) results in the Authority being required to make a compensation payment to one or more third parties; and/or
 - 9.5.3 the Authority is otherwise entitled to or does terminate this Contract pursuant to Clause 35.1 (Authority Termination Rights) except Clause 35.1.9 (Termination Without Cause);

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

9.6.1 the total number of Service Levels for which the weighting is to be changed does not exceed the number applicable as at the Implementation Commencement Date;

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

9.6.3 there is no change to the Service Credit Cap.

10. **CRITICAL SERVICE LEVEL FAILURE**

10.1 On the occurrence of a Critical Service Level Failure:

10.1.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and

10.1.2 the Authority shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the ASC Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),

provided that the operation of this Clause 10 shall be without prejudice to the right of the Authority to terminate this Contract and/or to claim damages from the ASC Supplier for material Default as a result of such Critical Service Level Failure.

11. **ASC SUPPLIER PERSONNEL**

ASC Supplier Personnel

11.1 The ASC Supplier shall:

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

11.1.2 ensure that all ASC Supplier Personnel involved in the performance of this Contract:

(a) are adequately trained and suitably qualified and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the ASC Supplier's obligations are fulfilled in accordance with this Contract;

- (b) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule S3 (Security Requirements), where used; and
 - (c) comply with any reasonable instructions issued by the Authority from time to time (including, if so required, the ICT Policy).
- 11.1.3 subject to Schedule S4 (Staff Transfer) where used, retain overall control of the ASC Supplier Personnel at all times so that the ASC Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;
- 11.1.4 be liable at all times for all acts or omissions of ASC Supplier Personnel, so that any act or omission of a member of any ASC Supplier Personnel which results in a Default under this Contract shall be a Default by the ASC Supplier;
- 11.1.5 use all reasonable endeavours to minimise the number of changes in ASC Supplier Personnel;
- 11.1.6 replace (temporarily or permanently, as appropriate) any ASC Supplier Personnel as soon as practicable if any ASC Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- 11.1.7 bear the Programme familiarisation and other costs associated with any replacement of any ASC Supplier Personnel; and
- 11.1.8 procure that the ASC Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Contract.
- 11.2 If the Authority reasonably believes that any of the ASC Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:
 - 11.2.1 refuse admission to the relevant person(s) to the Authority's Premises; and/or
 - 11.2.2 require that the ASC Supplier replace as soon as reasonably practicable any such relevant person(s) with a suitably qualified alternative and procure that any security pass issued by the Authority to the relevant person(s) replaced is surrendered.

Key Personnel

- 11.3 The ASC Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Contract Period.

- 11.4 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the ASC Supplier, the relevant person selected to fill those Key Roles shall for the purposes of this Contract be included on the list of Key Personnel.
- 11.5 The ASC Supplier shall not and shall procure that any Sub-Contractor shall not remove or replace any Key Personnel (including when carrying out Exit Management, if any) unless:
- 11.5.1 requested to do so by the Authority or the ASC Supplier obtains the Authority's prior written consent to such removal or replacement (such consent not to be unreasonably withheld or delayed);
 - 11.5.2 the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave; or
 - 11.5.3 the person's employment or contractual arrangement with the ASC Supplier or Sub-Contractor is terminated for material breach of contract by the employee.
- 11.6 The ASC Supplier shall:
- 11.6.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the ASC Supplier shall ensure appropriate temporary cover for that Key Role);
 - 11.6.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - 11.6.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least three (3) Months' notice;
 - 11.6.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Services and Deliverables; and
 - 11.6.5 ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 11.7 The Authority may require the ASC Supplier to remove or procure that any Sub-Contractor shall remove any Key Personnel that the Authority considers in any

respect unsatisfactory. The Authority shall not be liable for the cost of replacing any Key Personnel.

1.1. Employment Liabilities

11.8 The Parties agree that:

11.8.1 the ASC Supplier shall both during and after the Contract Period indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the ASC Supplier or any ASC Supplier Personnel; and

11.8.2 the Authority shall both during and after the Contract Period indemnify the ASC Supplier against all Employee Liabilities that may arise as a result of any claims brought against the ASC Supplier by any person where such claim arises from any act or omission of the Authority or any of the Authority's employees, agents, consultants and contractors.

12. STAFF TRANSFER

Where indicated in the Order Form, the Parties shall comply with the provisions of Schedule S4 (Staff Transfer).

13. STANDARDS

The ASC Supplier shall at all times during the Contract Period comply with the Standards and maintain, where applicable, accreditation with the relevant Standards' authorisation body.

14. EQUIPMENT AND MAINTENANCE

ASC Supplier Equipment

14.1 The ASC Supplier shall be solely responsible for the cost of carriage of ASC Supplier Equipment to the Sites and to the Authority Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Contract the ASC Supplier shall be responsible for the removal and safe disposal of all relevant ASC Supplier Equipment from the Sites and the Authority Premises, including the cost of packing, carriage and making good the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.

14.2 All the ASC Supplier's property, including ASC Supplier Equipment, shall remain at the sole risk and responsibility of the ASC Supplier, except that the Authority shall be liable for loss of or damage to any of the ASC Supplier's property located on Authority Premises which is due to the negligent act or omission of the Authority.

- 14.3 Subject to any express provision of the BCDR Plan (if any) to the contrary, the loss or destruction for any reason of any ASC Supplier Equipment shall not relieve the ASC Supplier of its obligation to supply the Services in accordance with this Contract, including the Service Levels.

Maintenance

- 14.4 The ASC Supplier shall create and maintain a rolling schedule of planned maintenance to the IT Environment (the “**Maintenance Schedule**”) which shall be agreed with the Authority. Once the Maintenance Schedule has been agreed with the Authority Representative, the ASC Supplier shall only undertake such planned maintenance (which shall be known as “**Permitted Maintenance**”) in accordance with the Maintenance Schedule.
- 14.5 The ASC Supplier shall give as much notice as is reasonably practicable to the Authority Representative prior to carrying out any Emergency Maintenance.
- 14.6 The ASC Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the IT Environment or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the IT Environment and the Services.

Supply of Goods

- 14.7 Where, as part of the Services, the ASC Supplier is to sell goods or equipment (“**Goods**”) to the Authority:
- 14.7.1 the relevant Goods and their prices shall be as set out in the Order Form;
 - 14.7.2 the ASC Supplier shall supply and, where relevant, install the Goods in accordance with the relevant specification;
 - 14.7.3 the ASC Supplier shall ensure that the Goods are free from material Defects in design, materials and workmanship and remain so for 12 Months after delivery;
 - 14.7.4 if following inspection or testing the Authority considers that the Goods do not conform with the relevant specification, the Authority shall inform the ASC Supplier and the ASC Supplier shall immediately take such remedial action as is necessary to ensure compliance; and
 - 14.7.5 without prejudice to any other rights or remedies of the Authority:
 - (a) risk in the Goods shall pass to the Authority at the time of delivery; and

- (b) ownership of the Goods shall pass to the Authority at the time of payment.

15. CHARGES AND INVOICING

Charges and Invoicing

- 15.1 In consideration of the ASC Supplier carrying out its obligations under this Contract, including the provision of the Services, the Authority shall pay the Charges to the ASC Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 2 (Charges and Invoicing).
- 15.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 7.9 (Testing and Achievement of Milestones), 29 (Reports and Audits), 41 (Transparency and Freedom of Information), 34 (Protection of Personal Data) and, to the extent specified therein, Clause 31 in respect of step-in.
- 15.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Contract, the ASC 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.

1.2. VAT

- 15.4 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.
- 15.5 The ASC 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 ASC Supplier's failure to account for or to pay any VAT relating to payments made to the ASC Supplier under this Contract. Any amounts due under this Clause 15.5 shall be paid in cleared funds by the ASC 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.

1.3. Set-off and Withholding

- 15.6 The Authority may retain or set off any amount owed to it by the ASC Supplier against any amount due to the ASC Supplier under this Contract or under any other agreement between the ASC Supplier and the Authority.
- 15.7 If the Authority wishes to exercise its right pursuant to Clause 15.6 it shall give notice to the ASC Supplier within thirty (30) days of receipt of the relevant

invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.

16. INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS

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

16.1.1 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 (including IR35) and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and

16.1.2 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 (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services and/or Deliverables by the ASC Supplier or any ASC Supplier Personnel.

16.2 In the event that any one of the ASC Supplier Personnel is a Worker who receives consideration relating to the Services and/or Deliverables, then, in addition to its obligations under Clause 16.1 the ASC Supplier shall ensure that its contract with the Worker contains the following requirements:

16.2.1 that the Authority may, at any time during the Contract Period, request that the Worker provides information which demonstrates how the Worker complies with the requirements of Clause 16.1, or why those requirements do not apply to it. In such case, the Authority may specify the information which the Worker must provide and the period within which that information must be provided;

16.2.2 that the Worker's contract may be terminated at the Authority's request if:

- (a) the Worker fails to provide the information requested by the Authority within the time specified by the Authority; or
- (b) the Worker provides information which the Authority considers is inadequate to demonstrate how the Worker complies with Clause 16.1 or confirms that the Worker is not complying with those requirements;

- 16.2.3 that the Authority may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

17. BENCHMARKING AND CONTINUOUS IMPROVEMENT

- 17.1 Where indicated in the Order Form, the Parties shall comply with the provisions of Schedule S5 (Benchmarking) in relation to the benchmarking of any or all of the Services.
- 17.2 Where indicated in the Order Form, the Parties shall comply with the provisions of Schedule S7 (Continuous Improvement) in relation to the continuous improvement of the Services.

18. FINANCIAL DISTRESS

The Parties shall comply with the provisions of Schedule 8 (Financial Distress) in relation to the assessment of the financial standing of the ASC Supplier and the consequences of a change to that financial standing.

19. LIMITATION OF LIABILITY

Unlimited Liability

- 19.1 Neither Party limits its liability for:
- 19.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
 - 19.1.2 fraud or fraudulent misrepresentation by it or its employees;
 - 19.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 19.1.4 any liability to the extent it cannot be limited or excluded by Law.
- 19.2 The ASC Supplier's liability in respect of the indemnities in Clause 15.5 (VAT), Clause 11.8.1 (Employment Liabilities), Clause 16.1.2 (Income Tax and National Insurance Contributions), Clause 23 (IPRs Indemnity) and where used, Schedule S4 (Staff Transfer) and the Annexes to Schedule S4 (Staff Transfer) be unlimited.
- 19.3 The Authority's liability in respect of the indemnities in Clause 11.8.2 (Employment Indemnity) and where used, Schedule S4 (Staff Transfer) and the Annexes to Schedule S4 (Staff Transfer) shall be unlimited.

Financial and other limits

19.4 Subject to Clauses 19.1 and 19.2 and Clauses 19.7:

19.4.1 the ASC Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property or Assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority's Data or any other data) that is caused by Defaults of the ASC Supplier occurring in each and any Contract Year shall in no event exceed £10 million;

19.4.2 the ASC 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 ASC Supplier occurring in each and any Contract Year shall in no event exceed £10 million;

19.4.3 the ASC Supplier's aggregate liability in respect of all:

(a) Service Credits; and

(b) Compensation for Critical Service Level Failure;

incurred in any rolling period of 12 Months shall be subject to a value equal to the aggregate of twelve (12) Months' worth of the Service Credit Cap; and

19.4.4 the ASC Supplier's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Contract as a result of Defaults by the ASC Supplier shall in no event exceed:

(a) in relation to Defaults occurring in the first Contract Year, an amount equal to 150% of the Estimated Year 1 Charges;

(b) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to 150% of the Charges paid and/or due to be paid to the ASC Supplier under this Contract in the Contract Year immediately preceding the occurrence of the Default; and

(c) in relation to Defaults occurring after the end of the Contract Period, an amount equal to 150% of the Charges paid and/or due to be paid to the ASC Supplier in the 12-Month period immediately prior to the last day of the Contract Period,

provided that where any Losses referred to this Clause 19.4.4 have been incurred by the Authority as a result of the ASC Supplier's abandonment of this Contract or the ASC Supplier's wilful default, wilful breach of a fundamental term of this Contract or wilful repudiatory breach of this Contract, the references in such Clause to 150% shall be deemed to be references to 200%.

- 19.5 Deductions from Charges shall not be taken into consideration when calculating the ASC Supplier's liability under Clause 19.4.4.
- 19.6 Subject to Clauses 19.1 and 19.3 and Clause 19.7 and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:
- 19.6.1 the Authority's total aggregate liability as a result of early termination of this Contract by the Authority pursuant to Clause 35.1.9 (Termination Without Cause) shall comprise the fee calculated in accordance with the provisions of Clause 36.2 and Part E (Early Termination Fee(s)) of Schedule 2 (Charges and Invoicing);
- 19.6.2 the Authority's aggregate liability in respect of all Losses incurred by the ASC Supplier under or in connection with this Contract as a result of Defaults of the Authority shall in no event exceed:
- (a) in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Charges;
- (b) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Charges paid and/or due to be paid under this Contract in the Contract Year immediately preceding the occurrence of the Default; and
- (c) in relation to Defaults occurring after the end of the Contract Period, an amount equal to the total Charges paid and/or due to be paid to the ASC Supplier in the 12-Month period immediately prior to the last day of the Contract Period.

Consequential Losses

- 19.7 Subject to Clauses 19.1, 19.2 and 19.3 and Clause 19.8, neither Party shall be liable to the other Party for:
- 19.7.1 any indirect, special or consequential Loss; or
- 19.7.2 any loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 19.8 Notwithstanding Clause 19.7 but subject to Clause 19.4, the ASC Supplier acknowledges that the Authority may, amongst other things, recover from the ASC Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the ASC Supplier:
- 19.8.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

- 19.8.2 any wasted expenditure or charges;
- 19.8.3 the additional cost of procuring Replacement Services for the remainder of the Contract Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Contract;
- 19.8.4 any compensation or interest paid to a third party by the Authority; and
- 19.8.5 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

Mitigation

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

20. INTELLECTUAL PROPERTY RIGHTS

- 20.1 Except as expressly set out in this Contract:
 - 20.1.1 the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the ASC Supplier or its licensors, namely:
 - (a) the ASC Supplier Software;
 - (b) the Third Party Software;
 - (c) the Third Party IPRs; and
 - (d) the ASC Supplier Background IPRs;
 - 20.1.2 the ASC 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 Software;
 - (b) the Authority Data; and
 - (c) the Authority Background IPRs;
 - 20.1.3 Specially Written Software and Project Specific IPRs (except for any Know-How, trade secrets or Confidential Information contained therein) shall be the property of the Authority.

- 20.2 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 20.1, 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).
- 20.3 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.
- 20.4 Unless the Authority otherwise agrees in advance in writing:
 - 20.4.1 all Specially Written Software and any software element of Project Specific IPRs shall be created in a format, or able to be converted into a format, which is suitable for publication by the Authority as open source software; and
 - 20.4.2 where the Specially Written Software and any software element of Project Specific IPRs are written in a format that requires conversion before publication as open source software, the ASC Supplier shall also provide the converted format to the Authority.
- 20.5 Where the Authority agrees that any Specially Written Software and/or any software element of Project Specific IPRs should be excluded from Open Source publication, the ASC Supplier shall as soon as reasonably practicable provide written details of the impact that such exclusion will have on the Authority's ability to publish other Open Source software under Clause 24.
- 20.6 The ASC Supplier waives (and shall procure that each of the ASC Supplier Personnel shall waive) any moral rights which it is now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of Law in any jurisdiction, to the extent such rights arise.

21. TRANSFERS AND LICENCES GRANTED BY THE ASC SUPPLIER

Specially Written Software and Project Specific IPRs

- 21.1 Subject to Clause 21.17 the ASC Supplier hereby agrees to transfer to the Authority, or shall procure the transfer to the Authority of, all rights (subject to Clause 20.1.1 in the Specially Written Software and the Project Specific IPRs including (without limitation)):
 - 21.1.1 the Documentation, Source Code and the Object Code of the Specially Written Software; and
 - 21.1.2 all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the "**Software Supporting Materials**");

but not including any Know-How, trade secrets or Confidential Information.

21.2 The ASC Supplier:

21.2.1 shall:

- (a) inform the Authority of all Specially Written Software and any element of Project Specific IPRs that constitutes a modification or enhancement to ASC Supplier Software or Third Party Software; and
- (b) deliver to the Authority the Specially Written Software and the software element of Project Specific IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable and shall provide Updates of the Source Code and of the Software Supporting Materials promptly following each New Release of the Specially Written Software, in each case on media that is reasonably acceptable to the Authority; and
- (c) without prejudice to Clause 21.11, provide full details to the Authority of any ASC Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs;

21.2.2 acknowledges and agrees that the ownership of the media referred to in Clause 21.2.1(b) shall vest in the Authority upon their receipt by the Authority; and

21.2.3 shall execute all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly transferred to the Authority.

ASC Supplier Software and ASC Supplier Background IPRs

21.3 The ASC Supplier shall not use any ASC Supplier Non-COTS Software or ASC Supplier Non-COTS Background IPR in the provision of the Services unless it is detailed in the Order Form, and where Part A of Schedule 7 (Governance) applies to this Contract as indicated in the Order Form, sent to the Technical Board (as defined therein) for review and approval granted by the Authority.

21.4 The ASC Supplier hereby grants to the Authority:

21.4.1 subject to the provisions of Clause 21.17, perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes

of archiving, backing-up, loading, execution, storage, transmission or display)):

- (a) the ASC Supplier Non-COTS Software for which the ASC Supplier delivers a copy to the Authority for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function; and
- (b) the ASC Supplier Non-COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function;

21.4.2 a licence to use the ASC Supplier COTS Software for which the ASC Supplier delivers a copy to the Authority and ASC Supplier COTS Background IPRs on the licence terms identified in a letter or substantially in the form set out in Part A of Schedule 9 (Software) and signed by or on behalf of the Parties on or before the Implementation Commencement Date provided always that the Authority shall remain entitled to sub-license and to assign and novate the ASC Supplier COTS Software and ASC Supplier COTS Background IPRs on equivalent terms to those set out in Clauses 21.7 and 21.8 in relation to the ASC Supplier Non-COTS Software and ASC Supplier Non-COTS Background IPRs; and

21.4.3 a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.

21.5 At any time during the Contract Period or following termination or expiry of this Contract, the ASC Supplier may terminate the licence granted in respect of the ASC Supplier Non-COTS Software under 21.4.1(a) or in respect of the ASC Supplier Non-COTS Background IPRs under Clause 21.4.1(b) by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if the Authority or any person to whom the Authority grants a sub-licence pursuant to Clause 21.7 (Authority's right to sub-licence) commits any material breach of the terms of Clause 21.4.1(a) or 21.4.1(b) or 21.7.1 (as the case may be) which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the ASC Supplier gives the Authority written notice specifying the breach and requiring its remedy.

- 21.6 In the event the licence of the ASC Supplier Non-COTS Software or the ASC Supplier Non-COTS Background IPRs is terminated pursuant to Clause 21.5, the Authority shall:
- 21.6.1 immediately cease all use of the ASC Supplier Non-COTS Software or the ASC Supplier Non-COTS Background IPRs (as the case may be);
 - 21.6.2 at the discretion of the ASC Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the ASC Supplier Non-COTS Software and/or the ASC Supplier Non-COTS Background IPRs, provided that if the ASC Supplier has not made an election within 6 Months of the termination of the licence, the Authority may destroy the documents and other tangible materials that contain any of the ASC Supplier Non-COTS Software and/or the ASC Supplier Non-COTS Background IPRs (as the case may be); and
 - 21.6.3 ensure, so far as reasonably practicable, that any ASC Supplier Non-COTS Software and/or ASC Supplier Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such ASC Supplier Non-COTS Software and/or ASC Supplier Non-COTS Background IPRs.

Authority's right to sub-license

- 21.7 Subject to Clause 21.17, the Authority may sub-license:
- 21.7.1 the rights granted under Clause 21.4 to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
 - (a) the sub-licence is on terms no broader than those granted to the Authority;
 - (b) the sub-licence authorises the third party to use the rights licensed in Clause 21.4 only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function; and
 - (c) the sub-licensee shall have executed a confidentiality undertaking in favour of the ASC Supplier in or substantially in the form set out in Part B to Schedule 9 (Software); and
 - 21.7.2 the rights granted under Clause 21.4 to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the

Specially Written Software and/or the Project Specific IPRs provided that:

- (a) the sub-licence is on terms no broader than those granted to the Authority; and
- (b) the ASC Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Part B to Schedule 9 (Software) duly executed by the Approved Sub-Licensee.

Authority's right to assign/novate licenses

21.8 The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 21.4 to:

21.8.1 a Central Government Body; or

21.8.2 to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.

21.9 Any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 21.4. If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licence granted in Clause 21.4.

21.10 If a licence granted in Clause 21.4 is novated under Clause 21.8 or there is a change of the Authority's status pursuant to Clause 21.9, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.

Third Party Software and Third Party IPRs

21.11 The ASC Supplier shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless detailed in the Order Form, where Part A of Schedule 7 (Governance) applies to this Contract as indicated in the Order Form, approval is granted by the Authority following a review by the Technical Board and has in each case either:

21.11.1 first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Authority on a royalty-free basis to the Authority and on terms no less favourable to the Authority than those set out in Clauses 21.4.1 and 21.5 and Clause 21.8; or

- 21.11.2 complied with the provisions of Clause 21.12.
- 21.12 If the ASC Supplier cannot obtain for the Authority a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Clause 21.11.1, the ASC Supplier shall:
- 21.12.1 notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the ASC Supplier could seek to use; and
 - 21.12.2 use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Authority has first approved in writing the terms of the licence from the relevant third party.
- 21.13 The ASC Supplier shall:
- 21.13.1 notify the Authority in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
 - 21.13.2 unless instructed otherwise in writing by the Authority in any case within twenty (20) Working Days of notification pursuant to 21.12.1, use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.
- 21.14 Should the ASC Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights for which the Authority does not have a suitable licence, then the ASC Supplier must notify the Authority within ten (10) days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in.

Termination and Replacement Suppliers

- 21.15 For the avoidance of doubt, the termination or expiry of this Contract shall not of itself result in any termination of any of the licences granted by the ASC Supplier or relevant third party pursuant to or as contemplated by this Clause 21.

21.16 The ASC Supplier shall, if requested by the Authority and at the ASC Supplier's cost:

21.16.1 grant (or procure the grant) to any Replacement ASC Supplier of:

- (a) a licence to use any ASC Supplier Non-COTS Software, ASC Supplier Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to the Authority in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Clause 21 subject to receipt by the ASC Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Part B to Schedule 9 (Software) duly executed by the Replacement Supplier;
- (b) a licence to use any ASC Supplier COTS Software and/or ASC Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the ASC Supplier; and/or

21.16.2 use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

1.4. Patents

21.17 Where a patent owned by the ASC Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs by the Authority or any Replacement Supplier, the ASC Supplier hereby grants to the Authority and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Contract.

22. LICENCES GRANTED BY THE AUTHORITY

22.1 The Authority hereby grants to the ASC Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Software, the Authority Background IPRs, the Specially Written Software, the Project Specific IPRs and the Authority Data solely to the extent necessary for performing the

Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:

- 22.1.1 any relevant Sub-Contractor has entered into a confidentiality undertaking with the ASC Supplier on the same terms as set out in Clause 39; and
 - 22.1.2 the ASC 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.
- 22.2 In the event of the termination or expiry of this Contract, the licence granted pursuant to Clause 22.1 and any sub-licence granted by the ASC Supplier in accordance with Clause 22.1 shall terminate automatically on the date of such termination or expiry and the ASC Supplier shall:
- 22.2.1 immediately cease all use of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be);
 - 22.2.2 at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data, provided that if the Authority has not made an election within 6 Months of the termination of the licence, the ASC Supplier may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be); and
 - 22.2.3 ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPRs and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any ASC Supplier computer, word processor, voicemail system or any other ASC Supplier device containing such Authority Software, Authority Background IPRs and/or Authority Data.

23. IPR INDEMNITY

- 23.1 The ASC Supplier shall at all times, during and after the Contract Period, on written demand 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 or agreed to be paid by an Indemnified Person arising from an IPRs Claim.

- 23.2 If an IPRs Claim is made, or the ASC Supplier anticipates that an IPRs Claim might be made, the ASC Supplier may, at its own expense and sole option, either:
- 23.2.1 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
 - 23.2.2 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 Contract shall apply to the replaced or modified Services.
- 23.3 If the ASC Supplier elects to procure a licence in accordance with Clause 23.2.1 or to modify or replace an item pursuant to Clause 23.2.2, but this has not avoided or resolved the IPRs Claim, then:
- 23.3.1 the Authority may terminate this Contract (if subsisting) with immediate effect by written notice to the ASC Supplier; and
 - 23.3.2 without prejudice to the indemnity set out in Clause 23.1, the ASC Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

24. **OPEN SOURCE PUBLICATION**

- 24.1 The ASC Supplier agrees that the Authority may at its sole discretion publish as Open Source all or part of the Specially Written Software and any software element of the Project Specific IPRs after the Implementation Commencement Date.
- 24.2 The ASC Supplier hereby warrants that the Specially Written Software and any software element of the Project Specific IPRs:
- 24.2.1 are suitable for release as Open Source and that any release will not allow a third party to use the Open Source to in any way compromise the operation, running or security of the Specially Written Software, the Project Specific IPRs or the Authority System;

- 24.2.2 shall not cause any harm or damage to any party using anything published as Open Source and that the Specially Written Software and the Project Specific IPRs do not contain any Malicious Software;
 - 24.2.3 do not contain any material which would bring the Authority into disrepute upon publication as Open Source;
 - 24.2.4 do not contain any IPR owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and the Project Specific IPRs ("**Non-Party IPRs**"); and
 - 24.2.5 will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the Implementation Commencement Date.
- 24.3 The ASC Supplier shall ensure that the Open Source Publication Material provided to the Authority does not include any ASC Supplier Software or ASC Supplier Background IPRs save that which the ASC Supplier is willing to allow to be included in any Open Source publication. In such a case, the ASC Supplier hereby acknowledges that any such ASC Supplier Software or ASC Supplier Background IPRs will become Open Source and will be licensed and treated as such following publication by the Authority and any third party that uses the Open Source Publication Materials on the terms of the Open Source licence used by the Authority when publishing as Open Source.
- 24.4 The ASC Supplier hereby indemnifies the Authority against all claims in which the Authority is, or is threatened to be, a party for any alleged infringement of any Non-Party IPRs arising from publication of the Specially Written Software and any software element of the Project Specific IPRs as Open Source under Clause 24.

25. **PUBLICITY AND BRANDING**

- 25.1 The ASC Supplier shall not, and shall take all reasonable steps to ensure the ASC Supplier Personnel do not, make any press announcements or publicise this Contract or any part of it in any way nor use the Authority's name or brand in any promotion or marketing or announcement of orders, without the Authority's prior written approval (the decision of the Authority to approve or not shall not be unreasonably withheld or delayed).
- 25.2 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services and Deliverables) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

26. **AUTHORITY DATA AND SECURITY REQUIREMENTS**

Security Requirements

- 26.1 Where indicated in the Order Form, the Parties shall comply with either Part A or Part B of Schedule S3 (Security Requirements).
- 26.2 Where the Authority has notified the ASC Supplier that the award of this Contract by the Authority shall be conditional upon the ASC Supplier having an accredited security facility and a number of UK national security cleared personnel, the ASC Supplier shall have a number of UK national security cleared personnel prior to the Implementation Commencement Date.
- 26.3 If the ASC Supplier fails to comply with Clause 26.2 above, then without prejudice to the Authority's other rights and remedies (if any), the Authority shall be entitled to terminate this Contract for material Default in accordance with Clause 35.1.1.

Protection of Authority Data

- 26.4 The ASC Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 26.5 The ASC Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the ASC Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- 26.6 To the extent that the Authority Data is held and/or Processed by the ASC Supplier, the ASC Supplier shall supply that Authority Data to the Authority as requested by the Authority and in the format (if any) specified in this Contract and in any event as specified by the Authority from time to time in writing.
- 26.7 The ASC Supplier shall preserve the integrity of Authority Data and 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.
- 26.8 The ASC 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 BCDR Plan or otherwise. The ASC Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than 6 Monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 26.9 The ASC Supplier shall ensure that any system on which the ASC Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan (if any).

26.10 If the Authority Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Authority may:

26.10.1 require the ASC Supplier (at the ASC Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule S6 (Business Continuity and Disaster Recovery) where used, or as otherwise required by the Authority, and the ASC Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Authority's notice; and/or

26.10.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the ASC Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule S6 (Business Continuity and Disaster Recovery) where used, or as otherwise required by the Authority.

27. MALICIOUS SOFTWARE

27.1 The ASC Supplier shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.

27.2 If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any Losses and to restore the provision of the Services to its desired operating efficiency.

27.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 27.2 shall be borne by the Parties as follows:

27.3.1 by the ASC Supplier, where the Malicious Software originates from the ASC Supplier Software, the Third Party Software supplied by the ASC Supplier or the Authority Data (whilst the Authority Data was under the control of the ASC Supplier) unless the ASC Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the ASC Supplier; and

27.3.2 by the Authority, if the Malicious Software originates from the Authority Software or the Authority Data (whilst the Authority Data was under the control of the Authority).

28. GOVERNANCE

28.1 The Parties shall comply with the provisions of Schedule 7 (Governance) in relation to the management and governance of this Contract.

Representatives

- 28.2 Each Party shall have a representative for the duration of this Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Contract.
- 28.3 The initial ASC Supplier Representative shall be the person named as such in the Order Form. Any change to the ASC Supplier Representative shall be agreed in accordance with Clause 11 (ASC Supplier Personnel).
- 28.4 The initial Authority Representative shall be the person named as such in the Order Form. The Authority may, by written notice to the ASC Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

29. RECORDS AND AUDIT

- 29.1 The ASC Supplier shall keep and maintain for seven (7) years after termination or expiry of this Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Contract including the Services provided under it, any Sub-Contracts and the amounts paid by the Authority.
- 29.2 The ASC Supplier shall:
 - 29.2.1 keep the records and accounts referred to in Clause 29.1 in accordance with Good Industry Practice and Law; and
 - 29.2.2 afford any Auditor access to the records and accounts referred to in Clause 29.1 at the ASC Supplier's premises and/or provide records and accounts (including copies of the ASC Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Contract Period and the period specified in Clause 29.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the ASC Supplier and/or its Sub-Contractors of any of the ASC Supplier's obligations under this Contract including for the following purposes to:
 - (a) verify the accuracy of the Charges and any other amounts payable by the Authority under this Contract (and any proposed or actual variations to them in accordance with this Contract);
 - (b) verify the costs of the ASC Supplier (including the costs of all Sub- Contractors and any third party ASC Suppliers) in connection with the provision of the Services;
 - (c) verify the ASC Supplier's and each Sub-Contractor's compliance with the applicable Law;

- (d) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened Breach of Security and in these circumstances the Authority shall have no obligation to inform the ASC Supplier of the purpose or objective of its investigations;
- (e) identify or investigate any circumstances which may impact upon the financial stability of the ASC Supplier, the Guarantor (if applicable) and/or any Sub-Contractors or their ability to perform the Services;
- (f) obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (g) review any books of account and the internal contract management accounts kept by the ASC Supplier in connection with this Contract;
- (h) 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;
- (i) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (j) review any Performance Monitoring Reports provided under Part B (Performance Monitoring) of Schedule 3 (Service Levels, Service Credits and Performance Monitoring) and/or other records relating to the ASC Supplier's performance of the provision of the Services and to verify that these reflect the ASC Supplier's own internal reports and records;
- (k) verify the accuracy and completeness of any information delivered or required by this Contract;
- (l) inspect the IT Environment (or any part of it) and the wider Service delivery environment (or any part of it);
- (m) review any records created during the design and development of the ASC Supplier System and pre-operational environment such as information relating to Testing;

- (n) review the ASC Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
 - (o) review the ASC Supplier's compliance with the Standards;
 - (p) inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of Assets is up to date; and/or
 - (q) review the integrity, confidentiality and security of the Authority Data.
- 29.3 The Authority shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the ASC Supplier or delay the provision of the Services save insofar as the ASC Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Authority.
- 29.4 Subject to the ASC Supplier's rights in respect of Confidential Information, the ASC Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
- 29.4.1 all reasonable information requested by the Authority within the scope of the audit;
 - 29.4.2 reasonable access to Sites controlled by the ASC Supplier and to any ASC Supplier Equipment used in the provision of the Services; and
 - 29.4.3 access to the ASC Supplier Personnel.
- 29.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 29.1, unless the audit reveals a Default by the ASC Supplier in which case the ASC Supplier shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the audit.

30. **INSURANCE**

- 30.1 Without limitation to the generality of Clause 30.2, the ASC Supplier shall ensure that it maintains the policy or policies of insurance referred to in the Order Form.
- 30.2 Notwithstanding the benefit to the Authority of the policy or policies of insurance referred to in Framework Schedule 14 (Insurance Requirements), the ASC Supplier shall effect and maintain any such further policy or policies of insurance or extensions to such existing policy or policies of insurance procured by under the Framework in respect of all risks which may be incurred

by the ASC Supplier arising out of its performance of its obligations under this Contract.

31. AUTHORITY REMEDIES FOR DEFAULT

Remedies

- 31.1 Without prejudice to any other right or remedy of the Authority howsoever arising (including under Schedule 3 (Service Levels, Service Credits and Performance Monitoring)) and subject to the exclusive financial remedy provisions in Clauses 9.5 and 7.8, if the ASC Supplier commits any Default of this Contract then the Authority may (whether or not any part of the Services have been delivered) do any of the following:
- 31.1.1 at the Authority's option, give the ASC Supplier the opportunity (at the ASC Supplier's expense) to remedy the Default together with any damage resulting from such Default (and where such Default is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Contract are fulfilled, in accordance with the Authority's instructions;
 - 31.1.2 carry out, at the ASC Supplier's expense, any work necessary to make the provision of the Services comply with this Contract;
 - 31.1.3 if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different) obligations and regardless of whether such Defaults are remedied, which taken together constitute a "material Default"):
 - (a) instruct the ASC Supplier to comply with the Rectification Plan Process;
 - (b) suspend this Contract (whereupon the relevant provisions of Clause 35.3 (Partial Termination, Suspension and Partial Suspension) shall apply) and step- in to itself supply or procure a third party to supply (in whole or in part) the Services;
 - (c) without terminating or suspending the whole of this Contract, terminate or suspend this Contract in respect of part of the provision of the Services only (whereupon the relevant provisions of Clause 35.3 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Services;
- 31.2 Where the Authority exercises any of its step-in rights under Clause 31.1.3 (b) or Clause 31.1.3 (c), the Authority shall have the right to charge the ASC Supplier for and the ASC Supplier shall on demand pay any costs reasonably

incurred by the Authority (including any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.

Rectification Plan Process

- 31.3 Where the Authority has instructed the ASC Supplier to comply with the Rectification Plan Process pursuant to Clause 31.1.3 (a) the ASC Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) from the date of Authority's instructions. The ASC Supplier shall submit a draft Rectification Plan even if the ASC Supplier disputes that it is responsible for the Default giving rise to the Authority's request for a draft Rectification Plan.
- 31.4 The draft Rectification Plan shall set out:
- 31.4.1 full details of the Default that has occurred, including a root cause analysis;
 - 31.4.2 the actual or anticipated effect of the Default; and
 - 31.4.3 the steps which the ASC Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).
- 31.5 The ASC Supplier shall promptly provide to the Authority any further documentation that the Authority requires to assess the ASC Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an Expert in accordance with Paragraph 6 of Schedule 4 (Dispute Resolution Procedure).
- 31.6 The Authority may reject the draft Rectification Plan by notice to the ASC Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- 31.6.1 is insufficiently detailed to be capable of proper evaluation;
 - 31.6.2 will take too long to complete;
 - 31.6.3 will not prevent recurrence of the Default; and/or
 - 31.6.4 will rectify the Default but in a manner which is unacceptable to the Authority.
- 31.7 The Authority shall notify the ASC Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the

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

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

32. **ASC SUPPLIER RELIEF DUE TO AUTHORITY CAUSE**

- 32.1 Notwithstanding any other provision of this Contract, if the ASC Supplier has failed to:

- 32.1.1 Achieve a Milestone by its Milestone Date;
- 32.1.2 provide the Operational Services in accordance with the Service Levels; and/or
- 32.1.3 comply with its obligations under this Contract,

(each a “**Supplier Non-Performance**”),

and can demonstrate that the ASC Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the ASC Supplier fulfilling its obligations in this Clause 32):

- (a) **the ASC Supplier shall not be treated as being in breach of this Contract to the extent the ASC Supplier can demonstrate that the ASC 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 ASC Supplier Non-Performance to terminate this Contract pursuant to Clause 35.1 (Authority Termination Rights) except Clause 35.1.9 (Termination Without Cause);**
- (c) **where the ASC Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:**
 - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the ASC Supplier can demonstrate was caused by the Authority Cause;
 - (ii) if the Authority, acting reasonably, considers it appropriate, the Implementation Plan or Project Work Order (as applicable) shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause;
 - (iii) the ASC Supplier shall have no liability to pay any Delay

Payments associated with the Milestone to the extent that the ASC Supplier can demonstrate that such failure was caused by the Authority Cause; and

- (d) **where the ASC Supplier Non-Performance constitutes a Service Level Failure:**
 - (i) the ASC Supplier shall not be liable to accrue Service Credits;
 - (ii) the Authority shall not be entitled to any Compensation for Critical Service Level Failure pursuant to Clause 10; and
 - (iii) the ASC Supplier shall be entitled to invoice for the Service Charges for the relevant Services affected by the Authority Cause,

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

32.2 In order to claim any of the rights and/or relief referred to in Clause 32.1, the ASC 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 ASC Supplier Non-Performance, give the Authority notice (a “**Relief Notice**”) setting out details of:

- 32.2.1 the ASC Supplier Non-Performance;
- 32.2.2 the Authority Cause and its effect, or likely effect, on the ASC Supplier’s ability to meet its obligations under this Contract;
- 32.2.3 any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
- 32.2.4 the relief claimed by the ASC Supplier.

32.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the ASC Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the ASC 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 ASC Supplier where necessary.

32.4 The ASC Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the ASC Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

32.5 Without prejudice to Clause 8.9 (Continuing obligation to provide the Services), if a Dispute arises as to:

32.5.1 whether a ASC Supplier Non-Performance would not have occurred but for an Authority Cause; and/or

32.5.2 the nature and/or extent of the relief and/or compensation claimed by the ASC 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 ASC Supplier Non-Performance.

32.6 Any change that is required to the Implementation Plan, a Project Work Order or to the Charges pursuant to this Clause 32.1 shall be implemented in accordance with the Change Control Procedure.

33. **FORCE MAJEURE**

33.1 Subject to the remaining provisions of this Clause 33 (and, in relation to the ASC Supplier, subject to its compliance with its obligations in Schedule S6 (Business Continuity Plan and Disaster Recovery where used)), a Party may claim relief under this Clause 33 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the ASC Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the ASC Supplier.

33.2 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.

33.3 If the ASC Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 33 to the extent that consequences of the relevant Force Majeure Event:

33.3.1 are capable of being mitigated, but the ASC Supplier has failed to do so;

33.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract; or

33.3.3 are the result of the ASC Supplier's failure to comply with its BCDR Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the BCDR Plan).

- 33.4 Subject to Clause 33.5, 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.
- 33.5 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 ASC 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.
- 33.6 Where, as a result of a Force Majeure Event:
- 33.6.1 an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:
- (a) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure unless the provision of the Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days and the Other Party may terminate this Contract in whole or in part after such continuous period by issuing a Termination Notice to the other Party; and
 - (b) neither Party shall be liable for any Default arising as a result of such failure;
- 33.6.2 the ASC Supplier fails to perform its obligations in accordance with this Contract:
- (a) the Authority shall not be entitled:
 - (i) during the continuance of the Force Majeure Event to exercise its rights under Clause 31 (Authority Remedies for Default) as a result of such failure;
 - (ii) to receive Delay Payments pursuant to Clause 7.8 (Delay Payments) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
 - (iii) to receive Service Credits or withhold and retain any of the Service Charges as Compensation for Critical Service Level Failure pursuant to Clause 10.1 (Critical

Service Level Failure) to the extent that a Service Level Failure or Critical Service Level Failure has been caused by the Force Majeure Event; and

- (b) the ASC 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 Contract during the occurrence of the Force Majeure Event.

- 33.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.
- 33.8 Relief from liability for the Affected Party under this Clause 33 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 33.7.
- 33.9 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Contract under Clause 33.6.1(a) for a continuing Force Majeure Event.

34. PROTECTION OF PERSONAL DATA

Status of the Controller

- 34.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Contract will determine the status of each Party under the Data Protection Legislation. A Party may act as:
 - 34.1.1 “**Controller**” (where the other Party acts as the “**Processor**”);
 - 34.1.2 “**Processor**” (where the other Party acts as the “**Controller**”);
 - 34.1.3 “**Joint Controller**” (where both Parties are considered to jointly control the same Personal Data);
 - 34.1.4 “**Independent Controller**” of the Personal Data where the other Party is also “**Controller**” of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in the Schedule of Processing, Personal Data and Data Subjects which scenario or scenarios are intended to apply under this Contract.

Where One Party is Controller and the other Party its Processor

- 34.2 Where a Party is a Processor, the only Processing that the ASC Supplier is authorised to do is listed in the Schedule of Processing, Personal Data and Data Subjects by the Controller.
- 34.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 34.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
 - 34.4.1 a systematic description of the envisaged processing operations and the purpose of the Processing;
 - 34.4.2 an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
 - 34.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 34.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 34.5 The Processor shall, in relation to any Personal Data Processed in connection with its obligations under this Contract:
 - 34.5.1 Process that Personal Data only in accordance with the Schedule of Processing, Personal Data and Data Subjects, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by Law;
 - 34.5.2 ensure that it has in place Protective Measures, including in the case of the ASC Supplier the measures set out in Clause 26 (Authority Data and Security Requirements) which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;

- (c) state of technological development; and
- (d) cost of implementing any measures;

34.5.3 ensure that:

- (a) the Processor Personnel do not Process Personal Data except in accordance with this Contract (and in particular the Schedule of Processing, Personal Data and Data Subjects);
- (b) it takes all reasonable steps to ensure the reliability and integrity of any of the Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the ASC Supplier's duties under this Clause, Clauses 40 (Confidentiality) and in the case of the ASC Supplier, 26 (Authority Data and Security Requirements);
 - (ii) are subject to appropriate confidentiality undertakings with the ASC Supplier or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and

34.5.4 not transfer Personal Data to a Restricted Country unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- (a) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37 as relevant) as determined by the Authority;
- (b) the Data Subject has enforceable rights and effective legal remedies;
- (c) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations);

- (d) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
 - (e) in respect of any Processing in, or transfer of Personal Data to, any Restricted Country permitted in accordance with this Clause 34.5.4, the Processor shall, when requested by the Controller, promptly enter into an agreement with the Controller including or on such provisions as the Standard Contractual Clauses and/or such variation as a regulator or the Controller might require which terms shall, in the event of any conflict, take precedence over those in this Clause 34, and the Processor shall comply with any reasonable instructions notified to it in advance by the Controller with respect to the transfer of the Personal Data; and
- 34.5.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of this Contract unless the Processor is required by Law to retain the Personal Data.
- 34.6 Subject to Clause 34.7, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with this Contract it:
 - 34.6.1 receives a Data Subject Request (or purported Data Subject Request);
 - 34.6.2 receives a request to rectify, block or erase any Personal Data;
 - 34.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation; or
 - 34.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - 34.6.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 34.6.6 becomes aware of a Data Loss Event.
- 34.7 The Processor's obligation to notify under Clause 34.6 shall include the provision of further information to the Controller in phases, as details become available.
- 34.8 Taking into account the nature of the Processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under

Data Protection Legislation and any complaint, communication or request made under Clause 34.6 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

- 34.8.1 the Controller with full details and copies of the complaint, communication or request;
 - 34.8.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 34.8.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 34.8.4 assistance as requested by the Controller following any Data Loss Event; and
 - 34.8.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 34.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 34. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 34.9.1 the Controller determines that the Processing is not occasional;
 - 34.9.2 the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - 34.9.3 the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 34.10 The Processor shall allow for audits of its Processing activity by the Controller or the Controller's designated auditor or representative.
- 34.11 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- 34.12 Before allowing any Sub-processor to Process any Personal Data related to this Contract, the Processor must:
- 34.12.1 notify the Controller in writing of the intended Sub-processor and processing;
 - 34.12.2 obtain the written consent of the Controller;

- 34.12.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 34 such that they apply to the Sub-processor; and
- 34.12.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 34.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 34.14 The Authority may, at any time on not less than thirty (30) Working Days' notice, revise this Clause by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 34.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Working Days' notice to the ASC Supplier amend this Contract to ensure that it complies with any guidance, codes of practice, codes of conduct, regulatory guidance, standard clauses or any other related Laws arising from the GDPR.

Where the Parties are Joint Controllers of Personal Data

- 34.16 In the event that the Parties are Joint Controllers in respect of Personal Data under this Contract, the Parties shall implement Clauses that are necessary to comply with GDPR Article 26 based on the terms set out in the alternative Joint Controller clauses as indicated in the Alternative Clauses of the Order Form.

Where the Parties are Independent Controllers of Personal Data

- 34.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
- 34.18 Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 34.19 Where a Party has provided Personal Data to the other Party in accordance with Clause 34.17, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 34.20 The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the Processing of Personal Data for the purposes of this Contract.

- 34.21 The Parties shall only provide Personal Data to each other:
- 34.21.1 to the extent necessary to perform the respective obligations under this Contract;
 - 34.21.2 in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
 - 34.21.3 where it has recorded it in the Schedule of Processing, Personal Data and Data Subjects.
- 34.22 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.
- 34.23 A Party Processing Personal Data for the purposes of this Contract shall maintain a record of its Processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.
- 34.24 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Contract (“the **Request Recipient**”):
- 34.24.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
 - 34.24.2 where the request or correspondence is directed to the other party and/or relates to the other Party's Processing of the Personal Data, the Request Recipient will:
 - (a) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
 - (b) provide any information and/or assistance as reasonably requested by the other party to help it respond to the request

or correspondence in the timeframes specified by Data Protection Legislation.

34.25 Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to this Contract and shall:

34.25.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;

34.25.2 implement any measures necessary to restore the security of any compromised Personal Data;

34.25.3 work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and

34.25.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.

34.26 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Contract as specified in the Schedule of Processing, Personal Data and Data Subjects.

34.27 Personal Data shall not be retained or Processed for longer than is necessary to perform each Party's obligations under this Contract which is specified in the Schedule of Processing, Personal Data and Data Subjects.

34.28 Notwithstanding the general application of Clauses 34.2 to 34.15 to Personal Data, where the ASC Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Clause 34.16 to 34.27.

35. **TERMINATION AND EXPIRY**

35.1 **Authority Termination Rights**

Termination on Material Default

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

- (a) the ASC Supplier commits a Critical Service Level Failure;
- (b) as a result of any Defaults, the Authority incurs Losses in any Contract Year which exceed 80% of the value of the ASC Supplier's aggregate annual liability limit for that Contract Year as set out in Clause 19.4.1, 19.4.2, 19.4.3 and 19.4.4;

- (c) the Authority expressly reserves the right to terminate this Contract for material Default, including pursuant to any of the following: Clause 23 (IPRs Indemnity), Clause 46.5.2 (Prevention of Fraud and Bribery) and Paragraph 4 of Schedule 8 (Financial Distress);
- (d) the ASC Supplier commits any material Default of this Contract which is not, in the reasonable opinion of the Authority, capable of remedy;
- (e) the ASC Supplier commits a Default, including a material Default, which in the opinion of the Authority is remediable but has not remedied such Default to the satisfaction of the Authority in accordance with the Rectification Plan Process; and/or
- (f) the Authority has become aware that the ASC 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 Contract;

35.1.2 For the purpose of Clause 35.1.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

Termination in Relation to Financial Standing

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

Termination on Insolvency

- 35.1.4 The Authority may terminate this Contract with immediate effect by issuing a written notice to the ASC Supplier where an Insolvency Event affecting the ASC Supplier occurs.

Termination on Change of Control

- 35.1.5 The ASC Supplier shall notify the Authority immediately in writing and as soon as the ASC Supplier is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.
- 35.1.6 The ASC Supplier shall ensure that any notification made pursuant to Clause 35.1.5 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.
- 35.1.7 The Authority may terminate this Contract by issuing a Termination Notice to the ASC Supplier within six (6) Months of:
- (a) being notified in writing that a Change of Control is anticipated or in contemplation or has occurred; or
 - (b) where no notification has been made, the date that the Authority becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,

but shall not be permitted to terminate where written consent of the Authority was granted prior to the Change of Control.

Termination for breach of Regulations

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

Termination Without Cause

- 35.1.9 The Authority shall have the right to terminate this Contract at any time by issuing a Termination Notice to the ASC Supplier giving written notice of at least the number of days stipulated in the Order Form.

Termination in Relation to the Framework

- 35.1.10 The Authority may terminate this Contract by giving by issuing a Termination Notice to the ASC Supplier if the Framework is terminated for any reason whatsoever.

Termination in Relation to Benchmarking

- 35.1.11 The Authority may terminate this Contract by issuing a Termination Notice to the ASC Supplier if the ASC Supplier refuses or fails to

comply with its obligations as set out in Paragraph 3 Schedule S5 (Benchmarking) where used.

35.2 ASC Supplier Termination Right

- 35.2.1 ASC Supplier may issue a Reminder Notice if the Authority does not pay an undisputed invoice on time. The ASC Supplier can terminate this Contract if the Authority fails to pay an undisputed invoiced sum due and worth over 10% of the annual Contract Value within 30 days of the date of the Reminder Notice.
- 35.2.2 The ASC Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the provision of the Services for failure of the Authority to pay undisputed sums of money (whether in whole or in part).

35.3 Partial Termination, Suspension and Partial Suspension

- 35.3.1 Where the Authority has the right to terminate this Contract, the Authority shall be entitled to terminate or suspend all or part of this Contract provided always that, if the Authority elects to terminate or suspend this Contract in part, the parts of this Contract not terminated or suspended can, in the Authority's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Contract.
- 35.3.2 Any suspension of this Contract under Clause 35.3.1 shall be for such period as the Authority may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.
- 35.3.3 The Parties shall seek to agree the effect of any Change necessitated by a partial termination, suspension or partial suspension in accordance with the Change Control Procedure, including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Services and the Charges, provided that:
 - (a) the ASC Supplier shall not be entitled to an increase in the Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Authority's termination rights under Clause 35.1 (Authority Termination Rights) except Clause 35.1.9 (Termination Without Cause);if the Authority removes from the scope of the Operational Services any of the Business Applications (in whole or in part) and accordingly terminates any associated Operational Services pursuant to Clause 35.1.9 (Termination without

Cause) and this Clause 35.3 (Partial Termination, Suspension and Partial Suspension), then subject to the Authority having provided notice in accordance with the notice period for Termination Without Cause specified in the Order Form, no Termination Payment and/or Compensation Payment shall be payable by the Authority to the ASC Supplier in respect of the terminated Operational Services; and

- (b) the ASC Supplier shall not be entitled to reject the Change.

36. CONSEQUENCES OF TERMINATION AND EXPIRY

36.1 Consequences of termination under Paragraph 1.2 Schedule S8 (Guarantee) where used, 35.1.1 (Termination on Material Default), 35.1.3 (Termination in Relation to Financial Standing), 35.1.10 (Termination in Relation to Framework Agreement) and 35.1.11 (Termination in Relation to Benchmarking)

36.1.1 Where the Authority:

- (a) terminates (in whole or in part) this Contract under any of the Clauses referred to in Clause 36.1; and
- (b) then makes other arrangements for the supply of the Services, the Authority may recover from the ASC Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period provided that Authority shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Authority to the ASC Supplier until the Authority has established the final cost of making those other arrangements.

36.2 Consequences of termination under Clauses 35.1.9 (Termination without Cause)

36.2.1 Where the Authority terminates (in whole or in part) this Contract under Clause 35.1.9 (Termination without Cause) and Part E (Early Termination Fee(s) of Schedule 2 (Charges and Invoicing) expressly states:

- (a) the ASC Supplier is entitled to be paid an early termination fee pursuant to this Clause 36.2.1 where the Authority terminates this Contract pursuant to Clause 35.1.9 (Termination without Cause); and
- (b) in detail how any such early termination fee is to be calculated in the event of termination for convenience (including where relevant details of any formula for such calculation),

the Authority shall pay to the ASC Supplier the early termination fee (calculated in accordance with the formula set out in Part E (Early Termination Fee(s) of Schedule 2 (Charges and Invoicing) and due solely as a result of the Authority terminating this Contract for convenience pursuant to Clause 35.1.9 (Termination without Cause)).

36.2.2 The Authority shall not be liable under Clause 36.2.1 to pay any early termination fee(s):

- (a) which are claimable under insurance held by the ASC Supplier, and the ASC Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
- (b) which when added to any sums paid or due to the ASC Supplier under this Contract, exceeds the total sum that would have been payable to the ASC Supplier if this Contract had not been terminated; or
- (c) where no such calculation details are expressly set out in Part E (Early Termination Fee(s) of Schedule 2 (Charges and Invoicing); or
- (d) where the Authority removes from the scope of the Operational Services any of the Business Applications (in whole or in part) and accordingly terminates any associated Operational Services pursuant to Clause 35.1.9 (Termination without Cause) and Clause 35.3 (Partial Termination, Suspension and Partial Suspension).

36.3 **Consequences of Termination for Any Reason or Expiry**

36.3.1 Save as otherwise expressly provided in this Contract:

- (a) termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- (b) termination of this Contract shall not affect the continuing rights, remedies or obligations of the Authority or the ASC Supplier under Clauses 8.8 (Specially Written Software), 15.4 and 15.5 (VAT), 15.6 and 15.7 (Set-off and Withholding), 29 (Records and Audits), 11.8 (Employment Liabilities), 16 (Income Tax and National Insurance Contributions), 20 (IPRs), 21 (Transfers and Licenses Granted by the ASC Supplier), 23 (IPRs Indemnity), 40 (Confidentiality), 41 (Transparency and

FOIA), 34 (Protection of Personal Data), 19 (Limitation of Liability), 36 (Consequences of Termination or Expiry), 44 (Severance), 51 (Entire Agreement), 52 (Third Party Rights), 54 (Disputes), 55 (Governing Law and Jurisdiction), Schedule 1 (Definitions), Schedule 4 (Dispute Resolution Procedure), Schedule 10 (Exit Management), Schedule S4 (Staff Transfer) where used, Clause C3 (Collaboration Agreement) where used and without limitation to the foregoing, any other provision of this Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive termination or expiry of this Contract.

- 36.3.2 The Parties shall comply with the provision of Schedule 10 (Exit Management) and any current Exit Plan in relation to the orderly transition of the Services to the Authority or a Replacement Supplier.

37. APPOINTMENT OF SUB-CONTRACTORS

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

37.1.1 manage any Sub-Contractors in accordance with Good Industry Practice; and

37.1.2 comply with its obligations under this Contract in the delivery of the Services.

- 37.2 Prior to sub-contracting any of its obligations under this Contract, the ASC Supplier shall notify the Authority in writing of:

37.2.1 the proposed Sub-Contractor's name, registered office and company registration number;

37.2.2 the scope of any Services to be provided by the proposed Sub-Contractor; and

37.2.3 where the proposed Sub-Contractor is an Affiliate of the ASC Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-Contract has been agreed on "arm's-length" terms.

- 37.3 If requested by the Authority within 10 Working Days of receipt of the ASC Supplier's notice issued pursuant to Clause 37.2, the ASC Supplier shall also provide:

37.3.1 a copy of the proposed Sub-Contract; and

37.3.2 any further information reasonably requested by the Authority.

37.4 The Authority may, within 10 Working Days of receipt of the ASC Supplier's notice issued pursuant to Clause 37.2 (or, if later, receipt of any further information requested pursuant to Clause 37.3), object to the appointment of the relevant Sub-Contractor if it considers that:

37.4.1 the appointment of a proposed Sub-Contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;

37.4.2 the proposed Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or

37.4.3 the proposed Sub-Contractor employs unfit persons;

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

37.5 If:

37.5.1 the Authority has not notified the ASC Supplier that it objects to the proposed Sub-Contractor's appointment by the later of 10 Working Days of receipt of:

(a) the ASC Supplier's notice issued pursuant to Clause 37.2; and

(b) any further information requested by the Authority pursuant to Clause 37.3; and

37.5.2 the proposed Sub-Contract is not a Key Sub-Contract (which shall require the written consent of CCS and the Authority in accordance with Clause 38 (Appointment of Key Sub-Contractors),

the ASC Supplier may proceed with the proposed appointment.

37.6 The ASC 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.

38. **APPOINTMENT OF KEY SUB-CONTRACTORS**

38.1 The ASC Supplier shall only be entitled to sub-contract its obligations to the Key Sub-Contractors listed in Framework Schedule 7 (Key Sub-Contractors) where such Key Sub-Contractors are set out in the Order Form.

38.2 Where during the Contract Period the ASC Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of CCS and the Authority (such consent not to be unreasonably withheld or delayed). CCS and/or the Authority may reasonably withhold its

consent to the appointment of a Key Sub-Contractor if any of them considers that:

- 38.2.1 the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Services or may be contrary to its interests;
 - 38.2.2 the proposed Key Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
 - 38.2.3 the proposed Key Sub-Contractor employs unfit persons.
- 38.3 The ASC Supplier shall ensure that each new or replacement Key Sub-Contract shall include:
- 38.3.1 provisions which will enable the ASC Supplier to discharge its obligations under this Contract;
 - 38.3.2 a right under CRTPA for the Authority to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Authority;
 - 38.3.3 a provision enabling the Authority to enforce the Key Sub-Contract as if it were the ASC Supplier;
 - 38.3.4 a provision enabling the ASC Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Authority;
 - 38.3.5 obligations no less onerous on the Key Sub-Contractor than those imposed on the ASC Supplier under this Contract in respect of:
 - (a) the data protection requirements set out in Clause 34 (Protection of Personal Data);
 - (b) the FOIA requirements set out in Clause 41 (Transparency and FOIA);
 - (c) the keeping of records in respect of the services being provided under the Key Sub-Contract; and
 - (d) the conduct of audits set out in Clause 29 (Records and Audit);
 - 38.3.6 provisions enabling the ASC Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the ASC Supplier than those imposed on the Authority under Clauses 35 and 36 of this Contract;
 - 38.3.7 a provision restricting the ability of the Key Sub-Contractor to sub-contract all or any part of the provision of the Services provided

to the ASC Supplier under the Key Sub-Contract without first seeking the written consent of the Authority;

38.3.8 a provision requiring the Key Sub-Contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-Contractors in, the Multi-Party Dispute Resolution Procedure;

38.3.9 a provision requiring the Key Sub-Contractor to:

- (a) promptly notify the ASC Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
 - (i) the occurrence of a Financial Distress Event in relation to the Key Sub-Contractor; or
 - (ii) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-Contractor,

and in any event, provide such notification within ten (10) Working Days of the date on which the Key Sub-Contractor first becomes aware of such); and

- (b) co-operate with the ASC Supplier and the Authority in order to give full effect to the provisions of Schedule 8 (Financial Distress), including meeting with the ASC Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Remediation Plan, and providing the information specified at Paragraph 3.3.2(b) of Schedule 8 (Financial Distress).

39. SUPPLY CHAIN PROTECTION

Advertising Sub-Contract Opportunities

39.1 The ASC Supplier shall:

39.1.1 subject to Clauses 39.3 and 39.4, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the Goods and/or Services above a minimum threshold of £25,000 that arise during the Contract Period;

39.1.2 within ninety (90) days of awarding a Sub-Contract to a Sub-Contractor, update the notice on Contracts Finder with details of the successful Sub-Contractor;

- 39.1.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;
 - 39.1.4 provide reports on the information at Clause 39.1.3 to the Authority in the format and frequency as reasonably specified by the Authority; and
 - 39.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 39.2 Each advert referred to in Clause 39.1 above shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the ASC Supplier.
- 39.3 The obligation at Clause 39.1 shall only apply in respect of Sub-Contract opportunities arising after the Implementation Commencement Date.
- 39.4 Notwithstanding Clause 39.1 the Authority may, by giving its prior written approval, agree that a Sub-Contract opportunity is not required to be advertised on Contracts Finder.

Supply Chain Protection

- 39.5 The ASC Supplier shall ensure that all Sub-contracts (which in this sub-clause includes any contract in the ASC 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 Contract) contain provisions:
- 39.5.1 giving the ASC Supplier a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour Law;
 - 39.5.2 requiring the ASC Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
 - 39.5.3 that if the ASC Supplier or other party fails to consider and verify an invoice in accordance with sub-paragraph 39.5.2, the invoice shall be regarded as valid and undisputed for the purpose of sub-paragraph 39.5.4 after a reasonable time has passed;
 - 39.5.4 requiring the ASC Supplier or other party to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;

- 39.5.5 giving the Authority a right to publish the ASC Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
 - 39.5.6 requiring the Sub-Contractor to include a clause to the same effect as this Clause 39 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.
- 39.6 The ASC Supplier shall:
- 39.6.1 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;
 - 39.6.2 include within the Performance Monitoring Reports required under Part B of Schedule 3 (Service Levels, Service Credits and Performance Monitoring) a summary of its compliance with Clause 39.6.1, such data to be certified each quarter by a director of the ASC Supplier as being accurate and not misleading.
- 39.7 Notwithstanding any provision of Clauses 40 (Confidentiality) and 25 (Publicity and Branding) if the ASC Supplier notifies the Authority that the ASC Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).
- 39.8 The Authority may require the ASC Supplier to terminate:
- 39.8.1 a Sub-Contract where:
 - (a) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to any of the termination events in Clause 35.1 (Authority Termination Rights) except Clause 35.1.9 (Termination Without Cause); and/or
 - (b) the relevant Sub-Contractor or its Affiliates embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Services or otherwise; and/or
 - 39.8.2 a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:

- (a) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
- (b) the Authority has not served its notice of objection within six (6) Months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.

40. **CONFIDENTIALITY**

- 40.1 For the purposes of this Clause 40, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 40.2 Except to the extent set out in this Clause 40 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:
 - 40.2.1 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); and
 - 40.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner's prior written consent;
 - 40.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract; and
 - 40.2.4 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.
- 40.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
 - 40.3.1 the Recipient is required to disclose the Confidential Information by Law;
 - 40.3.2 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 Contract;
 - (b) the purpose of the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy,

efficiency and effectiveness with which the Authority is making use of any Services provided under this Contract; or

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

40.3.3 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.

40.4 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.

40.5 Subject to Clauses 40.2 and 40.3, the ASC Supplier may only disclose the Authority's Confidential Information on a confidential basis to:

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

40.5.2 its professional advisers for the purposes of obtaining advice in relation to this Contract.

40.6 Where the ASC Supplier discloses Confidential Information of the Authority pursuant to this Clause 40, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.

40.7 The Authority may disclose the Confidential Information of the ASC Supplier:

40.7.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;

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

40.7.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

40.7.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by the Authority for any purpose relating to or connected with this Contract;

40.7.5 on a confidential basis for the purpose of the exercise of its rights under this Contract; or

40.7.6 to a proposed transferee, assignee novatatee of, or successor in title to the Authority,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 40.

40.8 In the event of a breach by the ASC Supplier of any of the applicable provisions of this Clause 40, the Authority reserves the right to terminate this Contract for material Default.

41. **TRANSPARENCY AND FOIA**

41.1 The Parties acknowledge that:

41.1.1 the Transparency Reports; and

41.1.2 the content of this Contract, including any Changes to this Contract agreed from time to time, except for:

(a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and

(b) Commercially Sensitive Information;

(together the “**Transparency Information**”) are not Confidential Information.

41.2 Notwithstanding any other provision of this Contract, the ASC Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the ASC Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

41.3 The ASC Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Schedule 6 (Transparency Reports).

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

42. **WAIVER**

- 42.1 A partial or full waiver or relaxation of the terms of this Contract is only valid if it is stated to be a waiver in writing to the other Party.
- 42.2 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

43. 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 Contract.

44. SEVERANCE

44.1 If any provision of this Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Contract shall not be affected.

44.2 In the event that any deemed deletion under Clause 44.1 is so fundamental as to prevent the accomplishment of the purpose of this Contract or materially alters the balance of risks and rewards in this Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.

44.3 If the Parties are unable to agree on the revisions to this Contract within 5 Working Days of the date of the notice given pursuant to Clause 44.2, the matter shall be dealt with in accordance with Paragraph 4 (Commercial Negotiation) of Schedule 4 (Dispute Resolution Procedure) except that if the representatives are unable to resolve the Dispute within 30 Working Days of the matter being referred to them, this Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Contract is terminated pursuant to this Clause 44.3.

45. RELATIONSHIP OF THE PARTIES

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

46. PREVENTING FRAUD BRIBERY AND CORRUPTION

46.1 The ASC Supplier must not during the Contract Period:

46.1.1 commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2); nor

- 46.1.2 do or allow anything which would cause the Authority, including any of their employees, consultants, contractors, Sub-Contractors or agents to breach any of the Relevant Requirements or incur any liability under them.
- 46.2 The ASC Supplier must during the Contract Period:
 - 46.2.1 create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Sub-Contractors to do the same;
 - 46.2.2 keep full records to show it has complied with its obligations under this Clause 46 and give copies to the Authority on request; and
 - 46.2.3 if required by the Authority, within 20 Working Days of the Implementation Commencement Date, and then annually, certify in writing to the Authority, that it has complied with this Clause 46, including compliance of ASC Supplier Personnel, and provide reasonable supporting evidence of this on request, including its policies and procedures.
- 46.3 The ASC Supplier must immediately notify the Authority if it becomes aware of any breach of Clauses 46.1 and 46.2 or has any reason to think that it, or any of the ASC Supplier Personnel, has either:
 - 46.3.1 been investigated or prosecuted for an alleged Prohibited Act;
 - 46.3.2 been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
 - 46.3.3 received a request or demand for any undue financial or other advantage of any kind related to the Framework or any contract entered into under the Framework; or
 - 46.3.4 suspected that any person or Party directly or indirectly related to the Framework or any contract entered into under the Framework has committed or attempted to commit a Prohibited Act.
- 46.4 If the ASC Supplier notifies the Authority as required by Clause 46.3, the ASC Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the audit of any books, records and relevant documentation.
- 46.5 If the ASC Supplier breaches Clause 46.2 , the Authority may by notice:
 - 46.5.1 require the ASC Supplier to remove from performance of this Contract any ASC Supplier Personnel whose acts or omissions have caused the ASC Supplier's breach; or

46.5.2 immediately terminate this Contract for material Default.

46.6 In any notice the ASC Supplier gives under Clause 46.3 it must specify the:

46.6.1 Prohibited Act;

46.6.2 identity of the Party who it thinks has committed the Prohibited Act;
and

46.6.3 action it has decided to take.

47. EQUALITY, DIVERSITY AND HUMAN RIGHTS

47.1 The ASC Supplier must follow all applicable equality Law when it performs its obligations under this Contract, including:

47.1.1 protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and

47.1.2 any other requirements and instructions which the Authority reasonably imposes related to equality Law.

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

48. ASSIGNMENT AND NOVATION

48.1 The ASC 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 Contract without the prior written consent of the Authority.

48.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Contract and/or any associated licences to:

48.2.1 any Central Government Body; or

48.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority,

and the ASC Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 48.2.

48.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not, subject to Clause 48.4, affect the validity of this

Contract and this Contract shall be binding on any successor body to the Authority.

- 48.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Contract to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a “**Successor Body**”), the ASC 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 Clause 35.1.4 as if references in that Clause to the ASC Supplier and to ASC Supplier or Guarantor (if applicable) in the definition of Insolvency Event were references to the Successor Body).

49. **CHANGE**

Change Control Procedure

- 49.1 Any requirement for a Change shall be subject to the Change Control Procedure.

Change in Law

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

49.2.1 a General Change in Law; or

49.2.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Implementation Commencement Date.

- 49.3 If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in Clause 49.2.2), the ASC Supplier shall:

49.3.1 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 Contract; and
- (b) whether any relief from compliance with the ASC Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Level Performance Measures; and

49.3.2 provide the Authority with evidence:

- (a) that the ASC 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 Schedule S7 (Continuous Improvement) where used, has been taken into account in amending the Charges.

49.3.3 Any Change in the Charges or relief from the ASC Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 49.2.2) shall be implemented in accordance with the Change Control Procedure.

50. NOTICES

50.1 Any notices sent under this Contract must be in writing.

50.2 Subject to Clause 50.3, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

[REDACTED]

- 50.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 50.2:
- 50.3.1 notices issued by the ASC Supplier pursuant to Clause 35.2 (Termination by the ASC Supplier);
 - 50.3.2 Termination Notices; and
 - 50.3.3 Dispute Notices.
- 50.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 50.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For[™] 1st Class delivery (as set out in the table in Clause 50.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 50.5 This Clause 50 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 4 (Dispute Resolution Procedure)).
- 50.6 For the purposes of this Clause 50, the address and email address of each Party shall be the address and email address set out in the Order Form.

51. ENTIRE AGREEMENT

- 51.1 This Contract constitutes the entire agreement between the Parties in respect of the matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 51.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.
- 51.3 Nothing in this Clause 51 shall exclude any liability in respect of misrepresentations made fraudulently.

52. **THIRD PARTY RIGHTS**

- 52.1 The provisions of Clause 23 (IPR Indemnity), Paragraphs 2.1 and 3.1 of Part A, Paragraphs 2.1, 3.1 and 3.3 of Part B, Paragraphs 1.2 and 1.5 of Part C, Part D and Paragraphs 1.4, 2.3 and 2.5 of Part E of Schedule S4 (Staff Transfer) where used and the provisions of Paragraph 8.9 of Schedule 10 (Exit Management) (together “**Third Party Provisions**”) confer benefits on persons named or identified in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 52.2 Subject to Clause 52.1, a person who is not a Party to this Contract has no right under the CRTPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 52.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- 52.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 52.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

53. **CONFLICTS OF INTEREST**

- 53.1 The ASC Supplier must take action to ensure that neither the ASC Supplier nor the ASC Supplier’s staff are placed in the position of an actual or potential Conflict of Interest.
- 53.2 The ASC Supplier must promptly notify and provide details to the Authority if a Conflict of Interest happens or is expected to happen.
- 53.3 The Authority can terminate this Contract immediately by giving notice in writing to the ASC Supplier or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest.

54. **DISPUTES**

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

55. **GOVERNING LAW AND JURISDICTION**

- 55.1 This Contract and any issues, Disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or

formation shall be governed by and construed in accordance with the Laws of England and Wales.

- 55.2 Subject to Clause 54 (Disputes) and Schedule 4 (Dispute Resolution Procedure) (including the Authority's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

SCHEDULE 1 - DEFINITIONS

In accordance with Clause 1 (Definitions), in this Contract the following expressions shall have the meanings ascribed in the table below.

Acceptance Criteria	means the criteria used to determine the Achievement of Milestones within the Contract;
Achieve	<p>means:</p> <p>(a) in respect of a Test, to successfully pass a Test without any Test Issues; and</p> <p>(b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule S2 (Testing Procedures) where used,</p> <p>and “Achieved” and “Achievement” shall be construed accordingly;</p>
Affected Party	means the Party seeking to claim relief in respect of a Force Majeure Event;
Affiliates	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
Acceptance into Service or AiS	means a set of criteria used to establish a minimum baseline of support for all new or changed services; contains a number of service and Project facing elements, including references to the Non-Functional Requirements;
Applicable Supplier Personnel	<p>means any Supplier Personnel who:</p> <p>(a) at the Termination Date:</p> <p>(i) are employees of the ASC Supplier; and</p> <p>(ii) 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</p>

- materially involved in the provision of the Services or any part of the Services; and
- (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
- (b) are dismissed or given notice of dismissal by the ASC Supplier within:
 - (i) 40 Working Days of the Termination Date; or
 - (ii) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and
- (c) have not resigned or given notice of resignation prior to the date of their dismissal by the ASC Supplier; and
- (d) the Supplier can demonstrate to the satisfaction of the Authority:
 - (i) are surplus to the ASC Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers; and
 - (ii) are genuinely being dismissed for reasons of redundancy; and
- (e) have been selected for redundancy by the ASC Supplier on objective grounds other than the fact that the ASC Supplier is entitled to reimbursement under this provision in respect of such employees;

Approved Sub-Licensee means any of the following:

- (a) a Central Government Body;
- (b) any third party providing services to a Central Government Body; and/or
- (c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority

ASC Supplier	means the entity identified as such in the Order Form;
ASC Supplier Background IPRs	<p>means</p> <p>(a) Intellectual Property Rights owned by the ASC Supplier before the Implementation Commencement Date, for example those subsisting in the ASC Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the ASC Supplier's Know-How or generic business methodologies; and/or</p> <p>(b) Intellectual Property Rights created by the ASC Supplier independently of this Contract,</p> <p>which in each case is or will be used before or during the Contract Period for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the ASC Supplier subsisting in the ASC Supplier Software;</p>
ASC Supplier COTS Background IPRs	<p>means any embodiments of ASC Supplier Background IPRs that:</p> <p>(a) the ASC Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the ASC Supplier save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p>
ASC Supplier COTS Software	<p>means ASC Supplier Software (including open source software) that:</p> <p>(a) the ASC Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the ASC Supplier save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p>
ASC Supplier Equipment	means the hardware, computer and telecoms devices and equipment used by the ASC Supplier or its Sub-Contractors

(but not hired, leased or loaned from the Authority) for the provision of the Services;

ASC Supplier Non-COTS Background IPRs means any embodiments of ASC Supplier Background IPRs that have been delivered by the ASC Supplier to the Authority and that are not ASC Supplier COTS Background IPRs;

ASC Supplier Non-COTS Software means ASC Supplier Software that is not ASC Supplier COTS Software;

ASC Supplier Personnel means all persons employed or engaged by the ASC Supplier together with the ASC Supplier's servants, agents, suppliers, consultants and Sub-Contractors (and all persons employed by any Sub-Contractor together with the Sub-Contractor's servants, consultants, agents, suppliers and sub-contractors) used in the performance of its obligations under this Contract;

ASC Supplier Representative means the representative appointed by the ASC Supplier (as may be changed from time to time in accordance with Clause 28.3, the details of which as at the Implementation Commencement Date are set out in the Order Form;

ASC Supplier Software software which is proprietary to the ASC Supplier (or an Affiliate of the ASC Supplier) and which is or will be used by the ASC Supplier for the purposes of providing the Services, including the software specified as such in the Order Form;

ASC Supplier System means the information and communications technology system used by the ASC Supplier in implementing and performing the Services including the Software, the ASC Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);

Assets means all assets and rights used by the ASC Supplier to provide the Services in accordance with this Contract but excluding the Authority Assets;

Attachment means an attachment to the Order Form;

Auditor means:

- (a) the Authority's internal and external auditors;
- (b) the Authority's statutory or regulatory auditors;

- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (d) HM Treasury or the Cabinet Office;
- (e) any party formally appointed by the Authority to carry out audit or similar review functions; and
- (f) successors or assigns of any of the above;

Authority means the organisation eligible to use the Framework as specified in the Order Form;

Authority Assets means the Authority's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision of the Services details of which shall be set out in the Order Form;

Authority Background IPRs means

- (a) IPRs owned by the Authority before the Implementation Commencement Date, including IPRs contained in any of the Authority's Know-How, documentation, processes and procedures;
- (b) IPRs created by the Authority independently of this Contract; and/or
- (c) Crown Copyright which is not available to the ASC Supplier otherwise than under this Contract;

but excluding IPRs owned by the Authority subsisting in the Authority Software;

Authority Cause any material breach by the Authority of any of the Authority Responsibilities, except to the extent that such breach is:

- (a) the result of any act or omission by the Authority to which the ASC Supplier has given its prior consent; or
- (b) caused by the ASC Supplier, any Sub-Contractor or any ASC Supplier Personnel;

Authority Data means:

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

Authority Premises	means premises owned, controlled or occupied by the Authority which are made available for use by the ASC Supplier or its Sub-Contractors for the provision of the Services and/or Deliverables (or any of them) as set out or referred to in the Order Form;
Authority Protocol or Protocol	means a term denoting related Authority processes, policies and procedures, standards and guidelines. The ASC Supplier's delivery of the ASC Contract requires adherence to and integration with Authority Protocols;
Authority Representative	means the representative appointed by the Authority (as may be changed from time to time in accordance with Clause 28.4), the details of which as at the Implementation Commencement Date are set out in the Order Form;
Authority Responsibilities	means the responsibilities of the Authority set out the Order Form or agreed in writing between the Parties from time to time in connection with this Contract;
Authority Software	software which is owned by or licensed to the Authority (other than under or pursuant to this Contract) and which is or will be used by the ASC Supplier for the purposes of providing the Services;
Authority System	the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the ASC Supplier in connection with this Contract which is owned by the Authority or licensed to it by a third party and which interfaces with the

	ASC Supplier System or which is necessary for the Authority to receive the Services;
BCDR Plan	means the plan prepared pursuant to Paragraph 2.1 of Schedule S6 (Business Continuity and Disaster Recovery), as may be amended from time to time;
Breach of Security	<p>the occurrence of:</p> <ul style="list-style-type: none"> (a) any unauthorised access to or use of the Services, the Sites, the IT Environment and/or any IT, information or data (including the Confidential Information and the Authority Data) used by the Authority and/or the ASC Supplier in connection with this Contract; and/or (b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the ASC Supplier in connection with this Contract, <p>in either case as more particularly set out in the Security Policy (if any);</p>
Breakage Costs Payment	an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with Paragraph 3 of Part E (Early Termination Fees) of Schedule 2 (Charges and Invoicing);
Business Applications	Means the IT systems/applications that are to be supported and maintained by the ASC Supplier under this Contract and used by the ASC Supplier, the Authority and other approved persons to enable business operations;
Call Off Terms	means these terms and conditions, including the Schedules;
CCS	means Crown Commercial Service, the authority to the Framework;
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;

Change means any change to this Contract excluding changes made via Change Management;

Change Control Procedure means the procedures for changing this Contract set out in Part A and Part B of Schedule 5 (Change Control Procedure) and either Part A or Part B shall apply to this Contract as indicated in the Order Form;

Change in Law means any change in Law which impacts on the performance of the Services which comes into force after the Implementation Commencement Date;

Change Management means control of the lifecycle of all changes with the primary objective to enable beneficial changes to be made with minimum disruption to the delivery of the Services;

Charges means the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 2 (Charges and Invoicing), including any Milestone Payment or Service Charge or Project Charge;

Commercially Sensitive Information the Confidential Information listed in Section D of the Order Form (if any) comprising of commercially sensitive information relating to the ASC Supplier, its IPR or its business or which the ASC Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the ASC Supplier significant commercial disadvantage or material financial loss;

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

Compensation for Critical Service Level Failure has the meaning given to it in Clause 10.1.2;

Confidential Information

means the Authority's confidential information and/or the ASC Supplier's confidential information, as the context requires, but not including any information which:

- (a) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
- (b) the Recipient obtained on a non-confidential 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;
- (c) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality; or
- (d) was independently developed without access to the Confidential Information;

Configuration Item

means the lowest level of the service hierarchy, the Business Application or Infrastructure. Configuration Item(s) can describe the individual applications, servers etc that are used to provide the service and "Application Configuration Item" and "Application CI" and "CI" shall be construed accordingly;

Conflict of Interest

a conflict between the financial or personal duties of the ASC Supplier or the ASC Supplier's staff and the duties owed to the Authority under this Contract, in the reasonable opinion of the Authority;

Contract

means the contract between the Authority and the ASC Supplier (entered into pursuant to the terms of the Framework) consisting of:

- (a) the Order Form; and
- (b) the Call Off Terms;

Contract Breakage Costs the amounts payable by the ASC Supplier to its Sub-Contractors for terminating all relevant Sub-Contracts as a direct result of the early termination of this Contract;

Contract Finder	means the online government portal which allows suppliers to search for information about contracts worth over £10,000 (excluding VAT) as prescribed by Part 4 of the Public Contract Regulations 2015;
Contract Period	<p>means the period commencing on the Implementation Commencement Date and ending on:</p> <ul style="list-style-type: none"> (a) expiry of the Initial Term or the Extension Period; or (b) on the earlier of termination of this Contract, <p>which for the avoidance of doubt may not exceed the Maximum Contract Period;</p>
Contract Value	means the higher of the actual or expected total Charges paid or payable under this Contract where all obligations are met by the ASC Supplier;
Contract Year	means a consecutive period of twelve (12) Months commencing on the Implementation Commencement Date or each anniversary thereof;
Control	means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly;
Controller	has the meaning given to it in the GDPR;
Costs	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the ASC Supplier in providing the Deliverables:</p> <ul style="list-style-type: none"> (a) the cost to the ASC Supplier or the Key Subcontractor (as the context requires), calculated per Work Day, of engaging the Supplier Staff, including: <ul style="list-style-type: none"> (i) base salary paid to the Supplier Staff; (ii) employer's National Insurance contributions; (iii) pension contributions; (iv) car allowances; (v) any other contractual employment benefits;

- (vi) staff training;
 - (vii) work place accommodation;
 - (viii) work place IT equipment and tools reasonably necessary to provide the Deliverables (but not including items included within limb (b) below); and
 - (ix) reasonable recruitment costs, as agreed with the Authority;
- (b) costs incurred in respect of ASC Supplier Assets which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of ASC Supplier Assets by the ASC Supplier to the Authority or (to the extent that risk and title in any ASC Supplier Asset is not held by the ASC Supplier) any cost actually incurred by the ASC Supplier in respect of those ASC Supplier Assets;
 - (c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the ASC Supplier in the provision of the Deliverables; and
 - (d) Reimbursable Expenses to the extent these have been specified as allowable in the Order Form and are incurred in delivering any Deliverables;

but excluding:

- i) Overhead;
- ii) financing or similar costs;
- iii) maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Call-Off Contract Period whether in relation to ASC Supplier Assets or otherwise;
- iv) taxation;
- v) fines and penalties;
- vi) amounts payable under Schedule S5 (Benchmarking) where such Schedule is used; and

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

COTS	means "Commercial Off The Shelf", and in the ASC context a purchased item of software or technology;
Critical Service Level Failure	means any instance of critical Service Level Failure specified in Part C of Schedule 3 (Service Levels, Service Credits and Performance Monitoring);
Crown Body	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
CRTPA	means the Contracts (Rights of Third Parties) Act 1999;
Data Loss Event	means any event that results, or may result, in unauthorised access to Personal Data held by the ASC Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
Data Protection Impact Assessment	means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
Data Protection Legislation	means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to Processing of Personal Data and privacy; (iii) all applicable Law about the Processing of Personal Data and privacy;
Data Protection Officer	has the meaning given to it in the GDPR;
Data Subject	has the meaning given to it in the GDPR;
Data Subject Request	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

Default	means any breach of the obligations of the ASC Supplier (including any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the ASC Supplier or its personnel in connection with or in relation to this Contract or the subject matter of this Contract and in respect of which the ASC Supplier is liable to the Authority;
Defect	means: <ul style="list-style-type: none"> (a) any error, damage or defect in the manufacturing of a Deliverable; or (b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or (c) any failure of any Deliverable to provide the performance, features and functionality specified in the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria; or (d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria;
Delay	means: <ul style="list-style-type: none"> (a) a delay in the Achievement of a Milestone by its Milestone Date; or (b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan or Project Work Order (as applicable);
Delay Deduction Period	means the period of one hundred (100) days commencing on the relevant Milestone Date;

Delay Payments	means the amounts payable by the ASC Supplier to the Authority in respect of a Delay in Achieving a Milestone as specified in Schedule 2 (Charges and Invoicing);
Deliverable	means an item or feature delivered or to be delivered by the ASC Supplier at or before a Milestone Date or at any other stage during the performance of this Contract;
Detailed Implementation Plan	has the meaning given to it in Paragraph 1.3 of Schedule S1 (Implementation Plan) where used;
Dispute	means any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
Dispute Resolution Procedure	means the dispute resolution procedure set out in Schedule 4 (Dispute Resolution Procedure);
Dispute Notice	means a notice as described in paragraph 2 of Schedule 4 (Dispute Resolution Procedure);
Documentation	means all documentation as: <ul style="list-style-type: none"> (a) is required to be supplied by the ASC Supplier to the Authority under this Contract; (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services; (c) is required by the ASC Supplier in order to provide the Services; and/or (d) has been or shall be generated for the purpose of providing the Services;
DPA 2018	means the Data Protection Act 2018;

Due Diligence Information	means any information supplied to the ASC Supplier by or on behalf of the Authority prior to the Implementation Commencement Date;
Early Life Support	<p>means:</p> <ul style="list-style-type: none"> (a) a period of elevated support following a service transition where support teams have access to Project & transition resources to assist with Incident and request resolution. It is where the business-as-usual support model is tested to make sure it is fit for purpose. This mitigates the following risks: <ul style="list-style-type: none"> – Service impact during early life for incidents/faults not detected during testing. – Gaps in knowledge during the shift in responsibility from the project team to BAU support teams. – The immediate impact of the solution deployment. – Gaps or errors in the end to end service design, support and operational documentation (b) the period during which the ASC Supplier will initially take over Business Application support while the incumbent AMS Supplier is still available to mitigate the risks noted above <p>and "ELS" shall be construed accordingly;</p>
EIR	the Environmental Information Regulations 2004;
Electronic Invoice	<p>means an invoice which has been issued, transmitted and received in a structured electronic format which allows for its automatic and electronic processing and which complies with (a) the European standard and (b) any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870;</p>
Emergency Maintenance	<p>means ad hoc and unplanned maintenance provided by the ASC Supplier where:</p> <ul style="list-style-type: none"> (a) the Authority reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have

developed a fault, and notifies the ASC Supplier of the same; or

- (b) the ASC Supplier reasonably suspects that the IT Environment or the Services, or any part the IT Environment or the Services, has or may have developed a fault;

Employment Liabilities

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;

End User

means a person who uses the IT Service on a day-to-day basis;

**Estimated Year 1
Charges**

means the sum in pounds estimated by the Authority to be payable by it to the ASC Supplier as the total aggregate Charges from the Implementation Commencement Date until the end of the first Contract Year stipulated in the Order Form;

Euro Compliant

means that: (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Authority's business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):

- (a) be able to perform all such functions in any number of currencies and/or in euros;
- (b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations;
- (c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;
- (d) incorporate protocols for dealing with rounding and currency conversion;
- (e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and
- (f) permit the input of data in euro and display an outcome in euro where such data, supporting the Authority's normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK;

Exit Day

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

Exit Management	means services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the ASC Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in Schedule 10 (Exit Management);
Exit Plan	means the plan produced and updated by the ASC Supplier during the Contract Period in accordance with Paragraph 4 of Schedule 10 (Exit Management) where used;
Extension Period	means (where applicable) a period as specified in the Order Form to take effect from the end of the Initial Term;
FOIA	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
Force Majeure Event	means any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract 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 riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster but excluding any industrial dispute relating to the ASC Supplier or the ASC Supplier Personnel or any other failure in the ASC Supplier's or a Sub-Contractor's supply chain;
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
Framework	means the framework agreement reference RM6100 between the ASC Supplier and CCS;
GDPR	the General Data Protection Regulation (Regulation (EU) 2016/679);
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 ASC Supplier) or which affects or relates to a Comparable Supply;

Government	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
Guarantee	means a deed of guarantee executed by the Guarantor in favour of the Authority in the form set out in the Annex of Schedule S8 (Guarantee) where used;
Guarantor	means the entity (if any) set out in the Order Form who executes a Guarantee in favour of the Authority;
ICT Policy	means the Authority's ICT policy, referred to in the Order Form, in force as at the Implementation Commencement Date (a copy of which has been supplied to the ASC Supplier), as updated from time to time and notified to the ASC Supplier;
Implementation Commencement Date	the date specified in the Order Form, being the date upon which the Implementation Period begins;
Implementation Period	the period between the Implementation Commencement Date and the final Phased Service Commencement Date;
Implementation Plan	means the Outline Implementation Plan or (if and when approved by the Authority pursuant to Paragraph 3 of Schedule S1 (Implementation Plan)), where used, the Detailed Implementation Plan as updated in accordance with Paragraph 4 of Schedule S1 (Implementation Plan) where used, from time to time;
Implementation Services	means services which the ASC Supplier shall provide under this Contract during the Implementation Period as set out or referred to in the Implementation Plan;
Incident	means any unplanned interruption to a service, a reduction in the quality of a service or an event that has not yet impacted the service to the Authority;

Incident Management	Means the practice to restore normal Service operation as quickly as possible and minimise the adverse impact on business operations;
Indemnified Person	means the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Contract;
Information	has the meaning given to it under section 84 of the Freedom of Information Act 2000;
Initial Term	means a period from the Implementation Commencement Date as specified in the Order Form;
Insolvency Event	<p>means, in respect of the ASC Supplier or Guarantor (as applicable):</p> <ul style="list-style-type: none"> (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or (c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or (e) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) where the person is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or
- (i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;

Intellectual Property Rights or IPR

means:

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, 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;

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 save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Authority Software by or on behalf of the ASC Supplier, in either case in combination with any item not supplied or recommended by the ASC Supplier pursuant to this Contract or for a purpose not reasonably to be inferred from the Services Specification or the provisions of this Contract;

IT	means information and communications technology;
IT Environment	means the Authority System and the ASC Supplier System;
Joint Controllers	where two or more Controllers jointly determine the purposes and means of Processing
Key Performance Indicator or KPI	has the meaning set out at Schedule 3 (Service Levels, Service Credits and Performance Monitoring);
Key Roles	means the key roles of the Key Personnel listed in Attachment 5 to the Order Form;
Key Personnel	means the individuals listed in Attachment 5 to the Order Form;
Key Sub-Contract	means each Sub-Contract with a Key Sub-Contractor;
Key Sub-Contractor	means any Sub-Contractor: <ul style="list-style-type: none"> (a) listed as such in the Order Form; (b) which, in the opinion of CCS or the Authority performs (or would perform if appointed) a critical role in the provision of all or any part of the Services and/or Deliverables; and/or (c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Contract;
Know-How	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Implementation Commencement Date;
Law	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the ASC Supplier is bound to comply;

LED	means the Law Enforcement Directive (Directive (EU) 2016/680);
Licensed Software	means all and any Software licensed by or through the ASC Supplier, its Sub-Contractors or any third party to the Authority for the purposes of or pursuant to this Contract, including any ASC Supplier Software, Third Party Software specified in the Order Form and/or any Specially Written Software;
Losses or Loss	means all losses, liabilities, damages, costs, fines, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise;
Major Incident	<p>means:</p> <ul style="list-style-type: none"> (a) the highest category of impact for an Incident; (b) an Incident that results in significant disruption to the business; (c) an event which has significant impact or urgency for the business (Priority 1 or Priority 2) and which demands a response beyond the routine incident management process; and (d) an Incident that: <ul style="list-style-type: none"> - may either cause, or have the potential to cause, impact on business critical services or systems - or be an incident that has significant impact on reputation, legal compliance, regulation or security of the business <p>and "Major Incident Management" shall be construed accordingly;</p>
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;

Maximum Contract Period	means the period from the Implementation Commencement Date set out in the Order Form in respect of the applicable lot;
Milestone	means an event or task described in the Implementation Plan (in relation to Implementation Milestones) or the Project Work Order (in relation to Project Milestones) which, if applicable, shall be completed by the relevant Milestone Date;
Milestone Achievement Certificate	means the certificate to be granted by the Authority when the ASC Supplier has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 3 of Schedule S2 (Testing Procedures);
Milestone Date	means the target date set out against the relevant Milestone in the Implementation Plan (in relation to Implementation Milestones) or the Project Work Order (in relation to Project Milestones) by which the Milestone must be Achieved;
Milestone Payment	means a payment to be made following the Achievement of a Milestone;
Month	a calendar month and "Monthly" shall be interpreted accordingly;
New Releases	an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not Defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
Non-Functional Requirements	<p>means:</p> <ul style="list-style-type: none"> (a) requirements that define the overall qualities or attributes of the system (b) requirements used to place restrictions on the product being developed, the development process, and specify levels that the product must meet <p>Examples include safety, security, accessibility, reliability and performance requirements</p> <p>and "NFRs" shall be construed accordingly;</p>

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;
Object Code	means software and/or data in machine-readable, compiled object code form;
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 Authority System and the Sites;
Operational Period	means the period from the relevant Phased Service Commencement Date until the end of the Contract Period;
Operational Services	means the services which the ASC Supplier shall make available to the Authority under this Contract from the Phased Service Commencement Date as set out or referred to in the Order Form and the Services Specification;
Order	means the order placed by the Authority with the ASC Supplier for the provision of the Services and/or Deliverables in accordance with the Framework and under the terms of this Contract;
Order Form	means the form (based on the template included at Annex 1 to Framework Schedule 4 (Template Order Form and Template Call Off Terms)) together with any Attachments, as completed and forming part of this Contract, which contains details of an Order together with other information in relation to such Order, including the description of the Services to be provided;
Other Supplier	Means a supplier identified by the Authority to the ASC Supplier as one delivering products or services where there is a relationship to or dependency with the Services. The ASC Supplier is expected to collaborate with Other Suppliers;
Outline Implementation Plan	has the meaning given to it in Paragraph 1.2 of Schedule S1 (Implementation Plan);

Party	means a party to this Contract, namely either the Authority or the ASC Supplier (together the “Parties”);
Performance Monitoring Reports	has the meaning given in Paragraph 1.2 Part B (Performance Monitoring) of Schedule 3 (Service Levels, Service Credits and Performance Monitoring);
Personal Data	has the meaning given to it in the GDPR;
Personal Data Breach	has the meaning given to it in the GDPR;
Phased Service Commencement Date	in respect of each Business Application, the date upon which Business Application ELS in Milestone 5 –Service Acceptance is Achieved in respect of that Business Application;
Primary Support Hours	means: <ul style="list-style-type: none"> (a) the hours during which the Business Application is available to End Users and ASC Supplier support is fully available; or (b) the pattern of Primary Support Hours assigned to a Business Application;
Problem	means the underlying unknown root cause of a single High Priority incident (P1/P2) or a series of lower priority Incidents (P3/P4) which exhibit the same symptoms i.e. affecting the same Configuration Item. It differs from an Incident in that the Incident is primarily focused on resolving the Incident as quickly as possible in line with the Service Levels. Whereas Problems are looking for the root cause of the Incidents and helping to eliminate root causes or minimising them as far as is practicable;
Problem Management	means to manage the lifecycle of all Problems, to prevent Incidents (caused by the Problem) from happening and to minimise the impact of Incidents that cannot be prevented;
Processing	has the meaning given to it in the GDPR and “Process” and “Processed” shall be interpreted accordingly;
Processor	has the meaning given to it in the GDPR;
Processor Personnel	means all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-processor

engaged in the performance of its obligations under this Contract;

Programme

has the meaning given to it in Schedule S12 (Service Requests and Projects);

Prohibited Acts

means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by a Authority or any other public body 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 Contract; or
- (c) committing any offence:
 - i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or
 - ii) under legislation or common law concerning fraudulent acts; or
- (d) defrauding, attempting to defraud or conspiring to defraud a Authority or other public body; or
- (e) 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

has the meaning given to it in Schedule S12 (Service Requests and Projects);

Project Specific IPRs

- (a) Intellectual Property Rights in items created by the ASC Supplier (or by a third party on behalf of the ASC Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or

(b) Intellectual Property Rights arising as a result of the performance of the ASC Supplier's obligations under this Contract;

but shall not include the ASC Supplier Background IPRs or the Specially Written Software;

Protective Measures means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

Quality Plans has the meaning given in Clause 7.1;

Rectification Plan means the rectification plan pursuant to the Rectification Plan Process;

Rectification Plan Process means the process set out in Clauses 31.3 to 31.8;

Redundancy Costs means the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount apportioned between the ASC Supplier and the Authority based on the time spent by such employee on the Services as a proportion of the total Service duration:

- (a) any statutory redundancy payment; and
- (b) in respect of an employee who was a Transferring Former Supplier Employee (as defined in Schedule S4 (Staff Transfer)) or a Transferring Buyer Employee (as defined in Schedule S4 (Staff Transfer)), any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the ASC Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the ASC Supplier under the Employment Regulations;

Regulations	means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);
Relevant IPRs	means IPRs used to provide the Services or as otherwise provided and/or licensed by the ASC Supplier (or to which the Supplier has provided access) to the Authority or a third party in the fulfilment of the ASC Supplier's obligations under this Contract including IPRs in the Specially Written Software, the ASC Supplier Non-COTS Software, the ASC Supplier Non-COTS Background IPRs, the Third Party Non-COTS Software and the Third Party Non-COTS IPRs but excluding any IPRs in the Authority Software, the Authority Background IPRs, the ASC Supplier COTS Software, the ASC Supplier COTS Background IPRs, the Third Party COTS Software and/or the Third Party COTS IPRs;
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 pursuant to section 9 of the Bribery Act 2010;
Reminder Notice	means a notice sent in accordance with Clause 35.2.1 given by the ASC Supplier to the Authority providing notification that payment has not been received on time;
Replacement Services	means any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination (in whole or in part) of this Contract, whether those services are provided by the Authority internally and/or by any third party;
Replacement Supplier	means a third-party organisation that takes over all or part of the scope of the Contract from the ASC Supplier;
Restricted Country	means any country which is not: <ul style="list-style-type: none"> (a) a member of the European Economic Area; (b) the United Kingdom; or (c) deemed adequate by the European Commission pursuant to article 25(6) of Directive 95/46/EC or article 45(3) of the GDPR;

Request for Estimate	means a written request sent by the Buyer to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment and Compensation Payment that would be payable if the Buyer exercised its right under Clause 35.1.9 (Termination Without Cause) to terminate this Contract without notice on a specified Termination Date;
Risk Register	means the register of risk and contingencies that have been identified by the Parties, a copy of which is set out in Part D of Attachment 2 of the Order Form;
Schedule of Processing, Personal Data and Data Subjects	<p>means the schedule of Processing, personal data and data subjects set out in Attachment 9 of the Order Form (to be completed by the Authority) which sets out various details concerning the Processing of Personal Data including:</p> <ul style="list-style-type: none"> (a) identity of the Controller and Processor; (b) subject matter of Processing; (c) duration of the Processing; (d) nature and purposes of the Processing; (e) type of Personal Data being Processed; (f) categories of Data Subject; and (g) plan for return of the data once the processing is complete unless requirement under Data Protection Legislation to preserve that type of data;
Secondary Support Hours	means the hours during which the Business Application is available to End Users but ASC Supplier support is not normally expected to be available, except in the case of P1 or P2 Incidents;
Security Policy	means the security policy, referred to in the Order Form, in force as at the Implementation Commencement Date (a copy of which has been supplied to the ASC Supplier), as updated from time to time and notified to the ASC Supplier;
Service Catalogue	means:

	<p>(a) the list of defined, low-risk, repeatable 'standard' changes that can be performed without change control; and</p> <p>(b) standard changes listed in the ITSM to be delivered by the ASC Supplier;</p>
Service Catalogue Item	means a change listed in the Service Catalogue;
Service Charges	means the charges calculated in accordance with Paragraph 3 of Part A of Schedule 2 (Charges and Invoicing);
Service Credit Cap	has the meaning given to it Annex 3 (Service Credits) of Schedule 3 (Service Levels);
Service Credits	means any service credits specified in Annex 3 of Schedule 3 being payable by the ASC Supplier to the Authority in respect of any failure by the ASC Supplier to meet one or more Service Levels;
Service Level Failure	means a failure to meet the Service Level Performance Measure in respect of a Service Level;
Service Level Target	means the target level of achievement for a specific Service Level;
Service Level Threshold	shall be as set out against the relevant Service Level in Attachment 4 of the Order Form;
Service Levels	means any service levels applicable to the provision of the Services under this Contract specified in Attachment 4 of the Order Form;
Service Operations Guide or SOG	has the meaning set out at Paragraph 1.3 of Annex A of Schedule S1 (Implementation Plan);
Service Operations Implementation Plan or SOIP	has the meaning set out at Paragraph 2.1 of Schedule S1 (Implementation Plan);
Service Period	means a service period which, for the purposes of this Contract and unless otherwise agreed, shall be a recurrent period of one (1) Month during the Contract Period;

Services	means the Implementation Services and/or the Operational Services and/or Projects as the context requires;
Services Specification	means the specification of the Services as set out or referred to in Attachment 1 to the Order Form;
Sites	<p>means any premises (including the Authority Premises, the ASC Supplier's premises or third party premises) from, to or at which:</p> <ul style="list-style-type: none"> (a) the Services and/or Deliverables are (or are to be) provided; or (b) the ASC Supplier manages, organises or otherwise directs the provision or the use of the Services and/or Deliverables, <p>and which are set out in or referred to in the Order Form;</p>
Social Value Delivery Plan or 'SVDP'	has the meaning given to it in Annex 2 of Schedule 3 (<i>Service Levels, Service Credits and Performance Monitoring</i>);
Software	means the Software utilised by the Business Applications and "System Software" shall be construed accordingly;
Software Supporting Materials	has the meaning given in Clause 21.1.2;
Source Code	means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
Specially Written Software	means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the ASC Supplier (or by a Sub-Contractor or other third party on behalf of the ASC Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to ASC Supplier Software or Third Party Software created specifically for the purposes of this Contract;

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;
Standards	means any standards set out or referred to in these Call Off Terms (if any), the Order Form and the Framework;
Standard Contractual Clauses	means the standard contractual clauses for the transfer of Personal Data to processors established in third countries which do not ensure an adequate level of protection as set out in Commission Decision C (2010) 593 and reference to the standard contractual clauses shall be to the clauses as updated, amended, replaced or superseded from time to time by the European Commission;
Sub-Contract	means any contract or agreement or proposed agreement between the ASC Supplier and any third party whereby that third party agrees to provide to the ASC Supplier the Services (or any part thereof) or to provide facilities or services necessary for the provision of the Services (or any part thereof) or necessary for the management, direction or control of the provision of the Services or any part thereof;
Sub-Contractor	means any third party other than the ASC Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
Sub-processor	means any third party appointed to process Personal Data on behalf of the ASC Supplier related to this Contract;
Tender	means the tender submitted by the ASC Supplier to CCS and annexed to or referred to in Framework Schedule 18;
Termination Date	means the date set out in a Termination Notice on which this Contract shall terminate;
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 Contract (or any part thereof) on a specified date and setting out the grounds for termination;
Test Issues	has the meaning given in Schedule S2 (Testing Procedures) where used;

Test and Testing	means any tests required to be carried out under this Contract, as further described in Schedule S2 (Testing Procedure) where used and “Tested” shall be construed accordingly;
Test Success Criteria	has the meaning given in Paragraph 1 of Schedule S2 (Testing Procedure);
Third Party Beneficiary	has the meaning given in Clause 52.1;
Third Party COTS IPRs	means Third Party IPRs that: <ul style="list-style-type: none"> (a) the ASC Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the ASC Supplier save as to price; and (b) has a Non-trivial Customer Base;
Third Party COTS Software	means Third Party Software (including open source software) that: <ul style="list-style-type: none"> (a) the ASC Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the ASC Supplier save as to price; and (b) has a Non-trivial Customer base;
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 Non-COTS IPRs	means Third Party IPRs that are not Third Party COTS IPRs;
Third Party Non-COTS Software	means Third Party Software that is not Third Party COTS Software;
Third Party Software	means software which is proprietary to any third party (other than an Affiliate of the ASC Supplier) or any Open Source which in any case is, will be or is proposed to be used by the ASC Supplier for the purposes of providing the Services, including the software specified as such in the Order Form;

Transferring Supplier Employees	means those employees of the ASC Supplier and/or the ASC Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date;
Transparency Reports	means the information relating to the Services and performance of this Contract which the ASC Supplier is required to provide to the Authority in accordance with the reporting requirements in Schedule 6 (Transparency Reports);
Unrecovered Costs	means the Costs incurred by the Supplier in the performance of this Contract (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 Contract would have been payable by the Buyer after the Termination Date in accordance with this Schedule 2 (Charges and Invoicing) as such Costs and Charges are forecast in the Financial Model;
Updates	means in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
Upgrades	means any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the ASC Supplier or a Third Party Software supplier (or any Affiliate of the ASC Supplier or any third party) releases during the Contract Period;
VAT	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
Worker	means any one of the ASC Supplier Personnel which the Authority, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) (https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees) applies in respect of the Services and/or Deliverables;
Working Day	means any day other than a Saturday, Sunday or public holiday in England and Wales;

SCHEDULE 2 - CHARGES AND INVOICING

1. DEFINITIONS

In this Schedule 2, the following definitions shall apply:

"Anticipated Contract Life Profit Margin"	the anticipated ASC Supplier Profit Margin over the Contract Period as reflected in the Financial Model being 14% as at the Implementation Commencement Date;
"Service Catalogue Item Charges"	has the meaning given to it in Paragraph 3 of Part A (Pricing) of this Schedule 2 (Charges and Invoicing);
"Consumed"	<p>means:</p> <ul style="list-style-type: none">(a) in respect of Person Day resource, the deployment of that Person Day resource by the ASC Supplier in the course of providing the relevant Services to the Authority; and(b) in respect of Service Catalogue Items, the completion of the relevant Service Catalogue Item as evidenced by the closure of the ticket relating to the Service Catalogue Request for that Service Catalogue Item, <p>and "Consumption" shall be construed accordingly;</p>
"Cross-Functional Core Team"	the minimum cross-functional team required to manage the delivery of the Services, with the relevant roles and associated costs identified in the table in Annex 10 (Cross-Function Core Team Labour Costs) of this Schedule 2.
"Delay Payment Rate"	a daily amount as set out in the column headed 'Delay Payment Rate' in Paragraph 1 of Part B (Adjustments to the Charges and Risk Register) of this Schedule 2 in relation to Implementation Milestones and in the relevant Project Work Order in relation to Project Milestones;
Solved "Financial Model"	the ASC Supplier's financial model for the Contract set out in Annex 6 of Schedule 2 (Charges and Invoicing);
"Fixed Project Charges"	The fixed charges payable for the Repeatable Projects as set out in Annex 7 (Fixed Project Charges) to this Schedule 2 (Charges and Invoicing);

"Indexation" and "Index"	the adjustment of an amount or sum in accordance with Paragraph 3 of Part C of this Schedule 2 (Charges and Invoicing);
"Implementation Milestones"	Milestones associated with the Implementation Period as set out in paragraph 2 to Part A (Pricing) to this Schedule 2 (Charges and Invoicing);
"Implementation Milestone Payment"	the Milestone Payment associated with Achievement of an Implementation Milestone, as set out in paragraph 2 to Part A (Pricing) to this Schedule 2 (Charges and Invoicing);
"Maximum Permitted Profit Margin"	means the Anticipated Contract Life Profit Margin plus 5%;
"Project Charges"	has the meaning given to it in Paragraph 1.5 of Part B (Project Charges) of this Schedule 2 (Charges and Invoicing);
"Project Milestones"	the Milestones associated with Projects, as set out in the relevant Project Work Order;
"Project Milestone Payment"	the Milestone Payment associated with Achievement of a Project Milestone, as set out in the relevant Project Work Order;
"Rate Card"	the day rates set out in the table in Annex 4 to this Schedule 2 (Charges and Invoicing);
"Reimbursable Expenses"	<p>reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Authority's expenses policy current from time to time, but not including:</p> <ul style="list-style-type: none"> (a) travel expenses incurred as a result of ASC Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Authority otherwise agrees in advance in writing; and (b) subsistence expenses incurred by ASC Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed; and

“Repeatable Projects”		the Project elements listed in Part B to this Schedule 2 (Charges and Invoicing);
“Service Charges”		means the charges calculated in accordance with Paragraph 3 of Part A of this Schedule 2 (Charges and Invoicing);
“Supporting Documentation”		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;
“Variable Charges”	Service	has the meaning given to it in Paragraph 3.3 of Part A (Pricing) of this Schedule 2 (Charges and Invoicing);
“Work Day”		7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
“Work Hours”		the hours spent by the ASC Supplier Personnel properly working on the Services including time spent travelling (other than to and from the ASC Supplier's offices, or to and from the Sites) but excluding lunch breaks.

2. SCOPE

2.1 This Schedule 2 comprises:

- 2.1.1 Part A: Pricing;
- 2.1.2 Part B: Project Charges;
- 2.1.3 Part C: Adjustments to the Charges;
- 2.1.4 Part D: Invoicing and Payment Terms;
- 2.1.5 Part E Early Termination Fee(s)

PART A – PRICING

1. GENERAL

- 1.1 Except as is agreed by the Parties pursuant to the Change Control Procedure, the only Charges payable by the Authority in respect of the performance by the ASC Supplier of its obligations under this Contract are:
- 1.1.1 the Implementation Milestone Payments, payable during the Implementation Period for each Business Application s on a fixed price basis in accordance with paragraph 2 of this Part A in consideration for the delivery of the Implementaion Milestone;
 - 1.1.2 the Service Charges payable during the Operational Period for each Business Application on a fixed price basis in accordance with paragraph 3 of this Part A in consideration for the delivery of the Operational Services; and
 - 1.1.3 the Project Charges payable in relation to individual Projects that are commissioned by the Authority under this Contract in accordance with Part B of this Schedule 2. Such Project Charges may be payable by way of Project Milestone Payments, fixed charges or time and material payments.

2. IMPLEMENTATION MILESTONE PAYMENTS

- 2.1 Schedule S1 (Implementation Plan) sets out the approach to developing the Implementation Plan that will facilitate the transition of the services under the current support contract for the Business Applications to the Operational Services under this Contract. The Implementation Plan includes Implementation Milestones and associated Implementation Milestone Payments. Some of the Implementation Milestones are specific to each individual Business Application, and accordingly may be Achieved at different times in respect of each Business Application.
- 2.2 Subject to the provisions of Paragraph 1 of Part C of this Schedule 2 in relation to the deduction of Delay Payments, on the Achievement of an Implementation Milestone the ASC Supplier shall be entitled to invoice the Authority for the Implementation Milestone Payment associated with that Implementation Milestone (if any) less any applicable Delay Deductions
- 2.3 Each invoice relating to An Implementation Milestone Payment shall be supported by a Milestone Achievement Certificate and all relevant supporting information.
- 2.4 The Implementation Milestone Payments are charged on a fixed price basis and are set out in the table in Annex 1 (Implementation Milestone Payments and Delay Payments) to this Schedule 2.

2.5 The Implementation Milestone Payments shall not be subject to Indexation.

3. SERVICE CHARGES

3.1 The Service Charges shall be payable by the Authority for delivery of the relevant Operational Services with effect from the relevant Phased Service Commencement Date and shall comprise:

3.1.1 the Fixed Service Charges ("**Fixed Service Charges**") calculated in accordance with Paragraph 3.2 below;

3.1.2 the Variable Service Charges ("**Variable Service Charges**") calculated in accordance with Paragraph 3.3 below; and

3.1.3 the Service Catalogue Item Charges ("**Service Catalogue Item Charges**") calculated in accordance with Paragraph 3.4 below.

3.2 Fixed Service Charges

3.2.1 The Fixed Service Charges payable by the Authority in relation to each Business Application are set out in Annex 2 (Fixed Service Charges) to this Schedule 2.

3.2.2 The Fixed Service Charges shall be calculated on a Monthly basis by reference to the Monthly fixed unit price applicable to the relevant Monthly Business Application Charges set out in the "Fixed Service Charges" tab of the Financial Model.

3.2.3 The ASC Supplier shall be entitled to Index the Fixed Service Charges in accordance with Paragraph 3 of Part C of this Schedule 2.

3.2.4 The Authority will pay the Fixed Service Charges attributable to each Business Application to the ASC Supplier in each Month from the Phased Service Commencement Date that relates to such Business Application (to the date upon which delivery of the Operational Services cease in relation to that Business Application).

3.2.5 if the Authority elects in its sole discretion to decommission or remove from the scope of the Operational Services any Business Application, the Fixed Service Charge in respect of such Business Application shall cease to be payable from the date of decommissioning and for the remainder of the Operational Period, with no additional costs or Charges payable by the Authority in respect of such Business Application, or other Business Applications, or as a result of such decommissioning or removal from the scope of the Operational Services. The Business Application Charges are predicated on a principle of "no application, no charge", such that the Authority shall only pay for Operational Services Consumed. Notwithstanding, the parties agree that the ASC Supplier needs to maintain the ASC Supplier's Cross-Functional Core Team throughout

the Contract Period in order to manage the Operational Services delivered across the Business Applications. The labour costs associated with the ASC Supplier's Cross-Functional Core Team are set out in Annex 10 (Cross-Functional Core Team Labour Costs). Such shall be spread across the Business Applications that are in within the scope of this Agreement from time to time.

3.2.6 Where a new Business Application is added to the scope of the Operational Services in accordance with the Change Control Procedure, the Charges in respect of such new Business Application shall be structured such that:

- (a) all application development, testing, training, data migration, knowledge transfer, people and test and development environment costs associated with the Project(s) to implement that Business Application shall be payable as Project Milestone Payments (and the people cost elements of such Charges shall be calculated in accordance with paragraph 1.6 of Part B Project Charges); and
- (b) all costs associated with the ongoing support and maintenance of such Business Application (including any technology costs) shall constitute the Fixed Project Charges attributable to such Business Application Charges.

3.3 Variable Service Charges

3.3.1 The Variable Service Charges payable by the Authority are set out in Annex 3 (Variable Service Charges) to this Schedule 2. The ASC Supplier shall be entitled to Index the Variable Service Charges in accordance with Paragraph 3 of Part C of this Schedule 2.

3.3.2 The Variable Service Charges shall be calculated on a Monthly basis by reference to:

- (a) the volumes delivered within the relevant volume bands and the unit prices; and
- (b) the sum, quantity and type of items in scope of the Operational Services during that Month,

using the pricing set out in Annex 3 of this Schedule 2.

3.3.3 The volume for the purpose of calculation in Paragraph 3.3.2(a) of this Part A shall be the highest volume reached in the relevant Month.

3.3.3 A The Parties acknowledge that the list of items in Annex 3 (Variable Service Charges) may change during the Operational Period, and for the purpose of the calculation in Paragraph 3.3.2(b), the Parties

agree that:

- 3.3.3A.1 The ASC Supplier provided a Variable Service Charge against each item as part of the ASC Supplier's Call Off Tender, which as at the Implementation Commencement Date are set out at Annex 3 of this Schedule 2;
- 3.3.3A.2 Ahead of the first Phased Services Commencement Date, the ASC Supplier and the Authority shall compare the Variable Service Charges List with the list of items set out in Annex 3;
- 3.3.3A.3 In accordance with the Services Specification, the Authority shall update the list of the items in the Variable Service Charges on a Monthly basis;
- 3.3.3A.4 If following the review and update carried out at paragraphs 3.3.3A.2 or 3.3.3A.3, there are new items in the Variable Service Charges List that are different to the list in Annex 3 then the following shall apply to the Variable Service Charges:
 - 3.3.3A.4.1 If the new items are the same or substantially similar to Variable Service Charges items already listed in Annex 3, then the Variable Service Charge for supporting the item already listed in Annex 3, shall apply; and
 - 3.3.3A.4.2 If the new items are not the same nor substantially similar to items already listed in Annex 3, then the ASC Supplier shall propose a new Variable Service Charge for supporting such device in accordance with the Change Control Procedure. Until any new Variable Service Charge is agreed via the Change Control Procedure, then no charge shall be charged by the ASC Supplier for supporting the new Item. For the avoidance of doubt, if a new Variable Service Charge is agreed via the Change Control Procedure, the ASC Supplier may charge the Authority any retrospective Variable Service Charges that have been incurred since the new Item was being supported until the new Variable Service Charge was agreed;

- 3.3.4 The ASC Supplier acknowledges and agrees that the Authority gives no warranty or representation as to:
 - (a) the sum of volume and type of items in scope of the Operational Services during each Month; and/or
 - (b) the total Variable Service Charges; and
- 3.3.5 The ASC Supplier shall provide the Authority with sufficient evidence to enable the Authority to determine which such Variable Service Charges are payable.
- 3.4 Service Catalogue Item Charges
 - 3.4.1 The Service Catalogue contains the Service Catalogue Items. The Service Catalogue Item Charges due in respect of a Service Period shall be the aggregate of the charges arising in respect of chargeable Service Catalogue Items Consumed by the Authority from the Service Catalogue in that Service Period.
 - 3.4.2 The Authority shall be entitled to purchase each Service Catalogue Item at the price stated in the Service Catalogue set out in Annex 5 (Service Catalogue Item Charges) to this Schedule 2. The ASC Supplier shall be entitled to Index the Service Catalogue Item Charges in accordance with Paragraph 3 of Part C of this Schedule 2.
 - 3.4.3 The ASC Supplier shall list prices in the Service Catalogue as either:
 - (a) a one-off charge payable by the Authority following Consumption of the relevant Service Catalogue Item; or
 - (b) a recurring charge payable by the Authority for the relevant period referred to in the Service Catalogue in respect of recurring licence fees or maintenance and support charges.
 - 3.4.4 In order to receive payment for Service Catalogue Items, the ASC Supplier shall be required to comply with any agreed requirements (as such may be amended or replaced from time to time), as further set out in Paragraph 3.5 below.
- 3.5 The ASC Supplier shall submit to the Authority each Service Period a detailed file containing the details of all the amounts which the ASC Supplier considers as due and chargeable for Service Catalogue Items Consumed by the Authority. The ASC Supplier will ensure that such file includes all relevant information extractable from the Authority's ITSM, and as a minimum, shall provide the following information:
 - 3.5.1 task/request reference;
 - 3.5.2 date created/requested;

- 3.5.3 date closed/provided;
 - 3.5.4 current status;
 - 3.5.5 Delivery location;
 - 3.5.6 allocation/business unit;
 - 3.5.7 item code;
 - 3.5.8 item description; and
 - 3.5.9 net amount.
- 3.6 The ASC Supplier may only charge single amounts for Service Catalogue Item Charges approved by and agreed with the Authority. If the ASC Supplier charges an amount for Service Catalogue Items which has not been approved by the Authority or which is disputed by the Authority, then the ASC Supplier shall immediately credit such amount pending approval by the Authority or resolution of the dispute (as applicable).
- 3.7 The ASC Supplier shall submit to the Authority requests for changes to the Service Catalogue no more than once per quarter, in a pre-agreed format. Requests must be submitted within the following notice periods before the date that the changes to the Service Catalogue are required to be implemented:
- 3.7.1 with at least fifteen (15) Working Days' notice for modifications to existing Service Catalogue Items or deletions of existing Service Catalogue Items and
 - 3.7.2 with at least thirty (30) Working Days' notice for the addition of new Service Catalogue Items.
- 3.8 The Authority will in a timely manner review and raise any queries and then the ASC Supplier will respond and resolve such queries promptly and issue the final request for changes to the Service Catalogue Items at least ten (10) Working Days before the date that the changes to the Service Catalogue are required to be implemented. Delays in the timely submission of Service Catalogue Item changes or resolution of Authority queries will result in delayed implementation of changes and payments by the Authority.
- 3.9 The ASC Supplier shall ensure when proposing prices to be applicable to each new or revised Service Catalogue Item to be added to the Service Catalogue that these prices shall be a maximum of the purchase cost (net of any discounts) to the ASC Supplier of the relevant product or service (excluding VAT), plus a maximum uplift (incorporating any handling fee, margin and overhead) not to exceed the Maximum Permitted Profit Margin. For the avoidance of doubt, the inclusion of Service Catalogue Items at no charge shall not restrict the ASC Supplier's right to propose prices and charge for any new or revised Service Catalogue Items in accordance with this Clause.

- 3.10 If the Authority is able to obtain more favourable commercial terms in respect of any Service Catalogue Item, the Authority may require the ASC Supplier to enter into more favourable commercial terms as soon as reasonably practicable and in any event no later than thirty (30) days after initial notification to the ASC Supplier by:
- 3.10.1 requiring the ASC Supplier to replace its existing commercial terms with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
 - 3.10.2 subject to Paragraph 3.12, entering into a direct agreement with the supplier of that Service Catalogue Item in respect of the relevant Service Catalogue Item.
- 3.11 If the Authority exercises either of its options pursuant to Paragraph 3.10, then the price for that Service Catalogue Item shall be reduced by an amount that is agreed in accordance with the Change Control Procedure, and any Charges based on those Service Catalogue Items shall be reduced accordingly.
- 3.12 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
- 3.12.1 the Authority making the relevant item available to the ASC Supplier where this is necessary for the ASC Supplier to provide the Operational Services; and
 - 3.12.2 any reduction in the Charges taking into account any unavoidable costs payable by the ASC Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.
- 3.13 The ASC Supplier shall not be entitled to add any costs, other than those listed at Paragraph 3.9 above, to the Service Catalogue Item Charges.
- 3.14 Scope of Service Charges

For the avoidance of doubt, unless a requirement in the Services Specification states that it shall be requested by the Authority via a Project Request, and associated Project Charges are agreed by the Authority, all elements of the Operational Services shall be charged for as part of the Service Charges and the ASC Supplier shall not be entitled to receive any additional payment from the Authority for the ASC Supplier's performance of the Operational Services.

4. CALCULATION OF MONTHLY SERVICE CHARGES

- 4.1 Following the relevant Phased Service Commencement Date, the Service Charges shall be invoiced by the ASC Supplier for each Service Period in arrears in accordance with the requirements of Part D (Invoicing and Payment Terms) of this Schedule 2.
- 4.2 If a Service Charge:

4.2.1 commences on a day other than the first day of a Month; and/or

4.2.2 ends on a day other than the last day of a Month,

the Service Charge for the relevant Service Period shall be pro-rated based on the proportion which the number of days in the Month for which the Service is provided bears to the total number of days in that Month.

4.3 The Service Charges for each Service Period shall be the aggregate of:

4.3.1 the Fixed Service Charges for the relevant Month;

4.3.2 the Variable Service Charges for the relevant Month; and

4.3.3 the Service Catalogue Item Charges for the relevant Month,

each as calculated in accordance with Paragraph 3 of this Part A.

4.4 The ASC Supplier acknowledges and agrees that the Authority gives no warranty or representation as to:

4.4.1 the number or volume of Operational Services Consumed or required in the performance of the Operational Services; and/or

4.4.2 the total Service Charges.

5. SERVICE CREDITS

5.1 Service Credits shall be applied against the Service Charges in accordance with Paragraph 4 of Part C (Adjustments to the Charges and Risk Register) of this Schedule 2.

PART B – PROJECT CHARGES

1. INTRODUCTION

- 1.1 If the Parties agree that the ASC Supplier shall provide a Project, the Project will be scoped and the Project Charges estimated and approved via the Change Control Procedure.
- 1.2 This is done via production of a 'Request for Change' (RFC) or Change Request, a templated form. The Change Request can be initiated either by the Authority, or if requested by the Authority, by the ASC Supplier on the Authority's behalf. Regardless of who drafts the Change Request, the ASC Supplier must respond to the Change Request with an accurate estimate of the time, resources and costs of the Project to deliver the Change and must also include in their response a statement of relevant risks, dependencies, assumptions and constraints of relevance to successful delivery of proposed Project.
- 1.3 The ASC Supplier cannot commence the Project until the RFC is formally approved by the Authority. Such approval must be in writing.
- 1.4 Details on Key Performance Indicators (KPIs) and Service Level Targets (SLTs) for the Change Management protocols are set out in Schedule 3 (Service Levels, Service Credits and Performance Monitoring).
- 1.5 The Charges payable by the Authority for each Project (the "Project Charges") shall be payable on the basis of the charging mechanism set out in the relevant Project Work Order, produced and approved as part of the Change Control Procedure. Wherever possible, a Project Work Order should use Repeatable Projects Charges if relevant to the Project.
- 1.6 The Project Charges for a Project shall be calculated on the basis of one or more of the following:
 - 1.6.1 the relevant Fixed Project Charge(s) in respect of a Repeatable Project;
 - 1.6.2 the equivalent price of a relevant Service Catalogue Item Charges where a Service Catalogue Item can be used as part of a Project;
 - 1.6.3 a fixed price, payable in one or more Project Milestone Payments in accordance with Paragraph 2 of this Part B; and/or
 - 1.6.4 time and materials charges, payable in accordance with Paragraph 3 of this Part B.

2. PROJECT MILESTONE PAYMENTS

- 2.1 The Parties may specify Project Milestone Payments as the charging basis for part or all of a Project.

- 2.2 Project Work Orders that specify Project Milestone Payments as the basis for Charges shall set out the details of each Project Milestone Payment, including the relevant Project Milestone Date(s), the amount payable and the Delay Payment (if applicable) and the required Acceptance Criteria (where applicable).
- 2.3 Subject to paragraphs 2.4 to 2.5 below and to the payment of any Delay Payments in accordance with Paragraph 1 of Part C of this Schedule 2, the ASC Supplier shall be entitled to deliver an invoice to the Authority in respect of each Project Milestone Payment:
- 2.3.1 on the issue of a confirmation by the Authority of a Milestone Achievement Certificate in accordance with Schedule S2 (Testing Procedures); or
 - 2.3.2 on the ASC Supplier Achieving and evidencing the agreed Test Success Criteria to the Authority's reasonable satisfaction as set out in a Project Work Order,
- in each case, for the Project Milestone associated with that Project Milestone Payment.
- 2.4 The circumstances in which a Project Milestone shall be considered to have been Achieved shall be set out in the relevant Project Work Order. Payment shall be made to the ASC Supplier in accordance with Part D of this Schedule 2 (Charges and Invoicing).
- 2.5 Unless otherwise agreed in the Project Work Order, Project Milestone Payments shall constitute full consideration for the Project and shall be fully inclusive of all costs and expenses incurred in performance of the applicable Project.

3. TIME AND MATERIALS CHARGES

- 3.1 Where Project Work Orders specify 'Time and Materials Charges' as the basis of payment for the relevant Project (or part thereof), such Time and Materials Charges shall be calculated each Month as the aggregate of Work Day resources and any agreed Reimbursable Expenses Consumed in delivering the relevant Project in that Month where:
- 3.1.1 Work Day Resources are calculated by reference to:
 - (a) the number of Work Days the agreed ASC Supplier Personnel are actively performing the Project in that Month; and
 - (b) the Daily Rate applicable to the relevant grade of ASC Supplier Personnel as set out in the table in Annex 4 (Rate Card) to this Schedule 2 :

provided that where ASC Supplier Personnel work less than a full Work Day,

the relevant charge shall be calculated based on the applicable Daily Rate pro rata for each whole hour worked; and

- 3.1.2 Reimbursable Expenses must be agreed and authorised by the Authority in advance of performing the relevant Services in accordance with Paragraph 4 below and must be supported by Supporting Documentation; and
 - 3.1.3 No finance charges, risks or contingencies or any other uplifts shall be applied to the Time and Materials Charges; and
 - 3.1.4 The ASC Supplier shall only be entitled to be paid Charges that have been properly and reasonably incurred, taking into account the ASC Supplier's obligation to deliver the Services in a proportionate and efficient manner; and
 - 3.1.5 the ASC Supplier shall not be paid any Charges to the extent that they would otherwise exceed any cap on such Charges agreed in writing by the Parties unless the ASC Supplier has obtained the Authority's prior written consent. The ASC Supplier shall monitor the amount of each Charge incurred in relation to the relevant cap and notify the Authority as soon as possible in the event of any risk that the cap may be exceeded and the Authority shall instruct the ASC Supplier on how to proceed.
- 3.2 The ASC Supplier shall maintain full and accurate records of the time spent by the ASC Supplier Personnel in providing the relevant Project services and shall provide such records to the Authority with each relevant invoice submitted in accordance with Part D (Invoicing and Payment Terms) of this Schedule 2. The ASC Supplier shall keep records of hours properly worked by ASC Supplier Personnel (in the form of timesheets) and expenses incurred and submit a summary of the relevant records with each invoice. If the Authority requests copies of such records, the ASC Supplier shall make them available to the Authority within ten (10) Working Days of the Authority's request.
- 3.3 In respect of any Time and Materials Charges that are invoiced to the Authority in any Contract Year, the ASC Supplier shall apply a discount to all Time and Materials Charges in the next following Contract Year, calculated by reference to the bandings in the rows of the "Value (£) invoiced in Contract Year" column and the percentages in the "Discount %" column of the table in Annex 4 (Rate Card).

Worked example

If in Contract Year 1 the total invoiced spend on Time and Materials Charges is £750,000 and the discount percentage for the £500,001 - £1,000,000 band is 5%, then all Time and Materials Charges in Contract Year 2 will be discounted by 5%.

- 3.4 The ASC Supplier shall be entitled to Index the rates set out in table in Part C (ASC Supplier Personnel Rate Card for Calculation of Time and Materials Charges) of Attachment 2 (Charges and Invoicing) of the Order Form in accordance with Paragraph 3 of Part C of this Schedule 2 (Charges and Invoicing).

4. REIMBURSEABLE EXPENSES

4.1 Where:

4.1.1 Projects are to be charged using the Time and Materials pricing mechanism; and

4.1.2 the Authority so agrees in writing,
the ASC 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 supported by Supporting Documentation.

4.2 The Authority shall provide a copy of its current expenses policy to the ASC Supplier upon request.

4.3 Except as expressly set out in Paragraph 4.1, the Project Charges shall include all costs and expenses relating to the Deliverables, the Services and/or the ASC Supplier's performance of its obligations under this Contract in relation to the Project and no further amounts shall be payable by the Authority to the ASC Supplier in respect of such performance, including in respect of matters such as:

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

4.3.2 any amount for any services provided or costs incurred by the ASC Supplier prior to the commencement of the Project.

PART C – ADJUSTMENTS TO THE CHARGES AND RISK REGISTER

1. DELAY PAYMENTS

1.1 If a Implementation Milestone or Project Milestone has not been Achieved on or before the relevant Milestone Date, the ASC Supplier shall pay a Delay Payment to the Authority in respect of that Implementation Milestone or Project Milestone. Delay Payments shall accrue:

1.1.1 On a daily basis in accordance with the following formula:

Delay Payment Calculation = (Implementation Milestone Payment x 0.2) /100

1.1.2 from (but excluding) the relevant Milestone Date to (and including) the earlier of:

(a) the date on which the Implementation Milestone or Project Milestone (as applicable) is Achieved; and

(b) the expiry of the Delay Deduction Period; and

1.1.3 on a daily basis, with any part day's Delay counting as a day.

Worked example

If the Implementation Milestone Payment for Milestone M1 is £1000 and is delayed by 10 days, using the Delay Payment Calculation (20% of the Implementation Milestone Payment) / 100) then the Delay Payment shall be accrued on a daily basis as follows:

= (£1000 x 0.2) / 100 = £200 divided by 100 = £2.00

Therefore, if the Achievement of Milestone M1 is delayed by 10 days, the total Delay Payment relating to that Milestone would be £20.

1.2 Any Delay Payments paid to the Authority shall not be refundable

1.3 The Parties agree that Delay Payments calculated in accordance with the applicable Delay Payment Rates are in each case a genuine pre-estimate of the Losses which the Authority will incur as a result of any failure by the ASC Supplier to Achieve the relevant Implementation Milestone or Project Milestone by the Milestone Date. Delay Payment Rates are stated exclusive of VAT.

1.4 The Delay Payment in respect of a Implementation Milestone or Project Milestone (net of any payment made in respect of that Delay pursuant to Paragraph 1.2) shall be shown as a deduction from the amount due from the Authority to the ASC Supplier in the next invoice due to be issued by the ASC Supplier after the date on which the relevant Implementation Milestone or Project Milestone is Achieved or the expiry of the Delay Deduction Period (as

the case may be). If the relevant Implementation Milestone or Project Milestone is not Achieved by the expiry of the Delay Deduction Period and no invoice is due to be issued by the ASC Supplier within ten (10) Working Days of expiry of the Delay Deduction Period, then the ASC Supplier shall within ten (10) Working Days of expiry of the Delay Deduction Period:

- 1.4.1 issue a credit note to the Authority in respect of the total amount of the Delay Payment in respect of the Milestone (net of any payment made in respect of the Implementation Milestone or Project Milestone pursuant to Paragraph 0); and
- 1.4.2 pay to the Authority as a debt a sum equal to the total amount of the Delay Payment in respect of the Milestone together with interest on such amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.

2. CHANGES TO CHARGES

- 2.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 5 (Change Control Procedure).
- 2.2 The Authority may request that any Impact Assessment (as defined in Schedule 5 (Change Control Procedure)) presents Charges without Indexation for the purposes of comparison.

3. INDEXATION

- 3.1 Any amounts or sums in this Contract which are expressed to be “subject to Indexation” shall be adjusted in accordance with the provisions of this Paragraph 3 to reflect the effects of inflation. For the avoidance of doubt, Milestone Payment amounts shall not be subject to Indexation.
- 3.2 Where Indexation applies, the relevant adjustment shall be:
 - 3.2.1 applied on the first day of the second April following the Implementation Commencement Date and on the first day of April in each subsequent year (each such date an “adjustment date”); and
 - 3.2.2 determined by multiplying the relevant amount or sum by the percentage increase or changes in the Consumer Price Index published for the 12 Months ended on the 31 January immediately preceding the relevant adjustment date.
- 3.3 Except as set out in this Paragraph 3, 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 ASC Supplier or Sub-Contractors of the performance of their obligations.

4. SERVICE CREDITS

- 4.1 Service Credits shall be calculated in accordance with Part A of Schedule 3 (Service Levels, Service Credits and Performance Monitoring).
- 4.2 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.
- 4.3 Service Credits shall be applied by means of a credit note issued by the ASC Supplier against the Service Charges for the Service Period immediately succeeding the Service Period to which they relate.

5. RISK REGISTER

The Parties shall review the Risk Register set out in Part D (Risk Register) of Attachment 2 (Charges and Invoicing) of the Order Form from time to time and as otherwise required under Schedule 7 (Governance).

PART D – INVOICING AND PAYMENT TERMS

1. ASC SUPPLIER INVOICES

- 1.1 The Authority shall accept for processing any Electronic Invoice that complies with any standards required by this Contract or otherwise agreed in writing by the Parties, provided that it is valid and undisputed.
- 1.2 If the ASC Supplier proposes to submit for payment an invoice that does not comply with such agreed standards the ASC Supplier shall comply with the requirements of the Authority's e-invoicing system. In the alternative the ASC Supplier shall:
 - 1.2.1 prepare and provide to the Authority for approval of the format a template invoice within ten (10) Working Days of the Implementation Commencement Date which shall include, as a minimum, the details set out in Paragraph 1.2.3 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
 - 1.2.2 make such amendments as may be reasonably required by the Authority if the template invoice outlined in (1.2.1) is not approved by the Authority.
 - 1.2.3 The ASC Supplier shall ensure that each invoice contains the following information:
 - (a) the date of the invoice;
 - (b) a unique invoice number;
 - (c) the Service Period or other period(s) to which the relevant Charge(s) relate;
 - (d) the correct reference for this Contract;
 - (e) the reference number of the purchase order to which it relates (if any);
 - (f) the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
 - (g) a description of the Services;
 - (h) the pricing mechanism used to calculate the Charges (such as Fixed Price, Time and Materials etc.);
 - (i) any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;

- (j) 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 Contract, and, separately, any VAT or other sales tax payable in respect of each of the same;
- (k) details of any Service Credits or Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;
- (l) 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 ASC Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Services);
- (m) a contact name and telephone number of a responsible person in the ASC Supplier's finance department in the event of administrative queries;
- (n) the banking details for payment to the ASC Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number);
- (o) where the Services have been structured into separate Service lines, the information at (1.2.3(a)) to (1.2.3(n)) of this paragraph 1.2.3 shall be broken down in each invoice per Service line; and
- (p) and any other information reasonably required by the Authority.

- 1.3 The ASC Supplier shall invoice the Authority in respect of Services in accordance with the requirements of Part B of Schedule 2 (Charges and Invoicing).
- 1.4 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 ASC Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.
- 1.5 The ASC Supplier shall submit all invoices and Supporting Documentation through the Authority's electronic system (as notified to the ASC Supplier) or if that is not possible to the address or email set out in the Order Form with a copy (again including any Supporting Documentation) to such other person and at such place as the Authority may notify to the ASC Supplier from time to time.

- 1.6 All ASC Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
- 1.7 The Authority shall regard an invoice as valid only if it complies with the provisions of this Part D. Where any invoice does not conform to the Authority's requirements set out in this Part D, the Authority shall promptly return the disputed invoice to the ASC Supplier and the ASC Supplier shall promptly issue a replacement invoice which shall comply with such requirements.

2. PAYMENT TERMS

- 2.1 Subject to the relevant provisions of this Schedule 2 (Charges and Invoicing), the Authority shall make payment to the ASC Supplier within thirty (30) days of verifying that the invoice is valid and undisputed.
- 2.2 Unless the Parties agree otherwise in writing, all ASC Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the ASC Supplier has specified on its invoice.

PART E – EARLY TERMINATION FEES

1. PAYMENTS BY THE AUTHORITY

1.1 Subject to paragraph 1.2, if this Contract is terminated by the Authority pursuant to Clause 35.1.9 (Termination without Cause) or by the ASC Supplier pursuant to Clause 35.2 (ASC Supplier Termination Right), the Authority shall pay the ASC Supplier the following payments (which shall be the ASC Supplier's sole remedy for the termination of this Contract):

1.1.1 the Termination Payment; and

1.1.2 the Compensation Payment, where the period from (but excluding) the date that the Termination Notice is given by the Authority or by the ASC Supplier (as applicable) to (and including) the Termination Date (the **"Shortfall Period"**) is less than three hundred and sixty-five (365) days.

1.2 If the Authority removes from the scope of the Operational Services any of the Business Applications (whether in whole or in part) pursuant to Clause 35.1.9 (Termination without Cause), or 35.3 (Partial Termination, Suspension and Partial Suspension), or as part of planned decommissioning of Business Applications pursuant to GP004 of the Specification and, accordingly any associated Operational Services are no longer required, no Termination Payment and/or Compensation Payment shall be payable by the Authority to the ASC Supplier and the following paragraphs 2 to 14 inclusive of this Part E shall not be applicable.

2. EARLY TERMINATION FEE

2.1 The Termination Payment payable pursuant to Clause 36.2.1 shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment.

3. BREAKAGE COSTS PAYMENT

3.1 The ASC Supplier may recover through the Breakage Costs Payment only those costs incurred by the ASC Supplier directly as a result of the termination (or partial termination during the Initial Term) of this Contract which:

3.1.1 would not have been incurred had this Contract, or the relevant part thereof, continued until expiry of the Initial Term, or in the event that the Contract Period 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 Contract;

- 3.1.4 are not Contract Breakage Costs relating to contracts or Sub-Contracts with Affiliates of the ASC Supplier; and
- 3.1.5 relate directly to the termination of the Services.

4. LIMITATION ON BREAKAGE COSTS PAYMENT

- 4.1 The Breakage Costs Payment shall not exceed the lower of:
 - 4.1.1 the relevant limit set out in Annex 8 (Maximum Payments on Termination); and
 - 4.1.2 120% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

5. REDUNDANCY COSTS

- 5.1 The Authority shall not be liable under this Schedule 2 (Charges and Invoicing) for any costs associated with ASC Supplier Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.
- 5.2 Where the ASC Supplier can demonstrate that a member of ASC Supplier Personnel will be made redundant following termination of this Contract, but redeployment of such person is possible and would offer value for money to the Authority when compared with redundancy, then the Authority shall pay the ASC Supplier the actual direct costs incurred by the ASC Supplier or its Sub-Contractor arising out of the redeployment of such person (including retraining and relocation costs) subject to a maximum amount of £30,000 per relevant member of the ASC Supplier Personnel.

6. CONTRACT BREAKAGE COSTS

- 6.1 The ASC Supplier shall be entitled to Contract Breakage Costs only in respect of Key Sub-Contracts which:
 - 6.1.1 are not assigned or novated to a Replacement Supplier at the request of the Authority in accordance with Schedule 10 (Exit Management); and
 - 6.1.2 the ASC Supplier can demonstrate:
 - (a) are surplus to the ASC Supplier's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other customers; and
 - (b) have been entered into by it in the ordinary course of business.
- 6.2 The ASC Supplier shall seek to negotiate termination of any Key Sub-Contracts with the relevant Key Sub-Contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.

6.3 Except with the prior written agreement of the Authority, the Authority shall not be liable for any costs (including cancellation or termination charges) that the ASC Supplier is obliged to pay in respect of:

6.3.1 the termination of any contractual arrangements for occupation of, support of and/or services provided for ASC Supplier premises which may arise as a consequence of the termination of this Contract; and/or

6.3.2 Assets not yet installed at the Termination Date.

7. UNRECOVERED PAYMENT

7.1 The Unrecovered Payment shall not exceed the lowest of:

7.1.1 the relevant limit set out in Annex 8 (Maximum Payments on Termination);

7.1.2 120% of the estimate for the Unrecovered Payment set out in any relevant Termination Estimate; and

7.1.3 the Charges that but for the termination of this Contract would have been payable by the Authority after the Termination Date in accordance with this Schedule 2 (Charges and Invoicing) as forecast in the Financial Model.

8. MITIGATION OF CONTRACT BREAKAGE COSTS, REDUNDANCY COSTS AND UNRECOVERED COSTS

8.1 The ASC Supplier agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs, Redundancy Costs and Unrecovered Costs by:

8.1.1 the appropriation of Assets, employees and resources for other purposes;

8.1.2 at the Authority's request, assigning any Key Sub-Contracts to the Authority or a third party acting on behalf of the Authority; and

8.1.3 in relation to Key Sub-Contracts that are not to be assigned to the Authority or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.

8.2 If Assets, employees and resources can be used by the ASC Supplier for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs, Redundancy Costs and Unrecovered Costs payable by the Authority or a third party to the ASC Supplier. In the event of any Dispute arising over whether the ASC Supplier can use any ASC Supplier Assets, employees and/or

resources for other purposes and/or over the amount of the relevant equitable reduction, the Dispute shall be referred to the Dispute Resolution Procedure.

9. COMPENSATION PAYMENT

- 9.1 The Compensation Payment payable pursuant to Paragraph 1.1.2 above shall be an amount equal to the total forecast Charges over the Shortfall Period (as stated in the Financial Model) multiplied by the Anticipated Contract Life Profit Margin for the Initial Term.
- 9.2 The Compensation Payment shall be no greater than the lower of:
 - 9.2.1 the relevant limit set out in Annex 8 (Maximum Payments on Termination); and
 - 9.2.2 120% of the estimate for the Compensation Payment set out in the relevant Termination Estimate.

10. FULL AND FINAL SETTLEMENT

- 10.1 Any Termination Payment and/or Compensation Payment paid under this Part E of Schedule 2 (Charges and Invoicing) shall be in full and final settlement of any claim, demand and/or proceedings of the ASC Supplier in relation to any termination by the Authority pursuant to Clause 35.1.9 (Termination without Cause) or by the ASC Supplier pursuant to Clause 35.2 (ASC Supplier Termination Right), and the ASC Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

11. INVOICING FOR THE PAYMENTS ON TERMINATION

- 11.1 All sums due under this Part E of Schedule 2 (Charges and Invoicing) shall be payable by the Authority to the ASC Supplier in accordance with the payment terms set out in this Schedule 2 (Charges and Invoicing).

12. SET OFF

- 12.1 The Authority shall be entitled to set off any outstanding liabilities of the ASC Supplier against any amounts that are payable by it pursuant to this Part E of Schedule 2 (Charges and Invoicing).

13. NO DOUBLE RECOVERY

- 13.1 If any amount payable under this Part E of Schedule 2 (Charges and Invoicing) (in whole or in part) relates to or arises from any Transferring Assets (as defined in Schedule 10 (Exit Management)) then, to the extent that the Authority makes any payments pursuant to Schedule 10 (Exit Management) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Part E of Schedule 2 (Charges and Invoicing).

- 13.2 The value of the Termination Payment and/or the Compensation Payment shall be reduced or extinguished to the extent that the ASC Supplier has already received the Charges or the financial benefit of any other rights or remedy given under this Contract so that there is no double counting in calculating the relevant payment.
- 13.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

14. ESTIMATE OF TERMINATION PAYMENT AND COMPENSATION PAYMENT

- 14.1 The Authority may issue a Request for Estimate at any time during the Contract Period provided that no more than two (2) Requests for Estimate may be issued in any six (6) Month period.
- 14.2 The ASC 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 and the Compensation 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:
- 14.2.1 be based on the relevant amounts set out in the Financial Model;
 - 14.2.2 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 Key Sub-Contract and appropriate Supporting Documentation; and
 - (c) such information as the Authority may reasonably require; and
 - 14.2.3 state the period for which that Termination Estimate remains valid, which shall be not less than twenty (20) Working Days.
- 14.3 The ASC 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 Contract.
- 14.4 If the Authority issues a Termination Notice to the ASC Supplier within the stated period for which a Termination Estimate remains valid, the ASC 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 ASC Supplier and the Authority.

ANNEX 1

IMPLEMENTATION MILESTONE PAYMENTS AND DELAY PAYMENTS

For details of the Implementation Milestones including Deliverables associated with them please refer to S1 Implementation Plan.

[REDACTED]

ANNEX 2
FIXED SERVICE CHARGES

[REDACTED]

ANNEX 3
VARIABLE SERVICE CHARGES

Not applicable

ANNEX 4

RATE CARD

Rate Card

[REDACTED]

Volume Discounts Table

[REDACTED]

ANNEX 5

SERVICE CATALOGUE ITEMS CHARGES

[REDACTED]

ANNEX 6
FINANCIAL MODEL

[REDACTED]

ANNEX 7

FIXED PROJECT CHARGES

Not applicable

ANNEX 8

MAXIMUM PAYMENTS ON TERMINATION

The table below sets out, by Contract Year, the maximum amount of the Unrecovered Payment, Breakage Costs Payment and Compensation Payment that the Authority shall be liable to pay to the ASC Supplier pursuant to this Contract. The amounts stated are subject to Indexation.

[REDACTED]

ANNEX 9: NOT USED

ANNEX 10: CROSS-FUNCTIONAL CORE TEAM LABOUR COSTS

[REDACTED]

SCHEDULE 3 – SERVICE LEVELS, SERVICE CREDITS AND PERFORMANCE MONITORING

1. SCOPE

1.1 This Schedule 3 (Service Levels, Service Credits and Performance Monitoring) sets out the Service Levels which the ASC Supplier is required to achieve when providing the Services, the mechanism by which Service Level Failures and Critical Service Level Failures will be managed and the method by which the ASC Supplier's performance in the provision by it of the Services will be monitored.

1.1.1 This Schedule 3 comprises:

- (a) Part A: Service Levels and Service Credits; and
- (b) Part B: Performance Monitoring.
- (c) Part C: Critical Service Level Failure;
- (d) Annex 1: Service Levels;
- (e) Annex 2: Key Performance Indicators; and
- (f) Annex 3: Service Credits.

2. DEFINITIONS

2.1 In this Schedule 3, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

"Balanced Scorecard Report"	has the meaning given in Part B of this Schedule 3;
"Critical Service Level Failure"	has the meaning given to it in PART C of this Schedule 3;
"KPI Failure Threshold"	means the level of performance of the Services which becomes unacceptable to the Authority, as set out in each Key Performance Indicator;
"KPI Target"	shall be as set out against the relevant Service Level in Annex 2 of this Schedule 3;
"Service Level Performance Measure"	shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule.

"Target Resolution Time" means the amount of time it takes to resolve an Incident, measured from the point at which the ticket is assigned to the ASC Supplier up to receipt by the Service Desk of confirmation from the ASC Supplier that it has resolved the relevant ticket.

PART A – SERVICE LEVELS AND SERVICE CREDITS

1. SERVICE LEVELS

- 1.1 If the level of performance of the ASC Supplier:
- 1.1.1 is likely to or fails to meet any Service Level Performance Measure;
or
 - 1.1.2 is likely to cause or causes a Critical Service Failure to occur,
the ASC Supplier shall immediately notify the Authority in writing and
the Authority, in its absolute discretion and without limiting any
other of its rights, may:
 - (a) require the ASC Supplier to immediately take all remedial
action that is reasonable to mitigate the impact on the
Authority and to rectify or prevent a Service Level Failure or
Critical Service Level Failure from taking place or recurring;
 - (b) instruct the ASC Supplier to comply with the Rectification Plan
Process;
 - (c) if a Service Level Failure has occurred, deduct from the Charges
the applicable Service Level Credits payable by the ASC
Supplier to the Authority; and/or
 - (d) if a Critical Service Level Failure has occurred, exercise its right
to Compensation for Critical Service Level Failure in accordance
with Clause 10 (including the right to terminate for material
Default).
- 1.2 The Supplier shall not be responsible for any failure to meet a Service Level
where such failure is caused by a delay, act or omission of a third-party provider
that is engaged directly by the Authority and is not subcontracted to the
Supplier under this Call-Off Contract.

2. SERVICE CREDITS

- 2.1 The Authority shall use the Performance Monitoring Reports supplied by the
ASC Supplier under Part B (Performance Monitoring) of this Schedule 3 to verify
the calculation and accuracy of the Service Credits, if any, applicable to each
Service Period.
- 2.2 The liability of the ASC Supplier in respect of Service Credits shall be subject to
Clause 19.4.3 provided that, for the avoidance of doubt, the operation of the
Service Credit Cap shall not affect the continued accrual of Service Credits in
excess of such financial limit in accordance with the provisions of this Schedule
3.

- 2.3 Service Credits are a reduction of the amounts payable in respect of the Services and do not include VAT. The ASC Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula set out in Annex 3 to this Schedule.

3. KEY PERFORMANCE INDICATORS

- 3.1 The Key Performance Indicators are detailed at Annex 2 (Key Performance Indicators) to this Schedule 3.
- 3.2 Key Performance Indicators, in respect of the relevant part of the Services shall be measured and reported by the ASC Supplier from the Phased Service Commencement Date as detailed in the Key Performance Indicators table in Annex 2 (Key Performance Indicators).
- 3.3 A failure by the ASC Supplier to achieve a KPI does not attract Service Credits.
- 3.4 If a Key Performance Indicator falls below the KPI Target for that same Key Performance Indicator on three (3) or more occasions in a six (6) Month rolling period, the Authority, in its absolute discretion and without limiting any other of its rights, may instruct the ASC Supplier to comply with the Rectification Plan Process.
- 3.5 If the Rectification Plan Process is invoked under paragraphs 3.4 above, and the Rectification Plan Process does not resolve the performance failure, the Authority, in its absolute discretion and without limiting any other of its rights, may promote the applicable Key Performance Indicator (except for the Social Value Delivery KPI which may not be promoted) to a Service Level.
- 3.6 Any KPI which has been promoted to a Service Level shall be measured and reported on as a Service Level, and the associated Service Credits applied, from the following Service Period.
- 3.7 If a KPI is promoted to a Service Level, the Authority may recalibrate all Service Levels so that the maximum potential Service Credits in a Service Period remains proportionate.
- 3.8 If a KPI which has been promoted to a Service Level in accordance with paragraph 3.6 has been achieved consistently following such promotion, the Authority, at its sole discretion, may direct that such Service Level shall revert to a KPI.

PART B – PERFORMANCE MONITORING

1. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 1.1 Within twenty (20) Working Days of the Implementation Commencement Date the ASC Supplier shall provide the Authority with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 1.2 The ASC Supplier shall provide the Authority with Performance Monitoring Reports defined in Call-Off Schedule 6 Transparency Reports a Service Management Report, key performance indicator (KPI) report and a service level target (SLT) report, in accordance with the process and timescales agreed pursuant to paragraph 1.1 of Part B of this Schedule 3 (Service Levels, Service Credits and Performance Monitoring) which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
 - 1.2.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
 - 1.2.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
 - 1.2.3 details of any Critical Service Level Failures;
 - 1.2.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 1.2.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
 - 1.2.6 such other details as the Authority may reasonably require from time to time.
- 1.3 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a Monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the ASC Supplier and the Authority of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
 - 1.3.1 take place within one (1) week of the Performance Monitoring Reports being issued by the ASC Supplier at such location and time (within normal business hours) as the Authority shall reasonably require;
 - 1.3.2 be attended by the ASC Supplier Representative and the Authority Representative; and

- 1.3.3 be fully minuted by the ASC Supplier and the minutes will be circulated by the ASC Supplier to all attendees at the relevant meeting and also to the Authority Representative and any other recipients agreed at the relevant meeting.
- 1.4 The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the ASC Supplier Representative and the Authority Representative at each meeting.
- 1.5 The ASC Supplier shall provide to the Authority such documentation as the Authority may reasonably require in order to verify the level of the performance by the ASC Supplier and the calculations of the amount of Service Credits for any specified Service Period.

2. SATISFACTION SURVEYS

- 2.1 The Authority may undertake satisfaction surveys in respect of the ASC Supplier's provision of the Services. The Authority shall be entitled to notify the ASC Supplier of any aspects of their performance of the provision of the Services which the responses to the satisfaction surveys reasonably suggest are not in accordance with this Contract.

3. BALANCED SCORECARD REPORT

- 3.1 At any point during the Contract Period, the Authority may require the ASC Supplier to provide a report created by the ASC Supplier to the Authority's senior responsible officer which summarises the ASC Supplier's performance over the previous Service Period (the "**Balanced Scorecard Report**"). After the first request for the Balanced Scorecard Report the ASC Supplier shall then continue to provide the Balanced Scorecard Report within ten (10) Working Days of the end of each Service Period unless otherwise agreed in writing with the Authority. For the avoidance of doubt, the Balanced Scorecard Report is not required at the Implementation Commencement Date.
- 3.2 The Balanced Scorecard Report shall be presented in the form of an online accessible dashboard and, as a minimum, shall contain a high level summary of the ASC Supplier's performance over the relevant Service Period, including details of the following:
 - 3.2.1 financial indicators;
 - 3.2.2 performance against the Service Levels and KPIs;
 - 3.2.3 behavioural indicators;
 - 3.2.4 performance against its obligation to pay its Sub-Contractors within thirty (30) days of receipt of an undisputed invoice;
 - 3.2.5 performance against its obligation to pay 95% of invoices within sixty (60) days of receipt;

- 3.2.6 Milestone trend chart, showing performance of the overall Programme;
- 3.2.7 sustainability indicators, for example net zero carbon, waste minimisation or performance to support a circular economy; and
- 3.2.8 delivery against social value obligations.
- 3.3 The Balanced Scorecard Report shall be reviewed and their contents agreed by the Parties at the next Performance Review Meeting.
- 3.4 The Authority shall be entitled to raise any additional questions and/or request any further information from the ASC Supplier regarding any failure to meet a Service Level or KPI.

PART C – CRITICAL SERVICE LEVEL FAILURE

1. CRITICAL SERVICE LEVEL FAILURE

- 1.1 A Critical Service Level Failure shall be deemed to have occurred in any of the following circumstances:
 - 1.1.1 if the performance of the Services for the same Service Level is below the Service Level Failure Threshold on three (3) occasions in any six (6) consecutive Service Periods;
 - 1.1.2 if there are five (5) or more occurrences of Services falling below a Service Failure Threshold in respect of any Service Levels in any six (6) consecutive Service Periods;
 - 1.1.3 if any Service Level, following successful completion of a Rectification Plan, does not meet the Service Level Failure Threshold due to an Incident or situation that is substantially the same to the cause of the original Service Level Failure which triggered the Rectification Plan, in any of the six (6) subsequent Service Periods; or
 - 1.1.4 if the ASC Supplier has accrued Service Credits which meet or exceed the Service Credit Cap.

ANNEX 1 SERVICE LEVELS

1.

1.1 Service Levels – Support Hours

1.1.1 "Primary Support Hours" are defined as the hours during which ASC Supplier support is scheduled and available in Table 1 of 1.2.

1.1.2 "Secondary Support Hours" are the times when the Business Application is available to users but during which support is not normally expected to be available in Table 1 of 1.2.

1.2 Primary Support Hours vary depending on Business Application, and is either:

- 10 hours per day, 5 days per week; '10 x 5' (Mon-Fri 0800:1800); or
- 10 hours per day, 6 days per week; '10 x 6' (Mon-Sat 0800:1800) or

As determined by the Authority's business requirement for the Business Application.

TABLE 1: Business Application Support Hours

[REDACTED]

- 3.8.1 Primary Support Hours may be extended by the Authority without prior agreement due to Critical or High Priority Incidents in accordance with 1.2.2 below.
- 1.2.2 If a Priority 1 (“P1”) or Priority 2 (“P2”) Incident is reported and assigned to the ASC Supplier during Primary Support Hours, Primary Support Hours will be automatically extended until the Incident is resolved, or such corrective action is taken that the Incident is de-prioritised to a P3 or P4 Incident. For the avoidance of doubt, this means that the ASC Supplier will work continually on the P1 or P2 Incident with the objective to resolve the Incident as soon as possible and always before the start of the next Working Day.
- 1.2.3 The Incident Resolution Target time for P1 and P2 Incidents is measured from allocation of the Incident to the ASC Supplier to approved resolution of the Incident.
- 1.2.4 For P1 and P2 Incidents, Incident Resolution Time makes no distinction between Primary Support Hours or Secondary Support Hours.
- 1.2.5 *Example 1: A P1 Incident with the CAPS Business Application is reported and assigned to the ASC Supplier at 1700 on Monday. This Incident is resolved by 1900. The Incident Resolution Target for a P1 Incident is 2 hours (see table below), so the Incident was resolved within the Target response time.*
- 1.2.6 If a P1 or P2 Incident is reported and assigned to the ASC Supplier during Secondary Support Hours, the ASC Supplier will immediately mobilise such resources that are required to resolve the Incident as soon as possible and always before the start of the next Working Day. For the avoidance of doubt, the ASC Supplier shall not wait until the commencement of the next Working Day’s Primary Support Hours to address the P1 or P2 Incident.
- 1.2.7 *Example 2: A P2 Incident with the CAPS Business Application is reported and assigned to the ASC Supplier at 2200 on Monday. This Incident is resolved by 0130 on Tuesday. The Incident Resolution Target for a P2 Incident is 4 hours (see table below), so the Incident was resolved within the Target response time.*
- 1.2.8 The Resolution Target time for P3 and P4 Incidents is measured from allocation of the Incident to the ASC Supplier to approved resolution of the Incident.
- 1.2.9 For P3 or P4 Incidents, resolution time is measured using Primary Support Hours only.

- 1.2.10 *Example 3: A P3 Incident with the CAPS Business Application is reported and assigned to the ASC Supplier at 1600 on Saturday. The ASC Supplier works on the Incident for 2 hours on Saturday to the end of the Primary Support Hours at 1800. The ASC Supplier then continues work to resolve the P3 Incident when Primary Support Hours resume on Monday 0800 and takes a further 4 hours to resolve the Incident. The Incident Resolution Target for a P3 Incident is 8 hours (see table below). The time taken to resolve the P3 Incident is 6 hours (2 hours plus 4 hours), so the Incident was resolved within the Target response time.*

1.3 **Service Level – Business Application Availability**

- 1.3.1 Business Application Availability is the target to be achieved by the ASC Supplier to ensure that Business Applications are available for use.
- 1.3.2 An Application will not be considered 'available' during times it is subject to a live and unresolved P1 or P2 Incident.
- 1.3.3 An Application will be considered 'available' during times it is subject to P3 or P4 Incidents.
- 1.3.4 The Business Application Availability Target is set out below in relation to each of the Business Applications:

TABLE 2: Business Application Availability Targets

[REDACTED]

1.4 **Service Levels - Incident Management**

- 1.4.1 Incidents are categorised by the Authority using an assessment of 'Impact' and 'Urgency'.

- 1.4.2 'Impact' is the measure of the effect of an Incident on Business Processes. Impact is often based on how Service Levels will be affected.
- 1.4.3 'Urgency' is the measure of business criticality of an Incident where there is an effect upon business deadlines. The urgency reflects the time available for repair or avoidance before the impact is felt by the business.
- 1.4.4 Impact and Urgency are combined as set out in the diagram below, to determine the Priority ("P") rating of the Incident.

TABLE 3: Incident Priority Ratings

[REDACTED]

- 1.4.5 Assessments of Impact and Urgency, and consequently Incident Priority, are at the discretion of the Authority .
- 1.4.6 Priority 3 and 4 Incidents will be managed using Authority Incident management Protocols.
- 1.4.7 Priority 1 and 2 Incidents will be managed using Authority major Incident management Protocols.

Incident Resolution Targets

- 1.4.8 In the table below, Incident Priority is explained, with examples and the Incident Resolution Targets for each Priority Level is set out:

TABLE 4: Incident Resolution Targets

[REDACTED]

is a vital part of the Incident management process.

- 1.4.10 In addition to the Incident Resolution Targets set out in Table 4, the ASC Supplier shall meet the following Incident communication targets:
- 98% of Priority 1 Incidents have initial communication issued within 30 minutes of the Incident being reported.
 - 98% of Priority 1 Incidents have update communications issued within 60 minutes of previous communications.
 - 98% of Priority 2 Incidents have initial communication issued within 60 minutes of the Incident being reported.

- 98% of Priority 2 Incidents have update communications issued within 120 minutes of previous communications.
- 98% of Priority 3 Incident records are updated every 2 Working Days until the Incident has been resolved or the Priority Level has been changed.
- 98% of Priority 4 Incident Records are updated every 2 Working Days until the Incident has been resolved or the Priority Level has been changed.

1.5 Service Levels - Problem Management

- 1.5.1 'Problem Management' is the management of the underlying, unknown root cause of a single High Priority Incident (P1/P2) or a series of lower priority Incidents (P3/P4) which exhibit the same symptoms i.e. affecting the same Configuration Item.
- 1.5.2 It differs from an Incident (and therefore the Incident Management / Major Incident Management process) as Incidents are primarily focused on resolving the Incident as quickly as possible in line with Service Levels. Problems, on the other hand, are looking for the root cause of the Incidents and helping to eliminate root causes or minimising them as far as is practicable.
- 1.5.3 'Reactive' Problem Management is associated with Problems identified through the Incident Management / Major Incident Management processes.
- 1.5.4 'Proactive' Problem Management is associated with identifying Problems proactively by:
- Performing trend analysis on Incident data or performing internal assessments;
 - Service Transition/ Release and deployment coordinates the acceptance of known errors prior to a pre-production or production release of a new or changed service;
 - Event Management detecting 'events' that have yet to cause a service impact (i.e. Incident) which should be investigated through Problem Management
 - Notification by a vendor of a software bug/ flaw
- 1.5.5 The ASC Supplier is expected to undertake both reactive and proactive forms of Problem Management.

- 1.5.6 Similar to Incidents, Problems are also assigned a Priority to resolve, based on Impact and Urgency. These can be changed at the discretion of the Authority, so a Problem's Priority level may change.

TABLE 5: Problem Priority Ratings

[REDACTED]

- 1.5.7 The following Problem examples and Problem Resolution Targets apply:

TABLE 6: Problem Resolution Targets

[REDACTED]

Problem Root Cause Analysis Targets

1.5.8 In addition to the Problem Resolution Targets set out in the table above, the following Service Levels also apply for Problem Management:

- 100% of root cause analysis reports created within 10 Working Days
- 0% of Closed Problem records have a root cause as “Capacity”

1.6 Service Levels - Change Management

1.6.1 The purpose of Change Management is to minimise the risks associated to changes made to the wider IT estate for new and changed Services across infrastructure and Business Applications. It provides a standardised procedure for efficient and prompt handling of changes, adding an appropriate amount of governance to minimise unplanned service outages and disruptions without impacting the speed at which teams work, and consequently improve the day to day operations of the Authority.

1.6.2 There are different kinds of change, each requiring their information or procedures to be followed. To determine what Change type is required the change is assessed to understand:

- The **Change Priority** of the proposed or requested change; how urgent it is;
- The **Change Impact** of the proposed or requested change; the degree of 'disturbance' the change may have, as well as the impact on the business of not performing the change ; and
- The **Change Risk** of the proposed or requested change; how challenging it is and how damaging would it be if it were not undertaken or if the change should fail.

1.6.3 Change Priority is determined by the Authority, using classifications Low, Medium, High and Critical, as set out in the table below.

TABLE 7: Change Priority Ratings

[REDACTED]

1.6.4 Change Impact is determined by the Authority, using classifications Low, Medium, High as set out in the table below.

TABLE 8: Change Impact Ratings

[REDACTED]

[REDACTED]

- 1.6.5 A combination of Change Priority and Change Impact will be used to specify the Change Target Response Times from the ASC Supplier.
- 1.6.6 The ASC Supplier will respond to the requested Change with detailed proposals on how to deliver the Change within the target response times.

TABLE 9: Change Target Response Times

[REDACTED]

[REDACTED]

- 1.6.7 The ASC Supplier's response must include their assessment of Change Risk, proposing a classification of Low, Medium, High or Very High in accordance with the classifications set out in Table 10 below.
- 1.6.8 Where Change options are presented, each option will have its own Change Risk classification.
- 1.6.9 The Authority may amend the risk classification.

TABLE 10: Change Risk Classifications

[REDACTED]

determines the type of Change process that is appropriate, using classifications Normal Major, Normal Minor, Standard, Emergency and Retrospective as set out in Table 11 below.

- 1.6.11 Authority Approval specifies the target approval duration by the Authority to the Change Request submitted by the ASC Supplier:

TABLE 11: Authority Change Response Times

[REDACTED]

1.6.12 The following Service Levels shall also apply to Change Management:

- 95% of Changes, of all types, must be closed successfully per Month; and
- 97% of Changes closed per Month must not cause a Priority 1 or Priority 2 Incident,

1.7 Standard Changes –Service Catalogue

1.7.1 The following items, considered ‘Standard’ Changes and whose frequency and regularity of delivery has caused them to be added to and requestable via the Service Catalogue:

TABLE 12 SERVICE CATALOGUE ITEMS

[REDACTED]

1.8 Rough Order of Magnitude (ROM)

1.8.1 When considering Change options, particularly when undertaking long-term planning, the Authority may request that the ASC Supplier provide an initial, preliminary assessment of the Impact and Risk of a potential Change. This could be for Changes under consideration by the Authority, or Changes suggested by the ASC Supplier as part of continuous improvement. The ‘rough order of magnitude’ (ROM) estimate is a best endeavours view from the ASC Supplier and is non-binding for either Party. Should the Authority wish to proceed, the formal Authority Protocols regarding change management will be followed.

1.8.2 A ROM will include:

- Suggested approach
- Estimated outcomes
- Estimated cost
- Estimated duration
- Estimated benefits
- Summary of risks

1.8.3 When requested by the Authority, the ASC Supplier shall provide a ROM request that should be provided within 20 Working Days.

1.8.4 The Authority may request no more than 5 ROM requests per quarter.

ANNEX 2

KEY PERFORMANCE INDICATORS

1. The ASC Supplier shall provide the Services to meet or exceed the following KPIs:

[REDACTED]

ANNEX 3 - SERVICE CREDITS

1. DEFINITIONS

- (i) The following definitions shall apply in this Schedule:

"Target Resolution Time" means the measurement of time from when an event is recorded by service desk to when the ASC Supplier Personnel has resolved the relevant ticket in the service desk;

"Instance" means an instance of an Incident where the ASC Supplier fails to meet the Performance Measure and its performance has fallen below the Service Level Threshold.

[REDACTED]

2. CALCULATION OF SERVICE CREDITS

- 2.1 Service Credits shall be calculated on a per Service Level basis using the following formula:

- i) a Service Credit of 0.5% of the total Service Charges due for that Service Period shall be deducted from the next invoice payable by the Authority for each Instance that the actual Service Level performance is below the relevant Service Level Threshold;
- ii) where multiple Service Level Failures (i.e. across a number of different Service Levels) have occurred, the Service Credits payable shall be aggregated into a single percentage deduction.

Worked example 1: Incident Resolution Service Level: Multiple P3 Incidents

[REDACTED]

3. SERVICE CREDIT CAP

The Service Credit Cap means, in the aggregate, 15% of the Monthly Service Charges payable in the relevant Service Period, such that no more than 15% of the Monthly Service Charges are payable by the ASC Supplier in the relevant Month notwithstanding that the actual aggregate percentage deduction for Service Credits in that Month exceeds 15% of the Monthly Service Charges.

SCHEDULE 4 - DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

In this Schedule 4, the following definitions shall apply:

“CEDR”	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
“Counter Notice”	has the meaning given in Paragraph 7.2;
“Expert”	in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute;
“Expert Determination”	determination by an Expert in accordance with Paragraph 6;
“Expedited Dispute Timetable”	the expedited dispute timetable set out in Paragraph 3;
“Mediation Notice”	has the meaning given in Paragraph 4.2;
“Mediator”	the independent third party appointed in accordance with Paragraph 5.2 to mediate a Dispute;
“Multi-Party Dispute”	a Dispute which involves the Parties and one or more Related Third Parties;
“Multi-Party Dispute Representatives”	has the meaning given in Paragraph 9.6;
“Multi-Party Dispute Resolution Board”	has the meaning given in Paragraph 9.6;
“Related Third Party(ies)”	a party to: (a) another contract with the Authority or the ASC Supplier which is relevant to this Contract; or (b) a Sub-Contract; and
“ASC Supplier Request”	a notice served by the ASC 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-Party Dispute Resolution Procedure in respect of that Dispute.

2. DISPUTE NOTICES

2.1 If a Dispute arises then:

- 2.1.1 the Authority Representative and the ASC 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 A Dispute Notice:

2.2.1 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

2.2.2 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 ASC Supplier) that the Dispute is a Multi-Party Dispute, in which case Paragraph 2.3 shall apply.

2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to Paragraph 2.2.2, then:

- 2.3.1 if it is served by the Authority it shall be treated as a Multi-Party Procedure Initiation Notice; and
- 2.3.2 if it is served by the ASC Supplier it shall be treated as a ASC Supplier Request,

and in each case the provisions of Paragraph 9 shall apply.

2.4 Subject to Paragraphs 2.5 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 shall seek to resolve the Dispute:

- 2.4.1 first by commercial negotiation (as prescribed in Paragraph 4);

- 2.4.2 then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5); and
 - 2.4.3 lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 54).
- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Contract and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.
- 2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Contract regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under Paragraph 8.

3. EXPEDITED DISPUTE TIMETABLE

- 3.1 In exceptional circumstances where the use of the times in this Schedule 4 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 Contract, 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;
 - 3.2.3 in Paragraph 6.2, five (5) Working Days; and
 - 3.2.4 in Paragraph 7.2, ten (10) 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 ASC Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Authority Representative and the ASC Supplier Representative, or such other individual as may be notified by a Party to the other Party from time to time.
- 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,
 - 4.2.4 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 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 aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT, accounting or financing nature 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 a 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. ARBITRATION

- 7.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.
- 7.2 Before the ASC Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "Counter Notice") on the ASC Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The ASC Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 7.3 If the Authority serves a Counter Notice, then:
 - 7.3.1 if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or
 - 7.3.2 if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the ASC Supplier shall not commence arbitration proceedings.
- 7.4 If the Authority does not serve a Counter Notice within the fifteen (15) Working Day period referred to in Paragraph 7.2, the ASC Supplier may either commence arbitration proceedings in accordance with Paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
- 7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:

- 7.5.1 the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("LCIA") (subject to Paragraphs 7.5.5, 7.5.6 and 7.5.7);
- 7.5.2 the arbitration shall be administered by the LCIA;
- 7.5.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- 7.5.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 7.5.5 the chair of the arbitral tribunal shall be British;
- 7.5.6 the arbitration proceedings shall take place in London and in the English language; and
- 7.5.7 the seat of the arbitration shall be London.

8. URGENT RELIEF

- 8.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
 - 8.1.1 for interim or interlocutory remedies in relation to this Contract or infringement by the other Party of that Party's Intellectual Property Rights; and/or
 - 8.1.2 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 ASC 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 or to arbitration in accordance with Paragraph 7, the ASC 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 ASC Supplier may serve a ASC Supplier Request on the Authority.
- 9.4 The Authority shall (acting reasonably) consider each ASC Supplier Request and shall determine within 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 ASC Supplier; or
 - 9.4.2 not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the ASC Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 8.
- 9.5 If the Authority has determined, following a ASC Supplier Request, that a Dispute is not a Multi-Party Dispute, the ASC Supplier may not serve another ASC 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 ASC Supplier;
 - 9.6.3 each Related Third Party involved in the Multi-Party Dispute; and
 - 9.6.4 any other representatives of any of the Parties and/or any Related Third Parties 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.
- 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;
 - 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/or
 - 9.8.3 subject to Paragraph 9.9, Paragraph 7 shall apply to the Multi-Party Dispute,
- and in each case references to the “ASC Supplier” or the “Parties” in such provisions shall include a reference to all Related Third Parties.
- 9.9 If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the ASC Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-Contractor, by the ASC Supplier.

SCHEDULE 5- CHANGE CONTROL PROCEDURE

PART A – SHORT FORM CHANGE CONTROL PROCEDURE - N/A

PART B – LONG FORM CHANGE CONTROL PROCEDURE

1. DEFINITIONS

In this Part B (Long Form Change Control Procedure) of this Schedule 5(Change Control Procedure), the following definitions shall apply:

“Authority Change Manager”	the person appointed to that position by the Authority from time to time and notified in writing to the ASC Supplier or, if no person is notified, the Authority Representative;
“Change Authorisation Note”	an authorisation note setting out an agreed Contract Change which shall be substantially in the form of Annex 2 of this Part B (Long Form Change Control Procedure) of this Schedule 5(Change Control Procedure);
“Change Request”	a written request for a Contract Change which shall be substantially in the form of Annex 1 of this Part B (Long Form Change Control Procedure) of this Schedule 5 (Change Control Procedure);
“Change Communication”	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to Part B (Long Form Change Control Procedure) of this Schedule 5(Change Control Procedure);
“Contract Change”	any change to this Contract other than an Operational Change;
“Fast-track Change”	any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;
“Impact Assessment”	an assessment of a Change Request in accordance with Paragraph 5;
“Impact Assessment Estimate”	has the meaning given in Paragraph 4.3;

“Operational Change”	any change in the ASC Supplier's operational procedures which in all respects, when implemented: <ul style="list-style-type: none"> (a) will not affect the Charges and will not result in any other costs to the Authority; (b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services; (c) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and (d) will not require a change to this Contract;
“Receiving Party”	the Party which receives a proposed Contract Change;
“RFOC”	has the meaning given in Paragraph 9.2; and
“ASC Supplier Change Manager”	the person appointed to that position by the ASC Supplier from time to time and notified in writing to the Authority or, if no person is notified, the ASC Supplier Representative.

2. GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

- 2.1 This Part B (Long Form Change Control Procedure) of this Schedule 5(Change Control Procedure) sets out the procedure for dealing with Changes.
- 2.2 Operational Changes shall be processed in accordance with Paragraph 9 . If either Party is in doubt about whether a Change falls within the definition of an Operational Change, then it must be processed as a Contract Change. For the avoidance of doubt, any requirement to implement major releases, IT Health Check remediations and/or measures to mitigate or eliminate emerging risks, or to implement and integrate with the Authority’s Application Performance Monitoring (APM) tool shall be subject to agreement in accordance with the Change Control Procedure.
- 2.3 Where a change to be made by an Other Supplier may have an impact on the Services and Deliverables provided by the ASC Supplier, the ASC Supplier shall not be obliged to accept such change until it has the opportunity to complete an Impact Assessment to determine any potential impact to the ASC Services. Where a change made by an Other Supplier would result in additional costs, then the Parties will agree a Contract Change to revise the Charges.

- 2.4 The Parties shall deal with Contract Change as follows:
- 2.4.1 either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
 - 2.4.2 unless this Contract otherwise requires, the ASC Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 before the Contract Change can be either approved or implemented;
 - 2.4.3 the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;
 - 2.4.4 the ASC Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;
 - 2.4.5 save as otherwise provided in this Contract, no proposed Contract Change shall be implemented by the ASC Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2; and
 - 2.4.6 if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.
- 2.5 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule S2 (Testing Procedures) where used, and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.
- 2.6 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2, then:
- 2.6.1 unless the Authority expressly agrees (or requires) otherwise in writing, the ASC Supplier shall continue to supply the Services in accordance with the existing terms of this Contract as if the proposed Contract Change did not apply; and
 - 2.6.2 any discussions, negotiations or other communications which may take place between the Authority and the ASC Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Contract.
- 2.7 The ASC Supplier shall:
- 2.7.1 within 10 Working Days of the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Contract updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change

Authorisation Note pursuant to which the relevant Contract Changes were agreed; and

- 2.7.2 thereafter provide to the Authority such further copies of the updated Contract as the Authority may from time to time request.

3. COSTS

3.1 Subject to Paragraph 3.3:

- 3.1.1 the costs of preparing each Change Request shall be borne by the Party making the Change Request; and
- 3.1.2 the costs incurred by the ASC Supplier in undertaking an Impact Assessment shall be borne by the Party making the Change Request provided that the Authority shall not be required to pay any such costs if:
- (a) such costs are below the figure set out in Order Form;
 - (b) the ASC Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or
 - (c) such costs exceed those in the accepted Impact Assessment Estimate.

- 3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Schedule 2 (Charges and Invoicing). The ASC Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.

- 3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the ASC Supplier shall be paid for by the ASC Supplier.

4. CHANGE REQUEST

- 4.1 Either Party may issue a Change Request to the other Party at any time during the Contract Period. A Change Request shall be substantially in the form of Annex 1 of this Part B (Long Form Change Control Procedure) of this Schedule 5 (Change Control Procedure) and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.
- 4.2 If the ASC Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within 10 Working Days of the date of issuing the Change Request.
- 4.3 If the Authority issues the Change Request, then the ASC Supplier shall provide as soon as reasonably practical and in any event within ten (10) Working Days of the date of receiving the Change Request an estimate ("Impact Assessment Estimate") of

the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Authority within ten (10) Working Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Authority.

- 4.4 If the Authority accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the ASC Supplier shall provide the completed Impact Assessment to the Authority as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the ASC Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient information is received by the Authority to fully understand:

4.4.1 the nature of the request for clarification; and

4.4.2 the reasonable justification for the request;

the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

5. IMPACT ASSESSMENT

- 5.1 Each Impact Assessment shall be completed in good faith and shall include:

5.1.1 details of the proposed Contract Change including the reason for the Contract Change;

5.1.2 details of the impact of the proposed Contract Change on the Services and the ASC Supplier's ability to meet its other obligations under this Contract; and

5.1.3 any variation to the terms of this Contract that will be required as a result of that impact, including changes to:

(a) the Services Specification and/or the Service Levels;

(b) the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;

(c) other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority's IT infrastructure;

5.1.4 details of the cost of implementing the proposed Contract Change;

5.1.5 details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;

- 5.1.6 a timetable for the implementation, together with any proposals for the testing of the Contract Change;
 - 5.1.7 details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
 - 5.1.8 such other information as the Authority may reasonably request in (or in response to) the Change Request.
- 5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 34 (Protection of Personal Data).
- 5.3 Subject to the provisions of Paragraph 5.4, the Authority shall review the Impact Assessment and respond to the ASC Supplier in accordance with Paragraph 6 within fifteen (15) Working Days of receiving the Impact Assessment.
- 5.4 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within five (5) Working Days of receiving the Impact Assessment, it shall notify the ASC Supplier of this fact and detail the further information that it requires. The ASC Supplier shall then re-issue the relevant Impact Assessment to the Authority within ten (10) Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
- 5.5 The calculation of costs for the purposes of Paragraphs 5.1.4 and 5.1.5 shall:
- 5.5.1 include estimated volumes of each type of resource to be employed and the applicable rate card;
 - 5.5.2 include full disclosure of any assumptions underlying such Impact Assessment;
 - 5.5.3 include evidence of the cost of any assets required for the Change; and
 - 5.5.4 include details of any new Sub-Contracts necessary to accomplish the Change.

6. AUTHORITY'S RIGHT OF APPROVAL

- 6.1 Within fifteen (15) Working Days of receiving the Impact Assessment from the ASC Supplier or within ten (10) Working Days of receiving the further information that it may request pursuant to Paragraph 5.4, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:
- 6.1.1 approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
 - 6.1.2 in its absolute discretion reject the Contract Change, in which case it shall notify the ASC Supplier of the rejection. The Authority shall not reject any

proposed Contract Change to the extent that the Contract Change is necessary for the ASC Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the ASC Supplier as soon as is reasonably practicable following such rejection; or

- 6.1.3 in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the ASC Supplier to modify the relevant document accordingly, in which event the ASC Supplier shall make such modifications within five (5) Working Days of such request. Subject to Paragraph 5.4, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change within ten (10) Working Days.
- 6.2 If the Authority approves the proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the ASC Supplier in accordance with Paragraph 7, then it shall inform the ASC Supplier and the ASC Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the ASC Supplier. On the Authority's signature the Change Authorisation Note shall constitute (or, where the Authority has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Contract.
- 6.3 If the Authority does not sign the Change Authorisation Note within ten (10) Working Days, then the ASC Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within five (5) Working Days of such notification, then the ASC Supplier may refer the matter to the Expedited Dispute Timetable pursuant to Paragraph 3 of Schedule 4 (Dispute Resolution Procedure).

7. ASC SUPPLIER'S RIGHT OF APPROVAL

- 7.1 Following an Impact Assessment, if:
 - 7.1.1 the ASC Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:
 - (a) materially and adversely affect the risks to the health and safety of any person; and/or
 - (b) require the Services to be performed in a way that infringes any Law; and/or
 - 7.1.2 the ASC Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and the Services Specification does not state that the ASC Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

then the ASC Supplier shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 4.3.

8. FAST-TRACK CHANGES

8.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.

8.2 If:

8.2.1 the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed 4 in any 12-month period; and

8.2.2 both Parties agree the value of the proposed Contract Change over the remaining Contract Period and any period for which Termination Assistance may be required does not exceed the figure set out in the Order Form and the proposed Contract Change is not significant (as determined by the Authority acting reasonably),

then the Parties shall confirm to each other in writing that they shall use the process set out in Paragraphs 4, 5, 6 and 7 but with reduced timescales, such that any period of fifteen (15) Working Days is reduced to five (5) Working Days, any period of ten (10) Working Days is reduced to two (2) Working Days and any period of five (5) Working Days is reduced to one (1) Working Day.

8.3 The Parties may agree in writing to revise the parameters set out in Paragraph 8.2 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Contract Change notwithstanding that the total number of Contract Changes to which such procedure is applied will then exceed 4 in a 12 month period.

9. OPERATIONAL CHANGE PROCEDURE

9.1 Any Operational Changes identified by the ASC Supplier to improve operational efficiency of the Services may be implemented by the ASC Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:

9.1.1 have an impact on the business of the Authority;

9.1.2 require a change to this Contract;

9.1.3 have a direct impact on use of the Services; or

9.1.4 involve the Authority in paying any additional Charges or other costs.

9.2 The Authority may request an Operational Change by submitting a written request for Operational Change ("RFOC") to the ASC Supplier Representative.

9.3 The RFOC shall include the following details:

9.3.1 the proposed Operational Change; and

- 9.3.2 the time-scale for completion of the Operational Change.
- 9.4 The ASC Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.
- 9.5 The ASC Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Authority when the Operational Change is completed.

10. COMMUNICATIONS

For any Change Communication to be valid under this Part B (Long Form Change Control Procedure) of this Schedule 5 (Change Control Procedure), it must be sent to either the Authority Change Manager or the ASC Supplier Change Manager, as applicable. The provisions of Clause 50 (Notices) shall apply to a Change Communication as if it were a notice.

SCHEDULE 6 - TRANSPARENCY REPORTS

1. Within three (3) Months from the Implementation Commencement Date the ASC Supplier shall provide to the Authority for approval (the Authority's decision to approve or not shall not be unreasonably withheld or delayed) draft Transparency Reports consistent with the content and format requirements specified in Annex 1 (Transparency Reporting) of this schedule, unless otherwise required by the Authority.
2. If the Authority rejects any proposed Transparency Report submitted by the ASC Supplier, the ASC Supplier shall submit a revised version of the relevant report for approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.
3. The ASC Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1 of this Schedule.
4. Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under Paragraph 2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
5. The requirements in this Schedule 6 are in addition to any other reporting requirements in this Contract.

ANNEX 1

TRANSPARENCY REPORTING

1. SERVICE MANAGEMENT REPORT

1.1 FREQUENCY: MONTHLY.

1.2 The format of the Service Management Report shall be provided to the Authority in a Microsoft Word or AdobePDF format file, with the following contents:

1.3 Management Summary section

1.3.1 “Monthly Overview”: bullet points of noteworthy items in the reported Month, at the ASC Supplier’s discretion.

1.3.2 “Highlights”: Bullet points summarising notable maintenance or change delivery tasks achieved by ASC Supplier in the reported Month, to include:

- (a) Date of activity and completion
- (b) Summary of activity undertaken (short paragraph); and
- (c) Reason for activity including change reference(s) outcome.

1.3.3 Where “Highlights” includes reporting successful decommissioning of an in-scope Business Application, that Business Application will be removed from inclusion in subsequent Monthly reports.

1.3.4 “Lowlights”: Bullet points summarising notable maintenance or change delivery task failures in the reported Month, to include:

- (a) Date of event
- (b) Description of event (short paragraph) including summary of impact including number of users affected, team(s) affected, duration of impact,
- (c) Summary of root cause (if known, if not known, summary of root cause investigation progress)
- (d) Summary of corrective action(s) taken,
- (e) Summary of preventative action(s) taken or planned, including change reference(s); and
- (f) Note of next planned action(s), if applicable

1.3.5 “Planned service activity”: Table of planned and scheduled change activity for the next Month, to include:

- (a) Change reference(s);
- (b) Description of change;

- (c) Planned start date; and
 - (d) Planned end date.
- 1.3.6 “New Application service commencement”: Bullet points noting introduction of new Business Application into contract scope, to include:
 - (a) Change reference(s);
 - (b) Description of change, including name of new Business Application / service;
 - (c) Planned start date; and
 - (d) Business Application owner contact details (email).
- 1.3.7 If no “New application service commencement” in the reported Month, state ‘None’.
- 1.4 Incident Performance section
 - 1.4.1 “Incidents Logged, Closed, and carried forward” for the last six Months: Table of individual counts of number of incidents 'logged', 'closed', 'carried forward'. Shown for the reported Month and the preceding 5 Months to provide six Months' rolling reporting.
 - 1.4.2 “Incidents Logged, Closed, and carried forward” for the past Month by Priority: Table of individual counts of number of incidents in the reported Month by Priority (P1, P2, P3, P4) as:
 - (a) Total incident(s) logged by P1, P2, P3, P4
 - (b) Total incident(s) closed by P1, P2, P3, P4
 - (c) Total incident(s) closed within SLA by P1, P2, P3, P4
 - (d) Total incident(s) carried forward: Resolved but not closed by P1, P2, P3, P4
 - (e) Total incident(s) carried forward: unresolved / pending by P1, P2, P3, P4
- 1.5 Problem Performance section
 - 1.5.1 “Problem tickets for the last six months”: Table of individual counts of number of problem tickets 'opened', 'closed', 'carried forward'. Shown for the reported Month and the preceding five Months to provide 6 Months' rolling reporting.
 - 1.5.2 “Open Critical P1 Problems”: Bullet points summarising details of all Open Critical P1 Problems, to include:
 - (a) Date of problem start
 - (b) Description of problem (sentence)

- (c) Summary of corrective / mitigating action(s) taken (sentence)
 - (d) Summary of action(s) taken or planned, including change reference(s) (sentence); and
 - (e) Note of next planned action(s), if applicable.
- 1.5.3 “Closed Critical P1 Problems”: Bullet points summarising details of Critical P1 Problems, closed in the reporting Month, to include:
 - (a) Date of problem start;
 - (b) Date of Problem closure; and
 - (c) Description of problem and resolution.
- 1.5.4 “Known Error Items”: Table of individual counts of number of Known Error Items raised, closed and carried forward. Shown for the current reporting Month only, to include:
 - (a) Total Known Error Items Raised in Month, with reference ID, Business Application affected and status of error (active / resolved);
 - (b) Total Known Error items Closed (in Month); and
 - (c) Total Known Error Items Carried forward.
- 1.5.5 Closed in the reported Month, there is no requirement to provide Known Error reference, application affected or status.
- 1.6 Change Management section
 - 1.6.1 “Change Requests delivered” by ASC Supplier in the last six Months: Table of individual counts of number of change requests 'raised in Month', 'emergency', 'expedited', 'rejected', 'closed', 'carried forward'. Shown for the reported Month and the preceding 5 Months to provide 6 Months' rolling reporting.
 - 1.6.2 “Catalogue request items delivered” in the reporting Month: Table of all of the catalogue request items in contract scope with total requested in the Month for each item, to include:
 - (a) Item reference (ID);
 - (b) Item standard catalogue title ;
 - (c) Count of completed in the reporting Month; include zeros if none requested; and
 - (d) Total count of all catalogue items completed in the reporting Month.
- 1.7 Application Availability & Application User Count
 - 1.7.1 “Application Availability”: Table showing the number of instances or sites for each Business Application supported by the ASC Supplier and for each

Business Application the number of seconds of service downtime in the reported Month and the corresponding % of total time the Business Application was available. E.g. if 0 seconds downtime, Availability is 100%.

- 1.7.2 “Application User Count”: Table of recorded unique system users for each Business Application for the reported Month and the 5 preceding Months to provide 6 Months' rolling reporting.

NB: for the MCOL and PCOL applications on the Business Application List, a count of internal and external (public) users is required.

1.8 Continual Improvements (CI)

- 1.8.1 “CI delivered”: Brief statement of count of ASC Supplier improvement ideas raised to the Authority and count of approved improvements made and count of improvements that positively impacted user experience. E.g. “In the last 12 months, we have raised 20 ideas and delivered 10 improvements, of which 7 positively impacted end user experience” in accordance with Schedule S7 (Continuous Improvement).

- 1.8.2 “Improvements in Delivery”: Table of improvements actively under consideration by the Authority or in delivery, to include:

- (a) Improvement: Title and reference of the improvement;
- (b) Expected Benefits: brief bullet points of the reasons what will be improved; and
- (c) Progress: Sentence stating the current status of the improvement, e.g. with Authority for review, planned release date etc.

1.9 Disaster Recovery

- 1.9.1 “Disaster Recovery”: Table of completed or planned Disaster Recovery tests, to include:

- (a) Name of Business Application (or sub-component);
- (b) Planned demonstration date;
- (c) Test date;
- (d) Result (“success”, “partial success”, “unsuccessful”); and
- (e) Reference (change reference).

- 1.9.2 If no Disaster Recovery tests are reported in that Month, state ‘None’.

1.10 Appendix – Incident Trends

- 1.10.1 “Priority 1 (P1) Incidents by Business Application:” Bar chart showing reported P1 Incidents for the reported Month and the preceding 5 Months to provide 6 Months' rolling reporting for each Business Application.

- 1.10.2 If none in reported periods, show empty graph.

- 1.10.3 "Priority 2 (P2) Incidents by Business Application:" Bar chart showing reported P2 Incidents the reported Month and the preceding 5 Months to provide 6 Months' rolling for each Business Application.
- 1.10.4 If none in reported periods, show empty graph.
- 1.10.5 "Priority 3 (P3) Incidents by Business Application:" Bar chart showing reported P3 Incidents for the reported Month and the preceding 5 Months to provide 6 Months' rolling for each Business Application.
- 1.10.6 If none in reported periods, show empty graph.

2. KEY PERFORMANCE INDICATOR (KPI) REPORTING

2.1 FREQUENCY: MONTHLY

2.2 The format of the KPI Report shall be provided to the Authority in a Microsoft Excel format file, with the following contents:

- 2.2.1 KPI performance % for all KPIs specified in Annex 2 in Call-Off Schedule 3 – Service Levels, Service Credits and Performance Monitoring.
- 2.2.2 Each KPI Monthly % figure to be set in a table showing 12 Month rolling results.
- 2.2.3 Where KPI Failure Threshold is met in the reported Month additional commentary must be added to the Monthly report referencing the specific incident(s) or event(s) that led to KPI Failure Threshold breach.

3. SERVICE LEVEL TARGET ("SLT") REPORTING

3.1 FREQUENCY: MONTHLY

3.2 The format of the Service Level Report ("SLT Report") shall be provided to the Authority in a Microsoft Excel format file, with the following contents:

- 3.2.1 SLT achievement % for all SLTs specified in Annex 3 in Call-Off Schedule 3 – Service Levels, Service Credits and Performance Monitoring.
- 3.2.2 Each SLT Monthly achievement % figure to be set in a table showing 12 Month rolling results.
- 3.2.3 Where SLT Service Level Threshold is not met in the reported Month, additional commentary must be added to the Monthly report referencing the specific incident(s) or event(s) that led to KPI Failure Threshold breach.

4. SERVICE MANAGEMENT BOARD MEETING PRESENTATION

4.1 FREQUENCY: MONTHLY

4.2 In addition to the reports specified above, the ASC Supplier shall prepare a Microsoft PowerPoint format report and issue to the distribution list of the SERVICE MANAGEMENT BOARD (See Call-Off Schedule 7 – Governance) no less than 5 days in advance of scheduled Board meetings (the "Service Management Report").

- 4.3 The content of the Microsoft PowerPoint Presentation shall:
- 4.3.1 Summarise contents of the Service Management Report using appropriate graphical views, with sections on Monthly activity regarding:
 - (a) Open Incident Volumes;
 - (b) SLT & KPI performance;
 - (c) Problem management and Known Error Items; and
 - (d) Change and release management forecast.
 - 4.3.2 Highlight and explain where Service Level Targets have not been met, if applicable in that reporting Month;
 - 4.3.3 Highlight and explain where KPI Failure Thresholds have been met, if applicable in that reporting Month;
 - 4.3.4 Document Key Risk Items and Issues appropriate for the attention of the Service Management Board;
 - 4.3.5 Provide additional commentary on resolved P1 / P2 Incidents, highlighting lessons learned and improvement opportunities, if applicable in that reporting Month; and
 - 4.3.6 Summary of any continual improvement initiatives to be brought to the attention of the Service Management Board, if applicable in that reporting Month.

SCHEDULE 7 – GOVERNANCE

1. DEFINITIONS

In this Schedule 7 (Governance), the following definitions shall apply:

"Board Member"	the initial persons appointed by the Authority and ASC Supplier to the Boards as set out in Part B of Attachment 8 (Governance) of the Order Form and any replacements from time to time agreed by the Parties in accordance with Paragraph 3.3;
"Boards"	means together the Service Management Board, Risk and Issues Management Board, and additional Project Boards or Programme Boards temporarily convened to deliver Projects and Programmes and "Board" shall mean any of them;
"Programme Board" or "Project Board"	the body described in Paragraph 5;
"Risk and Issues Management Board"	the body described in Paragraph 6; and
"Service Management Board"	the body described in Paragraph 4.

2. MANAGEMENT OF THE SERVICES

- 2.1 The ASC Supplier and the Authority shall each appoint representatives for the purposes of this Contract through whom the Services shall be managed at a day-to-day.
- 2.2 Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.
- 2.3 Without prejudice to Paragraph 3 below, the Parties agree to operate the Boards specified as set out in Annex 1 to this Schedule.

3. BOARDS

Establishment and structure of the Boards

- 3.1 The Boards shall be established by the Authority for the purposes of this Contract on which both the ASC Supplier and the Authority shall be represented.
- 3.2 In relation to each Board, the:

3.2.1 Authority Board Members;

- 3.2.2 ASC Supplier Board Members;
 - 3.2.3 frequency that the Board shall meet (unless otherwise agreed between the Parties);
 - 3.2.4 location of the Board's meetings; and
 - 3.2.5 planned start date by which the Board shall be established, shall be as set out in Annex 1 of this Schedule.
- 3.3 In the event that either Party wishes to replace any of its appointed Board Members, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority Board Member has at all times a counterpart ASC Supplier Board Member of equivalent seniority and expertise.

Board Meetings

- 3.4 Each Party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:
- 3.4.1 a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and
 - 3.4.2 that he/she is debriefed by such delegate after the Board Meeting.
- 3.5 A chairperson shall be appointed by the Authority for each Board as identified in Annex 1 (Governance Boards). The chairperson shall be responsible for:
- 3.5.1 scheduling Board meetings;
 - 3.5.2 setting the agenda for Board meetings and circulating to all attendees in advance of such meeting;
 - 3.5.3 chairing the Board meetings;
 - 3.5.4 monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;
 - 3.5.5 ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within seven (7) Working Days after the Board meeting; and
 - 3.5.6 facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.
 - 3.5.7 The chairperson may delegate any of tasks 3.5.1 to 3.5.6 to other Authority personnel, or by agreement with the ASC Supplier, to ASC Supplier Personnel.

- 3.6 Board meetings shall be quorate as long as at least two representatives from each Party are present.
- 3.7 The Parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

4. ROLE OF THE SERVICE MANAGEMENT BOARD

- 4.1 The Service Management Board shall be responsible for the executive management of the Services and shall:
 - 4.1.1 provide senior level guidance, leadership and strategy for the overall delivery of the Services;
 - 4.1.2 be responsible for comprehensive oversight of the Services and for the senior management of the operational relationship between the Parties;
 - 4.1.3 ensure that this Contract is operated throughout the Contract Period in a manner which optimises the value for money and operational benefit derived by the Authority and the commercial benefit derived by the ASC Supplier;
 - 4.1.4 consider significant issues requiring decision and resolution and review ASC Supplier progress against the Service Operations Implementation Plan (SOIP) (See Schedule S1 Implementation Plan);
 - 4.1.5 receive reports from the ASC Supplier on matters such as issues relating to delivery of existing Services and performance against Performance Indicators, progress against the Implementation Plan and possible future developments;
 - 4.1.6 deal with the prioritisation of resources and the prioritisation and progress of approved Changes
 - 4.1.7 consider and resolve Disputes (including Disputes as to the cause of a Delay or the performance of the Services) in the first instance and if necessary escalate the Dispute to Senior Management in the ASC Supplier's organisation; and
 - 4.1.8 develop the operational/supplier relationship and facilitate a collaborative approach to the delivery of the contract in line with requirements GP005 and GP006 as set out in the Services Specification.

5. ROLE OF THE PROGRAMME / PROJECT BOARD

- 5.1 Where a Programme or Project is initiated to deliver change to Business Applications supported by the ASC Supplier, a Programme or Project Board may be established.
- 5.2 Programme and Project Boards are temporary and expire with the completion or termination of the Programme or Project.

- 5.3 While active, the Programme or Project Board shall:
- 5.3.1 Provide such updates to the Service Management Board that the Service Management Board shall specify and which may vary depending on the size, complexity, scale and risk associated with the Programme or Project;
 - 5.3.2 provide guidance, leadership and strategy for the delivery of the Programme or Project;
 - 5.3.3 be the point of escalation for issues exceeding set tolerances defined for the Programme or Project; and
 - 5.3.4 Ensure that the Programme or Project is managed in line with all relevant Authority Protocols.

6. ROLE OF THE RISK AND ISSUES MANAGEMENT BOARD

- 6.1 The Risk and Issues Management Board shall identify and manage risks and issues relating to the performance of the Services.
- 6.2 The Risk and Issues Management Board shall:
- 6.2.1 establish a risks and issues log detailing for each of the Business Applications in scope of the Contract;
 - 6.2.2 identify the risks and issues to be reported to the Service Management Board via the regular risk reports;
 - 6.2.3 accept or reject new risks and issues proposed for inclusion in the Risk and Issues Register;
 - 6.2.4 ratify or refuse requests to close risks or issues on the Risk and Issues Register;
 - 6.2.5 identify risks and issues relating to or arising out of the performance of the Services and provisional owners of these risks and issues;
 - 6.2.6 convene regularly to review and update progress on mitigating risks and issues, and to direct such mitigating actions as seem appropriate;
 - 6.2.7 provide assurance to the Service Management Board that risks and issues are being effectively managed across the Services, including reporting the 'top 5' risk scoring risks and highest impact issues to the Service Management Board on a Monthly basis;
 - 6.2.8 take such action on risks and issues as may be directed by the Service management Board;
 - 6.2.9 monitor Programmes and Projects initiated under the Contract and assure that risks and issues identified in those Projects are being managed effectively, or where that is not possible, are being escalated appropriately;
 - 6.2.10 collaborate with any Authority risk or issues management reporting requests or audit activity, support or provide; and

- 6.2.11 risk and Issue information must at all times remain within Authority authorised networks and systems, including email and other digital storage mechanisms. The content must not be emailed or stored or processed on unaccredited corporate systems, including unaccredited corporate email systems. The Need-To-Know principle must be enforced whether in electronic or printed format.

7. OTHER AUTHORITY GOVERNANCE

- 7.1 In addition to the Boards specified in this Schedule, the ASC Supplier will, in its delivery of Services in line with Authority Protocols, attend or provide reports and information to other Authority meeting forums or Boards established to govern delivery of the Authority Protocols. For example, ASC Supplier attendance on meetings to resolve major incidents, or ASC Supplier presenting design documents, developed to implement a change request, to the appropriate Authority governance forum, for example the 'Technical Architecture Board' (TAB) for approval. Details of these events are specified in the relevant Protocol documentation.

ANNEX 1

GOVERNANCE BOARDS

The Parties agree to operate the following Boards at the locations and at the frequencies set out below:

[REDACTED]

SCHEDULE 8 – FINANCIAL DISTRESS

1. DEFINITIONS

In this Schedule 8 (Financial Distress), the following definitions shall apply:

- "Credit Rating Threshold"** the minimum credit rating level for the Monitored Company as set out in Part A of Attachment 7 (Financial Distress) of the Order Form;
- "Financial Distress Event"** the occurrence or one or more of the following events:
- a) the credit rating of the Monitored Company dropping below the applicable Credit Rating Threshold;
 - b) the Monitored Company issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;
 - c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Monitored Company;
 - d) Monitored Company committing a material breach of covenant to its lenders;
 - e) a Key Sub-Contractor (where applicable) notifying the Authority that the ASC Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute; or
 - f) any of the following:
 - i) commencement of any litigation against the Monitored Company with respect to financial indebtedness or obligations under a contract;
 - ii) non-payment by the Monitored Company of any financial indebtedness;
 - iii) any financial indebtedness of the Monitored Company becoming due as a result of an event of default; or

- iv) the cancellation or suspension of any financial indebtedness in respect of the Monitored Company;

in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance delivery of the Services in accordance with this Contract;

"Financial Distress Service Continuity Plan"

a plan setting out how the ASC Supplier will ensure the continued performance and delivery of the Services in accordance with this Contract in the event that a Financial Distress Event occurs;

"Monitored Company"

ASC Supplier, Guarantor (if any) or any Key Sub-Contractor; and

"Rating Agencies"

the rating agencies set out in Annex 1 of Attachment 7 (Financial Distress) of the Order Form.

2. WARRANTIES AND DUTY TO NOTIFY

- 2.1 The ASC Supplier warrants and represents to the Authority that as at the Implementation Commencement Date the long term credit ratings issued for the Monitored Companies by each of the Rating Agencies are as set out in Part B of Attachment 7 (Financial Distress) of the Order Form.
- 2.2 The ASC Supplier shall promptly (and in any event within five (5) Working Days) notify the Authority in writing if there is any downgrade in the credit rating issued by any Rating Agency for a Monitored Company.
- 2.3 If there is any downgrade credit rating issued by any Rating Agency for the Monitored Company the ASC Supplier shall ensure that the Monitored Company's auditors thereafter provide the Authority within ten (10) Working Days of the end of each Contract Year and within ten (10) Working Days of written request by the Authority (such requests not to exceed four (4) in any Contract Year) with written calculations of the quick ratio for the Monitored Company as at the end of each Contract Year or such other date as may be requested by Authority. For these purposes the "quick ratio" on any date means:

where:

$$\frac{A + B + C}{D}$$

- A is the value at the relevant date of all cash in hand and at the bank of the Monitored Company;

- B is the value of all marketable securities held by the ASC Supplier the Monitored Company determined using closing prices on the Working Day preceding the relevant date;
- C is the value at the relevant date of all account receivables of the Monitored Company; and
- D is the value at the relevant date of the current liabilities of the Monitored Company.

2.4 The ASC Supplier shall:

- 2.4.1 regularly monitor the credit ratings of each Monitored Company with the Rating Agencies; and
- 2.4.2 promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, ensure that such notification is made within ten (10) Working Days of the date on which the ASC Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.

- 2.5 For the purposes of determining whether a Financial Distress Event has occurred the credit rating of the Monitored Company shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Monitored Company at or below the applicable Credit Rating Threshold.

3. CONSEQUENCES OF FINANCIAL DISTRESS EVENTS

- 3.1 In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if the Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the ASC Supplier), the ASC Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in Paragraphs 3.3 to 3.6.
- 3.2 In the event that a Financial Distress Event arises due to a Key Sub-Contractor notifying the Authority that the ASC Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute then, the Authority shall not exercise any of its rights or remedies under Paragraph 3.3 without first giving the ASC Supplier ten (10) Working Days to:
 - 3.2.1 rectify such late or non-payment; or
 - 3.2.2 demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.
- 3.3 The ASC Supplier shall and shall procure that the other Monitored Companies shall:
 - 3.3.1 at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within three (3) Working Days of the initial

notification (or awareness) of the Financial Distress Event) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Contract; and

3.3.2 where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 3.3.1) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Contract:

(a) submit to the Authority for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event); and

(b) provide such financial information relating to the Monitored Company as the Authority may reasonably require.

3.4 If the Authority does not (acting reasonably) approve the draft Financial Distress Service Continuity Plan, it shall inform the ASC Supplier of its reasons and the ASC Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Authority within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the Authority or referred to the Dispute Resolution Procedure under Paragraph 3.5.

3.5 If the Authority considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.

3.6 Following approval of the Financial Distress Service Continuity Plan by the Authority, the ASC Supplier shall:

3.6.1 on a regular basis (which shall not be less than Monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Contract;

3.6.2 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 3.6.1, submit an updated Financial Distress Service Continuity Plan to the Authority for its approval, and the provisions of Paragraphs 3.5 and 3.6 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and

3.6.3 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

3.7 Where the ASC Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer

exists, it shall notify the Authority and subject to the agreement of the Parties, the ASC Supplier may be relieved of its obligations under Paragraph 3.6.

4. TERMINATION RIGHTS

4.1 The Authority shall be entitled to terminate this Contract for material Default if:

- 4.1.1 the ASC Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.4;
- 4.1.2 the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 3.3 to 3.5; and/or
- 4.1.3 the ASC Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 3.6.3.

5. PRIMACY OF CREDIT RATINGS

5.1 Without prejudice to the ASC Supplier's obligations and the Authority's rights and remedies under Paragraph 4, if, following the occurrence of a Financial Distress Event, the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

- 5.1.1 the ASC Supplier shall be relieved automatically of its obligations under Paragraphs 3.3 to 3.6; and
- 5.1.2 the Authority shall not be entitled to require the ASC Supplier to provide financial information in accordance with Paragraph 3.3.2(b).

ANNEX 1
RATING AGENCIES

Rating Agencies:

[REDACTED]

SCHEDULE 9 - SOFTWARE

PART A – FORM OF LETTER RE SUB-LICENSING OF ASC SUPPLIER COTS SOFTWARE
AND ASC SUPPLIER COTS BACKGROUND IPRs

[insert Authority name and address]

[Date]

Dear Sirs

LICENCES FOR ASC SUPPLIER COTS SOFTWARE AND ASC SUPPLIER COTS BACKGROUND IPRs

We refer to the contract between us dated [insert date] in respect of [brief summary of subject of the contract] (the “**Contract**”). Capitalised expressions used in this letter have the same meanings as in the Contract.

In accordance with Clause 21.4.2 of the Contract we confirm that:

1. the Authority is licensed by the ASC Supplier to use the ASC Supplier COTS Software and ASC Supplier COTS Background IPRs identified in the first column of the Appendix to this letter (the “**Appendix**”) on the terms of the licences identified in the second column of the Appendix (the “**Licences**”); and
2. notwithstanding any provision to the contrary in the Licences, it is agreed that the Authority may sub-license, assign and novate the ASC Supplier COTS Software and ASC Supplier COTS Background IPRs as referred to in Clause 21.4.2 of the Contract.

Yours faithfully,

Signed:

On behalf of [name of the ASC Supplier]

PART B
FORM OF CONFIDENTIALITY UNDERTAKING CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [date]

BETWEEN:

- (1) [insert name] of [insert address] (the “Sub-licensee”); and
- (2) [insert name] of [insert address] (the “ASC Supplier” and together with the ASC Supplier, the “Parties”).

WHEREAS:

- (A) [insert name of Authority] (the “Authority”) and the ASC Supplier are party to a contract dated [insert date] (the “Contract”) for the provision by the ASC Supplier of [insert brief description of services] to the Authority.
- (B) The Authority wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to the Authority pursuant to the Contract (the “Sub-licence”).
- (C) It is a requirement of the Contract that, before the Authority grants such sub-licence to the Sub-licensee, the Sub-licensee execute a confidentiality agreement in favour of the ASC Supplier in or substantially in the form of this Agreement to protect the Confidential Information of the ASC Supplier.

IT IS AGREED as follows:

1. INTERPRETATION

In this Agreement, unless the context otherwise requires:

“Confidential Information”

means:

- (a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Authority to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:
 - (i) the ASC Supplier; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, Know-How and/or personnel of the ASC Supplier;
- (b) the Source Code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, 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 supplied by the ASC Supplier to the Authority pursuant to or in connection with the Sub-licence;

(c) other Information provided by the Authority pursuant to this Agreement to the Sub- licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub- licensee's attention or into the Sub- licensee's possession in connection with the Sub- licence; and

(d) Information derived from any of the above,

but not including any Information that:

(a) was in the possession of the Sub- licensee without obligation of confidentiality prior to its disclosure by the Authority;

(b) 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; or

(c) was independently developed without access to the Information;

“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 CD-ROM, magnetic and digital form); and

“Sub-licence” has the meaning given to that expression in recital (B) to this Agreement.

1.1 In this Agreement:

1.1.1 a reference to any gender includes a reference to other genders;

1.1.2 the singular includes the plural and vice versa;

1.1.3 the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;

1.1.4 references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;

1.1.5 headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and

1.1.6 references to Clauses are to clauses of this Agreement.

2. CONFIDENTIALITY OBLIGATIONS

- 2.1 In consideration of the Authority entering into the Sub-licence, the Sub-licensee shall:
- 2.1.1 treat all Confidential Information as secret and confidential;
 - 2.1.2 have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
 - 2.1.3 not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the ASC Supplier or except as expressly set out in this Agreement;
 - 2.1.4 not transfer any of the Confidential Information outside the United Kingdom;
 - 2.1.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;
 - 2.1.6 immediately notify the ASC Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
 - 2.1.7 upon the expiry or termination of the Sub-licence:
 - 2.1.8 destroy or return to the ASC Supplier all documents and other tangible materials that contain any of the Confidential Information;
 - 2.1.9 ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub-licensee) from any computer, word processor, voicemail system or any other device; and
 - 2.1.10 make no further use of any Confidential Information.

3. PERMITTED DISCLOSURES

- 3.1 The Sub-licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
- 3.1.1 reasonably need to receive the Confidential Information in connection with the Sub-licence; and
 - 3.1.2 have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and
 - 3.1.3 have agreed to terms similar to those in this Agreement.
- 3.2 The Sub-licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable Law or by order of a court or other public body that has jurisdiction over the Sub-licensee.

- 3.3 Before making a disclosure pursuant to Clause 3.2, the Sub-licensee shall, if the circumstances permit:
- 3.3.1 notify the ASC Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
 - 3.3.2 ask the court or other public body to treat the Confidential Information as confidential.

4. GENERAL

- 4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the ASC Supplier shall remain with and be vested in the ASC Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
- 4.2.1 to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
 - 4.2.2 to require the ASC Supplier to disclose, continue disclosing or update any Confidential Information; or
 - 4.2.3 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by Law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the ASC Supplier may have, the Sub-licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub-licensee of any of the provisions of this Agreement. Accordingly, the Sub-licensee acknowledges that the ASC Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Sub-licensee to the ASC Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.

- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

5. NOTICES

- 5.1 Any notice to be given under this Agreement (each a “Notice”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.

- 5.2 Any Notice:

- 5.2.1 if to be given to the ASC Supplier shall be sent to:

[Address]

Attention: [Contact name and/or position, e.g. “The Finance Director”]

- 5.2.2 if to be given to the Sub-licensee shall be sent to:

[Name of Organisation]

[Address]

Attention: [Contact name and/or position, e.g. “The Finance Director”]

6. GOVERNING LAW

- 6.1 This Agreement shall be governed by, and construed in accordance with, English Law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.

- 6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

IN WITNESS of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of [name of ASC Supplier]

Signature: _____

Date:

Name:

Position:

For and on behalf of [name of Sub-licensee]

Signature: _____

Date:

Name:

Position:

SCHEDULE 10 – EXIT MANAGEMENT

1. DEFINITIONS

1.1 In this Schedule 10, the following definitions shall apply:

"Exclusive Assets"	Assets used exclusively by the ASC Supplier or a Key Sub-Contractor in the provision of the Services;
"Exit Information"	has the meaning given to it in Paragraph 3.1 of this Schedule 10;
"Exit Manager"	the person appointed by each Party to manage their respective obligations under this Schedule 10;
"Net Book Value"	the current net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the ASC Supplier (which the ASC Supplier shall ensure is in accordance with Good Industry Practice);
"Non-Exclusive Assets"	those Assets used by the ASC Supplier or a Key Sub-Contractor in connection with the Services but which are also used by the ASC Supplier or Key Sub-Contractor for other purposes;
"Registers"	the register and configuration database referred to in Paragraph 2.2 of this Schedule 10;
"Replacement Goods"	any goods which are substantially similar to any of the Goods and which the Authority receives in substitution for any of the Goods following termination or expiry of this Contract, whether those goods are provided by the Authority internally and/or by any third party;
"Termination Assistance"	the activities to be performed by the ASC Supplier pursuant to the Exit Plan, and other assistance required by the Authority pursuant to the Termination Assistance Notice;
"Termination Assistance Notice"	has the meaning given to it in Paragraph 5.1 of this Schedule 10;
"Termination Assistance Period"	the period specified in a Termination Assistance Notice for which the ASC Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of this Schedule 10;
"Transferable Assets"	Exclusive Assets which are capable of legal transfer to the Authority;
"Transferable Contracts"	Sub-Contracts, licences for ASC Supplier's Software, licences

for Third Party Software or other agreements which are

necessary to enable the Authority or any Replacement ASC Supplier to provide the Services or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;

"Transferring Assets" has the meaning given to it in Paragraph 8.2.1 of this Schedule 10;

"Transferring Contracts" has the meaning given to it in Paragraph 8.2.2(d) of this Schedule 10.

2. ASC SUPPLIER MUST ALWAYS BE PREPARED FOR CONTRACT EXIT

- 2.1 The ASC Supplier shall within 30 days from the Implementation Commencement Date provide to the Authority a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.
- 2.2 During the Contract Period, the ASC Supplier shall promptly:
 - 2.2.1 create and maintain a detailed register of all Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-Contracts and other relevant agreements required in connection with the Services; and
 - 2.2.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the ASC Supplier provides the Services ("**Registers**").
- 2.3 The ASC Supplier shall:
 - 2.3.1 ensure that all Exclusive Assets listed in the Registers are clearly physically identified as such; and
 - 2.3.2 procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the Authority) at the request of the Authority to the Authority (and/or its nominee) and/or any Replacement Supplier upon the ASC Supplier ceasing to provide the Services (or part of them) and if the ASC Supplier is unable to do so then the ASC Supplier shall promptly notify the Authority and the Authority may require the ASC Supplier to procure an alternative Sub-Contractor or provider of Services.
- 2.4 Each Party shall appoint an Exit Manager within three (3) Months of the Implementation Commencement Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Contract.

3. ASSISTING RE-COMPETITION FOR SERVICES

- 3.1 The ASC Supplier shall, on reasonable notice, provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), such information (including any access) as the Authority shall reasonably require in order to facilitate

the preparation by the Authority of any invitation to Tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence (the "Exit Information").

- 3.2 The ASC Supplier acknowledges that the Authority may disclose the ASC Supplier's Confidential Information (excluding the ASC Supplier's or its Sub-Contractors' prices or costs) to an actual or prospective Replacement Supplier to the extent that such disclosure is necessary in connection with such engagement.
- 3.3 The ASC Supplier shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Authority within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services (and shall consult the Authority in relation to any such changes).
- 3.4 The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Services; and not be disadvantaged in any procurement process compared to the ASC Supplier.

4. EXIT PLAN

- 4.1 The ASC Supplier shall, within six (6) Months after the Implementation Commencement Date, deliver to the Authority an Exit Plan which complies with the requirements set out in Paragraph 4.3 of this Schedule 10 and is otherwise reasonably satisfactory to the Authority.
- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 4.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.3 The Exit Plan shall set out, as a minimum:
 - 4.3.1 a detailed description of both the transfer and cessation processes, including a timetable;
 - 4.3.2 how the Service will transfer to the Replacement Supplier and/or the Authority;
 - 4.3.3 details of any contracts which will be available for transfer to the Authority and/or the Replacement Supplier upon termination or expiry of this Contract together with any reasonable costs required to effect such transfer;
 - 4.3.4 proposals for the training of key members of the Replacement Supplier's staff in connection with the continuation of the provision of the Services following the termination or expiry of this Contract;
 - 4.3.5 proposals for providing the Authority or a Replacement Supplier copies of all documentation relating to the use and operation of the Services and required for their continued use;

- 4.3.6 proposals for the assignment or novation of all services utilised by the ASC Supplier in connection with the supply of the Services;
 - 4.3.7 proposals for the identification and return of all Authority Assets in the possession of and/or control of the ASC Supplier or any third party;
 - 4.3.8 proposals for the disposal of any redundant Deliverables and materials;
 - 4.3.9 how the ASC Supplier will ensure that there is no disruption to or degradation of the Services during the Termination Assistance Period; and
 - 4.3.10 any other information or assistance reasonably required by the Authority or a Replacement Supplier.
- 4.4 The ASC Supplier shall:
- 4.4.1 maintain and update the Exit Plan (and risk management plan) no less frequently than:
 - (a) every six (6) Months throughout the Contract Period; and
 - (b) no later than twenty (20) Working Days after a request from the Authority for an up-to-date copy of the Exit Plan;
 - (c) as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than ten (10) Working Days after the date of the Termination Assistance Notice;
 - (d) as soon as reasonably possible following, and in any event no later than twenty (20) Working Days following, any material change to the Services (including all changes under the Change Control Procedure); and
 - 4.4.2 jointly review and verify the Exit Plan if required by the Authority and promptly correct any identified failures.
- 4.5 Only if (by notification to the ASC Supplier in writing) the Authority agrees with a draft Exit Plan provided by the ASC Supplier under Paragraph 4.2 or 4.4 (as the context requires), shall that draft become the Exit Plan for this Contract.
- 4.6 A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the ASC Supplier.

5. TERMINATION ASSISTANCE

- 5.1 The Authority shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the ASC Supplier (a "Termination Assistance Notice") at least four (4) Months prior to the termination or expiry of this Contract or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a notice to terminate this Contract. The Termination Assistance Notice shall specify:
 - 5.1.1 the nature of the Termination Assistance required; and

- 5.1.2 the start date and period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the date that the ASC Supplier ceases to provide the Services.
- 5.2 The Authority shall have an option to extend the Termination Assistance Period beyond the Termination Assistance Notice period provided that such extension shall not extend for more than six (6) Months beyond the end of the Termination Assistance Period and provided that it shall notify the ASC Supplier of such this extension no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Authority shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the ASC Supplier.
- 5.3 In the event that Termination Assistance is required by the Authority but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4, the ASC Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule 10 and the last Authority approved version of the Exit Plan (insofar as it still applies).

6. TERMINATION ASSISTANCE PERIOD

- 6.1 Throughout the Termination Assistance Period the ASC Supplier shall:
 - 6.1.1 continue to provide the Services (as applicable) and otherwise perform its obligations under this Contract and, if required by the Authority, provide the Termination Assistance;
 - 6.1.2 provide to the Authority and/or its Replacement Supplier any reasonable assistance and/or access requested by the Authority and/or its Replacement Supplier including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
 - 6.1.3 use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Authority;
 - 6.1.4 subject to Paragraph 6.3, provide the Services and the Termination Assistance at no detriment to the Service Levels, the provision of the management information or any other reports nor to any other of the ASC Supplier's obligations under this Contract;
 - 6.1.5 at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority; and
 - 6.1.6 seek the Authority's prior written consent to access any Authority Premises from which the de-installation or removal of Assets is required.
- 6.2 If it is not possible for the ASC Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.1.2 without additional costs to the Authority, any additional costs incurred by the ASC Supplier in providing such reasonable assistance shall be subject to the Change Control Procedure.

- 6.3 If the ASC Supplier demonstrates to the Authority's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the ASC Supplier's ability to meet one or more particular Service Levels, the Parties shall vary the relevant Service Levels and/or the applicable Service Credits accordingly.

7. OBLIGATIONS WHEN THE CONTRACT IS TERMINATED

- 7.1 The ASC Supplier shall comply with all of its obligations contained in the Exit Plan.
- 7.2 Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the ASC Supplier's performance of the Services and the Termination Assistance), the ASC Supplier shall:
- 7.2.1 vacate any Authority Premises;
 - 7.2.2 remove the ASC Supplier Equipment together with any other materials used by the ASC Supplier to supply the Services and shall leave the Sites in a clean, safe and tidy condition. The ASC Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the ASC Supplier;
 - 7.2.3 provide access during normal working hours to the Authority and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:
 - (a) such information relating to the Services as remains in the possession or control of the ASC Supplier; and
 - (b) such members of the ASC Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the ASC Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the ASC Supplier actually incurred in responding to such requests for access.
- 7.3 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Authority to the ASC Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

8. ASSETS, SUB-CONTRACTS AND SOFTWARE

- 8.1 Following notice of termination of this Contract and during the Termination Assistance Period, the ASC Supplier shall not, without the Authority's prior written consent:
- 8.1.1 terminate, enter into or vary any Sub-Contract or licence for any software in connection with the Services; or
 - 8.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets.

- 8.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the ASC Supplier, the Authority shall notify the ASC Supplier setting out:
- 8.2.1 which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier ("**Transferring Assets**");
- 8.2.2 which, if any, of:
- (a) the Exclusive Assets that are not Transferable Assets; and
 - (b) the Non-Exclusive Assets,
 - (c) the Authority and/or the Replacement Supplier requires the continued use of; and
 - (d) which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the "**Transferring Contracts**"),
- in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. The ASC Supplier shall provide all reasonable assistance required by the Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Deliverables or the Replacement Goods and/or Replacement Services.
- 8.3 With effect from the expiry of the Termination Assistance Period, the ASC Supplier shall sell the Transferring Assets to the Authority and/or the Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges.
- 8.4 Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.
- 8.5 Where the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the ASC Supplier shall as soon as reasonably practicable:
- 8.5.1 procure a non-exclusive, perpetual, royalty-free licence for the Authority and/or the Replacement Supplier to use such Assets (with a right of sub-licence or assignment on the same terms); or failing which
- 8.5.2 procure a suitable alternative to such assets, the Authority or the Replacement Supplier to bear the reasonable proven costs of procuring the same.
- 8.6 The ASC Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Authority and/or the Replacement Supplier. The ASC Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 8.7 The Authority shall:

- 8.7.1 accept assignments from the ASC Supplier or join with the ASC Supplier in procuring a novation of each Transferring Contract; and
- 8.7.2 once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 8.8 The ASC Supplier shall hold any Transferring Contracts on trust for the Authority until the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has taken place.
- 8.9 The ASC Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to Paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 52 shall not apply to this Paragraph 8.9 which is intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

9. NO CHARGES

- 9.1 Unless otherwise stated, the Authority shall not be obliged to pay for costs incurred by the ASC Supplier in relation to its compliance with this Schedule 10.

10. DIVIDING THE BILLS

- 10.1 All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and/or the Replacement and the ASC Supplier as follows:
 - 10.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
 - 10.1.2 the Authority or Replacement Supplier (as applicable) shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
 - 10.1.3 the ASC Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

ALTERNATIVE AND ADDITIONAL CLAUSES AND SCHEDULES FOR LOTS 2, 3 AND 5

ALTERNATIVE CLAUSES

Scots Law – Not Used
Northern Ireland – Not Used
Joint Controller Clauses

ADDITIONAL CLAUSES AND SCHEDULES

SCHEDULES

S1	Implementation Plan
S2	Testing Procedures
S3	Security Requirements (either Part A or Part B)
S4	Staff Transfer
S5	Benchmarking
S6	Business Continuity and Disaster Recovery
S7	Continuous Improvement
S8	Guarantee
S9	MOD Terms – Not Used
S10	Corporate Social Responsibility
S11	Authority Responsibilities
S12	Service Requests and Projects

CLAUSES

C1	Relevant Convictions
C2	Security Measures
C3	Collaboration Agreement

Unless there is a clear adjustment to an existing provision of the Contract, additional Clauses incorporated into the Contract via the Order Form will have the effect of being inserted sequentially immediately after Clause 55. New definitions for Schedule 1 (Definitions) will have the effect of being inserted alphabetically into the table therein and associated Schedules will have the effect of being inserted sequentially immediately after Schedule 10.

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ADDITIONAL CLAUSES AND SCHEDULES - SCHEDULES

S1 IMPLEMENTATION PLAN

1. INTRODUCTION

- 1.1 For the purposes of this Schedule, the following terms shall have the following meanings:
- 1.2 **"Outline Implementation Plan"** means together the Implementation Milestones set out in Annex 1 and the response provided by the ASC Supplier to question 4.2 in the ITT Quality Questionnaire; and
- 1.3 **"Detailed Implementation Plan"** means the ASC Supplier's approved SOIP as set out in 3.1 below.
- 1.4 **"Incumbent Supplier"** means the supplier of existing services during the Implementation Period prior to the ASC Supplier assuming responsibility for such services in accordance with the Implementation Plan;
- 1.5 This Schedule S1 (Implementation Plan):
 - 1.5.1 defines the process for the preparation and implementation of the Outline Implementation Plan and Detailed Implementation Plan; and
 - 1.5.2 identifies the Implementation Milestones (and associated Deliverables) including the Milestones which trigger payment to the ASC Supplier of the applicable Milestone Payments following the issue of the applicable Milestone Achievement Certificate.

2. OUTLINE IMPLEMENTATION PLAN TO DETAILED IMPLEMENTATION PLAN

- 2.1 The ASC Supplier will submit an initial Implementation Plan in response to the ITT Questionnaire, referred to as the Outline Implementation Plan. The ASC Supplier's response will be informed by the Implementation Plan Milestones in Annex A to this Schedule S1 (Implementation Plan). The Implementation Milestones set out are proposed as a high-level guide to the approach required by the ASC Supplier. Further guidance is available in the Authority 'Service Design' and 'Transition Protocols'. Within 90 calendar days after the Implementation Commencement Date, or as otherwise agreed with the Authority, the ASC Supplier will - in accordance with Implementation Milestone M2 - provide a further, detailed draft Detailed Implementation Plan, referred to as the Service Operations Implementation Plan ("**SOIP**"), for Authority approval.
- 2.2 The ASC Supplier shall ensure that the SOIP:
 - 2.2.1 contains information at the level of detail necessary to manage the Implementation Period effectively (including in accordance with the Authority's 'Service Design' and 'Service Transition' Protocols and Acceptance into Service ('AiS') criteria) and as the Authority may otherwise require;

- 2.2.2 takes account of all dependencies known to, or which should reasonably be known to, the ASC Supplier;
- 2.2.3 incorporates all of the Implementation Milestones and Milestone Dates set out in the Outline Implementation Plan;
- 2.2.4 includes, but shall not be limited to, the ASC Supplier's proposed timescales in respect of the following for each of the Implementation Milestones:
 - (a) the completion of each design document;
 - (b) the completion of the build phase (if required);
 - (c) the completion of any Testing to be undertaken in accordance with Schedule S2 (Testing Procedures); and
 - (d) training and roll-out activities;
- 2.2.5 clearly outlines all the steps required to implement the Implementation Milestones to be achieved in the next 12 months (or such other period agreed between the Parties), together with a high-level plan for the rest of the Programme;
- 2.2.6 clearly outlines the required roles and responsibilities of both Parties, including staffing requirements and TUPE requirements of Former Supplier employees subject to the relevant information being promptly supplied in full in order for the ASC Supplier to reasonably complete the plan; and
- 2.2.7 is produced using an appropriate software planning tool as specified or agreed by the Authority.

3. APPROVAL OF THE DETAILED IMPLEMENTATION PLAN

- 3.1 The ASC Supplier shall submit the draft Detailed Implementation Plan (SOIP) to the Authority for approval within ninety (90) Calendar Days of the Implementation Commencement Date, or as otherwise agreed with the Authority.
- 3.2 Prior to the submission of the draft Detailed Implementation Plan (SOIP) to the Authority in accordance with Paragraph 3.1, the Authority shall have the right:
 - 3.2.1 to review any documentation produced by the ASC Supplier in relation to the development of the Detailed Implementation Plan, including:
 - (a) details of the ASC Supplier's intended approach to the Detailed Implementation Plan and its development;
 - (b) copies of any drafts of the Detailed Implementation Plan produced by the ASC Supplier; and
 - (c) any other work in progress in relation to the Detailed Implementation Plan; and

- 3.2.2 to require the ASC Supplier to include any reasonable changes or provisions in the SOIP.
- 3.3 Following receipt of the draft Detailed Implementation Plan (SOIP) from the ASC Supplier, the Authority shall:
 - 3.3.1 review and comment on the draft Detailed Implementation Plan (SOIP) as soon as reasonably practicable; and
 - 3.3.2 notify the ASC Supplier in writing that it approves or rejects the draft Detailed Implementation Plan (SOIP) no later than twenty (20) Working Days after the date on which the draft Detailed Implementation Plan (SOIP) is first delivered to the Authority.
- 3.4 If the Authority rejects the draft Detailed Implementation Plan (SOIP):
 - 3.4.1 the Authority shall inform the ASC Supplier in writing of its reasons for its rejection; and
 - 3.4.2 the ASC Supplier shall then revise the draft Detailed Implementation Plan (SOIP) (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Detailed Implementation Plan (SOIP) to the Authority for the Authority's approval within twenty (20) Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 3.3 and this Paragraph 3.4 shall apply again to any resubmitted draft Detailed Implementation Plan (SOIP), provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 3.5 If the Authority approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of the Authority's notice of approval.

4. UPDATES TO AND MAINTENANCE OF THE DETAILED IMPLEMENTATION PLAN

- 4.1 Following the approval of the Detailed Implementation Plan by the Authority:
 - 4.1.1 the ASC Supplier shall submit a revised Detailed Implementation Plan to the Authority every three (3) months starting three (3) months from the Implementation Commencement Date;
 - 4.1.2 without prejudice to Paragraph 4.1.1, the Authority shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the ASC Supplier and the ASC Supplier shall submit a draft revised Detailed Implementation Plan to the Authority within twenty (20) Working Days of receiving such a request from the Authority (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);
 - 4.1.3 any revised Detailed Implementation Plan shall (subject to Paragraph 4.2) be submitted by the ASC Supplier for approval in accordance with the procedure set out in Paragraph 3; and

- 4.1.4 the ASC Supplier's performance against the Implementation Plan shall be monitored at meetings of the Service Management Board (as defined in Schedule 7 (Governance) where used) or any such service management board established under Part A of Schedule 7 (Governance) where used. In preparation for such meetings, the current Detailed Implementation Plan shall be provided by the ASC Supplier to the Authority not less than five (5) Working Days in advance of such meeting.
- 4.2 Save for any amendments which are of a type identified and notified by the Authority (at the Authority's discretion) to the ASC Supplier in writing as not requiring approval, any material amendments to the Detailed Implementation Plan shall be subject to the Change Control Procedure provided that:
 - 4.2.1 any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and
 - 4.2.2 in no circumstances shall the ASC Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 32 (ASC Supplier Relief Due to Authority Cause).
- 4.3 Any proposed amendments to the Detailed Implementation Plan shall not come into force until they have been approved in writing by the Authority.

5. GOVERNMENT REVIEWS

The ASC Supplier acknowledges that the Services may be subject to Government review at key stages of the Project. The ASC Supplier shall cooperate with any bodies undertaking such review and shall allow for such reasonable assistance as may be required for this purpose within the Charges.

6. IMPLEMENTATION PLAN

- 6.1 The Implementation Period will be a twelve (12) Month period (or such other period agreed between the Parties), subject to review and agreement on the ASC Supplier's SOIP.
- 6.2 During the Implementation Period, the Former Supplier shall retain full responsibility for all existing services until the completion of Implementation Milestone 5 or as otherwise formally agreed with the Authority. The ASC Supplier's full service obligations in relation to a given Business Application shall formally be assumed on the Phased Service Commencement Date for that Business Application.
- 6.3 In accordance with the Implementation Plan, the ASC Supplier shall:
 - 6.3.1 work cooperatively and in partnership with the Authority, the Former Supplier, and other Framework Supplier(s), where applicable, to understand the scope of Services to ensure a mutually beneficial handover of the Services;

- 6.3.2 work with the Former Supplier and Authority to assess the scope of the Services and prepare a plan which demonstrates how they will mobilise the Services;
 - 6.3.3 liaise with the Former Supplier to enable the full completion of the Implementation Period activities; and
 - 6.3.4 produce an Implementation Plan, to be agreed by the Authority, for carrying out the requirements within the Implementation Period including, key Implementation Milestones and dependencies.
- 6.4 The Implementation Plan will include detail stating:
- 6.4.1 how the ASC Supplier will work with the Former Supplier and the Authority to capture and load up information such as asset data ; and
 - 6.4.2 a communications plan, to be produced and implemented by the ASC Supplier, but to be agreed with the Authority, including the frequency, responsibility for and nature of communication with the Authority and End Users.
- 6.5 In addition, the ASC Supplier shall:
- 6.5.1 appoint a Supplier Authorised Representative who shall be responsible for the management of the Implementation Period, to ensure that the Implementation Period is planned and resourced adequately, and who will act as a point of contact for the Authority;
 - 6.5.2 mobilise all the Operational Services specified in the Specification;
 - 6.5.3 produce an Implementation Plan report for each Authority Premises to encompass programmes that will fulfil all the Authority's obligations to landlords and other tenants:
 - (a) the format of reports and programmes shall be in accordance with the Authority's requirements and particular attention shall be paid to establishing the operating requirements of the occupiers when preparing these programmes which are subject to the Authority's approval; and
 - (b) the Parties shall use reasonable endeavours to agree the contents of the report but if the Parties are unable to agree the contents within twenty (20) Working Days of its submission by the ASC Supplier to the Authority, then either Party may refer such Dispute to be resolved in accordance with the Dispute Resolution Procedure.
 - 6.5.4 manage and report progress against the Implementation Plan;
 - 6.5.5 construct and maintain an implementation risk and issue register in conjunction with the Authority detailing how risks and issues will be effectively communicated to the Authority in order to mitigate them;

- 6.5.6 attend progress meetings (frequency of such meetings to be agreed) in accordance with the Authority's requirements during the Implementation Period. Implementation meetings shall be chaired by the Authority and all meeting minutes shall be kept and published by the ASC Supplier; and
- 6.5.7 ensure that all risks associated with the Implementation Period are minimised to ensure a seamless change of control between the Former Supplier and the ASC Supplier.

[REDACTED]**S2 TESTING PROCEDURES****1. DEFINITIONS**

In this Schedule S2 (Testing Procedures), the following definitions shall apply:

“Component”	any constituent parts of the infrastructure for a Service, hardware or Software;
“Material Test Issue”	a Test Issue of Severity Level 1 or Severity Level 2;
“Severity Level”	the level of severity of a Test Issue, the criteria for which are described in Annex 1;
“Test Certificate”	a certificate materially in the form of the document contained in Annex 2 issued by the Authority when a Deliverable has satisfied its relevant Test Success Criteria;
“Test Issue”	any variance or non-conformity of a Deliverable from its requirements (such requirements being set out in the relevant Test Success Criteria);
“Test Issue Management Log”	a log for the recording of Test Issues as described further in Paragraph 9.1;
“Test Issue Threshold”	in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan;
“Test Plan”	a plan: <ul style="list-style-type: none"> (a) for the Testing of Deliverables; and (b) setting out other agreed criteria related to the achievement of Milestones, as described further in Paragraph 5;
“Test Reports”	the reports to be produced by the ASC Supplier setting out the results of Tests;
“Test Specification”	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 7;

“Test Strategy”	a strategy for the conduct of Testing as described further in Paragraph 4;
“Test Success Criteria”	in relation to a Test, the test success criteria for that Test as

referred to in Paragraph 6;

“Test Witness” any person appointed by the Authority pursuant to Paragraph 10.1; and

“Testing Procedures” the applicable testing procedures and Test Success Criteria set out in this Schedule S2 (Testing Procedures).

2. RISK

2.1 The issue of a Test Certificate, a Milestone Achievement Certificate and/or a conditional Milestone Achievement Certificate shall not:

2.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Authority's requirements for that Deliverable or Milestone; or

2.1.2 affect the Authority's right subsequently to reject:

(a) all or any element of the Deliverables to which a Test Certificate relates; or

(b) any Milestone to which the Milestone Achievement Certificate relates.

2.2 Notwithstanding the issuing of any Milestone Achievement Certificate, the ASC Supplier shall remain solely responsible for ensuring that:

2.2.1 the Services are implemented in accordance with this Contract; and

2.2.2 each Service Level is met in accordance with this Contract.

3. TESTING OVERVIEW

3.1 All Tests conducted by the ASC Supplier shall be conducted in accordance with the Test Strategy, the Test Plans and the Test Specifications.

3.2 The ASC Supplier shall not submit any Deliverable for Testing:

3.2.1 unless the ASC Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;

3.2.2 until the Authority has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and

3.2.3 until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).

3.3 The ASC Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.

- 3.4 Prior to the issue of a Test Certificate, the Authority shall be entitled to review the relevant Test Reports and the Test Issue Management Log.
- 3.5 Any Disputes between the Authority and the ASC Supplier regarding Testing shall be referred to the Dispute Resolution Procedure using the Expedited Dispute Timetable (as defined in Schedule 4 (Dispute Resolution Procedure) of this Contract).

4. TEST STRATEGY

- 4.1 The ASC Supplier shall develop the final Test Strategy as soon as practicable after the Implementation Commencement Date but in any case no later than twenty (20) Working Days (or such other period as the Parties may agree in writing) after the Implementation Commencement Date.
- 4.2 The final Test Strategy shall include:
 - 4.2.1 an overview of how Testing will be conducted in accordance with the Implementation Plan;
 - 4.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;
 - 4.2.3 the method for mapping the expected Test results to the Test Success Criteria;
 - 4.2.4 the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;
 - 4.2.5 the procedure to be followed to sign off each Test;
 - 4.2.6 the process for the production and maintenance of Test Reports and reporting, including templates for the Test Reports and the Test Issue Management Log, and a sample plan for the resolution of Test Issues;
 - 4.2.7 the names and contact details of the Authority's and the ASC Supplier's Test representatives;
 - 4.2.8 a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and Authority and/or third party involvement in the conduct of the Tests;
 - (a) the technical environments required to support the Tests; and
 - (b) the procedure for managing the configuration of the Test environments.

5. TEST PLANS

- 5.1 The ASC Supplier shall develop Test Plans and submit these for the approval of the Authority as soon as practicable but in any case no later than twenty (20) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start date for the relevant Testing (as specified in the Implementation Plan).

5.2 Each Test Plan shall include as a minimum:

5.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being tested and, for each Test, the specific Test Success Criteria to be satisfied;

5.2.2 a detailed procedure for the Tests to be carried out, including:

- (a) the timetable for the Tests, including start and end dates;
- (b) the Testing mechanism;
- (c) dates and methods by which the Authority can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;
- (d) the mechanism for ensuring the quality, completeness and relevance of the Tests;
- (e) the format and an example of Test progress reports and the process with which the Authority accesses daily Test schedules;
- (f) the process which the Authority will use to review Test Issues and the ASC Supplier's progress in resolving these in a timely basis;
- (g) the Test Schedule;
- (h) the re-Test procedure, the timetable and the resources which would be required for re-Testing; and
- (i) the process for escalating Test Issues from a re-test situation to the taking of specific remedial action to resolve the Test Issue.

5.3 The Authority shall not unreasonably withhold or delay its approval of the Test Plans provided that the ASC Supplier shall incorporate any reasonable requirements of the Authority in the Test Plans.

6. TEST SUCCESS CRITERIA

The Test Success Criteria for each Test that must be Achieved for the ASC Supplier to Achieve a Milestone shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 5.

7. TEST SPECIFICATION

7.1 Following approval of a Test Plan, the ASC Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least ten (10) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start of the relevant Testing (as specified in the Implementation Plan).

7.2 Each Test Specification shall include as a minimum:

- 7.2.1 the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Authority and the extent to which it is equivalent to live operational data;
- 7.2.2 a plan to make the resources available for Testing;
- 7.2.3 Test scripts;
- 7.2.4 Test pre-requisites and the mechanism for measuring them; and
- 7.2.5 expected Test results, including:
 - (a) a mechanism to be used to capture and record Test results; and
 - (b) a method to process the Test results to establish their content.

8. TESTING

- 8.1 Before submitting any Deliverables for Testing the ASC Supplier shall subject the relevant Deliverables to its own internal quality control measures.
- 8.2 The ASC Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 10.
- 8.3 The ASC Supplier shall notify the Authority at least ten (10) Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Tests and the Authority shall ensure that the Test Witnesses attend the Tests, except where the Authority has specified in writing that such attendance is not necessary.
- 8.4 The Authority may raise and close Test Issues during the Test witnessing process.
- 8.5 The ASC Supplier shall provide to the Authority in relation to each Test:
 - 8.5.1 a draft Test Report not less than two (2) Working Days (or such other period as the Parties may agree in writing) prior to the date on which the Test is planned to end; and
 - 8.5.2 the final Test Report within five (5) Working Days (or such other period as the Parties may agree in writing) of completion of Testing.
- 8.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
 - 8.6.1 an overview of the Testing conducted;
 - 8.6.2 identification of the relevant Test Success Criteria that have been satisfied;

- 8.6.3 identification of the relevant Test Success Criteria that have not been satisfied together with the ASC Supplier's explanation of why those criteria have not been met;
- 8.6.4 the Tests that were not completed together with the ASC Supplier's explanation of why those Tests were not completed;
- 8.6.5 the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 9.1; and
- 8.6.6 the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.

9. TEST ISSUES

- 9.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the ASC Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.
- 9.2 The ASC Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The ASC Supplier shall make the Test Issue Management Log available to the Authority upon request.
- 9.3 The Authority shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the ASC Supplier. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable (as defined in Schedule 4 (Dispute Resolution Procedure) of this Contract).

10. TEST WITNESSING

- 10.1 The Authority may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Authority, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 10.2 The ASC Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 10.3 The Test Witnesses:
 - 10.3.1 shall actively review the Test documentation;
 - 10.3.2 will attend and engage in the performance of the Tests on behalf of the Authority so as to enable the Authority to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;

- 10.3.3 shall not be involved in the execution of any Test;
- 10.3.4 shall be required to verify that the ASC Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
- 10.3.5 may produce and deliver their own, independent reports on Testing, which may be used by the Authority to assess whether the Tests have been Achieved;
- 10.3.6 may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
- 10.3.7 may require the ASC Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

11. TEST QUALITY AUDIT

- 11.1 Without prejudice to its rights pursuant to Clause 29.2 (Records and Audit), the Authority may perform on-going quality audits in respect of any part of the Testing (each a “**Testing Quality Audit**”) subject to the provisions set out in the agreed Quality Plan.
- 11.2 The focus of the Testing Quality Audits shall be on:
 - 11.2.1 adherence to an agreed methodology;
 - 11.2.2 adherence to the agreed Testing process;
 - 11.2.3 adherence to the Quality Plan;
 - 11.2.4 review of status and key development issues; and
 - 11.2.5 identification of key risk areas.
- 11.3 The ASC Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 11.4 The Authority will give the ASC Supplier at least five (5) Working Days' written notice of the Authority's intention to undertake a Testing Quality Audit and the ASC Supplier may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the ASC Supplier's reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the Authority will materially and adversely impact the Implementation Plan.
- 11.5 A Testing Quality Audit may involve document reviews, interviews with the ASC Supplier Personnel involved in or monitoring the activities being undertaken pursuant to this Schedule S2, the Authority witnessing Tests and demonstrations of the Deliverables to the Authority. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the ASC Supplier and the Authority on a case by case basis (such agreement not to be unreasonably withheld or delayed). The ASC Supplier shall provide all reasonable necessary assistance and

access to all relevant documentation required by the Authority to enable it to carry out the Testing Quality Audit.

11.6 If the Testing Quality Audit gives the Authority concern in respect of the Testing Procedures or any Test, the Authority shall:

11.6.1 discuss the outcome of the Testing Quality Audit with the ASC Supplier, giving the ASC Supplier the opportunity to provide feedback in relation to specific activities; and

11.6.2 subsequently prepare a written report for the ASC Supplier detailing its concerns,

and the ASC Supplier shall, within a reasonable timeframe, respond in writing to the Authority's report.

11.7 In the event of an inadequate response to the Authority's report from the ASC Supplier, the Authority (acting reasonably) may withhold a Test Certificate (and consequently delay the grant of a Milestone Achievement Certificate) until the issues in the report have been addressed to the reasonable satisfaction of the Authority.

12. OUTCOME OF TESTING

12.1 The Authority shall issue a Test Certificate as soon as reasonably practicable when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.

12.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Authority shall notify the ASC Supplier and:

12.2.1 the Authority may issue a Test Certificate conditional upon the remediation of the Test Issues;

12.2.2 where the Parties agree that there is sufficient time prior to the relevant Milestone Date, the Authority may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the ASC Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or

12.2.3 where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the ASC Supplier to meet a Milestone, then without prejudice to the Authority's other rights and remedies, such failure shall constitute a material Default.

12.3 The Authority shall be entitled, without prejudice to any other rights and remedies that it has under this Contract, to recover from the ASC Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.

13. ISSUE OF MILESTONE ACHIEVEMENT CERTIFICATE

13.1 The Authority shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following:

- 13.1.1 the issuing by the Authority of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
 - 13.1.2 performance by the ASC Supplier to the reasonable satisfaction of the Authority of any other tasks identified in the Implementation Plan as associated with that Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).
- 13.2 The grant of a Milestone Achievement Certificate shall entitle the ASC Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of Schedule 2 (Charges and Invoicing).
- 13.3 If a Milestone is not Achieved, the Authority shall promptly issue a report to the ASC Supplier setting out:
 - 13.3.1 the applicable Test Issues; and
 - 13.3.2 any other reasons for the relevant Milestone not being Achieved.
- 13.4 If there are Test Issues but these do not exceed the Test Issues threshold, then provided there are no Material Test Issues, the Authority shall issue a Milestone Achievement Certificate.
- 13.5 If there is one or more Material Test Issue(s), the Authority shall refuse to issue a Milestone Achievement Certificate and, without prejudice to the Authority's other rights and remedies, such failure shall constitute a material Default.
- 13.6 If there are Test Issues which exceed the Test Issues threshold but there are no Material Test Issues, the Authority may at its discretion (without waiving any rights in relation to the other options) choose to issue a Milestone Achievement Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:
 - 13.6.1 any Rectification Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Authority agrees otherwise (in which case the ASC Supplier shall submit a Rectification Plan for approval by the Authority within ten (10) Working Days of receipt of the Authority's report pursuant to Paragraph 13.3); and
 - 13.6.2 where the Authority issues a conditional Milestone Achievement Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

ANNEX 1: TEST ISSUES – SEVERITY LEVELS

Severity Level 1 Test Issue: a Test Issue that causes non-recoverable conditions, e.g. it is not possible to continue using a Component, a Component crashes, there is database or file corruption, or data loss;

Severity Level 2 Test Issue: a Test Issue for which, as reasonably determined by the Authority, there is no practicable workaround available, and which:

- (a) causes a Component to become unusable;
- (b) causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
- (c) has an adverse impact on any other Component(s) or any other area of the Services;

Severity Level 3 Test Issue: a Test Issue which:

- (a) causes a Component to become unusable;
- (b) causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
- (c) has an impact on any other Component(s) or any other area of the Services;

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

Severity Level 4 Test Issue: a Test Issue which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Services; and

Severity Level 5 Test Issue: a Test Issue that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Services

ANNEX 2: TEST CERTIFICATE

To: [NAME OF ASC SUPPLIER]

FROM: [NAME OF AUTHORITY]

[Date]

Dear Sirs,

TEST CERTIFICATE

Deliverables: [insert description of Deliverables]

We refer to the contract (the “Contract”) relating to the provision of the Services between the [name of Authority] (the “Authority”) and [name of ASC Supplier] (the “ASC Supplier”) dated [date].

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (Definitions) or Schedule S2 (Testing Procedures) of the Contract.

[We confirm that the Deliverables listed above have been tested successfully in accordance with the Test Plan relevant to those Deliverables.]

OR

[This Test Certificate is issued pursuant to Paragraph 12.1 of Schedule S2 (Testing Procedures) of the Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

**delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of [name of Authority]

ANNEX 3: MILESTONE ACHIEVEMENT CERTIFICATE

To: [NAME OF ASC SUPPLIER]

FROM: [NAME OF AUTHORITY]

[Date]

Dear Sirs,

MILESTONE ACHIEVEMENT CERTIFICATE

Milestone: [insert description of Milestone]

We refer to the contract (the “Contract”) relating to the provision of the Services between the [name of Authority] (the “Authority”) and [name of ASC Supplier] (the “ASC Supplier”) dated [date].

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (Definitions) or Schedule S2 (Testing Procedures) of the Contract.

[We confirm that all the Deliverables relating to Milestone [number] have been tested successfully in accordance with the Test Plan relevant to this Milestone [or that a conditional Test Certificate has been issued in respect of those Deliverables that have not satisfied the relevant Test Success Criteria.]]*

OR

[This Milestone Achievement Certificate is granted pursuant to Paragraph 13.1 of Schedule S2 (Testing Procedures) of the Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with the provisions of Schedule 2 (Charges and Invoicing)]*

**delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of [name of Authority]

S3 SECURITY REQUIREMENTS

1. DEFINITIONS

1.1 In this Schedule S3 (Security Requirements), the following definitions shall apply:

- 1.1.1 **"Baseline Security Requirements"** the baseline security requirements set out in Annex 1 (Baseline Security Requirements) of this Schedule S3 (Security Requirements);
- 1.1.2 **"Breach of Security"** means:
 - (a) any unauthorised access to or use of the Goods and/or Services, the Sites and/or any Information Technology ("IT") or Information Communication Technology ("ICT"), information or data (including the Confidential Information and the Authority Data) used by the Authority and/or the ASC Supplier in connection with this Contract; and/or
 - (b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the ASC Supplier in connection with this Contract;
- 1.1.3 **"Incident Response and Containment Plan"** sets out the ASC Supplier's proposed actions to resolve or mitigate the Security Incident
- 1.1.4 **"Initial Notification"** means the target duration from the ASC Supplier being assigned the Security Incident to providing the first update the Authority with an update on their progress resolving such Security Incident;
- 1.1.5 **"ISMS"** the information security management system and process in accordance with Paragraph 3 (ISMS) as updated from time to time in accordance with this Schedule S3 (Security Requirements);
- 1.1.6 **"Security Event"** anything that happens that could potentially have information security implications. For example, spam email is a security event because it may contain links to malware;
- 1.1.7 **"Security Incident"** a Security Event that results in damage such as loss of data. Security Incidents can also include events that do not involve damage but are viable risks. For example – a user has clicked on a link in a phishing email and parted with their credentials. After this a malicious actor has logged into their account and sent more links to colleagues or clients - this would be viewed as an incident;
- 1.1.8 **"Security Incident Protocol(s)"** means the relevant policy and process applied when an Incident includes a security element. It is a version of the Incident management protocol that is invoked when Incident management triage identifies a security component to the Incident, as specified in paragraph 9.1;

- 1.1.9 **“Security Management Plan (SMP)”** the ASC Supplier's security management plan prepared pursuant to this Schedule S3 (Security Requirements), a template for which has been provided in Annex 2 (Security Management Plan) of this Schedule S3 (Security Requirements); and
- 1.1.10 **“Security Tests”** tests to validate the ISMS and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security.

2. SECURITY REQUIREMENTS

- 2.1 The Parties acknowledge that the purpose of the ISMS and Security Management Plan are to ensure a good organisational approach to security under which the specific requirements of the Contract will be met.
- 2.2 The Parties shall each appoint a security single point of contact ("**SSPOC**"), who shall be responsible for coordinating security. The initial SSPOC of the Parties are:
 - 2.2.1 **[REDACTED]**
[REDACTED]

The SSPOC of each Party shall be responsible for ensuring that the contact details of the ASC Supplier Personnel that are responsible for security are up to date, and any changes are communicated to the Authority within a reasonable time.
- 2.3 The ASC Supplier's SSPOC shall:
 - 2.3.1 endeavour to ensure continuity of key ASC Supplier Personnel who are responsible for security during the term of the Contract; and
 - 2.3.2 notifying the Authority of any changes in such ASC Supplier Personnel.
- 2.4 The Authority shall clearly articulate its high level security requirements so that the ASC Supplier can ensure that the ISMS, security related activities and any mitigations are driven by these fundamental needs.
- 2.5 Both Parties shall provide a reasonable level of access to any members of their staff for the purposes of designing, implementing and managing security.
- 2.6 The ASC Supplier shall comply with the Authority Protocols in the day to day operation of any system holding, transferring or processing Authority Data and any system that could directly or indirectly have an impact on that information, and shall ensure that Authority Data remains under the effective control of the ASC Supplier at all times.
- 2.7 The ASC Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Authority.

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

3. INFORMATION SECURITY MANAGEMENT SYSTEM (ISMS)

- 3.1 The ASC Supplier shall develop and submit to the Authority, within twenty (20) Working Days after the Implementation Commencement Date, an ISMS for the purposes of this Contract, and shall comply with the requirements of Paragraph 3.4 to 3.5.
- 3.2 The ASC Supplier acknowledges that the Authority places great emphasis on the reliability of the performance of the ASC Services, confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and that the ASC Supplier shall be responsible for the effective performance of the ISMS.
- 3.3 The Authority acknowledges that:
- 3.3.1 if the Authority has not stipulated that it requires a bespoke ISMS, the ISMS provided by the ASC Supplier may be an extant ISMS covering the ASC Services and their implementation across the ASC Supplier's estate; and
 - 3.3.2 where the Authority has stipulated that it requires a bespoke ISMS then the ASC Supplier shall be required to present the ISMS for the Authority's approval.
- 3.4 The ISMS shall:
- 3.4.1 if the Authority has stipulated that it requires a bespoke ISMS, be developed to protect all aspects of the ASC Services and all processes associated with the provision of the ASC Services associated with the delivery of the ASC Services, including the Authority Premises, the Sites, the ASC Supplier System, the Authority System (to the extent that it is under the control of the ASC Supplier) and any IT, information and data (including the Authority's Confidential Information and the Authority Data) to the extent used by the Authority or the ASC Supplier in connection with this Contract;
 - 3.4.2 meet the relevant standards in ISO/IEC 27001 and ISO/IEC27002 in accordance with Paragraph 7;
 - 3.4.3 at all times provide a level of security which:
 - (a) is in accordance with the Law and this Contract;
 - (b) complies with the Baseline Security Requirements, with the exceptions noted in "**Existing Business Application Security Non-Compliance**" explained in Paragraph 7.4);
 - (c) as a minimum demonstrates Good Industry Practice

- (d) complies with the Security Policy and the ICT Policy;
- (e) complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (<https://www.gov.uk/government/publications/security-policy-framework/hmg-security-policy-framework>);
- (f) takes account of guidance issued by the Centre for Protection of National Infrastructure (<https://www.npsa.gov.uk>);
- (g) meets any specific security threats of immediate relevance to the ISMS, the ASC Services and/or Authority data;
- (h) addresses issues of incompatibility with the ASC Supplier's own organisational security policies; and
- (i) complies with ISO/IEC27001 and ISO/IEC27002 in accordance with Paragraph 7;
- (j) document the Security Incident management processes and Incident response plans;
- (k) document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the ASC Services of any new threat, vulnerability or exploitation technique of which the ASC Supplier becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Authority approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy; and
- (l) be certified by (or by a person with the direct delegated authority of) a ASC Supplier's main board representative, being the "Chief Security Officer", "Chief Information Officer", "Chief Technical Officer" or "Chief Financial Officer" (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Security Management Plan).

3.5 Subject to Paragraph 2, the references to standards, guidance and policies contained or set out in Paragraph 3.4.3 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the ASC Supplier from time to time.

3.6 In the event that the ASC Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in Paragraph 1.1, the ASC Supplier shall immediately notify the Authority Representative of such inconsistency and the Authority Representative shall, as soon as practicable, notify the ASC Supplier as to which provision the ASC Supplier shall comply with.

- 3.7 If the ISMS submitted to the Authority pursuant to Paragraph 3.3.1 is approved by the Authority, it shall be adopted by the ASC Supplier immediately and thereafter operated and maintained in accordance with this Schedule S3 (Security Requirements). If the ISMS is not approved by the Authority, the ASC Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of the first submission of the ISMS to the Authority. If the Authority does not approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Authority pursuant to this Paragraph 3 may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in Paragraphs 3.4 to 3.6 shall be deemed to be reasonable.
- 3.8 Approval by the Authority of the ISMS pursuant to Paragraph 3.7 or of any change to the ISMS shall not relieve the ASC Supplier of its obligations under this Schedule S3 (Security Requirements).

4. SECURITY MANAGEMENT PLAN

- 4.1 No less than twenty (20) Working Days before the Phased Service Commencement Date the ASC Supplier shall prepare and submit to the Authority for approval in accordance with this Paragraph 4.1, a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of Paragraph 4.2 and Requirement CS049 (SEC-14-001).
- 4.2 The Security Management Plan shall:
- 4.2.1 be based on the template Security Management Plan set out in Annex 2 Security Management Plan;
 - 4.2.2 comply with the Baseline Security Requirements and, where specified by the Authority, Paragraph 3.4.3(i),
 - 4.2.3 identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule S3 (Security Requirements) is complied with by the ASC Supplier;
 - 4.2.4 detail the process for managing any security risks from Sub-Contractors and third parties authorised by the Authority with access to the Goods and/or ASC Services, processes associated with the delivery of the Goods and/or ASC Services, the Authority Premises, the Sites, the ASC Supplier System, the Authority System (to the extent that it is under the control of the ASC Supplier) and any IT, Information and data (including the Authority's Confidential Information and the Authority Data) and any system that could directly or indirectly have an impact on that information, data and/or the ASC Services;
 - 4.2.5 unless otherwise specified by the Authority in writing, be developed to protect all aspects of the ASC Services and all processes associated with the

delivery of the ASC Services, including the Authority Premises, the Sites, the ASC Supplier System, the Authority System (to the extent that it is under the control of the ASC Supplier) and any IT, Information and data (including the Authority's Confidential Information and the Authority Data) to the extent used by the Authority or the ASC Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the ASC Services;

- 4.2.6 set out the security measures to be implemented and maintained by the ASC Supplier in relation to all aspects of the ASC Services and all processes associated with the delivery of the ASC Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the ASC Services comply with the provisions of this Schedule S3 (Security Requirements) (including the requirements set out in Paragraph 3.4);
 - 4.2.7 demonstrate that the ASC Supplier's approach to delivery of the ASC Services has minimised the Authority and ASC Supplier effort required to comply with this Part B Schedule S3 (Security Requirements) through consideration of available, appropriate and practicable pan-government accredited services;
 - 4.2.8 set out the plans for transitioning all security arrangements and responsibilities from those in place at the Implementation Commencement Date to those incorporated in the ISMS within the timeframe agreed between the Parties;
 - 4.2.9 set out the scope of the Authority System that is under the control of the ASC Supplier;
 - 4.2.10 be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules of this Contract which cover specific areas included within those standards; and
 - 4.2.11 be written in plain English in language which is readily comprehensible to the staff of the ASC Supplier and the Authority engaged in the ASC Services and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule S3 (Security Requirements).
- 4.3 If the Security Management Plan submitted to the Authority pursuant to Paragraph 4.1 is approved by the Authority, it shall be adopted by the ASC Supplier immediately and thereafter operated and maintained in accordance with this Schedule S3 (Security Requirements). If the Security Management Plan is not approved by the Authority, the ASC Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of the first submission to the Authority of the Security Management Plan. If the Authority does not approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the

Authority pursuant to this Paragraph may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.

- 4.4 Approval by the Authority of the Security Management Plan pursuant to Paragraph 4.3 or of any change or amendment to the Security Management Plan shall not relieve the ASC Supplier of its obligations under this Schedule S3 (Security Requirements).

5. AMENDMENT OF THE ISMS AND SECURITY MANAGEMENT PLAN

- 5.1 The ISMS and Security Management Plan shall be fully reviewed and updated by the ASC Supplier and at least annually to reflect Requirement CS058 (SEC-14-010) and:
 - 5.1.1 Compliance with the Authority Protocols;
 - 5.1.2 emerging changes in Good Industry Practice
 - 5.1.3 any change or proposed change to the ASC Supplier System, the ASC Services and/or associated processes;
 - 5.1.4 any new perceived or changed security threats;
 - 5.1.5 any changes to the Security Policy; and
 - 5.1.6 any reasonable change in requirement requested by the Authority.
- 5.2 The ASC Supplier shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Authority. The results of the review shall include, without limitation:
 - 5.2.1 suggested improvements to the effectiveness of the ISMS;
 - 5.2.2 proposed updates to the risk assessments, including suggestions to further mitigate risks;
 - 5.2.3 proposed modifications to the procedures and controls that affect information security to respond to events that may impact on the ISMS; and
 - 5.2.4 suggested improvements in measuring the effectiveness of controls.
- 5.3 Subject to Paragraph 5.4, any Change which the ASC Supplier proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to Paragraph 5.1, a Authority request, a change to the Baseline Security Requirements or otherwise) shall be subject to the Change Control Procedure and shall not be implemented until approved in writing by the Authority.
- 5.4 The Authority may, acting reasonably, approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than set out in the Change Control Procedure but, without prejudice to their

effectiveness, all such changes and amendments shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment.

6. SECURITY TESTING

- 6.1 The ASC Supplier shall conduct Security Tests from time to time (and at least annually across the scope of the ISMS) and additionally after any change or amendment to the ISMS (including Security Incident management processes and incident response plans) or the Security Management Plan. Security Tests shall be designed and implemented by the ASC Supplier so as to minimise the impact on the delivery of the ASC Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority. Subject to compliance by the ASC Supplier with the foregoing requirements, if any Security Tests adversely affect the ASC Supplier's ability to deliver the ASC Services so as to meet the Service Levels, the ASC Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.
- 6.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The ASC Supplier shall provide the Authority with the results of such Security Tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.
- 6.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to this Contract, the Authority and/or its authorised representatives shall be entitled, at any time upon giving reasonable notice to the ASC Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the ASC Supplier's compliance with the ISMS and the Security Management Plan. The Authority may notify the ASC Supplier of the results of such tests after completion of each such test. If any such Authority's test adversely affects the ASC Supplier's ability to deliver the ASC Services so as to meet the Service Levels, the ASC Supplier shall be granted relief against any resultant under-performance for the period of the Authority's test.
- 6.4 Where any Security Test carried out pursuant to Paragraphs 6.2 or 6.3 reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the ASC Supplier shall promptly notify the Authority of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the ASC Supplier proposes to make in order to correct such failure or weakness. Subject to the Authority's prior written approval, the ASC Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or Baseline Security Requirements or the requirements of this Schedule S3 (Security Requirements), the change to the ISMS or Security Management Plan shall be at no cost to the Authority.

- 6.5 If any repeat Security Test carried out pursuant to Paragraph 6.4 reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a material Default of this Contract.

7. COMPLYING WITH THE ISMS

- 7.1 The Authority shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001 and/or the Authority Protocols where such compliance is required in accordance with Paragraph 3.4.3(d).
- 7.2 If, on the basis of evidence provided by such security audits, it is the Authority's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 and/or, where relevant, the Security Policy are not being achieved by the ASC Supplier, then the Authority shall notify the ASC Supplier of the same and give the ASC Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement and remedy. If the ASC Supplier does not become compliant within the required time then the Authority shall have the right to obtain an independent audit against these standards in whole or in part.
- 7.3 If, as a result of any such independent audit as described in Paragraph 7.1, the ASC Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 and/or, where relevant, the Security Policy then the ASC Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.
- 7.4 Current security requirement compliance:
- 7.4.1 As at the Implementation Commencement Date, not all of the security requirements listed in Paragraph 10.1 of Annex 1 are being met for the Business Applications in scope of the Contract.
- 7.4.2 Details of this non-compliance is specified in Paragraph 10.2, noting which Business Application is not, or cannot, meet the requirement (each an **"Existing Business Application Security Non-Compliance"**).
- 7.4.3 For Existing Business Application Security Non-compliances , the Authority accepts that, at the Implementation Commencement Date, these requirements are not being met and accordingly the ASC Supplier shall not be in breach of this Contract solely as a result. However, the ASC Supplier shall use reasonable endeavours to seek to bring these Business Applications into conformance with the requirements should the opportunity arise; e.g. if as a result of an approved change to the Business Application.
- 7.4.4 The ASC Supplier shall, in the context of ISMS reviews specified in Paragraph 5.1, include a review of the Existing Business Application Security Non-Compliances, including conditions preventing security requirement compliance, and propose solutions to the Authority, or affirm that, at that time, no solution exists and non-compliance remains.

- 7.4.5 When responding to a Change Request from the Authority, for a Business Application that has an Existing Business Application Security Non-Compliance, the ASC Supplier shall also consider if their solution to the proposed change creates an opportunity to resolve the Existing Business Application Security Non-Compliance.

8. SECURITY BREACH

- 8.1 Either Party shall notify the other in accordance with the agreed Security Incident management process as defined by the ISMS upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 8.2 Without prejudice to the Security Incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 8.1, the ASC Supplier shall:
- 8.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Authority) necessary to:
 - 8.2.2 minimise the extent of actual or potential harm caused by any Breach of Security;
 - 8.2.3 remedy such Breach of Security or any potential or attempted Breach of Security in order to protect the integrity of the Authority Assets and/or ISMS to the extent that this is within the ASC Supplier's control;
 - 8.2.4 apply a tested mitigation against any such Breach of Security or attempted Breach of Security and provided that reasonable testing has been undertaken by the ASC Supplier, if the mitigation adversely affects the ASC Supplier's ability to provide the ASC Services so as to meet the relevant Service Levels, the ASC Supplier shall be granted relief against any resultant under-performance for such period as the Authority, acting reasonably, may specify by written notice to the ASC Supplier;
 - 8.2.5 prevent a further Breach of Security or any potential or attempted Breach of Security in the future exploiting the same root cause failure; and
 - 8.2.6 supply any requested data to the Authority (or the Computer Emergency Response Team for UK Government ("GovCertUK")) on the Authority's request within two (2) Working Days and without charge (where such requests are reasonably related to a possible incident or compromise); and
 - 8.2.7 as soon as reasonably practicable provide to the Authority full details (using the reporting mechanism defined by the ISMS) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.
- 8.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the ISMS with the Security Policy (where relevant) or the requirements of this Schedule S3 (Security Requirements), then any required change to the ISMS shall be at no cost to the Authority.

9. SECURITY INCIDENT MANAGEMENT

- 9.1 Security Incident Protocols shall be applied when any reported Incident:
- 9.1.1 related to the Authority threatens the confidentiality, integrity, or availability of data of any type or form; and/or
 - 9.1.2 is specifically identified as a Security Incident affecting any Authority asset, regardless of the data that the IT asset contains or grants access to.
- 9.2 Consequently, any reported incident could be a Security Incident, determination of which is at the Authority's discretion and determined during incident triage.
- 9.3 Security Incidents are categorised by the Authority using an assessment of Impact and Urgency (as set out below).
- 9.4 A Security Incident's impact reflects the extent to which the delivery of ASC Services is affected. The more an incident affects the Authority's functions or reputation, the higher the Impact should be considered.

Impact	Definition
Extensive Impact	The Authority is no longer able to provide some critical services to a subset or all users and / or the reputation and integrity of the Authority is highly likely be significantly impacted.
Significant Impact	There is a significant impact on the Authority's ability to provide a critical service to a subset of users and / or the reputation and integrity of the Authority is likely to be impacted.
Moderate Impact	There is moderate impact, but the Authority can provide all services to the majority of users but has a reduction in efficiency, and the reputation and integrity of the Authority may be impacted.
Minor Impact	There is minor or no impact and the Authority can provide all services to all users. None or minor reduction in efficiency. Informational reports which require no action would also fall under this category.

- 9.5 Urgency is the measure of business criticality of a Security Incident where there is an effect upon business deadlines. The urgency reflects the time available for repair or avoidance before the Impact is felt by the business.

Urgency	Definition
Critical	<ul style="list-style-type: none">• Critical systems are at risk of compromise or have already been compromised.• Further damage from incident increases rapidly and progress from a low impact to a medium or high impact incident.• The majority of or all users and/or services are affected.
High	<ul style="list-style-type: none">• The Impact caused by the Security Incident is likely to increase considerably over time.• A system within production or production-dependent environment is affected.• Several users and/or services are affected.
Moderate	<ul style="list-style-type: none">• The Impact caused by the Security Incident is likely to marginally increase over time.

	<ul style="list-style-type: none"> • System and/or users affected may be facing downtime. • Affects several users.
Low	<ul style="list-style-type: none"> • The Security Incident or informational report poses minimal to no risk/impact and this is not likely to increase over time. • Systems affected are not facing downtime. • Affects one or very few users.

9.6 Impact and Urgency are combined as set out in the diagram below, to determine the Priority (“P”) rating of the Security Incident.

[REDACTED]

9.7

9.8 Assessments of Security Incident Impact and Urgency, and consequently Security Incident priority, are at the discretion of the Authority.

9.9 In the table below, Security Incident Priority is defined, with examples:

Priority Level	Definition	Response Time Target
P1	<p>Priority 1 (P1) incidents should be investigated, and service restored or reassessed as soon as possible due to the risk they bring to the Authority.</p> <ul style="list-style-type: none"> • Any Security Incident which has a high Impact resulting in the interruption of one or more critical business services would be classified a P1 Incident (encryption malware outbreak, unauthorised exfiltration of data etc.) • Any Security Incident where 80% of users or the entire user base will be impacted constitutes a P1 incident. (direct denial of service (DDOS), ransomware outbreak, etc.) • Where the risk of a vulnerability being exploited is high or where it is known that a vulnerability has been exploited by a threat actor. (Published zero day exploits directly affecting critical systems such as email, AD etc) 	<p>Initial Notification: 1 hour</p> <p>Incident Response and Containment Plan: 1 hour</p> <p>Incident Recovery Plan: 1 hour</p>

	<ul style="list-style-type: none"> • Resolving P1 Incidents take priority over all BAU activities until resolved 	
P2	<p>Priority 2(P2) Security Incidents should be closed within 48 hours.</p> <ul style="list-style-type: none"> • Any Security Incident which has significant Impact on a single business service where performance or capability of a business-as-usual process is affected (malicious insider activity, unauthorised access etc.). • The risk of a vulnerability being exploited is medium (a known exploitable vulnerability that has not been patched). 	<p>Initial Notification: 2 hours</p> <p>Incident Response and Containment Plan: 4 hours</p> <p>Incident Recovery Plan: 1 day</p>

P3	<p>Priority 3 (P3) Security Incidents should be closed within 3-5 Working Days.</p> <ul style="list-style-type: none"> • These are generally Low impact Security Incidents where no business services are interrupted (compromised user account, Geo blocking avoidance, unauthorised privilege escalation etc.). • The risk of a vulnerability being exploited is low. 	<p>Initial Notification: 1 Working Day</p> <p>Incident Response and Containment Plan: 2 Working Day</p> <p>Incident Recovery Plan: 2 Working Day</p>
P4	<p>Priority 4 (P4) Security Incidents should be closed within 5-7 Working Days.</p> <ul style="list-style-type: none"> • Very Low to no Impact incidents where no business services are interrupted (spam/phishing emails without any user interaction, port-scanning activities, Geo requests etc.). • The risk of a vulnerability being exploited is very low to non-existent. 	<p>Initial Notification: 2 Working Day</p> <p>Incident Response and Containment Plan: 4 Working Day</p> <p>Incident Recovery Plan: 4 Working Day</p>

9.10 Other response times

- 9.10.1 Mobilisation time for Security Incident response: 30 minutes
- 9.10.2 Mobilisation time for Security Incident - remote access: 60 minutes
- 9.10.3 Mobilisation time for Security Incident - on-site: 1 day
- 9.10.4 Time to deliver initial forensics reports: 2 Working Day
- 9.10.5 Time to deliver final forensics reports: 10 Working Day
- 9.10.6 Time to deliver initial malware reports: 4 Working Day
- 9.10.7 Time to deliver final malware reports: 15 Working Day
- 9.10.8 Time to deliver Security Incident report: 5 Working Day
- 9.10.9 Update of knowledgebase post Security Incident report: 3 Working Days

10. VULNERABILITIES AND FIXING THEM

- 10.1 The Authority and the ASC Supplier acknowledge that from time to time vulnerabilities in the IT Environment will be discovered which unless mitigated will present an unacceptable risk to the Authority's information.
- 10.2 The severity of threat vulnerabilities for the ASC Supplier COTS Software and/or Third Party COTS Software shall be categorised by the ASC Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the ISMS and using the appropriate vulnerability scoring systems including the Authority Vulnerability Management Protocol.
- 10.3 The ASC Supplier shall procure the application of security patches to vulnerabilities in accordance with the time periods set out in the Authority 'Vulnerability Management' Protocols, except where:
 - 10.3.1 the ASC Supplier can demonstrate that a vulnerability is not exploitable within the context of any Service (e.g. because it resides in a software Component which is not running in the service) provided vulnerabilities which the ASC Supplier asserts cannot be exploited within the context of a Service must be remedied by the ASC Supplier within the above timescales if the vulnerability becomes exploitable within the context of the Service;
 - 10.3.2 the application of a 'Critical' or 'Important' security patch adversely affects the ASC Supplier's ability to deliver the ASC Services in which case the ASC Supplier shall be granted an extension to such timescales of 5 days, provided the ASC Supplier had followed and continues to follow the security patch test plan agreed with the Authority; or
 - 10.3.3 the Authority agrees a different maximum period after a case-by-case consultation with the ASC Supplier under the processes defined in the ISMS.
- 10.4 The ASC Supplier support shall include (if applicable) provisions for major version upgrades of all ASC Supplier COTS Software and/or Third Party COTS Software to be upgraded within 6 months of the release of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the 'n-1 version') throughout the Contract Period unless:
 - 10.4.1 where upgrading such ASC Supplier COTS Software and/or Third Party COTS Software reduces the level of mitigations for known threats, vulnerabilities or exploitation techniques, provided always that such upgrade is made within 12 months of release of the latest version; or
 - 10.4.2 it is agreed with the Authority in writing that such provisions cannot or should not apply, on a case by case basis, or
 - 10.4.3 at the Implementation Commencement Date, the ASC Supplier COTS Software and/or Third Party COTS Software was already more than one major version level below the latest release, in which case any upgrade shall be managed through in accordance with the Change Control Procedure at the Authority's cost.

10.5 The ASC Supplier shall:

- 10.5.1 implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Central Government Body;
 - 10.5.2 ensure that the Business Applications are monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;
 - 10.5.3 ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the Business Applications by actively monitoring the threat landscape during the Contract Period;
 - 10.5.4 pro-actively scan the Business Applications for vulnerable components and address discovered vulnerabilities through the processes described in the ISMS;
 - 10.5.5 from the date specified in the Security Management Plan provide a report to the Authority within five (5) Working Days of the end of each month detailing both patched and outstanding vulnerabilities in the Business Applications and any elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;
 - 10.5.6 provide Security Incident reports as set out in Annex 3 to this Schedule S3 (Security Requirements);
 - 10.5.7 propose interim mitigation measures to vulnerabilities in the Business Applications known to be exploitable where a security patch is not immediately available;
 - 10.5.8 remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the ASC Services (in order to reduce the attack surface vectors); and
 - 10.5.9 inform the Authority when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the Business Applications and provide initial indications of possible mitigations.
- 10.6 If the ASC Supplier is unlikely to be able to mitigate the vulnerability within the timescales under this Paragraph 10, the ASC Supplier shall immediately notify the Authority.
- 10.7 A failure to comply with Paragraph 10.3 shall constitute a Default, and the ASC Supplier shall comply with the Rectification Plan Process.

ANNEX 1 – BASELINE SECURITY REQUIREMENTS

1. HANDLING CLASSIFIED INFORMATION

- 1.1 The ASC Supplier shall not handle Authority information classified "SECRET" or "TOP SECRET" except if there is a specific requirement and in this case prior to receipt of such information the ASC Supplier shall seek additional specific guidance from the Authority.

2. END USER DEVICES

- 2.1 When Authority Data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system Component which has been formally assured through a recognised certification process of the National Cyber Security Centre ("NCSC") to at least Foundation Grade, for example, under the NCSC Commercial Product Assurance scheme ("CPA").
- 2.2 Devices used to access or manage Authority Data and ASC Services must be under the management authority of Authority or ASC Supplier and have a minimum set of security policy configuration enforced. These devices must be placed into a 'known good' state prior to being provisioned into the management authority of the Authority. Unless otherwise agreed with the Authority in writing, all ASC Supplier devices are expected to meet the set of security requirements set out in the End User Devices Security Guidance (<https://www.ncsc.gov.uk/collection/device-security-guidance>). Where the guidance highlights shortcomings in a particular platform the ASC Supplier may wish to use, then these should be discussed with the Authority and a joint decision shall be taken on whether the residual risks are acceptable. Where the ASC Supplier wishes to deviate from the NCSC guidance, then this should be agreed in writing on a case by case basis with the Authority.

3. DATA PROCESSING, STORAGE, MANAGEMENT AND DESTRUCTION

- 3.1 The ASC Supplier and Authority recognise the need for the Authority's information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, where possible the ASC Supplier must be able to state to the Authority the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Authority Data will be subject to at all times.
- 3.2 The ASC Supplier shall agree any change in location of data storage, processing and administration with the Authority in accordance with the Change Control Procedure.
- 3.3 The ASC Supplier shall:
 - 3.3.1 provide the Authority with all Authority Data on demand in an agreed open format;
 - 3.3.2 have documented processes to guarantee availability of Authority Data in the event of the ASC Supplier ceasing to trade;
 - 3.3.3 securely destroy all media that has held Authority Data at the end of life of that media in line with the Authority Protocols; and
 - 3.3.4 securely erase any or all Authority Data held by the ASC Supplier when requested to do so by the Authority.

4. ENSURING SECURE COMMUNICATIONS

- 4.1 The Authority requires that any Authority Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted using a product or system Component which has been formally assured through a certification process recognised by NCSC, to at least Foundation Grade, for example, under CPA.
- 4.2 The Authority requires that the configuration and use of all networking equipment to provide the ASC Services, including those that are located in secure physical locations, are at least compliant with the Authority Protocols.

5. SECURITY BY DESIGN

- 5.1 The ASC Supplier shall apply the 'principle of least privilege' (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Authority Data.
- 5.2 When designing and configuring the IT Environment (to the extent that the IT Environment is within the control of the ASC Supplier) the ASC Supplier shall follow the Authority Protocols and seek guidance from recognised security professionals with the appropriate skills and/or a NCSC certification (<https://www.ncsc.gov.uk/section/products-services/ncsc-certification>) for all bespoke or complex Components of the IT Environment (to the extent that the IT Environment is within the control of the ASC Supplier).
- 5.3 The ASC Supplier shall also comply with the Security Requirements set out at Annex 1 and the Security Protocols.
- 5.4 Where any solution proposed by the ASC Supplier seeks to utilize Intellectual Property Rights owned by the ASC Supplier, any of the ASC Supplier's Sub-Contractors or the ASC Supplier's supply chain, the ASC Supplier shall ensure that the Authority is made aware of the proposed use of Intellectual Property Rights, all conditions and restrictions on its use, and shall seek and confirm the Authority's approval before including such Intellectual Property Rights in any proposed solution. The Authority has the right to reject any such proposal.

6. SECURITY OF ASC SUPPLIER PERSONNEL

- 6.1 ASC Supplier Personnel shall be subject to pre-employment checks that include, as a minimum: identity, unspent criminal convictions and right to work.
- 6.2 The Authority and ASC Supplier shall agree on a case by case basis ASC Supplier Personnel roles which require specific government clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Authority Data.
- 6.3 The ASC Supplier shall prevent ASC Supplier Personnel who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Authority Data except where agreed with the Authority in writing.
- 6.4 All ASC Supplier Personnel that have the ability to access Authority Data or systems holding Authority Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Authority in writing, this training must be undertaken annually.

6.5 Where the ASC Supplier or Sub-Contractors are granted increased IT privileges or access rights to ASC Supplier Personnel, those ASC Supplier Personnel shall be granted only those permissions necessary for them to carry out their duties. When ASC Supplier or Sub-Contractor Personnel no longer need elevated privileges or leave the organisation, their access rights shall be revoked within one (1) Working Day.

6.6 Notwithstanding the obligations set out at Paragraphs 6.1 to 6.5 above, the ASC Supplier shall also comply with the Requirements set out at Annex 1.

7. RESTRICTING AND MONITORING ACCESS

7.1 The ASC Supplier shall operate an access control regime to ensure all users and administrators of the IT Environment (to the extent that the IT Environment is within the control of the ASC Supplier) are uniquely identified and authenticated when accessing or administering the ASC Services. Applying the 'principle of least privilege', users and administrators shall be allowed access only to those parts of the IT Environment that they require. The ASC Supplier shall retain an audit record of accesses.

8. AUDIT

8.1 The ASC Supplier shall collect audit records which relate to Security Events in the systems or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such ASC Supplier audit records should (as a minimum) include:

8.1.1 Logs to facilitate the identification of the specific asset which makes every outbound request external to the IT Environment (to the extent that the IT Environment is within the control of the ASC Supplier). To the extent the design of the ASC Services allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.

8.1.2 Security Events generated in the IT Environment (to the extent that the IT Environment is within the control of the ASC Supplier) and shall include: privileged account log-on and log-off events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.

8.2 The ASC Supplier and the Authority shall work together to establish any additional audit and monitoring requirements for the IT Environment.

8.3 The ASC Supplier shall retain audit records collected in compliance with this Paragraph 8 for a period of at least 6 months.

9. AUTHORITY PROTOCOLS

9.1 In the event that the ASC Supplier believes that complying with an Authority Protocol would cause it to be in breach of any other provision of this Contract or are otherwise unsuitable, it shall notify the Authority and seek further instruction from the Authority as to which provision should take precedence. The ASC Supplier shall not be deemed to be in breach of any provisions of this Contract where it has notified the Authority that such provisions are in conflict with the requirements of an Authority Protocol, and the Authority has instructed the ASC Supplier that it should comply with the Authority Protocol.

10. SECURITY REQUIREMENTS

- 10.1 The following table of requirements has been extracted from the master requirements log for convenience:

[REDACTED]

- 10.2 As described in paragraph 7.4 of Schedule S3 (Security Requirements), a number of the security requirements listed in paragraph 9.1 of this Annex 1 (Baseline Security Requirements) cannot be met or only partially met at the Implementation Commencement Date. The table below identifies these requirements, listing "Existing Business Application Security Non-Compliance".

[REDACTED]

1.5. ANNEX 2 – SECURITY MANAGEMENT PLAN

The ASC Supplier's Security Management Plan shall be based on this template:

[REDACTED]

1.6. ANNEX 3 – SECURITY REPORTING

1. GENERAL

- 1.1 The provision of all reports relating to cyber security Incidents operations or management shall be restricted and securely provided to designated Key Roles in the Authority's SecOps function only.
- 1.2 Contact details for designated Authority SecOps personnel will be provided to the ASC Supplier.
- 1.3 Under no circumstances should cybers reports be provided to third parties without the express written permission of the Authority.

2. SECURITY INCIDENT AND INVESTIGATION REPORTING

- 2.1 To be reported on a weekly basis (within the Security Incident Reports):
 - 2.1.1 Number of Security Incidents Confirmed;
 - 2.1.2 Number of Security Incidents by Priority;
 - 2.1.3 Number of closed Security Incidents;
 - 2.1.4 Number of Security Incidents still open;
 - 2.1.5 Number of Incidents self-generated by ASC Supplier;
 - 2.1.6 Number of containment plans implemented;
 - 2.1.7 Number of forensic investigations conducted;
 - 2.1.8 Number of malware analysis conducted;
 - 2.1.9 Number of Cyber Security related Problems / Lessons Learned investigations carried out;
 - 2.1.10 Number of knowledgebase documents created and shared; and
 - 2.1.11 Number of known issues Identified.

S4 STAFF TRANSFER

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Employee Liability"	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:</p> <ul style="list-style-type: none">a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;b) unfair, wrongful or constructive dismissal compensation;c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;d) compensation for less favourable treatment of part-time workers or fixed term employees;e) outstanding debts and unlawful deduction of wages including any PAYE and national insurance contributions in relation to payments made by the Authority or the Replacement Supplier to a Transferring ASC Supplier Employee which would have been payable by the ASC Supplier or the Sub-contractor if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions;f) claims whether in tort, contract or statute or otherwise; <p>any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</p>
"Employment Regulations"	<p>the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC;</p>
"Final ASC Supplier Personnel List"	<p>a list provided by the ASC Supplier of all ASC Supplier Personnel whose will transfer under the Employment Regulations on the Service Transfer Date;</p>

"Former Supplier"	a supplier supplying the Services to the Authority before any Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Sub-Contractor of such supplier (or any Sub-Contractor of any such Sub-Contractor);
"Partial Termination"	the partial termination of this Contract to the extent that it relates to the provision of any part of the Services;
"Provisional ASC Supplier Personnel List"	a list prepared and updated by the ASC Supplier of all ASC Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the ASC Supplier;
"Relevant Transfer"	a transfer of employment to which the Employment Regulations applies;
"Relevant Transfer Date"	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place, and for the purposes of Part D: Pensions, shall include the Implementation Commencement Date, where appropriate;
"Replacement Sub-Contractor"	a Sub-Contractor of the Replacement Supplier to whom Transferring ASC Supplier Employees will transfer on a Service Transfer Date (or any Sub-Contractor of any such Sub-Contractor);
"Service Transfer"	any transfer of the Services (or any part of the Services), for whatever reason, from the ASC Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;
"Service Transfer Date"	the date of a Service Transfer;

"Staffing Information"	<p>in relation to all persons identified on the Provisional ASC Supplier Personnel List or Final ASC Supplier Personnel List, as the case may be, the information as the Authority may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:</p> <ul style="list-style-type: none"> (a) their ages, dates of commencement of employment or engagement, gender and place of work; (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise; (c) the identity of the employer or relevant contracting Party; (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments; (e) their wages, salaries, bonuses and profit sharing arrangements as applicable; (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them; (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims); (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence; (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and (j) any other "employee liability information" as such term is defined in Regulation 11 of the Employment Regulations;
"Transferring Authority Employees"	<p>those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the ASC Supplier on or prior to the Relevant Transfer Date;</p>
"Transferring Former ASC Supplier Employees"	<p>in relation to a Former ASC Supplier, those employees of the Former ASC Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the ASC Supplier on or prior to the Relevant Transfer Date.</p>

2. INTERPRETATION

- 2.1 Where a provision in this Schedule imposes any obligation on the ASC Supplier including (without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the ASC 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 and where the Sub-contractor fails to satisfy any claims under such indemnities the ASC Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

3. WHICH PARTS OF THIS SCHEDULE APPLY

- 3.1 The Parties agree that:

- 3.1.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, this Schedule S4 (Staff Transfer) shall apply as follows:

- (a) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A and Part D of this Schedule S4 (Staff Transfer) shall apply;
- (b) where the Relevant Transfer involves the transfer of Transferring Former ASC Supplier Employees, Part B and Part D of this Schedule S4 (Staff Transfer) shall apply;
- (c) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former ASC Supplier Employees, Parts A, B and D of this Schedule S4 (Staff Transfer) shall apply; and
- (d) Part C of this Schedule S4 (Staff Transfer) shall not apply;

- 3.1.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of this Schedule S4 (Staff Transfer) shall apply, Part D of this Schedule S4 (Staff Transfer) may apply and Parts A and B of this Schedule S4 (Staff Transfer) shall not apply; and

- 3.1.3 Part E of this Schedule S4 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services.

PART A- STAFF TRANSFER AT THE IMPLEMENTATION COMMENCEMENT DATE – NOT USED

PART B - STAFF TRANSFER AT THE IMPLEMENTATION COMMENCEMENT DATE

Transfer from a Former Supplier on re-procurement

1. WHAT IS A RELEVANT TRANSFER

1.1 The Authority and the ASC Supplier agree that:

- 1.1.1** the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former ASC Supplier Employees; and
- 1.1.2** as a result of the operation of the Employment Regulations, the contracts of employment between each Former ASC Supplier and the Transferring Former ASC Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10 of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the ASC Supplier and/or any Sub-Contractor and each such Transferring Former ASC Supplier Employee

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

2. INDEMNITIES GIVEN BY THE FORMER ASC SUPPLIER

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

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

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

- 2.3.1** the ASC Supplier will within 5 Working Days of becoming aware of that fact notify the Authority and the relevant Former Supplier in writing;
- 2.3.2** the Former Supplier may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the ASC Supplier;

- 2.3.3 if such offer of employment is accepted, the ASC Supplier shall immediately release the person from its employment;
- 2.3.4 if after the period referred to in Paragraph 2.3.2 no such offer has been made, or such offer has been made but not accepted, the ASC Supplier may within 5 Working Days give notice to terminate the employment of such person;

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

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

- 2.4.1 for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the ASC Supplier and/or any Sub-Contractor; and
- 2.4.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the ASC Supplier and/or any Sub-Contractor (as appropriate) to the Authority and, if applicable, the Former Supplier, within 6 months of the Relevant Transfer Date.

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

3. INDEMNITIES THE ASC SUPPLIER MUST GIVE AND ITS OBLIGATIONS

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

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

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

4. INFORMATION THE ASC SUPPLIER MUST GIVE

- 4.1 The ASC Supplier shall promptly provide to the Authority and/or at the Authority's direction, the Former Supplier, in writing such information as is necessary to enable the Authority and/or the Former Supplier to carry out their respective duties under Regulation 13 of the Employment Regulations. The Authority shall procure that the Former Supplier shall promptly provide to the ASC Supplier in writing such information as is necessary to enable the ASC Supplier and any Sub-Contractor to carry out their respective duties under Regulation 13 of the Employment Regulations.

5. CABINET OFFICE REQUIREMENTS

- 5.1 The ASC Supplier shall comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in (i) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007; (ii) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; (iii) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or (iv) the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

6. LIMITS ON THE FORMER ASC SUPPLIER'S OBLIGATIONS

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

7. PENSIONS

- 7.1 The ASC Supplier shall comply with:

- 7.1.1 all statutory pension obligations in respect of all Transferring Former Supplier Employees; and
- 7.1.2 the provisions in Part D: Pensions.

PART C – NO STAFF TRANSFER EXPECTED ON THE IMPLEMENTATION COMMENCEMENT DATE

1. WHAT HAPPENS IF THERE IS A STAFF TRANSFER

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

1.2 Subject to Paragraphs 1.3, 1.4 and 1.5, 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 ASC Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then:

1.2.1 the ASC Supplier will, within 5 Working Days of becoming aware of that fact, notify the Authority in writing;

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

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

1.2.4 if after the period referred to in Paragraph 1.2.2 no such offer has been made, or such offer has been made but not accepted, the ASC Supplier may within 5 Working Days give notice to terminate the employment of such person;

and subject to the ASC Supplier's compliance with Paragraphs 1.2.1 to 1.2.4:

1.2.5 the Authority will indemnify the ASC Supplier and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any of the Authority's employees referred to in this Paragraph 1.2; and

1.2.6 the Authority will procure that the Former Supplier indemnifies the ASC Supplier and/or any Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in this Paragraph 1.2.

1.3 The indemnities in Paragraph 1.2 shall not apply to any claim:

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

1.3.2 any claim that the termination of employment was unfair because the ASC Supplier and/or any Sub-Contractor neglected to follow a fair dismissal procedure

- 1.4 The indemnities in Paragraph 1.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the ASC Supplier and/or any Subcontractor (as appropriate) to the Authority and, if applicable, the Former Supplier, within 6 months of the Relevant Transfer Date.
- 1.5 If the ASC Supplier and/or the Sub-Contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the ASC Supplier and/or the Sub-Contractor and the ASC Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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 ASC Supplier and/or employees of the Sub-Contractor.
2. **LIMITS ON THE FORMER ASC SUPPLIER'S OBLIGATIONS**
- 2.1 Where in this Part C the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

PART D – PENSIONS

1. DEFINITIONS

1.1 In this Part D, the following definitions shall apply and shall be deemed to include the definitions set out in the Annexes:

"Actuary"	a Fellow of the Institute and Faculty of Actuaries;
"Admission Agreement"	means either or both of the CSPA Admission Agreement (as defined in Annex D1: CSPA) or the LGPS Admission Agreement as defined in Annex D3: LGPS), as the context requires;
"Broadly Comparable"	<p>(a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of Pension Benefits as assessed in accordance with Annex 1 of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and</p> <p>(b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,</p> <p>and "Broad Comparability" shall be construed accordingly;</p>
"CSPA"	the schemes as defined in Annex D1 to this Part D;

"Fair Deal Employees"	<p>those:</p> <ul style="list-style-type: none"> (a) Transferring Authority Employees; and/or (b) Transferring Former Supplier Employees; and/or (c) employees who are not Transferring Authority Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the ASC Supplier or a Sub-Contractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.3.4 of Parts A or B or Paragraph 1.2.4 of Part C; (d) where the Former Supplier becomes the Supplier those employees; <p>who at the Implementation Commencement Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Authority;</p>
"Fair Deal Schemes"	means the relevant Statutory Scheme or a Broadly Comparable pension scheme;
"Fund Actuary"	means Fund Actuary as defined in Annex D3 to this Part D;
"LGPS"	the schemes as defined in Annex D3 to this Part D;
"NHSPS"	the schemes as defined in Annex D2 to this Part D;
"New Fair Deal"	<p>the revised Fair Deal position set out in the HM Treasury guidance: <i>"Fair Deal for Staff Pensions: Staff Transfer from Central Government"</i> issued in October 2013 including:</p> <ul style="list-style-type: none"> (a) any amendments to that document immediately prior to the Relevant Transfer Date; and (b) any similar pension protection in accordance with the subsequent Annex D1 to Annex D3 inclusive as notified to the ASC Supplier by the CCS or Authority; and
"Statutory Schemes"	means the CSPS, NHSPS or LGPS.

2. ASC SUPPLIER OBLIGATIONS TO PARTICIPATE IN THE PENSION SCHEMES

- 2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPS, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.
- 2.2 The ASC Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter, if necessary) as may be required to

enable the ASC Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.

2.3 The ASC Supplier undertakes:

- 2.3.1** to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
- 2.3.2** to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.

3. ASC SUPPLIER OBLIGATION TO PROVIDE INFORMATION

3.1 The ASC Supplier undertakes to the Authority:

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

4. INDEMNITIES THE ASC SUPPLIER MUST GIVE

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

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

- 4.2.1** relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; or

- 4.2.2 arise out of the failure of the ASC Supplier and/or any relevant Sub-Contractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract.

4.3 The indemnities in this Part D and its Annexes:

- 4.3.1 shall survive termination of this Contract; and

- 4.3.2 shall not be affected by the caps on liability contained in Clause 19.

5. **WHAT HAPPENS IF THERE IS A DISPUTE**

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

- 5.1.1 who will act as an expert and not as an arbitrator;

- 5.1.2 whose decision will be final and binding on the Authority and/or the ASC Supplier; and

- 5.1.3 whose expenses shall be borne equally by the Authority and/or the ASC Supplier unless the independent Actuary shall otherwise direct.

6. **OTHER PEOPLE'S RIGHTS**

6.1 The Parties agree Clause 52 does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her or it by the ASC Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.

6.2 Further, the ASC Supplier must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Sub-contractor in his or her or its own right under section 1(1) of the CRTPA.

7. **WHAT HAPPENS IF THERE IS A BREACH OF THIS PART D**

7.1 The ASC Supplier agrees to notify the Authority should it breach any obligations it has under this Part D and agrees that the Authority shall be entitled to terminate this Contract for material Default in the event that the ASC Supplier:

- 7.1.1 commits an irremediable breach of any provision or obligation it has under this Part D; or

- 7.1.2 commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Authority giving particulars of the breach and requiring the ASC Supplier to remedy it.

8. TRANSFERRING NEW FAIR DEAL EMPLOYEES

8.1 Save on expiry or termination of this Contract, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the Employment Regulations) the ASC Supplier shall and shall procure that any relevant Sub-Contractor shall:

8.1.1 consult with and inform those Fair Deal Employees of the pension provisions relating to that transfer; and

8.1.2 procure that the employer to which the Fair Deal Employees are transferred (the "**New Employer**") complies with the provisions of this Part D and its Annexes provided that references to the "**ASC Supplier**" will become references to the New Employer, references to "**Relevant Transfer Date**" will become references to the date of the transfer to the New Employer and references to "**Fair Deal Employees**" will become references to the Fair Deal Employees so transferred to the New Employer.

9. WHAT HAPPENS TO PENSIONS IF THIS CONTRACT ENDS

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

10. BROADLY COMPARABLE PENSION SCHEMES

10.1 If either:

10.1.1 the terms of any of Paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and or 4 of Annex D3: LGPS apply; and/or

10.1.2 the Authority agrees, having considered the exceptional cases provided for in New Fair Deal, (such agreement not to be unreasonably withheld) that the ASC Supplier (and/or its Sub-contractors, if any) need not continue to provide the Fair Deal Employees, who continue to qualify for Fair Deal Protection, with access to the appropriate Statutory Scheme;

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

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

10.2.1 supply to the Authority details of its (or its Sub-Contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability covering all relevant Fair Deal Employees, as soon as it is able to do so and in any event no later than 28 days before the Relevant Transfer Date;

- 10.2.2 fully fund any such Broadly Comparable pension scheme in accordance with the funding requirements set by that Broadly Comparable pension scheme's Actuary or by the Government Actuary's Department for the period ending on the Service Transfer Date;
- 10.2.3 instruct any such Broadly Comparable pension scheme's Actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the Replacement Supplier and/or CCS and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or the Authority may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
- 10.2.4 provide a replacement Broadly Comparable pension scheme with immediate effect for those Fair Deal Employees who are still employed by the ASC Supplier and/or relevant Sub-Contractor and are still eligible for New Fair Deal protection in the event that the ASC Supplier and/or Sub-Contractor's Broadly Comparable pension scheme is terminated;
- 10.2.5 allow and make all necessary arrangements to effect, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the relevant Statutory Scheme and as is relevant on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the appropriate Statutory Scheme to fund day for day service ("**Shortfall**"), the ASC Supplier or the Sub-Contractor (as agreed between them) must pay the Statutory Scheme, as required, provided that in the absence of any agreement between the ASC Supplier and any Sub-Contractor, the Shortfall shall be paid by the ASC Supplier; and
- 10.2.6 indemnify the Authority and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or on demand for any failure to pay the Shortfall as required under Paragraph 10.2.5 above.

ANNEX D1 – CIVIL SERVICE PENSIONS SCHEMES (CSPS)

1. DEFINITIONS

1.1 In this Annex D1: CSPS to Part D: Pensions, the following definition shall apply:

"CSPS Admission Agreement" an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the Services;

"CSPS Eligible Employee" any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPS Admission Agreement; and

"CSPS" the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health benefits arrangements and (ii) Death benefits arrangements; the Civil Service Additional Voluntary Contribution Scheme.

2. ACCESS TO EQUIVALENT PENSION SCHEMES AFTER TRANSFER

2.1 The ASC Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the CSPS that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date and the ASC Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the CSPS for service from (and including) the Relevant Transfer Date.

2.2 The ASC Supplier undertakes that should it cease to participate in the CSPS for whatever reason at a time when it has CSPS Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation of participation remained a CSPS Eligible Employee with access to a pension scheme which is Broadly Comparable to the CSPS on the date the CSPS Eligible Employees ceased to participate in the CSPS.

ANNEX D2 – NHS PENSION SCHEMES

1. DEFINITIONS

1.1 In this Annex D2: NHSPS to Part D: Pensions, the following definitions shall apply:

"Direction Letter" an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the ASC Supplier or a Sub-contractor of the ASC Supplier (as appropriate) relating to the terms of participation of the ASC Supplier or Sub-contractor in the NHSPS in respect of the NHSPS Eligible Employees;

"NHSPS Eligible Employees" each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:

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

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

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

"NHS Body" has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;

"NHS Pensions"	NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS;
"NHSPS"	the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations;
"NHS Pension Scheme Arrears"	any failure on the part of the ASC Supplier or its Sub-Contractors (if any) to pay employer's contributions or deduct and pay across employee's contributions to the NHSPS or meet any other financial obligations under the NHSPS or any Direction Letter in respect of the NHSPS Eligible Employees;
"NHS Pension Scheme Regulations"	as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;
"NHS Premature Retirement Rights"	rights to which any Fair Deal Employee (had they remained in the employment of the Authority, an NHS Body or other employer which participates automatically in the NHSPS) would have been or are entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;
"Pension Benefits"	any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme; and
"Retirement Benefits Scheme"	a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004.

2. MEMBERSHIP OF THE NHS PENSION SCHEME

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

have a right to membership or eligibility of that scheme under the terms of the Direction Letter.

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

3. ACCESS TO NHS PENSION SCHEMES AFTER TRANSFER

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

4. CONTINUATION OF EARLY RETIREMENT RIGHTS AFTER TRANSFER

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

5. WHAT THE AUTHORITY DO IF THE ASC SUPPLIER BREACHES ITS PENSION OBLIGATIONS

- 5.1 The ASC Supplier agrees that the Authority is entitled to make arrangements with NHS Pensions for the Authority to be notified if the ASC Supplier (or its Sub-Contractor) breaches the terms of its Direction Letter. Notwithstanding the provisions of the foregoing, the ASC Supplier shall notify the Authority in the event that it (or its Sub-Contractor) breaches the terms of its Direction Letter.
- 5.2 If the Authority is entitled to terminate this Contract or the ASC Supplier (or its Sub-Contractor, if relevant) ceases to participate in the NHSPS for whatever other reason, the Authority may in its sole discretion, and instead of exercising its right to terminate this Contract where relevant, permit the ASC Supplier (or any such Sub-Contractor, as

appropriate) to offer Broadly Comparable Pension Benefits, on such terms as decided by the Authority. The provisions of Paragraph 10 (Broadly Comparable Pension Scheme) of Part D: Pensions shall apply in relation to any Broadly Comparable pension scheme established by the ASC Supplier or its Sub-Contractors.

- 5.3 In addition to the Authority's right to terminate this Contract, if the Authority is notified by NHS Pensions of any NHS Pension Scheme Arrears, the Authority will be entitled to deduct all or part of those arrears from any amount due to be paid under this Contract or otherwise.

6. COMPENSATION WHEN PENSION SCHEME ACCESS CAN'T BE PROVIDED

- 6.1 If the ASC Supplier (or its Sub-Contractor, if relevant) is unable to provide the NHSPS Eligible Employees with either:

6.1.1 membership of the NHSPS (having used its best endeavours to secure a Direction Letter); or

6.1.2 access to a Broadly Comparable pension scheme,

the Authority may in its sole discretion permit the ASC Supplier (or any of its Sub-Contractors) to compensate the NHSPS Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the ASC Supplier (or Sub-Contractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Eligible Employees. The ASC Supplier must meet (or must procure that the relevant Sub-Contractor meets) the costs of the Authority determining whether the level of compensation offered is reasonable in the circumstances.

- 6.2 This flexibility for the Authority to allow compensation in place of Pension Benefits is in addition to and not instead of the Authority's right to terminate this Contract.

7. INDEMNITIES THAT A ASC SUPPLIER MUST GIVE

- 7.1 The ASC Supplier must indemnify and keep indemnified the Authority and any Replacement ASC Supplier against all Losses arising out of any claim by any NHSPS Eligible Employee that the provision of (or failure to provide) Pension Benefits and NHS Premature Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.

- 7.2 The ASC Supplier must indemnify and keep indemnified the Authority, NHS Pensions and any Replacement ASC Supplier against all Losses arising out of the ASC Supplier (or its Sub-Contractor) allowing anyone who is not an NHSPS Eligible Employee to join or claim membership of the NHSPS at any time during the Contract Period.

8. SUB-CONTRACTORS

- 8.1 If the ASC Supplier enters into a Sub-Contract for the delivery of all or part or any component of the Services which will involve the transfer of employment of any NHSPS Eligible Employee it will impose obligations on its Sub-Contractor in identical terms as those imposed on the ASC Supplier in relation to Pension Benefits and NHS Premature Retirement Rights by this Annex, including requiring that:

8.1.1 if the ASC Supplier has secured a Direction Letter, the Sub-Contractor also secures a Direction Letter in respect of the NHSPS Eligible Employees for their future service with the Sub-Contractor as a condition of being awarded

the Sub-Contract and the ASC Supplier shall be responsible for ensuring that the Authority receives a complete copy of each such Sub-Contractor direction letter as soon as reasonably practicable; or

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

- 8.2 The ASC Supplier shall procure that each Sub-Contractor provides indemnities to the Authority, NHS Pensions and/or any Replacement Supplier and/or Replacement Sub-Contractor that are identical to the indemnities set out in Paragraph 7 of this Annex D2. Where a Sub-Contractor fails to satisfy any claim made under such one or more indemnities, the ASC Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

ANNEX D3– LOCAL GOVERNMENT PENSION SCHEMES (LGPS)

1. DEFINITIONS

1.1 In this Annex D3: LGPS to Part D: Pensions, the following definitions shall apply:

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

2. ASC SUPPLIER MUST BECOME A LGPS ADMISSION BODY

2.1 Where the ASC Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date, the ASC Supplier shall become an LGPS Admission Body and shall on or before the Relevant Transfer Date enter into a LGPS Admission Agreement with the Administering Authority which will have effect from and including the Relevant Transfer Date.

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

3. **RIGHT OF SET-OFF**

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

4. **ASC SUPPLIER CEASES TO BE AN LGPS ADMISSION BODY**

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

5. **DISCRETIONARY BENEFITS**

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

PART E – STAFF TRANSFER ON EXIT

1. OBLIGATIONS BEFORE A STAFF TRANSFER

1.1 The ASC Supplier agrees that within 20 Working Days of the earliest of:

- 1.1.1** receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
- 1.1.2** receipt of the giving of notice of early termination or any Partial Termination of this Contract; and
- 1.1.3** the date which is 12 months before the end of the Contract Period; or
- 1.1.4** receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),

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

1.2 At least 20 Working Days prior to the Service Transfer Date, the ASC Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-Contractor (i) the Final ASC Supplier Personnel List, which shall identify the basis upon which they are Transferring Former ASC Supplier Employees and (ii) the Staffing Information in relation to the Final ASC Supplier Personnel List (insofar as such information has not previously been provided).

1.3 The Authority shall be permitted to use and disclose information provided by the ASC Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement ASC Supplier and/or Replacement Sub-Contractor.

1.4 The ASC Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

1.5 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the ASC Supplier agrees that it shall not assign any person to the provision of the Services who is not listed on the Provisional ASC Supplier Personnel List and shall, unless otherwise instructed by the Authority (acting reasonably):

- 1.5.1** not replace or re-deploy any ASC Supplier Personnel listed on the Provisional ASC Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- 1.5.2** not make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions, retirement and death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension

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

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

- 1.7.4 tax code;
- 1.7.5 details of any voluntary deductions from pay;
- 1.7.6 bank/building society account details for payroll purposes,
- 1.7.7 where available a copy of any personnel file and all other records regarding the service of the Transferring ASC Supplier Employee; and
- 1.7.8 all information required to meet the minimum recording keeping requirements under the Working Time Regulations 1998 and the National Minimum Wage Regulations 1998.

1.8 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3 of this Part E (Staff Transfer on Exit), the ASC Supplier agrees that following a request from the Authority it shall and shall procure that each Sub-Contractor shall use reasonable endeavours to comply with any reasonable request to align and assign Supplier Personnel to any future delivery model proposed by the Authority for Replacement Services within 30 Working Days or such longer timescale as may be agreed.

1.9 Any changes necessary to this Contract as a result of alignment referred to in Paragraph 1.8 shall be agreed in accordance with the Change Control Procedure.

2. STAFF TRANSFER WHEN THE CONTRACT ENDS

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

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

2.3 Subject to Paragraph 2.4, the ASC Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities arising from or as a result of:

- 2.3.1 any act or omission of the ASC Supplier or any Sub-Contractor in respect of any Transferring ASC Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring ASC Supplier Employee occurring before, but excluding, the Service Transfer Date.

- 2.3.2 the breach or non-observance by the ASC Supplier or any Sub-Contractor occurring before but excluding the Service Transfer Date of:
- (a) any collective agreement applicable to the Transferring ASC Supplier Employees; and/or
 - (b) any other undisclosed custom or practice with a trade union or staff association in respect of any Transferring ASC Supplier Employees which the ASC Supplier or any Sub-Contractor is contractually bound to honour;
- 2.3.3 any claim by any trade union or other body or person representing any Transferring ASC Supplier Employees arising from or connected with any failure by the ASC Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising before but excluding the Service Transfer Date;
- 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring ASC Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority related to the financial obligations arising before but excluding the Service Transfer Date; and
 - (b) in relation to any employee who is not identified in the Final Supplier Personnel List, and in respect of who it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Supplier to the Buyer and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before but excluding the Service Transfer Date;
- 2.3.5 a failure of the ASC Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national contributions relating to the Transferring ASC Supplier Employees in respect of the period up to (but excluding) the Service Transfer Date;
- 2.3.6 any claim made by or in respect of any person employed or formerly employed by the ASC Supplier or any Sub-contractor other than a Transferring ASC Supplier Employee identified in the Final Supplier Personnel List for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Contract and/or the Employment Regulations; and
- 2.3.7 any claim made by or in respect of a Transferring ASC Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring ASC Supplier Employee relating to any act

or omission of the ASC Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or the Replacement Supplier to comply with relation 13(4) of the Employment Regulations.

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

2.4.1 arising out of the resignation of any Transferring ASC Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to their working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date; or

2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

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

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

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

2.5.3 if such offer of employment is accepted, the Replacement Supplier and/or Replacement Sub-Contractor shall immediately release the person from its employment;

2.5.4 if after the period referred to in Paragraph 2.5.2 no such offer has been made, or such offer has been made but not accepted, the Replacement Supplier and/or Replacement Sub-Contractor may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Replacement Supplier's and/or Replacement Sub-Contractor's compliance with Paragraphs 2.5.1 to 2.5.4 the ASC Supplier will indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any of the ASC Supplier's employees referred to in Paragraph 2.5.

- 2.6 The indemnity in Paragraph 2.5 shall not apply to:
- 2.6.1 any claim for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief, or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor, or
 - 2.6.2 any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure.
- 2.7 The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 months from the Service Transfer Date.
- 2.8 If at any point the Replacement Supplier and/or Replacement Sub-Contract accepts the employment of any such person as is described in Paragraph 2.5, such person shall be treated as a Transferring ASC Supplier Employee and Paragraph 2.5 shall cease to apply to such person.
- 2.9 The ASC Supplier shall promptly provide the Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-Contractor, shall promptly provide to the ASC Supplier and each Sub-Contractor in writing such information as is necessary to enable the ASC Supplier and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.10 Subject to Paragraph 2.9, the Authority shall procure that the Replacement Supplier indemnifies the ASC Supplier on its own behalf and on behalf of any Replacement Sub-Contractor and its Sub-Contractors against any Employee Liabilities arising from or as a result of any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Sub-Contractor in respect of any Transferring ASC Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring ASC Supplier Employee.
- 2.11 The indemnity in Paragraph 2.10 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the ASC Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the ASC Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Final ASC Supplier Personnel List in accordance with Paragraph 2.5 (and subject to the limitations set out in Paragraphs 2.6 and 2.7 above).

S5 BENCHMARKING

1. INTRODUCTION

1.1 In this Schedule, the following definitions shall apply:

"Benchmark Review"	a review of the Services carried out in accordance with this Schedule to determine whether those Services represent Good Value;
"Benchmarked Services"	any Services included within the scope of a Benchmark Review pursuant to this Schedule;
"Comparable Rates"	the Charges for Comparable Services;
"Comparable Services"	services that are identical or materially similar to the Benchmarked Services (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar Services exist in the market, the ASC Supplier shall propose an approach for developing a comparable Services benchmark;
"Comparison Group"	a sample group of organisations providing Comparable Services which consists of organisations which are either of similar size to the ASC Supplier or which are similarly structured in terms of their business and their service offering so as to be fair comparators with the ASC Supplier or which, are best practice organisations;
"Equivalent Data"	data derived from an analysis of the Comparable Rates and/or the Comparable Services (as applicable) provided by the Comparison Group;
"Good Value"	that the Benchmarked Rates are within the Upper Quartile; and
"Upper Quartile"	in respect of Benchmarked Rates, that based on an analysis of Equivalent Data, the Benchmarked Rates, as compared to the range of prices for Comparable Services, are within the top 25% in terms of best value for money for the recipients of Comparable Services.

2. WHEN YOU SHOULD USE THIS SCHEDULE

- 2.1 The ASC Supplier acknowledges that the Authority wishes to ensure that the Services, represent value for money to the taxpayer throughout the Contract Period.
- 2.2 This Schedule sets to ensure this Contract represent value for money throughout and that the Authority may terminate this Contract by issuing a written notice to the ASC

Supplier if the ASC Supplier refuses or fails to comply with its obligations as set out in Paragraphs 3 of this Schedule.

3. BENCHMARKING

3.1 How benchmarking works

- 3.1.1 The Authority may, by written notice to the ASC Supplier, require a Benchmark Review of any or all of the Services.
- 3.1.2 The Authority shall not be entitled to request a Benchmark Review earlier than six (6) months from the end of the Implementation Period or at intervals of less than twelve (12) months after any previous Benchmark Review.
- 3.1.3 The purpose of a Benchmark Review will be to establish whether the Benchmarked Services are, individually and/or as a whole, Good Value.
- 3.1.4 The Services that are to be the Benchmarked Services will be identified by the Authority in writing.
- 3.1.5 Upon its request for a Benchmark Review the Authority shall nominate a benchmarker. The ASC Supplier must approve the nomination within ten (10) Working Days unless the ASC Supplier provides a reasonable explanation for rejecting the appointment. If the appointment is rejected then the Authority may propose an alternative benchmarker. If the Parties cannot agree the appointment within twenty (20) days of the initial request for Benchmark review then a benchmarker shall be selected by the Chartered Institute of Financial Accountants.
- 3.1.6 The cost of a benchmarker shall be borne by the Authority (provided that each Party shall bear its own internal costs of the Benchmark Review) except where the Benchmark Review demonstrates that the Benchmarked Service and/or the Benchmarked Services are not Good Value, in which case the Parties shall share the cost of the benchmarker in such proportions as the Parties agree (acting reasonably). Invoices by the benchmarker shall be raised against the ASC Supplier and the relevant portion shall be reimbursed by the Authority.

3.2 Benchmarking Process

- 3.2.1 The benchmarker shall produce and send to the Authority, for approval, a draft plan for the Benchmark Review which must include:
 - (a) a proposed cost and timetable for the Benchmark Review;
 - (b) a description of the benchmarking methodology to be used which must demonstrate that the methodology to be used is capable of fulfilling the benchmarking purpose; and
 - (c) a description of how the benchmarker will scope and identify the Comparison Group.

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

Benchmarked Rates and the Comparable Rates in order to derive Equivalent Data:

- (a) the contractual terms and business environment under which the Comparable Rates are being provided (including the scale and geographical spread of the customers);
- (b) exchange rates;
- (c) any other factors reasonably identified by the ASC Supplier, which, if not taken into consideration, could unfairly cause the ASC Supplier's pricing to appear non-competitive.

3.3 Benchmarking Report

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

S6 BUSINESS CONTINUITY AND DISASTER RECOVERY

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"BCDR Plan"	has the meaning given to it in Paragraph 2.1 of this Schedule;
"Business Continuity Plan"	has the meaning given to it in Paragraph 2.2.2 of this Schedule;
"Disaster"	the occurrence of one or more events which, either separately or cumulatively, mean that the Deliverables, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable);
"Disaster Recovery Plan"	has the meaning given to it in Paragraph 2.2.3 of this Schedule;
"Related Supplier"	any person who provides services to the Authority which are related to the Services from time to time;
"Review Report"	has the meaning given to it in Paragraph 6.3 of this Schedule; and
"ASC Supplier's Proposals"	has the meaning given to it in Paragraph 6.3 of this Schedule;

2. BCDR Plan

2.1 At least ninety (90) Working Days prior to the Implementation Commencement Date the ASC Supplier shall prepare and deliver to the Authority for the Authority's written approval a plan (a "**BCDR Plan**"), which shall detail the processes and arrangements that the ASC Supplier shall follow to:

- 2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and
- 2.1.2 the recovery of the Services in the event of a Disaster.

2.2 The BCDR Plan shall be divided into three sections:

- 2.2.1 Section 1 which shall set out general principles applicable to the BCDR Plan;
- 2.2.2 Section 2 which shall relate to business continuity (the "**Business Continuity Plan**"); and
- 2.2.3 Section 3 which shall relate to disaster recovery (the "**Disaster Recovery Plan**").

- 2.3 Following receipt of the draft BCDR Plan from the ASC Supplier, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

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

3.1 Section 1 of the BCDR Plan shall:

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

- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;
 - 3.1.11 identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDR Plan; and
 - 3.1.12 provide for the provision of technical assistance to key contacts at the Authority as required by the Authority to inform decisions in support of the Authority's business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
- 3.2.1 the Services are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
 - 3.2.2 the adverse impact of any Disaster is minimised as far as reasonably possible;
 - 3.2.3 it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and
 - 3.2.4 it details a process for the management of disaster recovery testing.
- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services and the business operations supported by the provision of Services.
- 3.4 The ASC Supplier shall not be entitled to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the ASC Supplier of this Contract.

4. Business Continuity Plan (Section 2)

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of Services remain supported and to ensure continuity of the business operations supported by the Services including:
- 4.1.1 the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of the Services; and
 - 4.1.2 the steps to be taken by the ASC Supplier upon resumption of the provision of the Services in order to address the effect of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
- 4.2.1 address the various possible levels of failures of or disruptions to the provision of Services;
 - 4.2.2 set out the goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services; and
 - 4.2.3 set out the circumstances in which the Business Continuity Plan is invoked.

5. Disaster Recovery Plan (Section 3)

- 5.1 The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed to ensure that upon the occurrence of a Disaster the ASC Supplier ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The ASC Supplier's BCDR Plan shall include an approach to business continuity and disaster recovery that addresses the following:
 - 5.2.1 loss of access to the Authority Premises;
 - 5.2.2 loss of utilities to the Authority Premises;
 - 5.2.3 loss of the ASC Supplier's helpdesk or CAFM system;
 - 5.2.4 loss of a Sub-Contractor;
 - 5.2.5 emergency notification and escalation process;
 - 5.2.6 contact lists;
 - 5.2.7 staff training and awareness;
 - 5.2.8 BCDR Plan testing;
 - 5.2.9 post implementation review process;
 - 5.2.10 details of how the ASC Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
 - 5.2.11 access controls to any disaster recovery sites used by the ASC Supplier in relation to its obligations pursuant to this Schedule; and
 - 5.2.12 testing and management arrangements.

6. Review and changing the BCDR Plan

- 6.1 The ASC Supplier shall review the BCDR Plan:
 - 6.1.1 on a regular basis and as a minimum once every six (6) months;
 - 6.1.2 within three (3) calendar months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 8; and
 - 6.1.3 where the Authority requests in writing any additional reviews (over and above those provided for in Paragraphs 6.1.1 and 6.1.2 of this Schedule) whereupon the ASC Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the ASC 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 ASC Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.

- 6.2 Each review of the BCDR Plan pursuant to Paragraph 6.1 shall assess its suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan, and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the ASC Supplier within such period as the Authority shall reasonably require.
- 6.3 The ASC Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Authority a report (a **"Review Report"**) setting out the ASC Supplier's proposals (the **"ASC Supplier's Proposals"**) for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.
- 6.4 Following receipt of the Review Report and the ASC Supplier's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the ASC Supplier's Proposals. If the Parties are unable to agree Review Report and the ASC Supplier's Proposals within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 6.5 The ASC Supplier shall as soon as is reasonably practicable after receiving the approval of the ASC Supplier's Proposals effect any change in its practices or procedures necessary so as to give effect to the ASC Supplier's Proposals. Any such change shall be at the ASC Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

7. Testing the BCDR Plan

- 7.1 The ASC Supplier shall test the BCDR Plan:
 - 7.1.1 regularly and in any event not less than once in every Contract Year;
 - 7.1.2 in the event of any major reconfiguration of the Services; and
 - 7.1.3 at any time where the Authority considers it necessary (acting in its sole discretion).
- 7.2 If the Authority requires an additional test of the BCDR Plan, it shall give the ASC Supplier written notice and the ASC Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the BCDR Plan. The ASC Supplier's costs of the additional test shall be borne by the Authority unless the BCDR Plan fails the additional test in which case the ASC Supplier's costs of that failed test shall be borne by the ASC Supplier.

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

8. Invoking the BCDR Plan

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

S7 CONTINUOUS IMPROVEMENT

1. ASC SUPPLIER'S OBLIGATIONS

- 1.1 The ASC Supplier must, throughout the Contract Period, identify new or potential improvements to the provision of the Services with a view to reducing the Authority's costs (including the Charges) and/or improving the quality and efficiency of the Services and their supply to the Authority.
- 1.2 The ASC Supplier must adopt a policy of continuous improvement in relation to the Services, which must include regular reviews with the Authority of the Services and the way it provides them, with a view to reducing the Authority's costs (including the Charges) and/or improving the quality and efficiency of the Services. The ASC Supplier and the Authority must provide each other with any information relevant to meeting this objective.
- 1.3 In addition to Paragraph 1.1, The ASC Supplier must, throughout the Contract Period, identify new or potential improvements to the provision of the Services with a view to reducing the Authority's costs (including the Charges) and/or improving the quality and efficiency of the Services and their supply to the Authority. The ASC Supplier shall produce at the start of each Contract Year a plan for improving the provision of Services and/or reducing the Charges (without adversely affecting the performance of this Contract) during that Contract Year, for the Authority's approval. The plan must include, as a minimum, proposals:
 - 1.3.1 identifying the emergence of relevant new and evolving technologies;
 - 1.3.2 changes in business processes of the ASC Supplier or the Authority and ways of working that would provide cost savings and/or enhanced benefits to the Authority (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
 - 1.3.3 new or potential improvements to the provision of the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services; and
 - 1.3.4 measuring and reducing the sustainability impacts of the ASC Supplier's operations and supply-chains relating to the Services, and identifying opportunities to assist the Authority in meeting their sustainability objectives.
- 1.4 The initial Continuous Service Improvement Plan for the first (1st) Contract Year shall be submitted by the ASC Supplier to the Authority for approval within six (6) months following the Implementation Commencement Date.
- 1.5 The Authority shall notify the ASC Supplier of its approval or rejection of the proposed Continuous Service Improvement Plan or any updates to it within twenty (20) Working Days of receipt. Any dispute arising from the agreement of the Continuous Service Improvement Plan shall be addressed in accordance with the Dispute Resolution Procedure.

- 1.6 The ASC Supplier must provide sufficient information with each suggested improvement, including a risk assessment, to enable a decision on whether to implement it. The ASC Supplier shall provide any further information as requested.
- 1.7 If the Authority wishes to incorporate any improvement into this Contract, it must request a Change in accordance with the Change Control Procedure and the ASC Supplier must implement such Change at no additional cost to the Authority.
- 1.8 Once the first Continuous Service Improvement Plan has been approved in accordance with Paragraph 1.5:
 - 1.8.1 the ASC Supplier shall use all reasonable endeavours to implement any agreed services in accordance with the Continuous Service Improvement Plan (subject to Authority approval in accordance with the Authority change management Protocols); and
 - 1.8.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the ASC Supplier's progress against the Continuous Service Improvement Plan.
- 1.9 The ASC Supplier shall update the Continuous Service Improvement Plan as and when required but at least once every Contract Year (after the first (1st) Contract Year) in accordance with the procedure and timescales set out in Paragraph 1.3
- 1.10 All costs relating to the compilation or updating of the Continuous Service Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges. Continuous Improvement Plan items should be accompanied by a Rough Order of Magnitude ("**ROM**") request as described in Schedule 3.
- 1.11 Should the ASC Supplier's costs in providing the Services to the Authority be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Authority by way of a consequential and immediate reduction in the Charges for the Services.
- 1.12 At any time during the Contract Period of this Contract, the ASC Supplier may make a proposal for gainshare. If the Authority deems gainshare to be applicable then the ASC Supplier shall update the Continuous Service Improvement Plan so as to include details of the way in which the proposal shall be implemented in accordance with an agreed gainshare ratio.

S8 GUARANTEE – NOT USED

S10 CORPORATE SOCIAL RESPONSIBILITY

1. WHAT WE EXPECT FROM OUR SUPPLIERS

- 1.1 In February 2019, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government which can be found online at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf
- 1.2 The Authority expects the ASC Supplier to meet the standards set out in that Code. In addition, the Authority expects the Supply to comply with the standards set out in this Schedule S10 (Corporate Social Responsibility).
- 1.3 The ASC Supplier acknowledges that the Authority has additional requirements in relation to corporate social responsibility. The Authority expects that the ASC Supplier and its Sub-Contractors will comply with such reasonable corporate social responsibility requirements as the Authority may notify to the ASC Supplier from time to time, with agreement of any such additional corporate social responsibility requirements being subject to the Change Control Procedure. EQUALITY AND ACCESSIBILITY
- 1.4 In addition to legal obligations, the ASC Supplier shall support the Authority in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under the Contract in a way that seeks to:
 - 1.4.1 eliminate discrimination, harassment or victimisation of any kind; and
 - 1.4.2 advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

2. MODERN SLAVERY, CHILD LABOUR AND INHUMANE TREATMENT

"**Modern Slavery Helpline**" means the mechanism for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.

- 2.1 The ASC Supplier:
 - 2.1.1 shall not use, nor allow its Sub-Contractors to use forced, bonded or involuntary prison labour;
 - 2.1.2 shall not require any ASC Supplier Personnel to lodge deposits or identify papers with the employer and shall be free to leave their employer after reasonable notice;
 - 2.1.3 warrants and represents that it has not been convicted of any slavery or human trafficking offenses anywhere around the world;

- 2.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human tracking offenses anywhere around the world;
- 2.1.5 shall make reasonable enquires to ensure that its officers, employees and Sub-Contractors have not been convicted of slavery or human tracking offenses anywhere around the world;
- 2.1.6 shall have and maintain throughout the Contract Period its own policies and procedures to ensure its compliance with the Modern Slavery Act and include in its contracts with its Sub-contractors anti-slavery and human trafficking provisions;
- 2.1.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;
- 2.1.8 shall prepare and deliver to the Authority an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with Paragraph 2;
- 2.1.9 shall not use, nor allow its employees or Sub-Contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Sub-Contractors;
- 2.1.10 shall not use or allow child or slave labour to be used by its Sub-Contractors; and
- 2.1.11 shall report the discovery or suspicion of any slavery or trafficking by it or its Sub-Contractors to the Authority and Modern Slavery Helpline.

3. INCOME SECURITY

3.1 The ASC Supplier shall:

- 3.1.1 ensure that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;
- 3.1.2 ensure that all ASC Supplier Personnel are provided with written and understandable information about their employment conditions in respect to wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid;
- 3.1.3 not make deductions from wages:
 - (a) as a disciplinary measure
 - (b) except where permitted by law; or
 - (c) without expressed permission of the worker concerned;

- 3.1.4 record all disciplinary measures taken against ASC Supplier Personnel; and
- 3.1.5 ensure that ASC Supplier Personnel are engaged under a recognised employment relationship established through national law and practice.

4. WORKING HOURS

4.1 The ASC Supplier shall:

- 4.1.1 ensure that the working hours of ASC Supplier Personnel comply with national laws, and any collective agreements;
- 4.1.2 that the working hours of ASC Supplier Personnel, excluding overtime, shall be defined by contract, and shall not exceed 48 hours per week unless the individual has agreed in writing;
- 4.1.3 ensure that use of overtime used responsibly, taking into account:
 - (a) the extent;
 - (b) frequency; and
 - (c) hours worked;

by individuals and by the ASC Supplier Personnel as a whole;

- 4.2 The total hours worked in any seven day period shall not exceed 60 hours, except where covered by Paragraph 4.3 below.
- 4.3 Working hours may exceed 60 hours in any seven day period only in exceptional circumstances where all of the following are met:
 - 4.3.1 this is allowed by national law;
 - 4.3.2 this is allowed by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce;
 - 4.3.3 appropriate safeguards are taken to protect the workers' health and safety; and
 - 4.3.4 the employer can demonstrate that exceptional circumstances apply such as unexpected production peaks, accidents or emergencies.
- 4.4 All ASC Supplier Personnel shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.

5. SUSTAINABILITY

- 5.1 The ASC Supplier shall meet the applicable Government Buying Standards applicable to Services which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

6. SOCIAL VALUE

- 6.1 In December 2020, HM Government published 'The Social Value Model' and 'Guide to Using the Social Value Model' which in combination set out the approach to be taken by government authorities to supporting social value, including themes, policy outcomes, benefits, effective measures, contract management and reporting. (<https://www.gov.uk/government/publications/procurement-policy-note-0620-taking-account-of-social-value-in-the-award-of-central-government-contracts>)
- 6.2 The Authority expects its suppliers and subcontractors to support the activities set out in that model and guidance, including the ASC Supplier's and Sub-Contractors' compliance with the requirements set out in this Paragraph 6.
- 6.3 The ASC Supplier acknowledges that HM Government may further develop and change its social value model, and the Authority may have additional requirements in relation to social value. The Authority expects that the ASC Supplier and Sub-Contractors will comply with such reasonable social value requirements as the Authority may notify to the ASC Supplier from time to time. Any necessary changes to the Contract shall be enacted via the Change Control Procedure.

THEMES, OUTCOMES AND BENEFITS

- 6.4 The ASC Supplier will particularly support the following social value themes, policy outcomes and benefits:

Table 1 – Social value themes, outcomes and benefits selected from the social value model

[REDACTED]

SOCIAL VALUE DELIVERY PLAN

- 6.5 Within sixty (60) days of the Implementation Commencement Date, the ASC Supplier must provide to the Authority a fully complete, up-to-date, timed project plan and process for delivering social value benefits (the "**Social Value Delivery Plan**") for the Authority to agree.
- 6.6 The Social Value Delivery Plan must contain information at the level of detail necessary to manage and deliver:
- 6.6.1 social value commitments included in the ASC Supplier's Call Off Tender;

- 6.6.2 monitoring, measuring and reporting on social value benefits (including those listed in Paragraph 6.4), commitments and impacts;
 - 6.6.3 timed actions;
 - 6.6.4 reporting including metrics, targets (to be assigned to metrics wherever possible), tools and processes to gather and report data;
 - 6.6.5 feedback and improvement;
 - 6.6.6 transparency;
 - 6.6.7 influencing of stakeholders and communities through the Contract Period to support the policy outcomes (e.g. engagement, co-design/creation, training and education, partnering/collaborating, volunteering).
- 6.7 The Social Value Delivery Plan will identify the ASC Supplier Personnel responsible for its delivery.
- 6.8 Following receipt of the Social Value Delivery Plan from the ASC Supplier, the Parties shall use reasonable endeavours to agree any amendments reasonably required for the Authority to accept the Social Value Delivery Plan. If the Parties are unable to agree the Social Value Delivery Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 6.9 The ASC Supplier shall keep the Social Value Delivery Plan under review at least annually and as otherwise directed by any Board (as described in Schedule 7 (Governance)) and will propose changes where necessary to improve outcomes.

PERFORMANCE MONITORING AND REPORTING

- 6.10 The ASC Supplier shall monitor its performance against the Social Value Delivery Plan and report to the Authority on such performance quarterly, in a format reasonably specified by the Authority from time to time.
- 6.11 The ASC Supplier's reports on social value delivery will be reviewed as a regular contract management activity, including in scope of relevant Board(s) (as described in Schedule 7 (Governance)).
- 6.12 The ASC Supplier's reports on social value delivery must include the reporting metrics used by HM Government to monitor progress against the relevant policy outcomes, including those listed in Table 2 below.

Table 2 – Reporting metrics for progress on policy outcomes (from social value model)

Policy outcomes	Reporting metrics
Create new businesses, new jobs and new skills	<ul style="list-style-type: none"> • Number of full-time equivalent (FTE) employment opportunities created under the Contract, by UK region. • Number of apprenticeship opportunities (level 2, 3 and 4+) created or retained under the Contract, by UK region.

	<ul style="list-style-type: none"> • Number of training opportunities (level 2, 3 and 4+) created or retained under the Contract, other than apprentices, by UK region. • Number of people-hours of learning interventions delivered under the Contract, by UK region.
Effective stewardship of the environment	<ul style="list-style-type: none"> • Number of people-hours spent protecting and improving the environment under the Contract, by UK region. • Number of green spaces created under the Contract, by UK region. • Annual: <ul style="list-style-type: none"> Reduction in emissions of greenhouse gases arising from the performance of the Contract, measured in metric tonnes carbon dioxide equivalents (MTCDE). Reduction in water use arising from the performance of the Contract, measured in litres. Reduction in waste to landfill arising from the performance of the Contract, measured in metric tonnes.

6.13 Performance against the targets in the Social Value Delivery Plan will be evaluated using the following scores:

Table 3 – Scores for evaluating social value targets

Good	The ASC Supplier is meeting or exceeding the target set out within the Social Value Delivery Plan.
Approaching Target	The ASC Supplier is close to meeting the targets are set out within the Social Value Delivery Plan.
Requires Improvement	The performance of the ASC Supplier is below that of the target set out within the Social Value Delivery Plan, but the ASC Supplier has identified and committed to and/or is progressing steps to improve its performance.
Inadequate	The performance of the ASC Supplier is significantly below that of the target set out within the Social Value Delivery Plan.

6.14 The Social Value Delivery Plan will set out how the KPI for social value delivery specified in Schedule 3 (Service Levels, Service Credits and Performance Monitoring) of this Contract will be calculated based on evaluation of targets in accordance with Paragraph 6.13, using the following template:

Table 4 – Template for evaluation of specific reporting metrics

Reporting Metric	Delivery period	Performance thresholds				Actual Delivery	% Delivery	Rating
		Good	Approaching Target	Requires improvement	Inadequate			

[Insert]	Q [insert] [Year]	[Thresho ld]	[Threshol d]	[Threshold]	[Threshol d]	[Insert]	[Actual/ Good x100]	[Insert]
[Insert]	Q [insert] [Year]	[Thresho ld]	[Threshol d]	[Threshold]	[Threshol d]	[Insert]	[Actual/ Good x100]	[Insert]
[Insert]	Q [insert] [Year]	[Thresho ld]	[Threshol d]	[Threshold]	[Threshol d]	[Insert]	[Actual/ Good x100]	[Insert]
[Insert]	Q [insert] [Year]	[Thresho ld]	[Threshol d]	[Threshold]	[Threshol d]	[Insert]	[Actual/ Good x100]	[Insert]

- 6.15 The Authority may publish social value performance metrics relating to the Contract from time to time, including in accordance with HM Government practice at the time.

S11 AUTHORITY RESPONSIBILITIES

1. INTRODUCTION

- 1.1 The responsibilities of the Authority set out in the table in Paragraph 3 of this Schedule this Schedule shall constitute the Authority responsibilities under this Contract (the "**Authority Responsibilities**"). Any obligations of the Authority in the Services Specification and the ASC Supplier's Call-Off Tender 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 3 of this Schedule. Authority Responsibilities can be reviewed from time to time and amended by agreement should that be required for the effective management of the Contract.
- 1.2 The Authority Responsibilities specified within this Schedule 11 shall be provided to the ASC Supplier free of charge, unless otherwise agreed between the Parties.

2. GENERAL RESPONSIBILITIES

- 2.1 The Authority shall:
 - 2.1.1 perform those obligations of the Authority which are set out in the Order Form, Clauses of this Contract and the Paragraphs of the Schedules (except Attachment 1 of the Order Form (Services Specification) and Attachment 11 of the Order Form (ASC Supplier's Call-Off Tender));
 - 2.1.2 use its reasonable endeavours to provide the ASC Supplier with access to appropriate members of the Authority Personnel and/or Other Suppliers as such access is reasonably requested or otherwise required by Authority Protocols by the ASC Supplier in order for the ASC Supplier to discharge its obligations throughout the Contract Period and the Termination Assistance Period;
 - 2.1.3 provide sufficient and suitably qualified staff to fulfil the Authority's roles and duties under this Contract;
 - 2.1.4 use its reasonable endeavours to provide such documentation, data and/or other information that the ASC Supplier reasonably requests that is necessary to perform its obligations under the terms of this Contract provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority; and
 - 2.1.5 procure for the ASC Supplier such agreed access and use of the Authority Premises (as a licensee only), data centre facilities and other facilities (including relevant IT systems and space and desks on a remote or in person basis (as applicable) as is reasonably required for the ASC Supplier to comply with its obligations under this Contract, 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 RESPONSIBILITIES

- 3.1 The Authority shall, in relation to this Contract, perform the Authority Responsibilities identified below:

[REDACTED]

S12 SERVICE REQUESTS AND PROJECTS

1. DEFINITIONS

- 1.1. In this Schedule S12 (Service Requests and Projects), the following definitions shall apply:

"Service Request"		has the meaning given to it in Paragraph 3.1 of this Schedule S12 (Service Requests and Projects);
"Change Priority"		has the meaning given to it in Paragraph 3.3.1 of this Schedule S12 (Service Requests and Projects);
"Change Impact"		has the meaning given to it in Paragraph 3.3.2 of this Schedule S12 (Service Requests and Projects);
"Change Risk"		has the meaning given to it in Paragraph 3.3.3 of this Schedule S12 (Service Requests and Projects);
"Change Response Time"	Target	has the meaning given to it in Paragraph 3.5 of this Schedule S12 (Service Requests and Projects) and is specified in Schedule 3 (Service Levels, Service Credits and Performance Monitoring), Table 8.
"Service Catalogue"		also "Service Catalogue Request" , has the meaning given to it in Paragraph 4.1 of this Schedule S12 (Service Requests and Projects);
"Service Catalogue Item"		also "Catalogue Item" , a specific request available in the Service Catalogue; these are listed in Schedule 3 (Service Levels, Service Credits and Performance Monitoring), Table 11
"Project"		has the meaning given to it in Paragraph 5.1 of this Schedule S12 (Service Requests and Projects);
"Programme"		has the meaning given to it in Paragraph 5.1 of this Schedule S12 (Service Requests and Projects);
"Project Proposal"		has the meaning given to it in Paragraph 5.6 of this Schedule S12 (Service Requests and Projects); included in details the ASC Supplier's assessment of the work required to deliver the change;
"Project Requests"		Service Requests that require a Project to deliver;

“Project Work Order” The formal instructions that must be approved by the Authority and ASC Supplier before a project can commence;

"Requests"	a Service Request, Service Catalogue Request and/or Project Request.
"Request for Change" or "RfC"	has the meaning given to it in Paragraph 3.2 of this Schedule S12 (Service Requests and Projects);

2. INTRODUCTION

- 2.1. This Schedule S12 (Service Requests and Projects) sets out the procedures for dealing with:
 - 2.1.1. Service Requests to deliver a change;
 - 2.1.2. Service Catalogue Requests; and
 - 2.1.3. Project Requests.
- 2.2. The Authority shall provide the ASC Supplier with the details of the individuals who are authorised by the Authority to raise and approve Requests and shall notify the ASC Supplier of any changes made by the Authority to the list of authorised individuals during the Contract Period.
- 2.3. The ASC Supplier shall:
 - 2.3.1. respond to a Request in accordance with:
 - 2.3.1.1. Paragraphs 3.1 to 3.10 inclusive in relation to a Service Request;
 - 2.3.1.2. Paragraphs 4.1 to 4.6 inclusive in relation to a Service Catalogue Request; and
 - 2.3.1.3. Paragraphs 5.1 to 5.9 inclusive in relation to a Project Request; and
 - 2.3.2. deliver, perform or otherwise implement the Services set out in the Request, in a timely manner consistent with the relevant lead times agreed in accordance with this Schedule S12 (Service Requests and Projects).
- 2.4. The procedures in this Schedule S12 (Service Requests and Projects) shall not be used to request Contract Changes which shall be dealt with in accordance with Clause 49.1 (Change).
- 2.5. A Request shall only be valid when approved by an authorised individual as notified to the ASC Supplier by the Authority in accordance with Paragraph 2.2.
- 2.6. Each Party shall be responsible for its own costs incurred in proposing, preparing, discussing, negotiating and agreeing any Request.
- 2.7. Any Charges applicable to any Request that are agreed by the Authority in accordance with this Schedule shall be payable in accordance with Schedule 2 (Charges and Invoicing).
- 2.8. The ASC Supplier acknowledges that the Authority is not obliged to raise Requests and provides no guarantee to the ASC Supplier on the volume, value or quantity of any that the Authority may require under this Contract (if any) and that nothing shall prevent the Authority from receiving services that are the same or similar to any services that may be

covered by a Project from any third party.

2.9. The ASC Supplier shall ensure that:

2.9.1. all the Registers, including any asset, licensing, warranty and/or configuration management information, are updated in as close to real time as possible (and in any event no later than 24 hours following the installation, removal or movement) to reflect the changes which have resulted from the installation, removal or movement of assets and initiation of Services; and

2.9.2. all Request related activities are co-ordinated to optimise use of resources.

3. SERVICE REQUESTS

3.1. The Authority may make a Service Request for a change to be delivered by the ASC Supplier to the Business Applications in scope. Such changes are subject to relevant Authority change management processes. For the avoidance of doubt, these are not contractual changes as described in Call-Off Schedule 5 (Change Control Procedure), but relate to the operation and maintenance of the Business Applications.

3.2. The change is initially requested via production of a 'Request for Change' (RfC) via a templated form. The RfC can be initiated either by the Authority, or if requested or agreed by the Authority, by the ASC Supplier. Regardless of who drafts the RfC, the ASC Supplier must respond to the RfC with an accurate estimate of the time, resources and costs to deliver the change and must also include in their response a statement of relevant risks, dependencies, assumptions and constraints of relevance to successful delivery of the change.

3.3. There are different kinds of change, each requiring their information or procedures to be followed. To determine this, the Service Request is assessed to understand:

3.3.1. The urgency of the proposed or requested change ('**Change Priority**'),; this is determined by the Authority.

3.3.2. The degree of 'disturbance' that the change may have, as well as the impact on the business of not performing the change; ('**Change Impact**'); this is determined by the Authority; and

3.3.3. how challenging the change is and how damaging would it be if it were not undertaken or if the change should fail (the '**Change Risk**'); this is proposed by the ASC Supplier in their response to the RfC though the Authority may amend the Change Risk classification. Where change options are presented, each option will have its own Change Risk classification.

3.4. The ASC Supplier will respond to the Service Request with detailed proposals on how to deliver the change within the Change Target Response Time, or such other time period as is reasonably requested by the ASC Supplier and agreed by the Authority (taking into account the nature and complexity of the change proposal in question).

3.5. A combination of Change Priority and Change Impact will be used to specify the required Change Target Response Times from the ASC Supplier. These are specified in Schedule 3 (Service Levels, Service Credits and Performance Monitoring), Table 8.

3.6. The ASC Supplier cannot initiate the change until the RfC is formally approved by the Authority in writing.

- 3.7. Details on the Key Performance Indicators (KPIs) and Service Level Targets (SLTs) that apply to the production of Change Requests are set out in Schedule 3 (Service Levels, Service Credits and Performance Monitoring).
- 3.8. In relation to each Service Request approved in accordance with Paragraph 3.6:
- 3.8.1. the ASC Supplier shall achieve the date for the delivery of the change in accordance with the dates proposed in the approved RfC, or as otherwise agreed with the Authority; and
- 3.8.2. charges applicable for the RfC shall be payable in accordance with Schedule 2 (Charges and Invoicing) after the relevant changes are delivered to the Authority.
- 3.9. The ASC Supplier shall provide regular status updates to the Authority for the purpose of tracking, managing and closing Service Requests.
- 3.10. In the event that any Service Requests are cancelled by the Authority whilst the ASC Supplier is delivering the Service Request:
- 3.10.1. the ASC Supplier shall:
- 3.10.1.1. notify the Authority in writing of any costs incurred by the ASC Supplier in delivering the Service Request up to and including the date of cancellation and/or any direct and unavoidable losses and/or expenses incurred as a result of the cancellation of such Service Request; and
- 3.10.1.2. cooperate with the Authority and take all reasonable steps to eliminate or, if this is not possible, mitigate any costs, losses and/or expenses that it incurs as a result of the Authority's cancellation of a Service Request, and provide to the Authority such documentation that the Authority shall reasonably require to evidence the same; and
- 3.10.1.3. subject to the ASC Supplier complying with the provisions of Paragraph 3.10.1.2 above, the Authority shall pay any such costs, losses and/or expenses incurred by the ASC Supplier as a result of the Authority's cancellation of a Service Catalogue Request in accordance with the provisions in Schedule 2 (Charges and Invoicing).

4. SERVICE CATALOGUE REQUESTS

- 4.1. The Authority Service Catalogue lists 'Standard' changes, some of which must be delivered by the ASC Supplier. These are low-risk changes, that used established procedures and are therefore pre-authorised. A Service Catalogue Item meets one or more of the following criteria:
- 4.1.1. a single instance of a pre-defined activity;
- 4.1.2. previously defined as Low Risk (see Schedule 3 (Service Levels, Service Credits and Performance Monitoring), Table 9);
- 4.1.3. previously defined as Low Impact (see Schedule 3 (Service Levels, Service Credits and Performance Monitoring), Table 7);

- 4.1.4. meets criteria of Normal Minor Change (see Schedule 3 (Service Levels, Service Credits and Performance Monitoring), Table 10);
- 4.1.5. previously defined and known cost;
- 4.1.6. tried and tested implementation;
- 4.1.7. not affecting critical infrastructure; and/or
- 4.1.8. rollback, or reversal of the change, is possible.
- 4.2. A Service Catalogue Request enables the Authority to order defined Service Catalogue Items from the Service Catalogue where no changes are required to the Service Catalogue Item(s) or the lead time stated within the Service Catalogue.
- 4.3. Service Catalogue Requests are submitted by the Authority via the Authority IT Service Management System (ITSM), to which the ASC Supplier will have access and integrated their request fulfilment capabilities.
- 4.4. Upon receipt of the Service Catalogue Request via the ITSM, the ASC Supplier shall promptly deliver the defined outcome specified within the response time specified for the Service Catalogue Request (see Schedule 3 (Service Levels, Service Credits and Performance Monitoring), Table 11) and shall:
 - 4.4.1. achieve the date for the delivery of the Service Catalogue Item(s) in accordance with the applicable lead time set out in the Service Catalogue;
 - 4.4.2. complete the defined activities required to fulfil the Service Catalogue Item; and
 - 4.4.3. if there are any Service Catalogue Item Charges applicable to the Service Catalogue Item(s) set out in the Service Request these shall be payable in accordance with Schedule 2 (Charges and Invoicing) after the relevant Services are received by the Authority.
- 4.5. The ASC Supplier shall provide regular status updates to the Authority for the purpose of tracking, managing and closing Service Catalogue Requests.
- 4.6. In the event that any Service Catalogue Requests are cancelled by the Authority whilst the ASC Supplier is delivering the Service Catalogue Request, the ASC Supplier shall:
 - 4.6.1. notify the Authority in writing of any costs incurred by the ASC Supplier in delivering the Service Catalogue Request up to and including the date of cancellation and/or any direct and unavoidable losses and/or expenses incurred as a result of the cancellation of such Service Catalogue Request; and
 - 4.6.2. cooperate with the Authority and take all reasonable steps to eliminate or, if this is not possible, mitigate any costs, losses and/or expenses that it incurs as a result of the Authority's cancellation of a Service Catalogue Request, and provide to the Authority such documentation that the Authority shall reasonably require to evidence the same; and
 - 4.6.3. subject to the ASC Supplier complying with the provisions of Paragraph 4.6.2 above, the Authority shall pay any such costs, losses and/or expenses incurred by the ASC

Supplier as a result of the Authority's cancellation of a Service Catalogue Request in accordance with the provisions in Schedule 2 (Charges and Invoicing).

5. PROJECTS

- 5.1. The Authority may request a change be delivered by the ASC Supplier or consider a change proposal from the ASC Supplier, for the Business Applications in scope. Changes of greater complexity or risk may be delivered via a Project or Programme managed by the ASC Supplier. A 'Project' is a temporary organisational structure put in place to manage work to a defined goal, in this case to deliver the change. A 'Programme' is a temporary organisational structure to deliver multiple, related projects.
- 5.2. The ASC Supplier will provide the change proposal within the timeframes specified for the impact and priority of the change (see Schedule 3 (Service Levels, Service Credits and Performance Monitoring), Table 8), or such other time period as is reasonably requested by the ASC Supplier and agreed by the Authority (taking into account the nature and complexity of the change proposal in question).
- 5.3. A Project or Programme is initially requested via production of a 'Request for Change' (RfC), via a templated form. The RfC can be initiated either by the Authority, or if requested by the Authority, by the ASC Supplier on the Authority's behalf. Regardless of who drafts the RfC, the ASC Supplier must respond to the RfC with an accurate estimate of the time, resources and costs of the Project or Programme to deliver the change and must also include in their response a statement of relevant risks, dependencies, assumptions and constraints of relevance to successful delivery of proposed Project or Programme.
- 5.4. The ASC Supplier cannot commence the Project or Programme until the RFC is formally approved by the Authority in writing.
- 5.5. Details on Key Performance Indicators (KPIs) and Service Level Targets (SLTs) for the production of Project Requests are set out in Schedule 3 (Service Levels, Service Credits and Performance Monitoring).
- 5.6. Where the ASC Supplier's RfC response requires a Project to deliver the requested change, the change control response shall include a Project Proposal that should include the following particulars of the proposed Project, to the extent relevant:
 - 5.6.1. a brief context, identifying the positioning of the intended Project or Programme in the Authority's IT strategy, targets, timescales and objectives;
 - 5.6.2. a detailed statement of the Authority's requirements for the intended Project or Programme (including scope) if known; alternatively the proposal may include a requirements identification activity;
 - 5.6.3. the objectives and goals of the intended Project or Programme and its contribution to the Authority's business objectives;
 - 5.6.4. outline approach, work breakdown structure (i.e. the appropriate Milestones (including any Milestones which attract Milestone Payments)), key deliverables, timescales and estimated number of each type of resource required and Project Plan.
 - 5.6.5. an Outline Project Plan, which represents the ASC Supplier's estimate of effort and duration;

- 5.6.6. details of any required third party service in relation to the intended Project or Programme including:
 - 5.6.6.1. the nature of the required third party service and anticipated charges; and
 - 5.6.6.2. the identity of the proposed third party ASC Supplier who shall provide the required third party service;
- 5.6.7. key assumptions and (including any cost assumptions) and anticipated risks;
- 5.6.8. any additional Authority responsibilities specific to the intended Project or Programme (if any) or dependencies;
- 5.6.9. an assessment as to whether any element of the Services which would be required in respect of that intended Project or Programme are already being provided by the ASC Supplier under this Contract, or if additional Services would be required;
- 5.6.10. if the ASC Supplier reasonably determines that Testing or approval of documentation in accordance with Authority Protocols shall be required, e.g. approval of design documentation;
- 5.6.11. the charges proposed by the ASC Supplier with reference to the prices set out in the relevant Paragraph of Schedule 2 (Charges and Invoicing) which would be payable by the Authority for undertaking the intended Project or Programme in accordance with the charging basis proposed by the Authority in the Project Request as set out in Paragraph 4.2.4 above. Such charges shall include the costs of complying with the Test Success Criteria;
- 5.6.12. any proposals in respect of funding or alternative pricing or new pricing mechanisms that the ASC Supplier wishes the Authority to consider;
- 5.6.13. details of any proposed Reimbursable Expenses;
- 5.6.14. outline details of the possible impact of the intended Project or Programme upon major works (for example implementation of the Contract, exit or other Projects) and/or of major works upon the intended Project or Programme together with details of the ASC Supplier's recommendations for addressing such possible impact;
- 5.6.15. any known technical, time or any other constraints;
- 5.6.16. specific cyber-security considerations, where relevant;
- 5.6.17. the proposed Milestones and proposed Test Success Criteria for the intended Project or Programme;
- 5.6.18. details of the Project Test Strategy relevant to the intended Project or Programme; and
- 5.6.19. the desired level of progress reporting.
- 5.7. It is anticipated that elements of Paragraph 5.6 may be developed iteratively by the ASC Supplier and require clarification and options discussion with the Authority.

- 5.8. The Authority may at its reasonable discretion, at any time prior to the approval of a Project Proposal, cancel the proposed project by providing written notice to that effect to the ASC Supplier.
- 5.9. Where in the reasonable opinion of the Authority, any Project Proposal fails to set out in sufficient detail the information required by Paragraph 5.6 to enable the Authority to carry out its initial assessment of an intended Project or Programme: the ASC Supplier shall, to the extent reasonably practicable, remedy any such failing within such time-scales as are reasonably requested by the Authority, or in the absence of such request, five (5) Working Days.

6. PROJECT WORK ORDERS

- 6.1. Following review of a Project Proposal, the Authority shall confirm within thirty (30) working days of receipt of RfC proposal from the ASC Supplier, whether it wishes to proceed with the Project or Programme, and if so shall require the ASC Supplier to produce a draft Project Work Order within ten (10) Working Days of the Authority's notice (or such other time period as may be agreed by the Parties), for agreement by the Authority.
- 6.2. The content and format of the Project Work Order shall be agreed by the Authority and ASC Supplier.
- 6.3. As part of the production of each such Project Work Order, the ASC Supplier shall also seek to collaborate and cooperate with any Other Supplier if required, to establish the impact of the intended Project or Programme on Other Suppliers, and / or other Projects or intended Projects and adjust the intended Projects accordingly to reasonably take into account any such impact.

7. PROJECT COMMITMENT

- 7.1. Authority approval of the Project Work Order is required prior to Project or Programme commencement. The ASC Supplier shall sign and deliver to the Authority for its signature a copy of the Project Work Order via an agreed electronic signature platform. Following receipt by the Authority of the Project Work Order it shall sign the Project Work Order. On the Authority's signature the Project Work Order shall be binding on both Parties.
- 7.2. Neither Party shall become contractually committed in respect of any Project or Programme unless and until such time as a Project Work Order has been executed in accordance with Paragraph 7.1 above.

8. PROJECT COMMENCEMENT

- 8.1. Following execution of the Project Work Order, a Project or Programme start meeting shall take place (unless the Parties agree otherwise) between the Parties prior to any work being undertaken on that Project or Programme.
- 8.2. Where requested by the Authority, a Project Board shall be established which shall meet as soon as practicable on a date agreed.
- 8.3. The Project Board shall establish the appropriate governance, risk management processes and any specific reporting requirements for each Project and be attended by representatives of the Authority and the ASC Supplier.

- 8.4. The Project Board shall review and approve progress on delivery of the Project Work Order, together with any other issues relating to the Project or Programme as are reasonably raised.
- 8.5. Proposed changes to an approved Project Work Order shall be considered at Project Board meetings.

9. CHANGES TO AGREED PROJECT WORK ORDERS

- 9.1. Following the agreement of any Project Work Order, any changes to such Project Work Order shall only become effective if the change has been agreed by the Authority and the ASC Supplier in writing.
- 9.2. The mechanism for changes to Project Work Orders shall be for the ASC Supplier to create a revised version of the relevant Project Work Order, including a statement that such revised version supersedes any previous version. The ASC Supplier shall sign and deliver to the Authority for its signature a copy of the Project Work Order via an agreed electronic signature platform. Following receipt by the Authority of the revised Project Work Order it shall sign the Project Work Order. On the Authority's signature the revised Project Work Order shall be binding on both Parties.
- 9.3. Where the Authority requires the termination of a Project after it has commenced, it shall raise a Change Request whereby the Parties agree the Termination Date of the relevant Project, taking into account the stage of the Project reached and the need to bring the Project to an end in an orderly manner, with all reasonable speed. The obligations in respect of the remaining Services shall continue unaffected and a Termination Payment shall only be payable by the Authority if applicable in accordance with Clause 36.2 and Schedule 2 (Charges and Invoicing).
- 9.4. Termination of a Project in accordance with Paragraph 9.3 shall be without prejudice to any right of action or remedy which has accrued or which subsequently accrues.

10. SUB-CONTRACTORS AND SUPPLIERS

- 10.1. The ASC Supplier may engage any Sub-Contractor or third party ASC Supplier in relation to any Project subject to the terms of this Schedule and in accordance with this Contract.
- 10.2. In respect of each Sub-Contractor or third party ASC Supplier engaged by the ASC Supplier on its own accord in relation to a Project the ASC Supplier shall, at no cost to the Authority, ensure that prior to the commencement of any work by that Sub-Contractor or third party ASC Supplier in relation to the Project such Sub-Contractor or third party ASC Supplier is given appropriate information in relation to the Project which shall include, at a minimum, the following information but only where such information is relevant to the work to be undertaken by the Sub-Contractor or third party supplier:
 - 10.2.1. an overview of the ASC Supplier's and Authority's respective organisations including background and position in the market (in the case of the ASC Supplier) and the political landscape (in the case of the Authority);
 - 10.2.2. an overview of the relevant Authority's organisation(s) to which the Project relates and/or impacts;
 - 10.2.3. an introduction to the Project itself, including the relevant background and its intended contribution to the Authority's business objectives;

- 10.2.4. the policies and procedures that are relevant to the Project;
- 10.2.5. an overview of the composition of the Project team (including the different roles of each member or categories of members) and key stakeholders;
- 10.2.6. the specific roles, responsibilities and objectives of the Sub-Contractor or third party ASC Supplier in relation to the Project (including any relevant background material);
- 10.2.7. relevant administrative requirements (e.g. time sheets, status reports and project meetings);
- 10.2.8. any relevant Authority or ASC Supplier policies or procedures specific to the Sub-Contractor's or third party Supplier 's role; and
- 10.2.9. Authority requirements on background checks and vetting and UK-based organisations and personnel shall apply to the ASC Supplier's Sub-Contractor or third party ASC Supplier personnel and organisations.

11. CONFLICTS OF INTEREST

- 11.1. Where the provision or planning of any Project or Service Request involves the selection of, or advice upon the selection of, alternative courses of action (including refraining from a particular course of action) or the acquisition, or advice upon the acquisition of goods, services and rights, the ASC Supplier shall make such selection or acquisition or give such advice in an impartial, independent and unbiased manner and in the best interests of the Authority.
- 11.2. If the ASC Supplier becomes aware of any actual or potential conflict of interest in relation to any Project or Service Request (whether such existed before the Implementation Commencement Date or thereafter) it shall, without undue delay, notify the Authority in writing providing full particulars of the actual or potential conflict together with any additional information which the Authority may require in connection with such matter.

12. AUDIT OF SERVICE REQUESTS, SERVICE CATALOGUE REQUESTS OR PROJECTS

- 12.1. The Authority shall have the right to audit any Service Request, Service Catalogue Request or Project consistent with the provisions set out in Clause 29 (Records and Audit).
- 12.2. The Authority reserves the right to verify throughout each Service Request, Service Catalogue Request or Project that the level of skill and experience of individuals assigned remains consistent with the grade associated with the ASC Supplier Personnel upon which the ASC Supplier bases its charges prior to inception of the Service Request, Service Catalogue Request or Project. The ASC Supplier shall provide to the Authority such information as the Authority may reasonably request to enable it to exercise its rights under this Paragraph 12.2.

ADDITIONAL CLAUSES AND SCHEDULES – CLAUSES

C1 RELEVANT CONVICTIONS

1. RELEVANT CONVICTIONS

1.1 For the purpose of this Clause, the following definitions shall apply:

“Conviction” means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006; and

“Relevant Conviction” means a Conviction that is relevant to the nature of the Services to be provided or as specified by the Authority in the Order Form.

1.2 The ASC Supplier shall ensure that no person who discloses that he has a Relevant Conviction, or who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Services without the approval of the Authority.

1.3 Notwithstanding Clause 1.3.1, for each member of ASC Supplier Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Authority owes a special duty of care, the ASC Supplier shall (and shall procure that the relevant Sub-Contractor shall):

1.3.1 carry out a check with the records held by the Department for Education (DfE);

1.3.2 conduct thorough questioning regarding any Relevant Convictions; and

1.3.3 ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),

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

C2 SECURITY MEASURES

1. SECURITY MEASURES

1.1 For the purpose of this Clause, the following definitions shall apply:

“Document”	includes specifications, plans, drawings, photographs and books;
“Secret Matter”	means any matter connected with or arising out of the performance of this Contract which has been, or may hereafter be, by a notice in writing given by the Authority to the ASC Supplier be designated 'top secret' or 'secret'; and
“Servant”	where the ASC Supplier is a body corporate shall include a director of that body and any person occupying in relation to that body the position of director by whatever name called.

1.2 The ASC Supplier shall not, either before or after the completion or termination of this Contract, do or permit to be done anything which it knows or ought reasonably to know may result in information about a Secret Matter being:

- 1.2.1 without the prior consent in writing of the Authority, disclosed to or acquired by a person who is an alien or who is a British subject by virtue only of a certificate of naturalisation in which his name was included;
- 1.2.2 disclosed to or acquired by a person as respects whom the Authority has given to the ASC Supplier a notice in writing which has not been cancelled stating that the Authority requires that Secret Matters shall not be disclosed to that person;
- 1.2.3 without the prior consent in writing of the Authority, disclosed to or acquired by any person who is not a servant of the ASC Supplier; or
- 1.2.4 disclosed to or acquired by a person who is an employee of the ASC Supplier except in a case where it is necessary for the proper performance of this Contract that such person shall have the information.

1.3 Without prejudice to the provisions of Clause 1.2, the ASC Supplier shall, both before and after the completion or termination of this Contract, take all reasonable steps to ensure:

- 1.3.1 no such person as is mentioned in Clause 1.2 hereof shall have access to any item or document under the control of the ASC Supplier containing information about a Secret Matter except with the prior consent in writing of the Authority;
- 1.3.2 that no visitor to any premises in which there is any item to be supplied under this Contract or where Services are being supplied shall see or discuss with the ASC Supplier or any person employed by him any Secret Matter unless the visitor is authorised in writing by the Authority so to do;
- 1.3.3 that no photograph of any item to be supplied under this Contract or any portions of the Services shall be taken except insofar as may be necessary

for the proper performance of this Contract or with the prior consent in writing of the Authority, and that no such photograph shall, without such consent, be published or otherwise circulated;

1.3.4 that all information about any Secret Matter and every document model or other item which contains or may reveal any such information is at all times strictly safeguarded, and that, except insofar as may be necessary for the proper performance of this Contract or with the prior consent in writing of the Authority, no copies of or extracts from any such document, model or item shall be made or used and no designation of description which may reveal information about the nature or contents of any such document, model or item shall be placed thereon; and

1.3.5 that if the Authority gives notice in writing to the ASC Supplier at any time requiring the delivery to the Authority of any such document, model or item as is mentioned in Clause 1.3.3, that document, model or item (including all copies of or extracts therefrom) shall forthwith be delivered to the Authority who shall be deemed to be the owner thereof and accordingly entitled to retain the same.

1.4 The decision of the Authority on the question whether the ASC Supplier has taken or is taking all reasonable steps as required by the foregoing provisions of this Clause 1.2 shall be final and conclusive.

1.5 If and when directed by the Authority, the ASC Supplier shall furnish full particulars of all people who are at any time concerned with any Secret Matter.

1.6 If and when directed by the Authority, the ASC Supplier shall secure that any person employed by it who is specified in the direction, or is one of a class of people who may be so specified, shall sign a statement that he understands that the Official Secrets Act, 1911 to 1989 and, where applicable, the Atomic Energy Act 1946, apply to the person signing the statement both during the carrying out and after expiry or termination of this Contract.

1.7 If, at any time either before or after the expiry or termination of this Contract, it comes to the notice of the ASC Supplier that any person acting without lawful authority is seeking or has sought to obtain information concerning this Contract or anything done or to be done in pursuance thereof, the matter shall be forthwith reported by the ASC Supplier to the Authority and the report shall, in each case, be accompanied by a statement of the facts, including, if possible, the name, address and occupation of that person, and the ASC Supplier shall be responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by it, that person shall forthwith report the matter to the ASC Supplier with a statement of the facts as aforesaid.

1.8 The ASC Supplier shall place every person employed by it, other than a Sub-Contractor, who in its opinion has or will have such knowledge of any Secret Matter as to appreciate its significance, under a duty to the ASC Supplier to observe the same obligations in relation to that matter as are imposed on the ASC Supplier by Clauses 1.2 and 1.3 and shall, if directed by the Authority, place every person who is specified in the direction or is one of a class of

people so specified, under the like duty in relation to any Secret Matter which may be specified in the direction, and shall at all times use its best endeavours to ensure that every person upon whom obligations are imposed by virtue of this Clause C2 observes the said obligations, and the ASC Supplier shall give such instructions and information to every such person as may be necessary for that purpose, and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to the ASC Supplier with all necessary particulars.

1.9 The ASC Supplier shall, if directed by the Authority, include in the Sub-Contract provisions in such terms as the Authority may consider appropriate for placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to those placed on the ASC Supplier by this Clause C2, but with such variations (if any) as the Authority may consider necessary. Further the ASC Supplier shall:

1.9.1 give such notices, directions, requirements and decisions to its Sub-Contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-Contracts under this Clause C2 into operation in such cases and to such extent as the Authority may direct;

1.9.2 if there comes to its notice any breach by the Sub-Contractor of the obligations of secrecy and security included in their Sub-Contracts in pursuance of this Clause C2, notify such breach forthwith to the Authority; and

1.9.3 if and when so required by the Authority, exercise its power to determine the Sub-Contract under the provision in that Sub-Contract which corresponds to Clause 1.12.

1.10 The ASC Supplier shall give the Authority such information and particulars as the Authority may from time to time require for the purposes of satisfying the Authority that the obligations imposed by or under the foregoing provisions of this Clause C2 have been and are being observed and as to what the ASC Supplier has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof, and the ASC Supplier shall secure that a representative of the Authority duly authorised in writing shall be entitled at reasonable times to enter and inspect any premises in which anything is being done or is to be done under this Contract or in which there is or will be any item to be supplied under this Contract, and also to inspect any document or item in any such premises or which is being made or used for the purposes of this Contract and that any such representative shall be given all such information as he may require on the occasion of, or arising out of, any such inspection.

1.11 Nothing in this Clause C2 shall prevent any person from giving any information or doing anything on any occasion when it is, by virtue of any enactment, the duty of that person to give that information or do that thing.

1.12 If the Authority shall consider that any of the following events has occurred:

1.12.1 that the ASC Supplier has committed a breach of, or failed to comply with any of, the foregoing provisions of this Clause C2; or

- 1.12.2 that the ASC Supplier has committed a breach of any obligations in relation to secrecy or security imposed upon it by any other contract with the Authority, or with any department or person acting on behalf of the Crown; or
- 1.12.3 that by reason of an act or omission on the part of the ASC Supplier, or of a person employed by the ASC Supplier, which does not constitute such a breach or failure as is mentioned in Clause 1.12.2, information about a Secret Matter has been or is likely to be acquired by a person who, in the opinion of the Authority, ought not to have such information;

and shall also decide that the interests of the State require the termination of this Contract, the Authority may by notice in writing terminate this Contract forthwith.

- 1.13 A decision of the Authority to terminate this Contract in accordance with the provisions of Clause 1.12 shall be final and conclusive and it shall not be necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which the Authority's decision is based.

1.14 ASC Supplier's notice

- 1.14.1 The ASC Supplier may within five (5) Working Days of the termination of this Contract in accordance with the provisions of Clause 1.12, give the Authority notice in writing requesting the Authority to state whether the event upon which the Authority's decision to terminate was based is an event mentioned in Clause 1.12 and to give particulars of that event; and
- 1.14.2 the Authority shall within ten (10) Working Days of the receipt of such a request give notice in writing to the ASC Supplier containing such a statement and particulars as are required by the request.

1.15 Matters pursuant to termination

- 1.15.1 The termination of this Contract pursuant to Clause 1.12 shall be without prejudice to any rights of either party which shall have accrued before the date of such termination;
- 1.15.2 The ASC Supplier shall be entitled to be paid for any work or thing done under this Contract and accepted but not paid for by the Authority at the date of such termination either at the price which would have been payable under this Contract if this Contract had not been terminated, or at a reasonable price;
- 1.15.3 The Authority may take over any work or thing done or made under this Contract (whether completed or not) and not accepted at the date of such termination which the Authority may by notice in writing to the ASC Supplier given within thirty (30) Working Days from the time when the provisions of this Clause C2 shall have effect, elect to take over, and the ASC Supplier shall be entitled to be paid for any work or thing so taken over a price which, having regard to the stage which that work or thing has reached and its condition at the time it is taken over, is reasonable. The ASC Supplier shall

in accordance with directions given by the Authority, deliver any work or thing taken over under this Clause, and take all such other steps as may be reasonably necessary to enable the Authority to have the full benefit of any work or thing taken over under this Clause; and

1.15.4 Save as aforesaid, the ASC Supplier shall not be entitled to any payment from the Authority after the termination of this Contract

1.15.5 If, after notice of termination of this Contract pursuant to the provisions of Clause 1.12:

- (a) the Authority shall not within ten (10) Working Days of the receipt of a request from the ASC Supplier, furnish such a statement and particulars as are detailed in Clause 1.14; or
- (b) the Authority shall state in the statement and particulars detailed in Clause 1.14 that the event upon which the Authority's decision to terminate this Contract was based on an event mentioned in Clause 1.12.3,

the respective rights and obligations of the ASC Supplier and the Authority shall be terminated in accordance with the following provisions:

- (c) the Authority shall take over from the ASC Supplier at a fair and reasonable price all unused and undamaged materials, bought-out parts and Components and articles in course of manufacture in the possession of the ASC Supplier upon the termination of this Contract under the provisions of Clause 1.12 and properly provided by or supplied to the ASC Supplier for the performance of this Contract, except such materials, bought-out parts and Components and articles in course of manufacture as the ASC Supplier shall, with the concurrence of the Authority, elect to retain;
- (d) the ASC Supplier shall prepare and deliver to the Authority within an agreed period or in default of agreement within such period as the Authority may specify, a list of all such unused and undamaged materials, bought-out parts and Components and articles in course of manufacture liable to be taken over by or previously belonging to the Authority and shall deliver such materials and items in accordance with the directions of the Authority who shall pay to the ASC Supplier fair and reasonable handling and delivery charges incurred in complying with such directions;
- (e) the Authority shall indemnify the ASC Supplier against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the ASC Supplier in connection with this Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an

unavoidable loss by the ASC Supplier by reason of the termination of this Contract;

- (f) if hardship to the ASC Supplier should arise from the operation of this Clause 1.15 it shall be open to the ASC Supplier to refer the circumstances to the Authority who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the Authority on any matter arising out of this Clause shall be final and conclusive; and
- (g) subject to the operation of Clauses 1.15.3, 1.15.4 and 1.15.5, termination of this Contract shall be without prejudice to any rights of either party that may have accrued before the date of such termination.

C3 COLLABORATION AGREEMENT – NOT USED

SCHEDULE 11 – COLLABORATION AGREEMENT – NOT USED

ALTERNATIVE CLAUSES

SCOTS LAW – NOT USED

1. GOVERNING LAW AND JURISDICTION (CLAUSE 55.1 AND 55.2)

- 1.1 Reference to “*laws of England and Wales*” in the original Clause 55.1 of the Contract (Governing Law, Jurisdiction and Dispute Resolution) shall be replaced with “*laws of Scotland*”.
- 1.2 Where legislation is expressly mentioned in the Contract, the adoption of Clause 1.1 shall have the effect of substituting the equivalent Scots legislation.
- 1.3 Reference to “the courts of England and Wales” in the original Clause 55.2 of the Contract (Governing Law, Jurisdiction and Dispute Resolution) shall be replaced with “the Court of Session”.

2. DEFINITIONS (WORKING DAY)

- 2.1 Reference to “*England and Wales*” in the definition of Working Day shall be replaced with “*Scotland*”.

3. DEFINITIONS (INSOLVENCY EVENT)

- 3.1 Reference to “*Assignment*” in the definition of Insolvency Event shall be replaced with “*Assignment*”.

4. DEFINITIONS (LOSSES)

- 4.1 Reference to “*tort*” in the definition of Losses shall be replaced with “*delict*”.

NORTHERN IRELAND LAW – NOT USED

1. GOVERNING LAW AND JURISDICTION (CLAUSE 55.1 AND 55.2)

- 1.1 Reference to *“laws of England and Wales”* in the original Clause 55.1 of the Contract (Governing Law, Jurisdiction and Dispute Resolution) shall be replaced with *“laws of Northern Ireland”*.
- 1.2 Where legislation is expressly mentioned in the Contract the adoption of Clause 1.1 shall have the effect of substituting the equivalent Northern Ireland legislation.
- 1.3 Reference to *“the courts of England and Wales”* in the original Clause 55.2 of the Contract (Governing Law, Jurisdiction and Dispute Resolution) shall be replaced with *“the Courts of Northern Ireland”*.

2. DEFINITIONS (WORKING DAY)

- 2.1 Reference to *“England and Wales”* in the definition of Working Day shall be replaced with *“Northern Ireland”*.

3. (DEFINITIONS) INSOLVENCY EVENT

- 3.1 Reference to *“section 123 of the Insolvency Act 1986”* in limb f) of the definition of Insolvency Event shall be replaced with *“Article 103 of the Insolvency (NI) Order 1989”*.

JOINT CONTROLLER CLAUSES

1. JOINT CONTROLLER STATUS AND ALLOCATION OF RESPONSIBILITIES

- 1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Controller in respect of that Personal Data in accordance with the terms of these joint controller clauses in replacement of Clauses 34.2 - 34.15 (Where one Party is Controller and the other Party is Processor) and Clauses 34.17 - 34.28 of (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controllers.
- 1.2 The Parties agree that the Party stipulated as such in Attachment 9 (Data Processing) of the Order Form:
- 1.2.1 is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the GDPR regarding the exercise by Data Subjects of their rights under the GDPR;
 - 1.2.2 shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
 - 1.2.3 is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the GDPR;
 - 1.2.4 is responsible for obtaining the informed consent of Data Subjects, in accordance with the GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
 - 1.2.5 shall make available to Data Subjects the essence of these joint controller clauses (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing) of Party stipulated in Clause 1.2 above.
- 1.3 Notwithstanding the terms of Clause 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Controller.

2. UNDERTAKINGS OF BOTH PARTIES

- 2.1 The ASC Supplier and the Authority each undertake that they shall:
- 2.1.1 report to the other Party every two (2) months on:
 - (a) the volume of Data Subject Access Request (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);

- (b) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
- (c) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
- (d) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
- (e) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law,

that it has received in relation to the subject matter of this Contract during that period;

- 2.1.2 notify each other immediately if it receives any request, complaint or communication made as referred to in Clauses 2.1.1(a) to 2.1.1(e);
- 2.1.3 provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Clauses 2.1.1(a) to 2.1.1(e) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
- 2.1.4 not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under the Contract or is required by Law) ensure consent has been obtained from the Data Subject prior to disclosing or transferring the Personal Data to the third party. For the avoidance of doubt, the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in these joint controller Clauses;
- 2.1.5 request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;
- 2.1.6 ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;
- 2.1.7 take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
 - (a) are aware of and comply with their duties under these joint controller Clauses and those in respect of Confidential Information

- (b) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;
- (c) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
- (d) ensure that it has in place Protective Measures as appropriate to protect against a Personal Data Breach having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Personal Data Breach;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (v) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that it holds; and
 - (vi) ensure that it notifies the other Party as soon as it becomes aware of a Personal Data Breach.

2.2 Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under these joint controller clauses in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

3. DATA PROTECTION BREACH

3.1 Without prejudice to Clause 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the Authority and its advisors with:

- 3.1.1 sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;
- 3.1.2 all reasonable assistance, including:
 - (a) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its

cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;

- (b) co-operation with the other Party including taking such reasonable steps as are directed by the Authority to assist in the investigation, mitigation and remediation of a Personal Data Breach;
- (c) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach; and/or
- (d) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Clause 3.2.

3.2 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

- 3.2.1 the nature of the Personal Data Breach;
- 3.2.2 the nature of Personal Data affected;
- 3.2.3 The categories and number of Data Subjects concerned;
- 3.2.4 the name and contact details of the ASC Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;
- 3.2.5 measures taken or proposed to be taken to address the Personal Data Breach; and
- 3.2.6 describe the likely consequences of the Personal Data Breach.

4. AUDIT

4.1 The ASC Supplier shall permit:

- 4.1.1 the Authority, or a third-party auditor acting under the Authority's direction, to conduct, at the Authority's cost, data privacy and security audits, assessments and inspections concerning the ASC Supplier's data security and privacy procedures relating to Personal Data, its compliance with these joint controller clauses and the Data Protection Legislation; and/or
- 4.1.2 the Authority, or a third-party auditor acting under the Authority's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 GDPR by the ASC Supplier so far as relevant to the Contract, and

procedures, including premises under the control of any third party appointed by the ASC Supplier to assist in the provision of the Services.

- 4.2 The Authority may, in its sole discretion, require the ASC Supplier to provide evidence of the ASC Supplier's compliance with Clause 4.1 in lieu of conducting such an audit, assessment or inspection.

5. IMPACT ASSESSMENTS

- 5.1 The Parties shall:

5.1.1 provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures); and

5.1.2 maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with the Contract, in accordance with the terms of Article 30 GDPR.

6. ICO GUIDANCE

The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. The Authority may on not less than thirty (30) Working Days' notice to the ASC Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.

7. LIABILITIES FOR DATA PROTECTION BREACH

- 7.1 If financial penalties are imposed by the Information Commissioner on either the Authority or the ASC Supplier for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:

7.1.1 if in the view of the Information Commissioner, the Authority is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Authority, its employees, agents, contractors (other than the ASC Supplier) or systems and procedures controlled by the Authority, then the Authority shall be responsible for the payment of such Financial Penalties. In this case, the Authority will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Personal Data Breach. The ASC Supplier shall provide to the Authority and its third party investigators and auditors, on request and at the ASC Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;

7.1.2 if in the view of the Information Commissioner, the ASC Supplier is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the Authority is responsible for, then the ASC Supplier shall be responsible for the payment of these Financial Penalties. The ASC Supplier will provide to the Authority and its auditors, on request and at the ASC

Supplier's sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or

- 7.1.3 if no view as to responsibility is expressed by the Information Commissioner, then the Authority and the ASC Supplier shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure.

7.2 If either the Authority or the ASC Supplier is the defendant in a legal claim brought before a court of competent jurisdiction ("**Court**") by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such Personal Data Breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.

7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the "**Claim Losses**"):

- 7.3.1 if the Authority is responsible for the relevant Personal Data Breach, then the Authority shall be responsible for the Claim Losses;
- 7.3.2 if the ASC Supplier is responsible for the relevant Personal Data Breach, then the ASC Supplier shall be responsible for the Claim Losses; and
- 7.3.3 if responsibility for the relevant Personal Data Breach is unclear, then the Authority and the ASC Supplier shall be responsible for the Claim Losses equally.

7.4 Nothing in either Clause 7.2 or Clause 7.3 shall preclude the Authority and the ASC Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the Personal Data Breach and the legal and financial obligations of the Authority.

8. TERMINATION

8.1 If the ASC Supplier is in material Default under any of its obligations under these joint controller clauses, the Authority shall be entitled to terminate this Contract by issuing a Termination Notice in accordance with Clause 35.

9. SUB-PROCESSING

9.1 In respect of any Processing of Personal Data performed by a third party on behalf of a Party, that Party shall:

- 9.1.1 carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by this Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and

- 9.1.2 ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

10. DATA RETENTION

- 10.1 The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by the a Party for statutory compliance purposes or as otherwise required by this Contract), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.