

**RESTRICTED COMMERCIAL**

**FRAMEWORK SCHEDULE 4**

**Part 1**

**MODEL ORDER FORM AND CALL-OFF TERMS**

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## FRAMEWORK SCHEDULE 4

### ORDER FORM AND CALL-OFF TERMS

#### Part 1 - Order Form

This Order Form is issued subject to the provisions of the framework agreement entered into between the Authority and the Supplier on 4<sup>th</sup> September 2013 ("Framework Agreement"). The Supplier agrees to supply the Goods and/or Services specified below on and subject to the terms of this Contract and for the avoidance of doubt this Contract consists of the terms set out in this Order Form and the Call-Off Terms, together with the Schedules thereto.

Date	28/03/2017	Order Number	[◆ TBC ] To be quoted on all correspondence relating to this Order
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#### FROM

Customer	The Home Office "Customer"	
Customer's Address	REDACTED	
Invoice Address	REDACTED	
Contract Ref:	Name:	REDACTED

	<b>Address:</b>	REDACTED
	<b>Phone:</b>	REDACTED
	<b>Email:</b>	REDACTED

**TO**

<b>Supplier</b>	AJ Engineering Services Ltd                      "Supplier"	
<b>Supplier's Address</b>	REDACTED	
<b>Account Manager</b>	John Leslie	
	<b>Name:</b>	REDACTED
	<b>Address:</b>	REDACTED
	<b>Phone:</b>	REDACTED
	<b>Email:</b>	N/A
	<b>Fax:</b>	N/A

<b>1.      TERM</b>
1.1      Commencement Date  <b>4<sup>th</sup> May 2017</b>

1.2 Expiry Date

1.2.1 This Contract shall expire upon the completion of the two van conversions agreed, or by **30<sup>th</sup> June 2017**, whichever occurs first.

Subject to earlier termination of the Contract in accordance with Clause 23, the Contract shall expire on the Expiry Date provided.

2. GOODS AND SERVICES REQUIREMENTS

2.1 Goods, Services and Deliverables required

Enter x against the relevant goods, service/deliverables required.

X	<b><i>Removal of existing vehicle conversion materials</i></b>
X	<b><i>Disposal of existing vehicle conversion materials</i></b>
X	Installation of new conversion materials as per the agreed specification (Appendix B).

***Goods transportation details and packaging provided***

The customer will ensure vehicles are delivered to the agreed supplier location for works to be securely completed.

2.2	<p>Lots under which the above Goods and Services are being supplied:</p> <p>Not applicable – single lot only</p>
2.3	<p>Title to Goods</p> <p><b>Title to Goods is transferred to the Customer in accordance with Clause 5.6.1</b></p>
2.4	<p>Installation Works</p> <p>As per Appendix B.</p>
2.5	<p>Performance/Delivery Location/Premises</p> <p>The vehicles will be delivered to the agreed supplier site to undertake the conversion work via the customers Fleet management company. The authority will also arrange inspection/collection of the vehicles once the conversion work has been completed.</p> <p>All work on the vehicles will take place securely at the Suppliers premises.</p>
2.6	<p>Standards</p> <p>Quality Standards</p> <p>As per Schedule 13 of the Framework Agreement.</p> <p>Technical Standards</p> <p>As per Schedule 13 of the Framework Agreement.</p>
2.7	<p>Warranty Period</p> <p>Where the Goods are supplied by the Supplier the Warranty Period shall be the period from and including the date of Delivery of the Goods to the date 36 Months thereafter. Where the Supplier manufactures new Vehicles/Chassis, the Supplier shall provide a manufacturer's warranty that warrants the Vehicle/Chassis</p>

supplied to the Other Contracting Body as free from defects for a minimum period of three years from the date of delivery.

Any modification work including parts and labour to any Vehicle/Trailer/Body carried out or procured by the Supplier in order to satisfy the requirements of the Other Contracting Body shall be covered by the warranty for a minimum of one year.

Any additional equipment and goods supplied as part of the Order shall have the warranty transferred to the customer.

## 2.8 Security Requirements (including details of the outline Security Management Plan and policy)

As per Schedule 2.

### **Additional Security Requirements**

As per Schedule 2.

## 2.9 Disaster Recovery and Business Continuity

### **Set out in 0**

## 2.10 Disaster

**Disaster means the occurrence of one or more events which, either separately or cumulatively, mean that the Goods and Services, or a material part thereof will be unavailable for a period of 1 month or which is reasonably anticipated will mean that the Goods and Services or a material part thereof will be unavailable for that period.**

3.	SUPPLIER SOLUTION
3.1	Supplier Solution  <b>REDACTED</b>
3.2	Sub-Contractors to be involved in the provision of the Goods, Services and Deliverables  <b>TBC</b>
3.3	Security Management Plan  <b>As per Schedule 2.</b>
3.4	Not Used
3.5	Training  N/A
3.6	Supplier's inspection of the Premises and Infrastructure  N/A work to be carried out at the suppliers premises.

4. PERFORMANCE OF THE GOODS, SERVICES AND DELIVERABLES				
4.1 Implementation Plan and Milestones (including dates for completion)				
4.1.1 The Implementation Plan as at the Commencement Date is set out below:				
Milestone	Deliverables	Duration	Milestone Date	Customer Responsibilities
1	Supplier to contact the authority to refine the proposed timetable and discuss specifications	Within 1 week of contract award	8/5/17	Work schedule formally agreed and vehicles delivered to enable supplier to commence works
2	Vehicle conversion and delivery.	Within 3 weeks of contract	22/05/17	Work schedule formally agreed and vehicles delivered to enable supplier to commence works
3	Vehicle conversions completed to the required specifications and standard. Ensuring all removed parts	By or before 30 <sup>th</sup> June 2017	30/06/17	Customer to view completed vehicles (with demonstration from supplier) and sign off completed works if satisfied



	are disposed of securely.			
4.1.2	<p>If so required by the Customer, the Supplier shall produce within one (1) Month of the Commencement Date a further version of the Implementation Plan (based on the above plan) in such further detail as the Customer may reasonably require. The Supplier shall ensure that each version of the Implementation Plan is subject to Approval and complies with Clause 4.2 of this Contract. The Supplier shall ensure that the Implementation Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation of the Services and/or provision of the Goods.</p>			
4.1.3	<p>The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.</p>			
4.1.4	<p>The Supplier shall perform its obligations so as to Achieve each Milestone by the Milestone Date.</p>			
4.1.5	<p>Changes to the Milestones shall only be made in accordance with the Variation Procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of a Customer default which affects the Supplier's ability to Achieve a Milestone by the relevant Milestone Date).</p>			
4.1.6	<p>Subject to 4.1.4, if a Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Customer Delay Payments in accordance with the table above for each day of delay from and including the relevant Milestone Date until and including the date on which the relevant Milestone criteria are actually Achieved and the Customer provides the Supplier with a Satisfaction Certificate (set out in 0).</p>			
4.1.7	<p>No payment or concession to the Supplier by the Customer or other act or omission of the Customer shall in any way affect the rights of the Customer to recover the Delay Payments pursuant to the provisions of this paragraph 4.1 of this Order or be deemed to be a waiver of the right of the Customer to recover any such Delay Payments unless</p>			

such waiver has been expressly made in writing by the Customer and refers specifically to a waiver of the Customer's rights to claim Delay Payments.

4.2 Testing

**Set out in Schedule 4:**

4.3 Service Levels and Service Credits

**Not Applicable**

4.4 **Critical Service Failure - NOT USED**

4.4.1 In relation to the requirement a Critical Service Failure shall include a delay in producing the vehicles within 5 weeks of the agreed delivery date as stipulated by the Customer.

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

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

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#### 4.5 Monitoring

As per Part B: Performance Monitoring. 0

#### 4.6 Continuous Improvement, Value for Money and Benchmarking

- 4.6.1 Further to the Framework Schedule 7 (Value for Money), the Supplier shall regularly benchmark the Contract Charges and Delivery of the Goods and performance of the Services, against other suppliers providing goods and services substantially the same as the Goods and Services during the Contract Period in order to compare the Contract Charges and level of performance of the Services and delivery of the Goods with charges and services offered by third parties so as to provide the Customer with information for comparison purposes.
  - 4.6.2 The Customer shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in paragraph 4.6.1 above.
  - 4.6.3 The Customer shall be entitled to disclose the results of any benchmarking of the Contract Charges and provision of the Goods and Services to the Authority and other Contracting Bodies.
  - 4.6.4 The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Customer in order to undertake the benchmarking referred to in this paragraph 4.6, such information requirements to be at the discretion of the Customer.
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5. CUSTOMER RESPONSIBILITIES
<p data-bbox="331 258 784 288">5.1 Customer's Responsibilities</p> <p data-bbox="349 328 1601 496">Following award the Customer will arrange a meeting/teleconference between the winning bidder and the receiving Customer. This will allow for confirmation of the specification prior to conversion, any mandatory needs that are identified as part of these discussions which have not been captured as part of the issued specification will be priced and agreed to in writing prior to works commencing (as outlined in Key Milestones).</p> <p data-bbox="349 528 1601 560">The Customer will arrange collection and delivery via their current Fleet Management Company.</p> <p data-bbox="331 592 719 622">5.2 Customer's Equipment</p> <p data-bbox="349 662 649 694">As per the Appendix B.</p>
6. CHARGES AND PAYMENT
<p data-bbox="331 794 1601 895">6.1 Contract Charges payable by the Customer (including any applicable discount but excluding VAT), payment profile and method of payment (e.g. Government Procurement Card (GPC) or BACS))</p> <p data-bbox="349 927 1601 1027">Payment will be made within 30 days of receipt of invoice containing a valid purchase order number and an elemental breakdown of work. Invoices should be electronically sent to REDACTED.</p>
<p data-bbox="331 1179 719 1209">6.2 Invoicing and Payment</p> <p data-bbox="349 1249 1601 1310">The Supplier shall issue electronic invoices Monthly in arrears. The Customer shall pay the Supplier within 30 calendar days of receipt of a Valid Invoice, submitted in accordance with this</p>

paragraph 6.2, the payment profile set out in paragraph 6.1 above and the provisions of this Contract.

## 7. LIABILITY

Subject to the provisions of Clause 22.1 of the Call-Off Contract:

- 7.1 The annual aggregate liability of either Party for all defaults resulting in direct loss of or damage to the property of the other Party under or in connection with this Contract shall in no event exceed £1 million.
- 7.2 The annual aggregate liability under this Contract of [either Party] for all defaults shall in no event exceed the greater of £2 million] and/or one hundred and twenty five percent (125%) per cent of the Contract Charges payable by the Customer to the Supplier [in the Year in which the liability arises or any anniversary thereof in which the liability arises]/[during the Contract Period.
- 7.3 [the Supplier's aggregate liability in respect of Delay Payments shall be limited to [£ ] or the greater of [£ ] per cent of the Contract Charges. ] – **NOT USED**

## 8. INSURANCE

### 8.1 Minimum Insurance Period

Six (6) Years following the expiration or earlier termination of this Contract.

8.2 To comply with its obligations under Clause 22.2 and as a minimum, where requested by the Customer in writing the Supplier shall ensure that:

8.2.1 **professional indemnity insurance** is held by the Supplier and by any agent, Sub-Contractor or consultant involved in the supply of the Goods and Services and that such professional indemnity insurance has a minimum limit of indemnity of one million pounds sterling (£1,000,000) for each individual claim or such higher limit as the Customer may reasonably require (and as required by Law) from time to time;

8.2.2 **public liability insurance** adequate to cover all risks in the performance of this Contract from time to time with a minimum limit of [two million pounds sterling (£2,000,000)] for each individual claim or such higher limit as the Customer may reasonably require (and as required by Law) from time to time; and

8.2.3 **[property damage insurance]** with a minimum limit of [one million pounds sterling (£1,000,000)] for each individual claim or such higher limit as the Customer may reasonably require from time to time]; and

8.2.4 **[product liability insurance]** with a minimum limit of [one million pounds sterling (£1,000,000)] for each individual claim or such higher limit as the Customer may reasonably require from time to time]; and

8.2.5 **employers' liability insurance** with a minimum limit of five million pounds sterling (£5,000,000) or such higher minimum limit as required by Law from time to time.

## 9. TERMINATION

### 9.1 Undisputed Sums Time Period

At least ninety (90) Working Days of the date of the written notice specified in Clause 23.4.2.

**9.2 Termination Without Cause**

At least thirty (30) Working Days in accordance with Clause 23.5.

**10. CONFIDENTIAL INFORMATION**

The following information shall be deemed Commercially Sensitive Information or Confidential Information:

The Supplier is not to discuss any information relating to the vehicle conversion work.

**11. AUDIT AND ACCESS**

11.1 Seven (7) Years after the expiry of the Contract Period or following termination of this Contract.

**12. FORMATION OF CONTRACT**

12.1 The Customer shall enter into a Contract by sending electronically this Order Form to the Supplier for the provision of the Goods and Services referred to in the Order Form.

12.2 The Supplier shall enter into this Contract by returning electronically a signed copy of the Order Form to the Customer.

12.3 This Contract shall be formed when the Customer acknowledges the receipt of the signed copy of the Order Form.

**BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER AGREES** to enter a legally binding contract with the Customer to provide the Goods and Services. The Parties hereby acknowledge and agree that they have read the Call-Off Terms and the Order Form and by signing below agree to be bound by the terms of this Contract.

**For and on behalf of the Supplier:**

Name and Title	
Signature	
Date	

**For and on behalf of the Customer:**

Name and Title	
Signature	
Date	



## **Part 2 - Call-Off Terms**

### **INDEX**

1.	GENERAL PROVISIONS .....	1
2.	DUE DILIGENCE .....	13
3.	GUARANTEE .....	14
4.	CONTRACT PERIOD .....	14
5.	SUPPLY OF GOODS AND SERVICES .....	14
6.	ASSISTANCE ON EXPIRY OR TERMINATION .....	22
7.	DISASTER RECOVERY AND BUSINESS CONTINUITY .....	22
8.	MONITORING OF CONTRACT PERFORMANCE .....	22
9.	CONTINUOUS IMPROVEMENT .....	22
10.	DISRUPTION .....	24
11.	REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES OR PROVISION OF THE GOODS .....	24
12.	PREMISES .....	26
13.	PAYMENT AND CONTRACT CHARGES .....	28
14.	KEY PERSONNEL .....	30
15.	SUPPLIER'S STAFF .....	30
16.	GOVERNMENT FRAMEWORKS .....	31
17.	TRAINING .....	33
18.	STAFFING SECURITY .....	33
19.	INTELLECTUAL PROPERTY RIGHTS .....	34
20.	PROTECTION OF INFORMATION .....	36
21.	WARRANTIES AND REPRESENTATIONS .....	47
22.	LIABILITIES .....	49
23.	TERMINATION .....	53
24.	CONSEQUENCES OF EXPIRY OR TERMINATION .....	57
25.	PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES .....	59
26.	HEALTH AND SAFETY .....	59
27.	ENVIRONMENTAL REQUIREMENTS .....	60
28.	PREVENTION OF BRIBERY AND CORRUPTION .....	60
29.	RECORDS AND AUDIT ACCESS .....	62

30.	NON-DISCRIMINATION.....	63
31.	PREVENTION OF FRAUD .....	64
32.	TRANSFER AND SUB-CONTRACTING .....	64
33.	FORCE MAJEURE.....	67
34.	WAIVER .....	68
35.	CUMULATIVE REMEDIES.....	69
36.	FURTHER ASSURANCES.....	69
37.	VARIATION .....	69
38.	SEVERABILITY .....	69
39.	MISTAKES IN INFORMATION.....	70
40.	SUPPLIER'S STATUS.....	70
41.	CONFLICTS OF INTEREST.....	70
42.	ENTIRE AGREEMENT.....	70
43.	THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999.....	71
44.	NOTICES .....	71
45.	LEGISLATIVE CHANGE .....	72
46.	STANDARDS .....	72
47.	DISPUTES AND LAW .....	72
	SCHEDULE 1: VARIATION FORM.....	1
	SCHEDULE 2: SECURITY MANAGEMENT PLAN .....	1
	SCHEDULE 3: PARENT COMPANY GUARANTEE. <b>ERROR! BOOKMARK NOT DEFINED.</b>	
	SCHEDULE 4: TESTING .....	1
	SCHEDULE 5: DISASTER RECOVERY AND BUSINESS CONTINUITY.....	5
	SCHEDULE 6: SERVICE LEVELS AND SERVICE CREDITS.....	12
	PART A Service Levels .....	12
	PART B Performance Monitoring .....	16
	SCHEDULE 7: EXIT PLANNING AND SERVICE TRANSFER ARRANGEMENTS .....	18
	SCHEDULE 8: DIVERSITY & EQUALITY.....	21
	PART A Low Risk and / or Low Value Procurement .....	22
	PART B High Risk and / or High Value Procurement..... <b>Error! Bookmark not defined.</b>	
	SCHEDULE 9: STANDARDS.....	26
	SCHEDULE 10: ALTERNATIVE AND/OR ADDITIONAL CLAUSES ... <b>ERROR! BOOKMARK NOT DEFINED.</b>	
48.	SECURITY MEASURES .....	<b>ERROR! BOOKMARK NOT DEFINED.</b>
49.	ACCESS TO MOD SITES .....	<b>ERROR! BOOKMARK NOT DEFINED.</b>

## 1. GENERAL PROVISIONS

### 1.1 Definitions

In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

**"Achieve"** means in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone in accordance with paragraph 4.1 of the Order Form and **"Achieved"** and **"Achievement"** shall be construed accordingly;

**"Additional Service Charge"** means those charges for the Additional Services;

**"Additional Goods and Services(s)"** means additional services which the Customer may request from time to time which may be added to the Services in accordance with this Contract;

**"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;

**"Affected Party"** means the party seeking to claim relief in respect of a Force Majeure;

**"Approval"** means the prior written consent of the Customer and **"Approve"** and **"Approved"** shall be construed accordingly;

**"Auditor"** means the National Audit Office or an auditor appointed by the Audit Commission as the context requires;

**"Authority"** means **THE MINISTER FOR THE CABINET OFFICE ("Cabinet Office")** as represented by Government Procurement Service formerly Buying Solutions, trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;

**"BCDR Plan"** means any plan relating to business continuity and disaster recovery as referred to in paragraph 2.9 of the Order Form; **"Business Continuity Plan"** has the meaning set out in paragraph 1.2.2 of OSCHEDULE 5: DISASTER RECOVERY AND BUSINESS CONTINUITY;

**"Call-Off Terms"** means these terms and conditions in respect of the provision of the Goods and Services, together with the Schedules hereto;

**"Call-Off Agreement"** means a legally binding agreement (entered into pursuant to the provisions of this Framework Agreement) for the provision of the Goods and Services made between a Contracting Body and the Supplier pursuant to Framework Schedule 5 (Ordering Procedure) of the Framework Agreement;

**"Change in Law"** means any change in Law or governmental policy which impacts on the supply of the Goods and Services and performance of the Call-Off Terms which comes into force after the Commencement Date;

**"Clearance"** means national security clearance and employment checks undertaken by and/or obtained from the Defence Vetting Agency;

**"Commencement Date"** means the date set out in paragraph 1.1 of the Order Form;

**"Commercially Sensitive Information"** means the Confidential information listed in paragraph 10 of the Order Form (if any) comprising of a commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;

**"Confidential Information"** means the Customer's Confidential Information and/or the Supplier's Confidential Information;

**"Continuous Improvement Plan"** means a plan for improving the provision of Goods and Services and/or reducing the charges produced by the Supplier pursuant to Clause 9 of this Contract and Schedule 7 (Value for Money) of the Framework Agreement;

**"Contract"** means the written agreement between the Customer and the Supplier consisting of the Order Form and the Call-Off Terms save that for the purposes of Clause 1.1.11 only, reference to Contract shall not include the Order Form;

**"Contract Period"** means the period from the Commencement Date to:

- (a) the Expiry Date; or
- (b) such earlier date of termination or partial termination of the Contract in accordance with Law or the provisions of the Contract;

**"Contract Charges"** means the prices (exclusive of any applicable VAT), payable to the Supplier by the Customer under this Contract, as set out in paragraph 6.1 of the Order Form, in consideration of the full and proper performance by the Supplier of its obligations under the Contract less any Service Credits;

**"Contracting Body"** means [the Authority and] any [other] person as listed in paragraph VI.3 of the OJEU Notice and **"Contracting Bodies"** and **"Contracting Body"** shall be construed accordingly; additionally "Contracting Bodies" may be vehicle lease or vehicle management providers acting on behalf of other customers.

**"Control"** means control as defined in section 1124 and 450 of the Corporation Tax Act 2010 and **"Controls"** and **"Controlled"** shall be interpreted accordingly;

**"Critical Service Failure"** shall have the meaning given in paragraph 4.4 of the Order Form;

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

**"Customer"** means the customer(s) identified in the Order Form;

**"Customer 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 Supplier by or on behalf of the Customer; or
  - (ii) the Supplier is required to generate, process, store or transmit pursuant to this Contract; or
- (b) any Personal Data for which the Customer is the Data Controller;

**"Customer Pre-Existing IPR"** shall mean any Intellectual Property Rights vested in or licensed to the Customer prior to or independently of the performance by the Supplier of its obligations under the Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;

**"Customer's Premises"** means the premises identified in paragraph 2.5 of the Order Form and which are to be made available for use by the Supplier for the provision of the Goods and Services on the terms set out in this Contract;

**"Customer Responsibilities"** means the responsibilities of the Customer set out in paragraph 5.1 of the Order Form;

**"Customer Representative"** means the representative appointed by the Customer from time to time in relation to the Contract;

**"Customer System"** means the Customer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer or the Supplier in connection with this Contract which is owned by or licensed to the Customer by a third party and which interfaces with the Supplier System or which is necessary for the Customer to receive the Goods and Services;]

**"Customer's Confidential Information"** means all Customer Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Customer, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;

**"Data Controller"** shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;

**"Data Processor"** shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;

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

**"Data Subject"** shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;

**"Default"** means any breach of the obligations of the Supplier (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the Supplier or the Supplier's Staff in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to the Customer;

**"Delay Payments"** means payments detailed in paragraph 4.1 of the Order Form and Clause 5.8 of this Contract;

**"Deliverables"** means those deliverables listed in paragraph 2.1 of the Order Form (if any);

**"Delivery"** means the time at which the Goods and Services have been delivered by the Supplier and the Customer has issued a Satisfaction Certificate in respect thereof and **"Deliver"** and **"Delivered"** shall be construed accordingly;

**"Disaster"** shall have the meaning given in paragraph 2.10 of the Order Form;

**"Disaster Recovery"** means the process of restoration of the Services by the provision of the Disaster Recovery Services;

**"Disaster Recovery Plan"** has the meaning set out in paragraph 1.2.3 of 0(SCHEDULE 5: DISASTER RECOVERY AND BUSINESS CONTINUITY);

**"Disaster Recovery Services"** means the disaster recovery and/or business continuity services (as the context may require) to be provided by the Supplier pursuant to 0(SCHEDULE 5: DISASTER RECOVERY AND BUSINESS CONTINUITY);

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

**"Dispute Resolution Procedure"** means the dispute resolution procedure set out in Clause 47.2;

**"Documentation"** means any hard or soft copy operating instructions, installation instructions or the technical specifications, user manuals, operating manuals, process definitions and procedures and other documentation including designs relating to the Goods and Services;

**"Environmental Information Regulations"** means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the

Information Commissioner or relevant government department in relation to such regulations;

**"Equipment"** means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under the Contract which, for the avoidance of doubt does not include the Goods;

**"ERG"** means the Cabinet Office Efficiency and Reform Group;

**"Exit Plan"** has the meaning set out in Clause 5.11;

**"Expiry Date"** means the date set out in paragraph 1.2 of the Order Form;

**"FOIA"** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

**"Force Majeure"** means any event, occurrence or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:

- (a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;
- (b) riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
- (c) acts of government, local government or Regulatory Bodies;
- (d) fire, flood or any disaster;
- (e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
- (f) any industrial dispute relating to the Supplier, the Supplier's Staff or any other failure in the Supplier or the Sub-Contractor's supply chain; and
- (g) any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned;

**"Framework Agreement"** means the framework agreement between the Authority and the Supplier referred to in the Order Form;

**"Framework Price(s)"** means the price(s) applicable to the provision of the Goods and Services set out in Framework Schedule 3 (Charging Structure);

**"Fraud"** means any offence under any Laws creating offences in respect of fraudulent acts or in relation to the Misrepresentation Act 1967 or at common law in respect of

fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud a Contracting Body or the Customer;

**"General Principles"** has the meaning set out in paragraph 1.2.1 of 0SCHEDULE 5: DISASTER RECOVERY AND BUSINESS CONTINUITY;

**"Good Industry Practice"** means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;

**"Goods and Services"** means the goods and services to be supplied as specified in paragraphs 2.1 and 2.3 of the Order Form. **"Goods"** and **"Services"** shall be interpreted accordingly

**"Guarantee"** means the deed of guarantee set out in **Error! Reference source not found.****Error! Reference source not found.;**

**"Guarantor"** means the Supplier's parent company identified in the Order Form (if any);

**"HMRC"** means Her Majesty's Revenue and Customs;

**"ICT"** means information and communications technology;

**"ICT Environment"** means the Customer System and the Supplier System;

**"Implementation Plan"** means the plan set out in paragraph 4.1 of the Order Form and Clause 5.2 of this Contract;

**"Information"** has the meaning given under section 84 of the FOIA;

**"Installation Works"** shall mean all works which the Supplier is to carry out at the beginning of the Contract Period to install the Goods in accordance with paragraph 2.4 of the Order Form;

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

- (a) patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, semi-conductor topography rights, rights in inventions, domain names and website addresses, trade or business names, rights in Know-How and moral rights and other similar rights or obligations whether registerable or not;
- (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 whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off;

**"ITT Response"** means the response submitted by the Supplier to the Invitation to Tender issued by the Authority on 31/03/2017.

**"Key Personnel"** means the individuals (if any) identified in paragraph **Error! Reference source not found.** of the Order Form;

**"Key Performance Indicators" or "KPIs"** means the performance measurements and targets set out in Part B of the Framework Schedule 1 (Goods and Services);

**"Know-How"** means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and Services but excluding know-how already in the Supplier's or the Customer's possession before the Commencement Date;

**"Law"** means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of Court or directives or requirements of any Regulatory Body, delegated or subordinate legislation;

**"List x"** means, in relation to a Sub-Contractor, one who has been placed on List x in accordance with Ministry of Defence guidelines and procedures, due to that Sub-Contractor undertaking work on its premises marked as "CONFIDENTIAL" or above;

**"Management Information"** means the management information specified in Framework Schedule 8 (Management Information) and, where applicable, paragraph 5.5 of the Order Form;

**"Material Breach"** means a material breach of this Call-Off Contract and/or, breach by the Supplier of any of the following Clauses: Clause 8 (Monitoring of Contract Performance), Clause 9 (Continuous Improvement), Clause 20.5 (Protection of Personal Data), Clause 20.7 (Official Secrets Acts 1911 to 1989), Clause 21 (Warranties and Representations), Clause 28 (Prevention of Bribery and Corruption), Clause 29 (Records and Audits Access), Clause 30 (Non-Discrimination), Clause 31 (Prevention of Fraud), Clause 32 (Transfer and Sub-Contracting), shall be a material breach.

**"Milestone"** means an event or task described in the Implementation Plan which must be completed by the corresponding Milestone Date set out in such plan;

**"Milestone Date"** means the date set against the relevant Milestone in the Implementation Plan;

**"Minimum Insurance Period"** has the meaning given in paragraph 8.1 of the Order Form;

**"Ministry of Justice Guidance"** means Ministry of Justice Guidance in relation to Section 9 of the Bribery Act 2010 available at <http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf>;

**"Month"** means a calendar month and **"Monthly"** shall be interpreted accordingly;

**"Order"** means the order submitted by the Customer to the Supplier in accordance with the Framework Agreement;

**"Order Form"** means the form containing details of an Order, together with other information in relation to such Order, including without limitation the description of the Goods and Services to be supplied;

**"Ordered Goods"** means the goods as specified in paragraph 2.1 of the Order Form;

**"Parent Company"** means in relation to the Supplier any company which is the ultimate holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier. The term **"Parent Company"** shall have the meaning ascribed by the Companies Act 2006 section 1159 and Schedule 6 of the Companies Act 2006 or any statutory re-enactment or amendment thereto;

**"Party"** means the Supplier or the Customer and **"Parties"** shall mean both of them;

**"Personal Data"** shall have the same meaning as set out in the Data Protection Act 1998;

**"Premises"** means the location where the Services are to be provided and/or the Goods are to be supplied, as set out in paragraph 2.5 of the Order Form;

**"Processing"** has the meaning given to "processing" under the Data Protection Act 1998 (but shall include both manual and automatic processing), and **"Process"** and **"Processed"** shall be interpreted accordingly;

**"Prohibited Act"** means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or the Authority 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; or
- (b) committing any offence:
  - (i) under the Bribery Act 2010; or

- (ii) under legislation creating offences concerning fraudulent acts; or
- (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Authority and/or Customer and/or any other Contracting Body; or
- (iv) defrauding, attempting to defraud or conspiring to defraud the Authority and/or the Customer or any other Contracting Body.

**"Property"** means the property, other than real property and IPRs, issued or made available to the Supplier by the Customer in connection with this Contract;

**"Quality Standards"** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with (as may be further detailed in paragraph 2.6 of the Order Form) and any other applicable quality standards, Government codes of practice and Guidance;

**"Quarter"** means a three (3) Months period beginning on 1<sup>st</sup> January, 1<sup>st</sup> April, 1<sup>st</sup> July or 1<sup>st</sup> October. The term **"Quarterly"** shall be similarly construed;

**"Regulatory Bodies"** means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Customer;

**"Related Supplier"** means any person (other than the Supplier) who provides goods and services to the Customer which are related to the Goods and Services from time to time;

**"Replacement Supplier"** means any third party provider of Replacement Goods and Services appointed by the Customer from time to time;

**"Replacement Goods and Services"** means any goods and services which are substantially similar to any of the Goods and Services and which the Customer receives in substitution for any of the Goods and Services following the expiry or termination of this Contract, whether those goods and services are provided by the Customer internally and/or by any third party;

**"Request for Information"** means a request for information or an apparent request relating to this Contract or the provision of the Goods and Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;

**"Review Report"** has the meaning set out in paragraph 6 of 0SCHEDULE 5: DISASTER RECOVERY AND BUSINESS CONTINUITY;

**"Satisfaction Certificate"** means the certificate materially in the form of the document contained in the Appendix to Schedule 4 (Testing) granted by the Customer when the Supplier has Achieved a Milestone;

**"Security Management Plan"** means the Supplier's security management plan prepared pursuant to paragraph 3 of SCHEDULE 2: an outline of which is set out in paragraph 2.8 of the Order Form as updated from time to time;

**"Security Policy"** means the Customer's security policy set out in paragraph 2.8 of the Order Form, as updated from time to time;

**"Service Credits"** means the sums referred to in paragraph 4.3 of the Order Form as being payable by the Supplier in respect of any failure by the Supplier to meet one or more Service Levels;

**"Service Levels"** means any service levels applicable to the provision of the Services as referred to in paragraph 4.3 of the Order Form and set out in 0 of this Contract;

**"Service Requirements"** means the requirements set out in Framework Schedule 1 (Goods and Services);

**"Services"** means the services to be supplied as set out in paragraph 2.1 of the Order Form;

**"Services [Level] Failures"** means an unplanned failure and interruption to Services, reduction in the quality of the Services or event which could affect the Services in the future;

**"Sites"** means any premises from which the Services are provided or from which the Supplier manages, organises or otherwise directs the provision or the use of the Services or where any part of the Supplier System is situated or where any physical interface with the Customer System takes place;

**"Staff"** means all persons employed by the Supplier and/or any Sub-Contractor to perform its obligations under this Contract together with the Supplier's and/or any Sub-Contractor's servants, consultants, agents, suppliers and Sub-Contractors used in the performance of its obligations under this Contract (or any Sub-Contract);

**"Staff Vetting Procedures"** means the Customer's procedures and departmental policies for the vetting of personnel as set out in paragraph **Error! Reference source not found.** of the Order Form;

**"Standards"** means the British or international standards, Customer's internal policies and procedures, Government codes of practice and guidance referred to in Schedule 9 (Standards) together with any other specified policies or procedures identified in the Framework Schedule 13 (Standards);

**"Sub-Contract"** means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to

the Supplier the Goods and Services or any part thereof or facilities, goods or services necessary for the provision of the Goods and Services or any part thereof necessary for the management, direction or control of the Goods and Services or any part thereof;

**"Sub-Contractor"** means any person with whom the Supplier enters into a Sub-Contract or its servants or agents;

**"Supplier"** means the person, firm or company with whom the Customer enters into the Contract as identified in the Order Form;

**"Supplier's Confidential Information"** means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential or which ought reasonably to be considered to be confidential (whether or not it is marked as "confidential");;

**"Supplier's Provisional Staff List"** means a list prepared and updated by the Supplier of all Supplier Staff who are engaged in or wholly or mainly assigned to, the provision of the Services (or any relevant part of the Services which it is envisaged will no longer be provided by the Supplier) as at the date of such list;]

**"Supplier's Proposals"** has the meaning set out in paragraph 6.3.3 of 0 (Disaster Recovery and Business Continuity);

**"Supplier Solution"** means the Supplier's solution for the provision of the Goods and Services as referred to in paragraph 3.1 of the Order Form;

**"Supplier System"** means the information and communications technology system used by the Supplier in performing the Services, the Equipment and related cabling (but excluding the Customer System);

**"Technical Standards"** means the technical standards set out in paragraph 2.6 of the Order Form;

**"Tender"** means the tender submitted by the Supplier to the Customer in response to the Customer's invitation to suppliers for formal offers to supply it with the Goods and Services pursuant to the Framework Agreement;

**"Tests" and "Testing"** means any tests required to be carried out pursuant to this Contract as set out in the Test Plan and in paragraph 4.2 of the Order Form;

**"Test Issue"** means any variance or non-conformity of Goods, Services or Deliverables from its requirements as set out in the Contract;

**"Test Plan"** means a plan for the Testing of the Goods, Services or Deliverables and other agreed criteria related to the achievement of Milestones as described further in paragraph 4 of 0;

**"Test Strategy"** means a strategy for the conduct of Testing as described further in paragraph 3 of 0

**"Transferring Goods" means Goods**, title to which transfers between the Parties in accordance with Clause 5.6.1, as may be specified in paragraph 2.3 of the Order Form;

**"Undelivered Goods"** shall have the meaning given in **Clause 5.5.7**;

**"Undisputed Sums Time Period"** has the meaning given in paragraph 9.1 of the Order Form;

**"Use"** means:

- (a) in respect of software, the right to load, execute, store, transmit, display and copy (for the purposes of loading, execution, storage, transmission or display) [modify, adapt, enhance, reverse compile, decode, translate, or otherwise utilise] that software; and
- (b) in respect of other IPR, the right to use, duplicate and otherwise maintain the materials concerned;

**"Valid Invoice"** means an invoice issued by the Supplier to the Customer that complies with Clause 13.2.2;

**"Variation"** has the meaning given to it in Clause 37.1(Variation);

**"Variation Procedure"** means the procedure set out in Clause 37;

**"VAT"** means value added tax in accordance with the provisions of the Value Added Tax Act 1994, as amended from time to time;

**"Warranty Period"** means the period specified as such in paragraph 2.7 of the Order Form;

**"Working Day"** means any day other than a Saturday or Sunday or public holiday in England and Wales; and

**"Year"** means a calendar year.

The interpretation and construction of this Contract shall be subject to the following provisions:

- 1.1.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.1.2 words importing the masculine include the feminine and the neuter;
- 1.1.3 the words "include", "includes" and "including" "for example" and "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;
- 1.1.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever

kind and however constituted and their successors and permitted assigns or transferees;

- 1.1.5 the Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to this Contract includes the Schedules;
- 1.1.6 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to such statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, modification, order, regulation or instrument;
- 1.1.7 headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract;
- 1.1.8 references to "Clauses" and "Schedules" are, unless otherwise provided, references to the Clauses of and Schedules to this Contract. References to "paragraphs" are, unless otherwise provided, references to paragraphs of the Schedule in which the references are made;
- 1.1.9 terms or expressions contained in this Contract which are capitalised but which do not have an interpretation in Clause 1 shall be interpreted in accordance with the Framework Agreement save for such words as do not have an interpretation in the Framework Agreement in which case they shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning;
- 1.1.10 reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and
- 1.1.11 in the event of and only to the extent of any conflict between the Order Form, the Clauses of this Contract, any document referred to in the Clauses of this Contract and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
  - 1.1.11.1 the Framework Agreement;
  - 1.1.11.2 the Clauses of this Contract;
  - 1.1.11.3 the completed Order Form; and
  - 1.1.11.4 any other document referred to in the Clauses of this Contract.

## **2. DUE DILIGENCE**

### **2.1 The Supplier acknowledges that it:**

- 2.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;

2.1.2 has raised all relevant due diligence questions with the Customer before the Commencement Date; and

2.1.3 has entered into this Contract in reliance on its own due diligence alone.

### 3. GUARANTEE

Where the Customer has specified in the Order Form that this Contract shall be conditional upon receipt of a Guarantee from the Guarantor, the Supplier shall deliver to the Customer an executed Guarantee substantially in the form set out in **Error! Reference source not found.** from the Guarantor, on or prior to the Commencement Date.

### 4. CONTRACT PERIOD

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

4.1.1 the date specified in the Order Form of the 30/06/2017

4.2 For the purposes of this Contract, the initial period [and any extensions thereof] shall be referred to as the "Term".

### 5. SUPPLY OF GOODS AND SERVICES

#### 5.1 Supply of the Goods and Services

5.1.1 The Supplier shall supply the Goods and Services in accordance with the Implementation Plan as outlined in paragraph 4.1 of the Order Form.

5.1.2 The Supplier shall supply the Goods and Services during the Contract Period in accordance with the Customer's requirements as set out in this Contract in consideration of the payment of the Contract Charges. The Customer may inspect and examine the manner in which the Supplier supplies the Goods and Services at the Premises during normal business hours on reasonable notice.

5.1.3 If the Customer informs the Supplier in writing that the Customer reasonably believes that any part of the Goods and Services does not meet the requirements of the Contract or differs in any way from those requirements, the Supplier shall at its own expense re-schedule and re-Deliver and/or re-perform, as appropriate the Goods and Services in accordance with the requirements of this Contract within such reasonable time as may be specified by the Customer.

5.1.4 The Supplier accepts responsibility for all damage to, shortage or loss of the Ordered Goods if:

5.1.4.1 the same is notified in writing to the Supplier within three (3) Working Days of receipt of the Ordered Goods by the Customer; and



- 5.1.4.2 the Ordered Goods have been handled by the Customer in accordance with the Supplier's instructions.
- 5.1.5 Where the Supplier accepts responsibility under Clause 5.1.4 it shall, at its sole option, replace or repair the Ordered Goods (or part thereof) within such time as is reasonable having regard to the circumstances and as agreed with the Customer.
- 5.1.6 The Supplier acknowledges and agrees that the Customer relies on the skill and judgment of the Supplier in the supply of the Goods and Services and the performance of its obligations under this Contract.
- 5.1.7 If requested by the Customer, the Supplier shall provide the Customer with samples of Goods for evaluation and Approval, at the Supplier's cost and expense.
- 5.1.8 The Goods shall be packed and marked in a proper manner and in accordance with the Customer's instructions as set out in the Order Form, any Law and any requirements of the carriers. In particular the Goods shall be marked with the Order Number and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

## **5.2 Implementation Plan**

- 5.2.1 Subject to paragraph 4.1 of the Order Form, the Implementation Plan must contain information at the level of detail necessary to manage the implementation effectively. The draft Implementation Plan shall take account of all dependencies known to, or which should reasonably be known to the Supplier.
- 5.2.2 Once the draft Implementation Plan is Approved by the Customer (such Approval not to be unreasonably delayed or withheld), the Supplier shall:
  - 5.2.2.1 monitor its performance against the Implementation Plan;
  - 5.2.2.2 report to the Customer on such performance; and
  - 5.2.2.3 keep the Implementation Plan under review.
- 5.2.3 [If the Supplier fails to meet the agreed timetable in the Implementation Plan, the Customer shall be entitled to Delay Payments calculated in accordance with paragraph 4.1 of the Order Form and Clause 5.8].

## **5.3 Provision and Removal of Equipment**

- 5.3.1 Unless otherwise stated in the Order Form, the Supplier shall provide all the Equipment necessary for the supply of the Goods and Services.

- 5.3.2 The Supplier shall not deliver any Equipment nor begin any work on the Premises without obtaining Approval.
- 5.3.3 All Equipment brought onto the Premises shall be at the Supplier's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless and to the extent that the Supplier is able to demonstrate that such loss or damage was caused by or materially contributed to by the Customer's default. The Supplier shall be wholly responsible for the haulage or carriage of the Equipment to the Premises and the removal thereof when it is no longer required by the Customer and in each case at the Supplier's sole cost. Unless otherwise stated in this Contract, Equipment brought onto the Premises will remain the property of the Supplier.
- 5.3.4 The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 5.3.5 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
- 5.3.5.1 remove from the Premises any Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with the requirements of this Contract; and
- 5.3.5.2 replace such item with a suitable substitute item of Equipment.
- 5.3.6 Where a failure of an item of Equipment or any component part of Equipment causes two (2) or more Services Failures in any twelve (12) Month period, the Supplier shall notify the Customer in writing and shall, at the Customer request (acting reasonably), replace such Equipment or component part thereof at its own cost with a new item of Equipment or component part thereof (of the same specification or having the same capability as the Equipment being replaced).
- 5.3.7 Upon termination or expiry of this Contract, the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Goods and Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or Supplier's Staff.

## 5.4 Quality

- 5.4.1 The Supplier shall at all times comply with the Technical Standards and the Quality Standards, standards provisions of **SCHEDULE 9: STANDARDS** and where applicable shall maintain accreditation with the relevant Quality Standards' authorisation body. To the extent that the Standard to which the Goods and Services must be provided has not been specified in this Contract, the Supplier shall agree the relevant Standard for the provision of

the Goods and Services with the Customer prior to the supply of the Goods and Services commencing and in any event, the Supplier shall perform its obligations under this Contract in accordance with the Law and Good Industry Practice.

5.4.2 The Supplier shall ensure that the Staff shall at all times during the Contract Period:

5.4.2.1 faithfully and diligently perform those duties and exercise such powers as necessary in connection with the provision of the Goods and Services;

5.4.2.2 obey all lawful instructions and reasonable directions of the Customer and provide the Goods and Services to the reasonable satisfaction of the Customer; and

5.4.2.3 apply all due skill, care, diligence and be appropriately experienced, qualified and trained to perform and/or deliver the Goods and Services in accordance with this Contract.

5.4.3 The Supplier shall supply the Goods and Services and, where relevant, install the Goods in accordance with the specification in the Framework Agreement, the Order Form and in accordance with all applicable Laws, including but not limited to, any obligation implied by sections 12, 13 and 14 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982.

5.4.4 The Supplier shall at all times during the Contract Period ensure that:

5.4.4.1 the Goods and Services conform in all respects with the specifications set out in the Order Form and/or where applicable the Framework Agreement;

5.4.4.2 the Goods and Services operate in accordance with the relevant technical specifications and correspond with all requirements set out in the Order Form and 0 **SCHEDULE 9: STANDARDS**;

5.4.4.3 the Goods and Services conform in all respects with all applicable Laws, Quality Standards and Technical Standards;

5.4.4.4 the Services conform in all respects with the Service Requirements as set out in Framework Agreement Schedule 1 (Goods and Services);

5.4.4.5 the Goods are free from defects in design and workmanship and are fit for the purpose that such Goods are ordinarily used for and for any particular purpose made known to the Supplier by the Customer; and

5.4.4.6 the Goods and Services are supplied in accordance with the Supplier Solution.

## 5.5 Delivery

- 5.5.1 The Supplier shall without prejudice to Clause 5.1.3 perform its obligations under this Contract in a timely manner and Deliver the Goods and provide the Services in accordance with the Implementation Plan and the Milestones Dates.
- 5.5.2 Unless otherwise agreed, time of delivery in relation to commencement and/or supply of the Goods and Services shall be of the essence and if the Supplier fails to Deliver or supply, as appropriate the Goods and Services within the time specified in accordance with paragraph 4.1 of the Order Form, the Customer may release itself from any obligation to accept and pay for the Goods [and Services] and/or shall be entitled to terminate this Contract, in either case without prejudice to any other rights and remedies of the Customer under this Contract.
- 5.5.3 If the Delivery of the Goods and provision of the Services is delayed by reason of any act or omission of the Customer or the Customer's employees or authorised agents, the Supplier shall be entitled to a reasonable extension of time and to any reasonable additional costs which it can show were directly incurred as result of the delay, provided always that it notifies the Customer in writing without undue delay.
- 5.5.4 Except where otherwise provided in the Contract, the Goods shall be Delivered and the Services provided by the Staff or the Sub-Contractors at such place or places as set out in paragraph 2.5 of the Order Form.
- 5.5.5 Where the Goods are delivered by the Supplier, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by the Customer, the point of delivery shall be when the Goods are loaded on the Customer's vehicle.
- 5.5.6 Except where otherwise provided in this Contract, Delivery shall include the unloading, stacking [or installation] of the Goods by the Staff or the Supplier's suppliers or carriers at such place as the Customer or Customer's duly authorised person shall reasonably direct.
- 5.5.7 In the event that not all of the Goods and Services are Delivered by the relevant Milestone Dates specified in the Implementation Plan ("**Undelivered Goods and Services**") then the Customer shall be entitled to charge Delay Payments as provided under Clause 5.8 and paragraph 4.1 of the Order Form and withhold payment of the Contract Charges for any Goods and Services that were not Delivered in accordance with the corresponding Milestone Date until such time as the Undelivered Goods and Services are Delivered.
- 5.5.8 The Customer shall be under no obligation to accept or pay for any Goods Delivered in excess of the quantity specified in paragraph 2 of the Order Form. If the Customer elects not to accept such over-Delivered Goods it shall give notice in writing to the Supplier to remove them within five (5)

Working Days and to refund to the Customer any expenses incurred by the Customer as a result of such over-Delivery (including but not limited to the costs of moving and storing the over-Delivered Goods), failing which the Customer may dispose of such over-Delivered Goods and charge the Supplier for the costs of such disposal. The risk in any over-Delivered Goods shall remain with the Supplier.

5.5.9 [Unless expressly agreed to the contrary, the Customer shall not be obliged to accept Delivery by instalments. If, however, the Customer does specify or agree to Delivery by instalments, Delivery of any instalment later than the date specified or agreed for its Delivery shall, without prejudice to any other rights or remedies of the Customer, entitle the Customer to terminate the whole or any unfulfilled part of the Contract without further liability to the Customer.]

5.5.10 Any time the Milestone Date or period mentioned in the Implementation Plan and this Contract may be extended by written agreement between the Parties but otherwise, and except as expressly provided, as regards the time, date or Milestone Date or period so extended, time shall be of the essence.

## 5.6 Ownership and Risk

5.6.1 Ownership and passing of title in the Transferring Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer on the payment by the Customer of the Contract Charges.

5.6.2 Risk in the Transferring Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer at the time of acceptance of Delivery.

## 5.7 Testing

5.7.1 The Parties shall carry out their obligations set out in OSchedule 4:TESTING.

5.7.2 Without prejudice to the detailed requirements set out in OSchedule 4:TESTING the Supplier shall be responsible for demonstrating to the Customer that:

5.7.2.1 the Goods satisfy the Customer specifications as set out in the Order Form;

5.7.2.2 the Services satisfy the Services Requirements as set out in Schedule 1 (Goods and Services) of the Framework Agreement;

5.7.2.3 the Goods have been satisfactorily Delivered [and installed (if applicable)]; and

5.7.2.4 the Supplier has taken all steps reasonably necessary for the provision of the Services in accordance with this Contract.

## 5.8 Delay Payments – NOT USED

5.8.1 If the Supplier fails to Deliver the Goods and Services by the Milestones Date(s) agreed and specified in paragraph 4.1 of the Order Form or (where an extension of time has been agreed by the Parties) the revised date for Delivery (as the context requires, the “**Agreed Delivery Date**”):

5.8.1.1 the Supplier shall pay the Customer a sum by way of Delay Payments for each day between the original Milestone Date] /Agreed Delivery Date and until and including the date on which the Milestones are actually Achieved, the Customer issues Satisfaction Certificate and the date on which the Goods are Delivered and the Services provided to the Customer. [The Delay Payments shall equal to [ ]% of the Contract Charges for the Goods and Services, up to a maximum amount of [ ]% of the Contract Charges for the Goods and Services (“**Delay Payments Threshold**”). Subject to Clause 5.8.1.3, during the period in which the Delay Payments are payable under this Clause 5.8.1.1 (“**Delay Payments Period**”) the Delay Payments payable in accordance with this Clause 5.8.1.1 shall be the Customer’s primary financial remedy for any loss or damage suffered or incurred by the Customer in relation to the failure by the Supplier to Deliver the Goods and Services by the Agreed Delivery Date; and

5.8.1.2 where the Delay Payments Threshold is met or exceeded (being that Delivery continues not to be performed after the Delay Payments Threshold is met), the Customer shall be entitled to:

5.8.1.2.1 claim any remedy available to it (whether under the Contract or otherwise) for loss or damage incurred or suffered by it after the end of the Delay Payments Period; and

5.8.1.2.2 without prejudice to Clause 5.8.1.2.1, the Customer shall be entitled to terminate this Contract with immediate effect by giving notice in writing to the Supplier.

5.8.1.3 The Supplier shall not be obliged to pay any sums pursuant to Clause 5.8.1.1 if and to the extent the failure by the Supplier to Deliver the Goods and Services by the Agreed Delivery Date directly results from the Customer’s default provided that the Supplier notifies the Customer immediately of such circumstances in sufficient detail to enable the Customer to remedy the situation and if appropriate, make any consequential revision to subsequent Implementation Plan. Except as set out in this Clause 5.8.1.3, no payment or concession to the Supplier by the Customer or other act or omission of the Customer shall in any way affect its rights to Delay Payments pursuant to

Clause 5.8.1.1 or be deemed to be a waiver of the right of the Customer to recover Delay Payments unless such waiver has been expressly made in writing by the Customer.

- 5.8.1.4 The Supplier waives absolutely any entitlement to challenge the enforceability in whole or in part of this Clause 5.8 and Delay Payments shall not be subject to or count towards any cap on liability except the liability cap in Clause 22.1.4.2.

## 5.9 Warranty

The Supplier hereby guarantees the Transferring Goods for the Warranty Period against faulty materials and workmanship. If the Customer shall within such Warranty Period or within twenty five (25) Working Days thereafter give notice in writing to the Supplier of any defect in any of the Transferring Goods as may have arisen during such Warranty Period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Customer may have) promptly remedy such faults or defects (whether by repair or replacement as the Customer shall elect) free of charge.

## 5.10 Service Levels

- 5.10.1 The Supplier shall provide the Services to meet or exceed the Service Levels and any failure to meet the Service Levels shall entitle the Customer to Service Credits calculated in accordance with the provisions of 0or in the event of a Critical Service Failure shall give rise to a right for the Customer to terminate the Contract with immediate effect upon giving written notice to the Supplier.
- 5.10.2 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.
- 5.10.3 The Supplier acknowledges and agrees that any Service Credit paid to the Customer is:
- 5.10.3.1 a price adjustment in response to poor performance and not liquidated damages or an estimate of the loss or damage that may be suffered by the Customer as a result of the Supplier's failure to meet any Service Level; and
- 5.10.3.2 without prejudice to any entitlement the Customer may have (if any) to any claim for damages resulting from, or otherwise arising in respect of, any breach of this Contract in relation to Service Levels.

## 5.11 Exit Planning

The Supplier shall, within three (3) Months after the Commencement Date, deliver to the the Customer a plan ("**Exit Plan**") which sets out the Supplier's proposed

for achieving orderly transition of the Delivery of the Goods and provision of the Services from the Supplier to the Customer and/or the Replacement Supplier on the expiry or termination of this Contract. Within thirty (30) Working Days after of the draft Exit Plan (or any revised Exit Plan) the Parties will use their reasonable endeavours to agree its content and if they are unable to reach agreement then the dispute shall be referred to the Dispute Resolution Procedure. The Supplier will and update the Exit Plan within one (1) Month of each anniversary of the Commencement Date and shall comply with the exit planning provisions as set out in **0SCHEDULE 7: EXIT PLANNING AND SERVICE TRANSFER ARRANGEMENTS.**

## **SERVICE TRANSFER ARRANGEMENTS.**

### **6. ASSISTANCE ON EXPIRY OR TERMINATION**

In the event that this Contract expires or is terminated the Supplier shall, where so requested requested by the Customer, provide assistance to the Customer to migrate the provision of the Services to a Replacement Supplier including as set out in the Exit Plan prepared pursuant to **0SCHEDULE 7: EXIT PLANNING AND SERVICE TRANSFER ARRANGEMENTS.**

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

The Parties shall comply with the provisions of **0SCHEDULE 5: DISASTER RECOVERY AND BUSINESS CONTINUITY.**

### **8. MONITORING OF CONTRACT PERFORMANCE**

8.1 The Supplier shall comply with the monitoring arrangements referred to in paragraph 4.5 of the Order Form including, but not limited to, providing such data and information as the Supplier may be required to produce under this Contract.

8.2 The Supplier shall supply the Management Information to the Authority in the form set out in Schedule 8 (Management Information) of the Framework Agreement (as amended from time to time) on such dates during the Contract Period as specified in paragraph 4.5 of the Order Form. Where requested by the Customer in paragraph 5.5 of the Order Form the Supplier shall supply the Management Information to the Customer in the form set out in Schedule 8 (Management Information) of the Framework Agreement (as amended from time to time) or in a reasonable, alternative format to be agreed between the Customer and the Supplier.

### **9. CONTINUOUS IMPROVEMENT**

9.1 The Supplier shall have an on-going obligation throughout the Contract Period to identify new or potential improvements to the Services pursuant to which it shall regularly review with the Customer the Goods and Services and the manner in which it is providing the Goods and Services with a view to:

9.1.1 reducing the Customer's costs (including the Contract Charges);

9.1.2 improving the quality and efficiency of the Goods and Services; and/or



- 9.1.3 complying with any specific provisions referred to in paragraph 4.6 of the Order Form.
- 9.2 The Supplier shall ensure that the information that it provides to the Customer in accordance with Clause 9.1 shall be sufficient for the Customer to decide whether any improvement to the Services should be implemented. The Supplier shall provide any further information that the Customer requests in connection with any improvements to the Services identified by the Supplier.
- 9.3 Notwithstanding the Supplier's obligations under Clause 9.1 to 9.2 above, the Customer shall be entitled to regularly benchmark the Contract Charges and performance of the Goods and Services, against other suppliers providing services substantially the same as the Goods and Services during the Contract Period in order to compare the Contract Charges and level of performance of the Goods and Services with charges and services offered by third parties so as to provide the Customer with information for comparison purposes.
- 9.4 The Customer shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in Clause 9.3 above.
- 9.5 The Customer shall be entitled to disclose the results of any benchmarking of the Contract Charges and provision of the Goods and Services carried out under Clause 9.3 to the Authority and any Contracting Body (subject to the Contracting Body entering into reasonable confidentiality undertakings).
- 9.6 The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Customer in order to undertake the benchmarking in accordance with Clause 9.3 and such information requirements shall be at the discretion of the Customer.
- 9.7 Where, as a consequence of any benchmarking carried out by the Customer under Clause 9.3, the Customer decides improvements to the Goods and Services should be implemented such improvements shall be implemented by way of the Contract Variation procedures set out in Clause 37 (Variation).
- 9.8 As part of the Supplier's continuous obligations, the Supplier shall identify and report to the Customer Monthly in the first (1) Contract Year and once every six (6) Months for the remainder of the Contract Period on:
- 9.8.1 the emergence of new and evolving relevant technologies which could improve the Services, and those technological advances in relation to the Goods and Services potentially available to the Supplier and the Customer which the Parties may wish to adopt;
- 9.8.2 proposals for implementation of the new and improved technological advances under Clause 9.8.1 shall not amount to any reduction in the functionality, performance, capacity or quality of the Goods; and

- 9.8.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Customer which might result in efficiency or productivity gains or in reduction of operational risk.
- 9.9 The benefit of any work carried out by the Supplier to improve or update the Goods and Services or to facilitate their delivery to any other Contracting Body and/or any alterations or variations to the Contract Charges or the provision of the Goods and Services, which are identified in the Continuous Improvement Plan produced by the Supplier and/or as a consequence of any benchmarking carried out by the Authority pursuant to Framework Schedule 7 (Value for Money), shall be implemented by the Supplier (subject to EU procurement Law and the Framework Agreement) at no additional cost to the Customer.

## **10. DISRUPTION**

- 10.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 10.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Supplier's own employees or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Contract.
- 10.3 In the event of industrial action by the Staff which affects the Supplier's ability to perform its obligations under this Contract, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Goods and Services in accordance with its obligations under this Contract.
- 10.4 If the Supplier's proposals referred to in Clause 10.3 are considered insufficient or unacceptable by the Customer acting reasonably then this Contract may be terminated with immediate effect by the Customer by notice in writing.
- 10.5 If the Supplier is temporarily unable to fulfil the requirements of this Contract owing to disruption of normal business directly caused by the Customer, an appropriate allowance by way of extension of time will be Approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

## **11. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES OR PROVISION OF THE GOODS**

- 11.1 Without prejudice to any other right or remedy which the Customer may have, if any Goods and Services are not supplied in accordance with, or the Supplier fails to comply with any of the terms of this Contract then the Customer may (whether or not any part of the Goods and Services have been Delivered) do any of the following:
- 11.1.1 at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to either remedy any defect in the Goods and/or failure in the

performance of the Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) or to supply Replacement Goods and Services and carry out any other necessary work to ensure that the terms of this Contract are fulfilled, in accordance with the Customer's instructions;

- 11.1.2 reject the Goods (in whole or in part) and require the Supplier to remove the Goods (in whole or in part) at the risk and cost of the Supplier and a full refund for the Goods so rejected shall be paid to the Customer forthwith by the Supplier;
- 11.1.3 refuse to accept any further Goods and Services to be Delivered but without any liability to the Customer arising in respect of such refusal;
- 11.1.4 if the Goods [and Services] have not been Delivered, the Customer shall claim Delay Payments from the Supplier and the Supplier shall pay such amounts (calculated in accordance with Clause 5.8 and paragraph 4.1 of the Order Form) on demand. The Delay Payments will accrue on a daily basis from the relevant Milestone Date and will continue to accrue until the date when the Milestone is Achieved and the Customer issues Satisfaction Certificate;
- 11.1.5 carry out at the Supplier's expense any work necessary to make the Goods and Services comply with this Contract;
- 11.1.6 without terminating this Contract, itself supply or procure the supply of all or part of the Goods and Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Goods and Services in accordance with this Contract;
- 11.1.7 without terminating the whole of this Contract, terminate the Contract in respect of part of the Goods and Services only (whereupon a corresponding reduction in the Contract Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Goods and Services; and/or
- 11.1.8 charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Goods and Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Goods and Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods and Services.

11.2 In the event that the Supplier:

- 11.2.1 fails to comply with Clauses 5.1 and 5.4 and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or
- 11.2.2 persistently fails to comply with timely delivery of the Goods and Services,
- the Customer may terminate this Contract with immediate effect by giving the Supplier notice in writing.

## **12. PREMISES**

### **12.1 Inspection of Premises**

- 12.1.1 The Supplier acknowledges that it has inspected the Customer's Premises and has advised the Customer of any aspect of the Customer's Premises that is not suitable for the provision of the Goods and Services and that the actions required to remedy the unsuitable aspects of the Customer's Premises, together with a timetable for and the costs of those actions, have been specified in paragraph 3.6 of the Order Form.
- 12.1.2 If the Supplier has either failed to inspect the Customer's Premises or failed to notify the Customer of any required remedial actions in accordance with Clause 12.1.1 then the Supplier shall not be entitled to recover any additional costs or charges from the Customer relating to any unsuitable aspects of the Customer's Premises except in respect of any latent structural defect in the Customer's Premises. The onus shall be on the Supplier to prove to the Customer that any work to the Customer's Premises is required in respect of a latent structural defect and that the additional costs or charges are reasonable and necessary. The Supplier shall not incur such additional costs or charges without obtaining Approval.
- 12.1.3 Any disputes relating to any matter or issue arising out of or connected to the due diligence as set out in Clause 2 or this Clause 12 shall be resolved in accordance with the Dispute Resolution Procedure.

### **12.2 Licence to occupy Premises**

- 12.2.1 Any Customer's Premises made available from time to time to the Supplier by the Customer in connection with this Contract shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Contract. The Supplier shall have the use of such Customer's Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Contract.
- 12.2.2 The Supplier shall limit access to the Customer's Premises to such Staff as is necessary to enable it to perform its obligations under this Contract and the Supplier shall co-operate (and ensure that its Staff co-operate) with other persons working concurrently at such Customer's Premises or with such other persons as the Customer may reasonably request.

- 12.2.3 Save in relation to such actions identified by the Supplier in accordance with Clause 12.1 and set out in paragraph 3.6 of the Order Form, should the Supplier require modifications to the Customer's Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Supplier's expense. The Customer shall undertake any modification work which it approves pursuant to this Clause 12.2.3 without undue delay. Ownership of such modifications shall rest with the Customer.
- 12.2.4 The Supplier shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Customer's Premises and conduct of personnel at the Customer's Premises as determined by the Customer, and the Supplier shall pay for the cost of making good any damage caused by the Supplier or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 12.2.5 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Supplier or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Customer retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.
- 12.2.6 The Supplier shall not be entitled to exclusive possession or exclusive use of the Customer's Premises and shall not at any time or in any manner do any act which may impede the Customer or any person authorised by the Customer in the exercise of the Customer's rights of possession and control of the Customer's Premises.
- 12.2.7 The rights hereby granted to the Supplier are to be used and enjoyed by the Supplier in common with the Customer and all others having like rights.
- 12.2.8 The Customer gives no warranty that the Customer's Premises are legally or physically fit for the Supplier's intended use.

### **12.3 Property**

- 12.3.1 Where the Customer issues Property free of charge to the Supplier such Property shall be and remain the Property of the Customer and the Supplier irrevocably licences the Customer and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Property. The Supplier shall not in any circumstances have a lien or any other interest in or over the Property and at all times the Supplier shall possess the Property as fiduciary agent and bailee of the Customer. The Supplier shall take all reasonable steps to ensure that the title of the Customer to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the

Customer's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Customer.

- 12.3.2 The Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Customer otherwise within five (5) Working Days of receipt.
- 12.3.3 The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with the Contract and for no other purpose without Approval.
- 12.3.4 The Supplier shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the provision of the Goods and supply of the Services, in accordance with the Customer's reasonable security requirements as required from time to time.
- 12.3.5 The Supplier shall be liable for all loss of, or damage to the Property, (excluding fair wear and tear), unless such loss or damage was caused by the Customer's Default. The Supplier shall inform the Customer within two (2) Working Days of becoming aware of any defects appearing in or losses or damage occurring to the Property.]

## **13. PAYMENT AND CONTRACT CHARGES**

### **13.1 Contract Charges**

- 13.1.1 In consideration of the Supplier's performance of its obligations under this Contract, the Customer shall pay the Contract Charges in accordance with Clause 13.2 (Payment and VAT).
- 13.1.2 The Customer shall, in addition to the Contract Charges and following delivery by the Supplier of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Goods and Services supplied in accordance with this Contract.
- 13.1.3 If at any time during the Contract Period the Supplier reduces its Framework Prices for any Goods and Services which are provided under the Framework Agreement (whether or not such Goods and Services are offered in a catalogue which is provided under the Framework Agreement) in accordance with the terms of the Framework Agreement, the Supplier shall immediately reduce the Contract Charges for such Goods and Services under this Contract by the same amount.
- 13.1.4 The benefit of any work being done pursuant to the provisions of Framework Schedule 7 (Value for Money) which is specifically commissioned from the Supplier by another Contracting Body at any time prior to or during the Contract Period to reduce costs or to improve the quality or efficiency of the Goods and Services or to facilitate their Delivery shall be offered by the Supplier to the Customer at no charge.

## 13.2 Payment and VAT

- 13.2.1 The Customer shall pay all sums properly due and payable to the Supplier in cleared funds within the time period specified in paragraph 6.2 of the Order Form.
- 13.2.2 The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form) contains all appropriate references and a detailed breakdown of the Goods supplied and the Services provided and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice. The Supplier shall ensure that all invoices submitted to the Customer for the Goods and Services are exclusive of management charges.
- 13.2.3 Where the Supplier enters into a Sub-Contract it shall ensure that a provision is included in such Sub-Contract which requires payment to be made of all sums due by the Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) calendar days from the receipt of a validly issued invoice, in accordance with the terms of the Sub-Contract.
- 13.2.4 The Supplier shall add VAT to the Contract Charges at the prevailing rate as applicable.
- 13.2.5 The Supplier shall indemnify the Customer on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due under this Clause 13.2.5 shall be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.
- 13.2.6 The Supplier shall not suspend the supply of the Services and provision of the Goods unless the Supplier is entitled to terminate this Contract under Clause 23.4.2 for Customer's failure to pay undisputed sums of money. Interest shall be payable by the Customer on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time).

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

### **13.3 Recovery of Sums Due**

- 13.3.1 Wherever under this Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of this Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under this Contract or under any other agreement or contract with the Customer or with any Other Contracting Body.
- 13.3.2 Any overpayment by either Party, whether of the Contract Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 13.3.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.
- 13.3.4 All payments due shall be made in accordance to timelines as set out in paragraph 6.2 of the Order Form, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

### **13.4 Euro**

- 13.4.1 Any requirement of Law to account for the Goods and Services in Euro, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Customer.
- 13.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 13.4.1 by the Supplier.

## **14. KEY PERSONNEL**

- 14.1 The Parties have agreed to the appointment of the Key Personnel. The Supplier shall and shall procure that any Sub-Contractor shall obtain Approval before removing or replacing any Key Personnel during the Contract Period.
- 14.2 The Supplier shall provide the Customer with at least [one (1)] Month's written notice of its intention to replace any member of Key Personnel.
- 14.3 The Customer shall not unreasonably delay or withhold its Approval to the removal or appointment of a replacement for any relevant Key Personnel by the Supplier or Sub-Contractor.
- 14.4 The Supplier acknowledges that the persons designated as Key Personnel from time to time are essential to the proper provision of the Goods and Services to the Customer. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as qualified and experienced or more qualified and experienced as the previous



incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

- 14.5 The Customer may also require the Supplier to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.]

## **15. SUPPLIER'S STAFF**

- 15.1 The Customer may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Customer's Premises:

15.1.1 any member of the Staff; or

15.1.2 any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.

- 15.2 At the Customer's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission to the Customer's Premises in connection with this Contract, specifying the capacities in which they are concerned with this Contract and giving such other particulars as the Customer may reasonably request.

- 15.3 Staff engaged within the boundaries of the Customer's Premises shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Customer's Premises.

- 15.4 If the Supplier fails to comply with Clause 15.2 within [three (3)] weeks of the date of the request, the Customer may terminate this Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

- 15.5 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Supplier has failed to comply with Clause 15.2 shall be final and conclusive.

## **16. GOVERNMENT FRAMEWORKS**

- 16.1 The Supplier acknowledges that the Authority, the Customer and/or any person on their behalf may from time to time notify the Supplier of contracts which may assist the Supplier in its supply of the Goods and Services which are available (or cease to be available) to the Customer, which the Customer can (or can no longer) grant access to the Supplier. Such notification, or update to it, may include any controls and restrictions which apply to the use of any such

contracts and the Supplier agrees to be bound by and comply with any such controls and restrictions as are notified to it from time to time.

- 16.2 The Supplier shall use the Government Frameworks, when available, in connection with the provision of the Goods and Services (including the leasing of the Vehicles) unless (subject to Clause 16.3 [check ref] below) the Supplier can obtain improved (from the perspective of the Customer) terms for equivalent services from other contracts or arrangements. Where a Government Framework is available to the Supplier but it elects (due to the availability of improved terms as permitted above) to use alternative contracts or arrangements then it will notify the Customer and the Authority of such alternative contracts or arrangements and provide such evidence of improved terms as the Customer and/or the Authority may request.
- 16.3 Where the Supplier notifies the Customer that it intends to use alternative contracts or arrangements then the Customer shall be entitled to require that the Supplier does not use such alternative but instead uses the Government Framework.
- 16.4 The Supplier shall ensure that all benefits (including volume rebates and enhanced discounts) gained through or in connection with use of the Government Frameworks and/or other contracts or arrangements as referred to in Clause 16.2 [check ref] above shall be passed on for the benefit of the Customer.
- 16.5 At all times in exercising its rights and carrying out its obligations and responsibilities under this Clause 16 the Supplier shall:
- 16.5.1 act in accordance with such procedures, rules and guidance as the Authority, the Customer and/or any person on their behalf may from time to time notify the Supplier;
  - 16.5.2 comply with all Laws, rules and guidance that apply to the Customer including, without limitation, the European Union public procurement rules;
  - 16.5.3 act towards the Customer dutifully and in good faith, not allow its interests to conflict with the duties that it owes to the Customer under this Contract and generally to carry out its agency in the way which it thinks best to promote the interests of the Customer;
  - 16.5.4 except as authorised by the Customer, not act in a way which will incur any liabilities on behalf of the Customer, nor pledge the credit of the Customer;
  - 16.5.5 comply with all reasonable and lawful instructions from the Customer from time to time;
  - 16.5.6 except where the Government Framework provides for the Supplier to contract on its own account (for example, without limit, where the Supplier is able to obtain the benefit of terms implied into its own contracts), describe itself in all dealings with suppliers under Government Frameworks and on

all correspondence, marketing and advertising material as the agent of the Customer;

- 16.5.7 provide to the Customer such information as the Customer may from time to time reasonably require in relation to the performance by the Parties pursuant to the Government Framework;
- 16.5.8 use all reasonable endeavours to ensure that each supplier under a Government Framework performs its relevant obligations in accordance with each Government Framework; and
- 16.5.9 discharge the obligations of the Customer under each Government Framework (including, where required by the Customer, making payments thereunder) as though it were the Customer and in accordance with the terms of each such Government Framework.
- 16.6 The Parties acknowledge that the Government Frameworks may through the effluxion of time expire or may terminate during the Term. Prior to any Government Framework expiring or otherwise terminating where the Supplier receives notice of such termination it shall immediately notify the Customer of the same.
- 16.7 Any amendments which may be required to the Charges or other change to the Contract that may be necessitated pursuant to the operation of this Clause 16 [check ref] shall be dealt with through Clause **Error! Reference source not found.** (Variation) [check ref] .
- 16.8 Throughout and after the Lease Period the Supplier shall indemnify the Customer and keep the Customer indemnified against all losses, claims, damages, costs and expenses (including reasonable legal fees) incurred by the Customer arising from the Supplier's breach of any Government Framework.
- 16.9 For the avoidance of doubt, the Supplier shall not be entitled to use any Government Framework for its own benefit or for any purpose other than as set out in this Clause 16.
- 16.10 The Customer shall be entitled to terminate this Contract, in accordance with Clause **Error! Reference source not found.**(Termination on Default), if the Supplier breaches any of the provisions of this Clause 16 .

## **17. TRAINING**

- 17.1 The Supplier shall provide training to the Customer's personnel in accordance with paragraph 3.5 of the Order Form (if any) in respect of the use and maintenance of the Goods.
- 17.2 The Contract Charges shall include the cost of any training and instruction of the Customer's personnel in the use and maintenance of the Goods.

## **18. STAFFING SECURITY**

- 18.1 The Supplier shall comply with the Staff Vetting Procedures in respect of all Staff employed or engaged in the provision of the Goods and Services. The Supplier confirms that all Staff employed or engaged by the Supplier at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 18.2 The Supplier shall provide training on a continuing basis for all Staff employed or engaged in the provision of the Goods and Services in compliance with the Security Policy and Security Management Plan.
- 18.3 The Supplier agrees that it will not require that the persons engaged by any Sub-Contractor obtain Clearance who have not previously held Clearance except where there is an urgent priority requirement including:
- 18.3.1 Clearance being genuinely necessary and proportionate; or
  - 18.3.2 the work must be completed by the relevant person within thirty (30) calendar days (in relation to Defence Vetting Agency Security Checks and Defence Vetting Agency Counter Terrorist Checks ("CTC") and one hundred (100) calendar days (in relation to Defence Vetting Agency Developed Vetting) of the Commencement Date; or
  - 18.3.3 the role of the Sub-Contractor requires immediate and routine unsupervised access to:
    - 18.3.3.1 sites or persons at risk of terrorist attack, in which case a CTC can be required; or
    - 18.3.3.2 assets protectively marked as at least SECRET or above.
- 18.4 Save in respect of the circumstances set out in Clause 18.3 above in the event that it will take longer for the Supplier to carry out the work than to secure Clearance and subject to the Customer's agreement, the Customer's existing practices for escorting and supervising un-cleared Sub-Contractors will be followed until such time as the Sub-Contractor's Clearance is confirmed.
- 18.5 Where the persons engaged by a Sub-Contractor have previously held Clearance, the Supplier may consider such person's Clearance as current if that person has not worked continuously on jobs where Clearance is required, only where the following conditions are met:
- 18.5.1 that person's existing Clearance is not more than three (3) Years old in relation to non List x or five (5) Years old in relation to List x;
  - 18.5.2 the Sub-Contractor has worked on a previous job and had required clearance in the past twelve (12) Months; or
  - 18.5.3 the Sub-Contractor has not resided overseas for more than six (6) Months since its last cleared post.

## 19. INTELLECTUAL PROPERTY RIGHTS

- 19.1 The Supplier shall on demand, during and after the Contract Period, fully indemnify and keep fully indemnified and hold the Customer and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer or the Crown may suffer or incur as a result of any claim that the rights granted to the Customer pursuant to this Contract and/or the performance by the Supplier of the Goods and Services and/or supply of the Goods and/or Deliverables and/or the possession or use by the Customer of the Goods and/or Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("**Claim**") except where the Claim arises from:
- 19.1.1 items or materials based upon designs supplied by the Customer; or
  - 19.1.2 the use of data supplied by the Customer which is not required to be verified by the Supplier under any provision of the Contract.
- 19.2 The Customer shall notify the Supplier in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Supplier:
- 19.2.1 shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
  - 19.2.2 shall take due and proper account of the interests of the Customer;
  - 19.2.3 shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute; and
  - 19.2.4 shall not settle or compromise the Claim without Approval (not to be unreasonably withheld or delayed).
- 19.3 If a Claim is made in connection with the Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall immediately notify the Customer and, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), use its best endeavours to:
- 19.3.1 modify the relevant part of the Services, Goods and/or the Deliverables without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that:
    - 19.3.1.1 the provisions herein shall apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or
    - 19.3.1.2 such substitution shall not increase the burden on the Customer; or

- 19.3.1.3 the replaced or modified item does not have an adverse effect on any other Services or the ICT Environment;
- 19.3.1.4 there is no additional cost to the Customer; and
- 19.3.1.5 such modified or substituted goods and/or services items shall be acceptable to the Customer (such acceptance not to be unreasonably withheld); or
- 19.3.2 procure a licence to use and supply the Services, Goods and/or the Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Customer;
- 19.3.3 in relation to the performance of the Supplier's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations,

and in the event that the Supplier is unable to comply with Clauses 19.3.1 or 19.3.2 within twenty (20) Working Days of receipt of the Supplier's notification the Customer may terminate this Contract with immediate effect by notice in writing and the Supplier shall, upon demand, refund the Customer with all monies paid in respect of the Services, Goods and/or Deliverable that is subject to the Claim.

- 19.4 The Supplier's compliance with Clause 19.3 shall be at its own expense and the Supplier shall be liable for all costs and expenses that the Customer may incur resulting from the Customer's compliance with Clause 19.3.
- 19.5 In the event that a modification or substitution in accordance with Clause 19.3.1 is not possible so as to avoid the infringement, or the Supplier has been unable to procure a licence in accordance with Clause 19.3.2, the Customer shall be entitled to delete the relevant Service, Goods and/or Deliverable from this Contract.
- 19.6 If the Supplier elects to modify or replace an item pursuant to Clause 19.3.1 or to procure a licence in accordance with Clause 19.3.2, but this has not avoided or resolved the Claim, then the Customer may terminate this Contract by written notice with immediate effect and, without prejudice to the indemnity set out in Clause 19.1, the Supplier shall, be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring and implementing and the substitute items.
- 19.7 The Supplier shall have no rights to use any of the Customer's names, logos or trademarks without prior Approval.
- 19.8 This Clause 19 sets out the entire financial liability of the Supplier with regard to the infringement of any IPRs as a result of the provision of the Goods and Services hereunder. This shall not affect the Supplier's financial liability for other Defaults or causes of action that may arise.

## **20. PROTECTION OF INFORMATION**

### **20.1 Security Requirements**

- 20.1.1 The Supplier shall comply, and shall procure the compliance of the Staff, with the Security Policy and the Security Management Plan and the Supplier shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 20.1.2 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 20.1.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Goods and Services it shall notify the Customer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Contract Charges shall then be agreed in accordance with the procedure set out in Clause 37 (Variation).
- 20.1.4 Until and/or unless a change to the Contract Charges is agreed by the Customer pursuant to Clause 37 (Variation) the Supplier shall continue to perform the Services and provide the Goods in accordance with its existing obligations.

## 20.2 Malicious Software

- 20.2.1 The Supplier shall, as an enduring obligation throughout this 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 in the ICT Environment (or as otherwise agreed between the Parties).
- 20.2.2 Notwithstanding Clause 20.2.1, 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 Customer Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 20.2.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 20.2.1 shall be borne by the Parties as follows:
  - 20.2.3.1 by the Supplier, where the Malicious Software originates from the Supplier Software or the Customer Data (whilst the Customer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Supplier; and
  - 20.2.3.2 by the Customer if the Malicious Software originates from the Customer Software or the Customer Data (whilst the Customer Data was under the control of the Customer).

## 20.3 Security of Premises

- 20.3.1 The Customer shall be responsible for maintaining the security of the Customer's Premises in accordance with its standard security requirements. The Supplier shall comply with all reasonable security requirements of the Customer while on the Customer's Premises and shall ensure that all Staff comply with such requirements.
- 20.3.2 The Customer shall provide the Supplier upon request copies of its written security procedures and shall afford the Supplier upon request an opportunity to inspect its physical security arrangements.

#### 20.4 **Customer Data**

- 20.4.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 20.4.2 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly Approved by the Customer.
- 20.4.3 To the extent that the Customer Data is held and/or Processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format specified in this Contract (if any) and in any event as specified by the Customer from time to time in writing.
- 20.4.4 To the extent that Customer Data is held and/or Processed by the Supplier, the Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 20.4.5 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy.
- 20.4.6 The Supplier shall ensure that any system on which the Supplier holds any Customer Data which is protectively marked shall be accredited and the Supplier shall review such accreditation status at least once in each Contract Year to assess whether material changes have occurred which could alter the original accreditation decision. If any such changes have occurred then the Supplier shall resubmit such system for accreditation.
- 20.4.7 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Customer may:
  - 20.4.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of the Customer Data to the extent and in accordance with the BCDR Plan and the Supplier shall do so as soon as practicable but in accordance with the time period notified by the Customer; and/or
  - 20.4.7.2 itself restore or procure the restoration of Customer Data, and the Supplier shall repay to the Customer any reasonable



expenses incurred by the Customer in doing so to the extent and in accordance with the requirements specified in the BCDR Plan.

- 20.4.8 If at any time the Supplier suspects or has reason to believe that the Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.

## 20.5 **Protection of Personal Data**

- 20.5.1 With respect to the Parties' rights and obligations under this Contract, the Parties agree that the Customer is the Data Controller and that the Supplier is the Data Processor in relation to the Customer Personal Data.

- 20.5.2 The Supplier shall:

- 20.5.2.1 Process the Customer Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Customer to the Supplier during the Contract Period);
- 20.5.2.2 Process the Customer Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services and Goods or as is required by Law or any Regulatory Body;
- 20.5.2.3 implement appropriate technical and organisational measures to protect the Customer Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Customer Personal Data and having regard to the nature of the Personal Data which is to be protected;
- 20.5.2.4 take reasonable steps to ensure the reliability of any Staff who have access to the Customer Personal Data;
- 20.5.2.5 obtain Approval in order to transfer the Customer Personal Data to any Sub-Contractors or Affiliates for the provision of the Services and Goods;
- 20.5.2.6 ensure that all Staff required to access the Customer Personal Data are informed of the confidential nature of the Customer Personal Data and comply with the obligations set out in this Clause 20.5;

- 20.5.2.7 ensure that none of the Staff publish, disclose or divulge any of the Customer Personal Data to any third party unless directed in writing to do so by the Customer;
- 20.5.2.8 notify the Customer (within five (5) Working Days) if it receives:
  - 20.5.2.8.1 a request from a Data Subject to have access to the Customer's Personal Data relating to that person; or
  - 20.5.2.8.2 a complaint or request relating to the Customer's obligations under the Data Protection Legislation;
- 20.5.2.9 provide the Customer with full cooperation and assistance in relation to any complaint or request made relating to the Customer's Personal Data, including by:
  - 20.5.2.9.1 providing the Customer with full details of the complaint or request;
  - 20.5.2.9.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;
  - 20.5.2.9.3 providing the Customer with any Customer Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and
  - 20.5.2.9.4 providing the Customer with any information requested by the Customer;
- 20.5.2.10 permit or procure permission for the Customer or the Customer Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Supplier's data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Supplier is in full compliance with its obligations under this Contract;
- 20.5.2.11 provide a written description of the technical and organisational methods employed by the Supplier for Processing Customer Personal Data (within the timescales required by the Customer); and
- 20.5.2.12 [not Process or otherwise transfer any Customer Personal Data outside the European Economic Area. If, after the Commencement Date, the Supplier (or any Sub-Contractor) wishes to Process and/or transfer any Customer Personal Data outside the European Economic Area, the following provisions shall apply:

20.5.2.12.1 the Supplier shall submit a request for Variation to the Customer which shall be dealt with in accordance with the Variation Procedure and paragraph 20.5.2.12.2 to 20.5.2.12.4 below;

20.5.2.12.2 the Supplier shall set out in its request for a Variation details of the following:

- (i) the Customer Personal Data which will be Processed and/or transferred outside the European Economic Area;
- (ii) the country or countries in which the Customer Personal Data will be Processed and/or to which the Customer Personal Data will be transferred outside the European Economic Area;
- (iii) any Sub-Contractors or other third parties who will be Processing and/or transferring Customer Personal Data outside the European Economic Area; and
- (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the Customer's compliance with the Data Protection Legislation) in respect of the Customer Personal Data that will be Processed and/or transferred outside the European Economic Area;

20.5.2.12.3 in providing and evaluating the request for Variation, the Parties shall ensure that they have regard to and comply with then-current Customer, Government and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing and/or transfers of Customer Personal Data outside the European Economic Area and/or overseas generally but, for the avoidance of doubt, the Customer may, in its absolute discretion, refuse to grant Approval of such Process and/or transfer of any Customer Personal Data outside the European Economic Area; and

20.5.2.12.4 the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:

- (i) incorporating standard and/or model Clauses (which are approved by the European

Commission as offering adequate safeguards under the Data Protection Legislation) in this Contract or a separate data processing agreement between the Parties; and

- (ii) procuring that any Sub-Contractor or other third party who will be Processing and/or transferring the Customer Personal Data outside the European Economic Area enters into a direct data processing agreement with the Customer on such terms as may be required by the Customer, which the Supplier acknowledges may include the incorporation of standard and/or model Clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation).]

20.5.3 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.

20.5.4 The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to Customer Personal Data that the Customer may be irreparably harmed (including harm to its reputation). In such circumstances, the Customer may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).

20.5.5 In the event that through any Default of the Supplier, Customer Personal Data is transmitted or Processed in connection with this Contract is either lost or sufficiently degraded so as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such Default of the Supplier.

## 20.6 Confidentiality

20.6.1 Except to the extent set out in this Clause 20.6 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

20.6.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

20.6.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

- 20.6.2 Clause 20.6.1 shall not apply to the extent that:
- 20.6.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 20.8 (Freedom of Information);
  - 20.6.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 20.6.2.3 such information was obtained from a third party without obligation of confidentiality;
  - 20.6.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
  - 20.6.2.5 it is independently developed without access to the other Party's Confidential Information.
- 20.6.3 The Supplier may only disclose the Customer's Confidential Information to the Staff who are directly involved in the provision of the Goods and Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 20.6.4 The Supplier shall not, and shall procure that the Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Contract.
- 20.6.5 At the written request of the Customer, the Supplier shall procure that those members of Staff identified in the Customer's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 20.6.6 In the event that any Default, act or omission of any Staff causes or contributes (or could cause or contribute) to the Supplier breaching its obligations as to confidentiality under or in connection with this Contract, the Supplier shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Staff, the Supplier shall provide such evidence to the Customer as the Customer may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings) to demonstrate that the Supplier is taking appropriate steps to comply with this Clause, including copies of any written communications to and/or from Staff, and any minutes of meeting and any other records which provide an audit trail of any discussions or exchanges with the Staff in connection with obligations as to confidentiality.

- 20.6.7 Nothing in this Contract shall prevent the Customer from disclosing the Supplier's Confidential Information (including the Management Information obtained under Clause 15 of the Framework Agreement):
- 20.6.7.1 to any Crown body or any other Contracting Body. All Crown bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Contracting Body;
  - 20.6.7.2 to any consultant, contractor or other person engaged by the Customer for any purpose relating to or connected with the Framework Agreement (on the basis that the information shall be held by such consultant, contractor or other person in confidence and is not to be disclosed to any third party) or any person conducting an Office of Government Commerce gateway review;
  - 20.6.7.3 for the purpose of the examination and certification of the Customer's accounts; or
  - 20.6.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 20.6.8 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Body, employee, third party or Sub-Contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 20.6.7 is made aware of the Customer's obligations of confidentiality.
- 20.6.9 Nothing in this Clause 20.6 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.
- 20.6.10 In the event that the Supplier fails to comply with Clause 20.6.1 to Clause 20.6.6, the Customer reserves the right to terminate this Contract with immediate effect by notice in writing.
- 20.6.11 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this Contract, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.
- 20.6.12 The Supplier shall, at all times during and after the Contract Period, indemnify the Customer and keep the Customer fully indemnified against

all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer arising from any breach of the Supplier's obligations under Clause 20.4 (Customer Data), 20.5 (Protection of Personal Data) and this Clause 20.6 (Confidentiality) except and to the extent that such liabilities have resulted directly from the Customer's instructions.

## **20.7 Official Secrets Acts 1911 to 1989, section 182 of the Finance Act 1989**

20.7.1 The Supplier shall comply with and shall ensure that its Staff comply with, the provisions of:

20.7.1.1 the Official Secrets Acts 1911 to 1989; and

20.7.1.2 Section 182 of the Finance Act 1989.

20.7.2 In the event that the Supplier or its Staff fail to comply with this Clause 20.7, the Customer reserves the right to terminate the Contract by giving notice in writing to the Supplier.

## **20.8 Freedom of Information**

20.8.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.

20.8.2 The Supplier shall and shall procure that its Sub-Contractors shall:

20.8.2.1 transfer to the Customer all Requests for Information relating to a Request for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

20.8.2.2 provide the Customer with a copy of all Information in its possession, or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and

20.8.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

20.8.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other Contract whether the Commercially Sensitive Information and/or any other Information including Supplier's Confidential Information, is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

- 20.8.4 In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 20.8.5 The Supplier acknowledges that (notwithstanding the provisions of Clause 20.6) the Customer may, acting in accordance with the Secretary of State's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Goods and Services:
- 20.8.5.1 in certain circumstances without consulting the Supplier; or
- 20.8.5.2 following consultation with the Supplier and having taken their views into account,
- provided always that where Clause 20.8.5 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 20.8.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with the provisions of this Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Customer to inspect such records as requested from time to time.
- 20.8.7 The Supplier acknowledges that the Commercially Sensitive Information is of an indicative nature only and that the Customer may be obliged to disclose it in accordance with Clause 20.8.5.

## 20.9 Transparency

- 20.9.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 20.9.2 Notwithstanding any other term of this Contract, the Supplier hereby gives his consent for the Customer to publish this Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including changes to this Contract agreed from time to time agreed, to the general public.
- 20.9.3 The Customer may consult with the Supplier to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.
- 20.9.4 The Supplier shall assist and cooperate with the Customer to enable the Customer to publish this Contract.



## **21. WARRANTIES AND REPRESENTATIONS**

21.1 The Supplier warrants, represents and undertakes to the Customer that:

- 21.1.1 it has full capacity and authority and all necessary permits, consents, licences, permissions (statutory, regulatory, contractual or otherwise) (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
- 21.1.2 this Contract is executed by a duly authorised representative of the Supplier;
- 21.1.3 in entering this Contract it has not committed any Fraud;
- 21.1.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
- 21.1.5 this Contract shall be performed in compliance with all Laws (as amended from time to time) and all applicable Standards;
- 21.1.6 as at the Commencement Date, all information, statements and representations contained in the Tender are true, accurate and not misleading save as specifically disclosed in writing to the Customer prior to execution of this Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading and all warranties and representations contained in the Tender shall be deemed repeated in this Contract;
- 21.1.7 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under this Contract;
- 21.1.8 it is not subject to any contractual obligation, judgement, order or decree of any court or Government agency by which the Supplier and/or any of its assets are bound and compliance with which is likely to have an adverse effect on its ability to perform its obligations under this Contract;
- 21.1.9 no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 21.1.10 its Delivery of the Goods and its performance of the Services under this Contract will not in any way constitute an infringement or other violation of any IPRs of any third party;
- 21.1.11 it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the unauthorised use of, modification, access,

introduction, creation or propagation of any disruptive element, virus, worms and/or Trojans, spyware or other malware into the Goods and Services, Customer Systems, data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Customer;

- 21.1.12 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract and shall maintain the same in full force and effect;

21.2 The Supplier warrants represents and undertakes to the Customer that:

- 21.2.1 the Goods and Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- 21.2.2 it shall discharge its obligations hereunder (including the provision of the Goods and Services) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures;

it shall comply with all KPIs and Service Levels for the provision of the Goods and Services  
Goods and Services as set out in Schedule 1 (Goods and Services) of the  
Framework Agreement and 0

#### **SCHEDULE 6: SERVICE LEVELS AND SERVICE CREDITS**

- 21.2.3 of this Contract.

- 21.2.4 the Goods and Services are and will continue to be during the Contract Period:

- 21.2.4.1 of satisfactory quality; and

- 21.2.4.2 in conformance with the relevant specifications set out in this Contract, the relevant Order and (if applicable) the manufacturer's specifications and documentation;

- 21.2.5 in the three (3) Years prior to the Commencement Date:

- 21.2.5.1 it has conducted all financial accounting and reporting activities in all material respects in compliance with the generally accepted accounting principles that apply to it in any country where it files accounts; and

- 21.2.5.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;

- 21.2.5.3 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract; and

21.2.5.4 for the Contract Period that all Staff will be vetted in accordance with Good Industry Practice, the Security Policy and the Quality Standards.

21.3 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Customer would have in respect of breach of that provision by the Supplier if that provision had not been so expressed.

21.4 The Supplier acknowledges and agrees that:

21.4.1 the warranties, representations and undertakings contained in this Contract are material and are designed to induce the Customer into entering into this Contract; and

21.4.2 the Customer has been induced into entering into this Contract and in doing so has relied upon the warranties, representations and undertakings contained herein.

## **22. LIABILITIES**

### **22.1 Liability**

22.1.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:

22.1.1.1 death or personal injury caused by its negligence or that of its Staff;

22.1.1.2 Fraud or fraudulent misrepresentation by it or that of its Staff;

22.1.1.3 any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; and

22.1.1.4 any other matter which, by Law, may not be excluded or limited.

22.1.2 The Supplier shall on demand indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported late supply or non-supply, of the Goods and Services or the performance or non-performance by the Supplier of its obligations under this Contract or the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier.

22.1.3 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful

misconduct of the Customer or by breach by the Customer of its obligations under the Contract.

### **Financial Limits**

22.1.4 Subject always to Clause 22.1.1 and Clause 22.1.6, the aggregate liability of either Party for each Year of this Contract under or in relation to this Contract:

22.1.4.1 for all defaults resulting in direct loss or damage to the property (including technical infrastructure, assets or equipment but excluding any loss or damage to the IPR, the Customer Data or Customer Personal Data) of the other Party shall be subject to the financial limits set out in paragraph 7.1 of the Order Form;

22.1.4.2 in respect of Delay Payments Supplier's liability shall be limited to [ ] or the greater of [ ] (subject to Clause 5.8 calculations) Contract Charges; and

22.1.4.3 in respect of all other defaults, claims, losses or damages, whether arising from breach of this Contract, the supply or failure to supply of the Goods and Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equivalent to one hundred and twenty five per cent (125%) of the Contract Charges paid or payable to the Supplier in the Year of this Contract, as calculated as at the date of the event giving rise to the claim under consideration (or if such event occurs in the first twelve (12) Months of the Term, the amount estimated to be paid in the first twelve (12) Months of the Term) and subject to the financial limits set out in paragraph 7.2 of the Order Form.

22.1.5 Subject to Clauses 22.1.1, 22.1.6 and 22.1.7, in no event shall either Party be liable to the other for any:

22.1.5.1 loss of profits;

22.1.5.2 loss of business;

22.1.5.3 loss of revenue;

22.1.5.4 loss of or damage to goodwill;

22.1.5.5 loss of savings (whether anticipated or otherwise); and/or

22.1.5.6 any indirect, special or consequential loss or damage.

22.1.6 Subject to Clauses 22.1.1, 22.1.4 and 22.1.7, the Supplier's liability under this Agreement in respect of the indemnities in:

- 22.1.6.1 Clause 13.2.5 (VAT);
  - 22.1.6.2 any claim under Clause 21.1 (Warranties and Representations);
  - 22.1.6.3 Clause 19.31 (IPR);
  - 22.1.6.4 Clause 20.6.12 (in relation to Clause 20.4 (Customer Data), Clause 20.5 (Protection of Personal Data) and Clause 20.6 (Confidentiality));
  - 22.1.6.5 Clause 28 (Prevention of Bribery and Corruption);
  - 22.1.6.6 Clause 31 (Prevention of Fraud);
- shall be unlimited.
- 22.1.7 Subject always to the provisions of Clauses 22.1.1, 22.1.2, 22.1.4 and 22.1.6, the provisions of 22.1.4 shall not be taken as limiting the right of the Customer to recover as a direct loss:
    - 22.1.7.1 any additional operational and/or administrative expenses arising from the Supplier's Default;
    - 22.1.7.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Supplier's Default;
    - 22.1.7.3 the additional cost of procuring Replacement Goods and Services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Supplier; and
    - 22.1.7.4 any losses, costs, damages, expenses or other liabilities suffered or incurred by the Customer which arise out of or in connection with the loss of, corruption or damage to or failure to deliver Customer Data by the Supplier.
  - 22.1.8 Nothing in this Contract shall impose any liability on the Customer in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Supplier that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.
  - 22.1.9 Any indemnity by either Party under any provision of this Contract shall be without limitation and/or exclusion to any indemnity by that Party under any other provision of this Contract.
  - 22.1.10 Nothing in this Clause 22 shall affect a Party's general duty to mitigate its loss.

## 22.2 Insurance

- 22.2.1 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss (including the insurance policies specified in paragraph 8 of the Order Form). Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the Contract Period and for the Minimum Insurance Period.
- 22.2.2 The Supplier shall hold employer's liability insurance in respect of Staff in accordance with paragraph 8 of the Order Form.
- 22.2.3 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in paragraph 8 of the Order Form or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 22.2.4 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of the Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 22.2.5 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract. [It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability referred to in Clause 22.2.1.]
- 22.2.6 The Supplier shall effect and maintain a professional indemnity insurance policy during the Contract Period in accordance with paragraph 8 of the Order Form and shall ensure that all agents, professional consultants and Sub-Contractors involved in the supply of the Services effect and maintain appropriate professional indemnity insurance during the Contract Period in accordance with paragraph 8 of the Order Form.
- 22.2.7 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any insurance, or any cover or claim under any insurance in whole or in part.

## **22.3 Taxation, National Insurance and Employment Liability**

The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Goods and Services and not a contract of employment. The Supplier shall at all times indemnify the Customer and keep the Customer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Customer is alleged or determined to have assumed or been imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HMRC as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

## **23. TERMINATION**

### **23.1 Termination on Insolvency**

23.1.1 The Customer may terminate the Contract with immediate effect by giving notice in writing to the Supplier where the Supplier is a company and in respect of the Supplier:

23.1.1.1 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

23.1.1.2 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

23.1.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) calendar 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

23.1.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

23.1.1.5 an application is made either for the appointment of an administrator or for an administration order and an administrator is appointed, or notice of intention to appoint an administrator is given; or

23.1.1.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or

23.1.1.7 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

- 23.1.1.8 any event similar to those listed in Clause 23.1.1.1 to 23.1.1.7 occurs under the law of any other jurisdiction.
- 23.1.2 The Customer may terminate the Contract with immediate effect by notice in writing where the Supplier is an individual and:
  - 23.1.2.1 an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors; or
  - 23.1.2.2 a petition is presented and not dismissed within fourteen (14) days or order made for the Supplier's bankruptcy; or
  - 23.1.2.3 a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
  - 23.1.2.4 the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or
  - 23.1.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within fourteen (14) calendar days; or
  - 23.1.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
  - 23.1.2.7 the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

## **23.2 Termination on Change of Control**

- 23.2.1 The Supplier shall notify the Customer immediately if the Supplier undergoes a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 ("Change of Control") and provided this does not contravene any Law shall notify the Customer immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. The Customer may terminate the Contract by notice in writing with immediate effect within six (6) Months of:
  - 23.2.1.1 being notified in writing that a Change of Control has occurred or is planned or in contemplation; or
  - 23.2.1.2 where no notification has been made, the date that the Customer becomes aware of the Change of Control,



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

[For the purposes of Clause 23.2.1, any transfer of shares or of any interest in shares by a person to its Affiliate where such transfer forms part of a bona fide reorganisation or restructuring shall be disregarded.]

### **23.3 Termination relating to Guarantee**

23.3.1 Where the Supplier has procured a Guarantee pursuant to Clause 3, the Customer may terminate this Contract with immediate effect if:

23.3.1.1 the Guarantor withdraws the Guarantee for any reason whatsoever;

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

23.3.1.3 any of the events set out in Clauses 23.1.1.1 to 23.1.1.8 occurs in respect of the Guarantor; or

23.3.1.4 the Guarantee becomes invalid or unenforceable for any reason whatsoever,

and in each case the Guarantee is not replaced by an alternative agreement acceptable to the Customer.

### **23.4 Termination on Default**

23.4.1 The Customer may terminate this Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a Default and if:

23.4.1.1 the Supplier has not remedied the Default to the satisfaction of the Customer within ten (10) Working Days or such other longer period as may be specified by the Customer, after issue of a written notice specifying the Default and requesting it to be remedied; or

23.4.1.2 the Default is not, in the opinion of the Customer, capable of remedy; or

23.4.1.3 the Default is a Material Breach of this Contract.

23.4.2 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within 30 calendar days from the receipt of a validly issued invoice, the Supplier may terminate this Contract in writing subject to giving the length of notice as specified in paragraph 9.1 of the Order Form, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under Clause 13.3 (Recovery of Sums Due).

### **23.5 Termination without Cause**

The Customer shall have the right to terminate the Contract at any time by giving the length of written notice to the Supplier specified in paragraph 9.2 of the Order Form.

### **23.6 Termination on Financial Standing**

The Customer may terminate this Contract by serving notice on the Supplier in writing with effect from the date specified in such notice where (in the reasonable opinion of the Customer), there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:

23.6.1 adversely impacts on the Supplier's ability to supply the Goods and Services under this Contract; or

23.6.2 could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Goods and Services under this Contract.

### **23.7 Termination on Audit**

The Customer may terminate this Contract by serving notice in writing with effect from the date specified in such notice if the Supplier commits a Default of Clauses 29.1 to 29.6 (Records and Audit Access).

### **23.8 Termination in relation to Benchmarking**

The Customer may terminate this Contract by serving notice on the Supplier in writing with effect from the date specified in such notice if the Supplier refuses or fails to comply with its obligations as set out in Clause 9 and/or Schedule 7 of the Framework Agreement (Value for Money).

### **23.9 Termination on Bribery and Corruption**

The Customer may terminate this Contract by serving notice on the Supplier in writing with effect from the date specified in such notice where the conduct prohibited in Clause 28 (Prevention of Bribery and Corruption) has occurred.

### **23.10 Termination in relation to Fraud**

The Customer may terminate this Contract by serving notice on the Supplier in writing with effect from the date specified in such notice where the conduct prohibited in Clause 31 (Prevention of Fraud) has occurred.

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

Either Party may, by written notice to the other with immediate effect, terminate this Contract if a Force Majeure Event endures for a continuous period of more than one hundred and twenty (120) Working Days.

#### **23.12 Termination on Critical Service Failure**

The Customer may terminate this Contract by serving notice on the Supplier in writing with effect from the date specified in such notice where a Critical Service Failure has occurred.

#### **23.13 Termination on Failure to Comply with the Implementation Plan and/or Achieve a Milestone**

The Customer may terminate this Contract by serving notice on the Supplier in writing with effect from the date specified in such notice where the Supplier failed to Achieve a Delivery in accordance with the Milestone Dates and/or comply with the dates set out in the Implementation Plan (or the Agreed Delivery Date).

#### **23.14 Partial Termination**

The Customer is entitled to terminate all or part of this Contract pursuant to this Clause 23.14, provided always that the parts of this Contract not terminated can operate effectively to deliver the intended purpose of this Contract.

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

24.1 Where the Customer terminates this Contract under any of the following Clauses: 23.3 (Guarantee), 23.4 (Termination on Default), 23.6 (Financial Standing), 23.7 (Audit), 23.8 (Benchmarking), 23.12 (Termination on Critical Service Failure), (23.13 (Termination on Failure to Comply with the Implementation Plan and/or Achieve a Milestone) and 48.12 (Security Measures) and then makes other arrangements for the supply of the Goods and/or the Services, the Customer may recover from the Supplier the cost reasonably incurred in making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clauses 23.3, 23.4, 23.6, 23.7, 23.8, 23.12, 23.13 and 48.12 no further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.

24.2 Subject to Clause 22 (Liabilities), where the Customer terminates this Contract under Clause 23.5 (Termination without Cause), the Customer shall indemnify the Supplier against any reasonable and proven commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under Clause 23.5 (Termination without Cause).

24.3 The Customer shall not be liable under Clause 24.2 to pay any sum which:

24.3.1 was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

- 24.3.2 when added to any sums paid or due to the Supplier under this Contract, exceeds the total sum that would have been payable to the Supplier if this Contract had not been terminated prior to the expiry of this Contract Period.
- 24.4 On the termination of the Contract for any reason, the Supplier shall:
- 24.4.1 immediately return to the Customer all Confidential Information and the Customer Personal Data in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Goods and Services;
  - 24.4.2 cease to use the Customer Data and, at the direction of the Customer provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form in the formats and on media agreed with the Customer and/or the Replacement Supplier;
  - 24.4.3 except where the retention of Customer Data is required by Law, on the earlier of the receipt of the Customer's written instructions or twelve (12) Months after the date of expiry or termination, destroy all copies of the Customer Data and promptly provide written confirmation to the Customer that the data has been destroyed.
  - 24.4.4 immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Supplier under Clause 12.3 (Property). Such Property shall be handed back to the Customer in good working order (allowance shall be made for reasonable wear and tear);
  - 24.4.5 assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Supplier and/or the completion of any work in progress in accordance with the Exit Plan, or if no Exit Plan has been agreed, provide such assistance and co-operation as the Customer may require;
  - 24.4.6 return to the Customer any sums prepaid in respect of the Goods and Services not provided by the date of expiry or termination (howsoever arising); and
  - 24.4.7 promptly provide all information concerning the provision of the Goods and Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Goods and Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence.
- 24.5 If the Supplier fails to comply with Clauses 24.4.1 and 24.4.4, the Customer may recover possession of the items to which they relate and the Supplier grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted agents or Sub-Contractors where any such items may be held.

- 24.6 Where the Contract is terminated arises due to the Supplier's Default, the Supplier shall provide all assistance under Clause 24.4.55 and 24.4.77 free of charge. Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.
- 24.7 At the end of the Contract Period (howsoever arising) the licence granted pursuant to Clause 12.2.1 (Licences to Occupy Premises) shall automatically terminate without the need to serve notice.
- 24.8 Save as otherwise expressly provided in this Contract:
- 24.8.1 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
- 24.8.2 termination of this Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 13.2 (Payment and VAT), 13.3 (Recovery of Sums Due), 19 (Intellectual Property Rights), 20.5 (Protection of Personal Data), 20.6 (Confidentiality), 20.7 (Official Secrets Acts 1911 to 1989), 20.8 (Freedom of Information), 22 (Liabilities), 24 (Consequences of Expiry or Termination), 28 (Prevention of Bribery and Corruption), 29 (Records and Audit Access), 31 (Prevention of Fraud), 35 (Cumulative Remedies), 41 (Conflicts of Interest), 43 (The Contracts (Rights of Third Parties Act 1999) and 47.1 (Governing Law and Jurisdiction).

## **25. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

- 25.1 The Supplier shall not and shall procure that its Sub-Contractors shall not make any press announcements or publicise this Contract in any way without Approval and shall take reasonable steps to ensure that its Staff and professional advisors comply with this Clause 25. Any such press announcements or publicity proposed under this Clause 25.1 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information,
- 25.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Customer shall be entitled to publicise this Contract in accordance with any legal obligation upon the Customer, including any examination of this Contract by the Auditor.
- 25.3 The Supplier shall not do anything or permit to cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

## **26. HEALTH AND SAFETY**

- 26.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Customer shall promptly notify the Supplier of any health and safety hazards which

may exist or arise at the Customer's Premises and which may affect the Supplier in the performance of its obligations under the Contract.

- 26.2 While on the Customer's Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.
- 26.3 The Supplier shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 26.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff, Sub-Contractors and other persons working on the Premises in the supply of the Goods and Services under the Contract.
- 26.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Customer on request.

## **27. ENVIRONMENTAL REQUIREMENTS**

The Supplier shall, when working on the Premises, perform its obligations under the Contract in accordance with the Customer's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

## **28. PREVENTION OF BRIBERY AND CORRUPTION**

- 28.1 The Supplier shall not:
  - 28.1.1 offer or give, or agree to give, to any employee, agent, servant or representative of the Customer, or other Contracting Body, or any other public body or person employed by or on behalf of the Customer, any gift or other consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to this Contract;
  - 28.1.2 engage in and shall procure that all Staff or any person acting on the Supplier's behalf shall not commit, in connection with this Contract, a Prohibited Act under the Bribery Act 2010, or any other relevant laws, statutes, regulations or codes in relation to bribery and anti-corruption.
- 28.2 The Supplier warrants, represents and undertakes that it has not:
  - 28.2.1 paid commission or agreed to pay commission to the Customer or any Contracting Body or any other public body or any person employed by or on behalf of the Customer, or any Contracting Body or any public body in connection with this Contract; and

28.2.2 entered into this Contract with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Customer or any other Contracting Body, or any other public body or any person employed by or on behalf of the Customer in connection with this Contract, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Customer and the Authority before execution of this Contract.

28.3 The Supplier shall:

28.3.1 in relation to this Contract, act in accordance with the Ministry of Justice Guidance pursuant to Section 9 of the Bribery Act 2010;

28.3.2 immediately notify the Customer and the Authority if it suspects or becomes aware of any breach of this Clause 28;

28.3.3 respond promptly to any of the Customer's enquiries regarding any breach, potential breach or suspected breach of this Clause 28 and the Supplier shall co-operate with any investigation into the same and allow the Customer to audit the Supplier's books, records and any other relevant documentation in connection with any such breach;

28.3.4 if so required by the Customer, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing of the compliance with this Clause 28 by the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Goods and Services in connection with this Contract. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and

28.3.5 have, maintain and enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it and any of its Staff or any person acting on the Supplier's behalf from committing a Prohibited Act.

28.4 If the Supplier, its Staff or any person acting on the Supplier's behalf, in all cases whether or not acting with the Supplier's knowledge breaches:

28.4.1 this Clause 28; or

28.4.2 the Bribery Act 2010 in relation to this Contract or any other contract with the Customer or Contracting Body or any other public body or any person employed by or on behalf of the Customer or a public body in connection with this Contract,

the Customer shall be entitled to terminate this Contract by written notice with immediate effect.

28.5 Without prejudice to its other rights and remedies under this Clause 28, the Customer shall be entitled to recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full from and against:

- 28.5.1 the amount of value of any such gift, consideration or commission; and
- 28.5.2 any other loss sustained by the Customer in consequence of any breach of this Clause 28.

## **29. RECORDS AND AUDIT ACCESS**

- 29.1 The Supplier shall keep and maintain for [seven (7)] Years after the date of expiry or earlier termination of this Contract (or such other period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Contract including the Goods and Services provided under it, and the amounts paid by the Customer.
- 29.2 The Supplier shall keep the records and accounts referred to in Clause 29.1 above in accordance with Good Industry Practice and generally accepted accounting principles.
- 29.3 The Supplier shall afford the Customer and the Auditors access to the records and accounts referred to in Clause 29.2 at the Supplier's premises and/or provide copies of such records and accounts, as may be required by the Customer and/or the Auditors from time to time, in order that the Customer and/or the Auditors may carry out an inspection including for the following purposes:
  - 29.3.1 to verify the accuracy of the Contract Charges (and proposed or actual variations to them in accordance with this Contract), and/or the costs of all supplier (including Sub-Contractors) of the Services;
  - 29.3.2 to review the integrity, confidentiality and security of the Customer Data held or used by the Supplier;
  - 29.3.3 to review the Supplier's compliance with the DPA in accordance with this Contract and any other Laws;
  - 29.3.4 to review the Supplier's compliance with its continuous improvement and benchmarking obligations set out in Schedule 7 (Value for Money) of the Framework Agreement and Clause 9 (Continuous Improvement) of this Contract;
  - 29.3.5 to review the Supplier's compliance with its security obligations set out in Clause 18 (Staffing Security);
  - 29.3.6 to review any books of account kept by the Supplier in connection with the provision of the Goods and Services;
  - 29.3.7 to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 (as amended from time to time) of the economy, efficiency and effectiveness with which the Customer has used its resources;
  - 29.3.8 to inspect the Customer's assets, including the Intellectual Property Rights, equipment, facilities and maintenance, for the purposes of ensuring that the Customer's assets are secure and that any register of assets is up to date; and/or



- 29.3.9 to ensure that the Supplier is complying with its obligations under this Contract.
- 29.4 The Supplier shall on request afford the Customer, the Customer's representatives and/or the Auditor access to such records and accounts as may be required by the Customer from time to time.
- 29.5 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) on request during the Contract Period and for the period specified in paragraph 11 of the Order Form after the date of termination or expiry of this Contract to the Customer and/or the Auditors.
- 29.6 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services or supply of the Goods save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.
- 29.7 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including:
- 29.7.1 all reasonable information requested by the Customer within the scope of the audit;
- 29.7.2 reasonable access to sites controlled by the Supplier and to Equipment used in the provision of the Goods and Services; and
- 29.7.3 access to the Staff.
- 29.8 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, unless the audit reveals a material Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

### **30. NON-DISCRIMINATION**

- 30.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any Law, enactment, order or regulation relating to discrimination (whether in relation to race, gender, religion, disability, sexual orientation, age or otherwise).
- 30.2 The Supplier shall take all reasonable steps to secure the observance of Clause 30.1 by all Staff employed in the performance of this Contract.
- 30.3 The Supplier shall comply with the requirements set out in OSCHEDULE 8: DIVERSITY & EQUALITY.

## **31. PREVENTION OF FRAUD**

- 31.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Supplier's [shareholders and] directors in connection with the receipt of monies from the Customer.
- 31.2 The Supplier shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur save where complying with this provision would cause the Supplier or its Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.
- 31.3 If the Supplier or its Staff commits any Fraud in relation to this or any other contract with a Contracting Body or the Customer, the Customer may:
  - 31.3.1 terminate this Contract with immediate effect by giving the Supplier notice in writing; and/or
  - 31.3.2 recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full from any loss sustained by the Customer in consequence of any breach of this Clause 31 including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and Services and any additional expenditure incurred by the Customer until the Expiry Date.

## **32. TRANSFER AND SUB-CONTRACTING**

- 32.1 Subject to Clause 32.5, the Supplier shall not assign, novate, Sub-Contract or in any other way dispose of this Contract or any part of it without Approval. The Customer has consented to the engagement of the Sub-Contractors listed in paragraph 3.2 of the Order Form.
- 32.2 The Supplier shall not substitute or remove a Sub-Contractor or appoint an additional Sub-Contractor without the prior written consent (which shall not be unreasonably withheld or delayed) of the Authority and the Customer. In its request for approval, the Supplier shall provide the Customer with the following information about the proposed sub-contractor:
  - 32.2.1 its name, registered office and company registration number;
  - 32.2.2 a copy of the proposed sub-contract;
  - 32.2.3 the purposes for which the proposed sub-contractor will be employed, including the scope of any goods and services to be provided by the proposed sub-contractor; and
  - 32.2.4 if relevant, confirmation that the sub-contract requires the proposed sub-contractor to comply with any relevant Service Levels.
- 32.3 Notwithstanding any permitted Sub-Contract in accordance with this Clause 32, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if

they were its own. An obligation on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that its Staff do, or refrain from doing, such act or thing.

- 32.4 Sub-Contracting any part of this Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under this Contract.
- 32.5 Subject to Customer's Approval which shall not be unreasonably withheld or delayed the Supplier may assign to a third party ("**the Assignee**") the right to receive payment of the Contract Charges or any part thereof due to the Supplier under this Contract (including any interest which the Customer incurs under Clause 13.2.6). Any assignment under this Clause shall be subject to:
  - 32.5.1 reduction of any sums in respect of which the Customer exercises its right of recovery under Clause 13.3 (Recovery of Sums Due);
  - 32.5.2 all related rights of the Customer under this Contract in relation to the recovery of sums due but unpaid; and
  - 32.5.3 the Customer receiving notification under both Clauses 32.6 and 32.7.
- 32.6 In the event that the Supplier assigns the right to receive the Contract Charges under Clause 32.5, the Supplier or the Assignee shall notify the Customer in writing of the assignment and the date upon which the assignment becomes effective.
- 32.7 The Supplier shall ensure that the Assignee notifies the Customer of the Assignee's contact information and bank account details to which the Customer shall make payment.
- 32.8 The provisions of Clause 13.2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended.
- 32.9 The Supplier shall be responsible for all acts and omissions of its Sub-Contractors and those employed or engaged by the Sub-Contractors as though they are its own.
- 32.10 Where the Customer has consented to the placing of Sub-Contracts, copies of each signed Sub-Contract shall be sent by the Supplier to the Customer as soon as reasonably practicable.
- 32.11 The Supplier shall ensure that each Sub-Contract shall include:
  - 32.11.1 a right under the Contracts (Rights of Third Parties) Act 1999 for the Customer to enforce the terms of that Sub-Contract as if it were the Supplier;
  - 32.11.2 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-Contract to the Customer;
  - 32.11.3 a provision requiring the Sub-Contractor to enter into a direct confidentiality agreement with the Customer on the same terms as set out in Clause 20.5 (Confidentiality);

- 32.11.4 a provision requiring the Sub-Contractor to comply with protection of data requirements pursuant to Clauses 20.4 (Customer Data) and 20.5 (Protection of Personal Data);
  - 32.11.5 a provision requiring the Sub-Contractor to comply with the anti-corruption and anti-bribery requirements pursuant to Clause 28 (Prevention of Bribery and Corruption);
  - 32.11.6 a provision requiring the Supplier to pay any undisputed sum due to the relevant Sub-Contractor within a specified period that does not exceed thirty (30) calendar days from the date the Supplier receives the Sub-Contractor's invoice; and
  - 32.11.7 a provision restricting the ability of the Sub-Contractor to further Sub-Contract elements of the service provided to the Supplier without first seeking the prior written consent of the Customer and the Authority.
- 32.12 If the Customer is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier in the supply of the Goods and Services, then the Customer may:
- 32.12.1 require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Customer in respect of the relevant item.
- 32.13 If the Customer exercises the option pursuant to Clause 32.12, then the Contract Charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.
- 32.14 Subject to Clause 32.16, the Customer may assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to:
- 32.14.1 any Contracting Body; or
  - 32.14.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
  - 32.14.3 any private sector body which substantially performs the functions of the Customer,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under this Contract.
- 32.15 Any change in the legal status of the Customer such that it ceases to be a Contracting Body shall not, subject to Clause 32.16, affect the validity of the Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Customer.

- 32.16 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 32.14 to a body which is not a Contracting Body or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Body (in the remainder of this Clause both such bodies being referred to as "the **Transferee**"):
- 32.16.1 the rights of termination of the Customer in Clauses 23.1 (Termination on Insolvency), 23.2 (Termination on Change of Control) and 23.4 (Termination on Default) shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or default of the Transferee; and
  - 32.16.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the previous consent in writing of the Supplier.
- 32.17 The Customer may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under this Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under this Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 32.18 For the purposes of Clause 32.16 each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of this Contract.

### **33. FORCE MAJEURE**

- 33.1 Subject to Clauses 33.6 and 33.7, neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Contract to the extent that such delay or failure is a result of Force Majeure. In particular, the Supplier shall be relieved from its Delay Payments obligation under Clause 5.8 and paragraph 4.1 of the Order Form to the extent that the Achievement of the Milestone in the Implementation Plan is affected by the Force Majeure.
- 33.2 Notwithstanding Clause 33.1, each Party shall use all reasonable endeavours to continue to perform its obligations under this Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under this Contract for a period in excess of one hundred and twenty (120) Working Days, either Party may terminate this Contract with immediate effect by notice in writing to the other Party.
- 33.3 Any failure or delay by the Supplier in performing its obligations under this Contract which results from any failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-Contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.

- 33.4 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in Clause 33.1 it shall immediately give the other Party written notice and shall inform the other Party of the period during which it is estimated that such failure or delay shall continue. The notification shall include details of the Force Majeure event together with evidence of its effect on the obligations of the Affected Party.
- 33.5 The Affected Party shall use all reasonable endeavours to prevent and mitigate the effects of any delay and the Supplier shall at all times during which a Force Majeure event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequence of the Force Majeure.
- 33.6 As soon as practicable following the Affected Party's notification and in any event within five (5) Working Days, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to facilitate the continued performance of this Contract. After such consultation, the Customer may direct the Supplier to procure the Goods and Services that are affected by the Force Majeure from a third party service provider in which case the Supplier will be liable for payment for the provision of those Goods and Services for as long as the delay in performance continues.
- 33.7 The Supplier will not have the right to any payment from the Customer under this Contract where the Supplier is unable to provide the Goods and Services because of an event of Force Majeure. However if the Customer directs the Supplier to use a replacement supplier pursuant to Clause 33.6, then the Customer will pay the Supplier (a) the Contract Charges; and (b) the difference between the Contract Charges and the new supplier's costs if, in respect of the Goods and Services that are subject to Force Majeure, the new service provider's costs are greater than the Contract Charges.
- 33.8 The Affected Party shall notify the other Party in writing as soon as practicable (and in any event within five (5) Working Days) after the Force Majeure event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure event.

#### **34. WAIVER**

- 34.1 The failure of either Party to insist upon strict performance of any provision of this Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.
- 34.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 44 (Notices).
- 34.3 A waiver by either Party of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

### **35. CUMULATIVE REMEDIES**

Except as otherwise expressly provided by this Contract, all remedies available to either Party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies provided at Law or in equity.

### **36. 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 necessary to give effect to the meaning of this Contract.

### **37. VARIATION**

37.1 Subject to the provisions of this Clause 37, the Customer may request a variation to the Goods and Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".

37.2 The Customer may request a Variation by completing and sending the Variation form set out in SCHEDULE 1: V to the Supplier giving sufficient information for the Supplier to assess the extent of the Variation and any additional cost that may be incurred. The Supplier shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.

37.3 In the event that the Supplier is unable to provide the Variation to the Goods and Services or where the Parties are unable to agree a change to the Contract Charges, the Customer may:

37.3.1 agree that the Parties to continue to perform their respective obligations under this Contract without the Variation; or

37.3.2 terminate this Contract with immediate effect, except where the Supplier has already Delivered part or all of the Order in accordance with the Order Form or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

37.4 If the Parties agree the Variation and any variation in the Contract Charges, the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Contract.

### **38. SEVERABILITY**

38.1 If any provision of this Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall

continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

- 38.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Contract, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

### **39. MISTAKES IN INFORMATION**

The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Supplier in connection with the supply of the Goods and Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein, except where such mistakes are the fault of the Customer.

### **40. SUPPLIER'S STATUS**

At all times during the Contract Period the Supplier shall be an independent contractor and nothing in this Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Contract.

### **41. CONFLICTS OF INTEREST**

- 41.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Customer under the provisions of this Contract.
- 41.2 The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 41.1 above arises or is reasonably foreseeable.
- 41.3 The Customer reserves the right to terminate this Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of this Contract. The actions of the Customer pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

### **42. ENTIRE AGREEMENT**

- 42.1 This Contract, together with a completed, signed and dated Framework Agreement and the other documents referred to in them constitute the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.



- 42.2 Each of the Parties acknowledges and agrees that in entering into this Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract.
- 42.3 The Supplier acknowledges that it has:
- 42.3.1 entered into this Contract in reliance on its own due diligence alone; and
  - 42.3.2 received sufficient information required by it in order to determine whether it is able to provide the Goods and Services in accordance with the terms of this Contract.
- 42.4 Nothing in Clauses 42.1 and 42.2 shall operate to exclude Fraud or fraudulent misrepresentation.
- 42.5 [This Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.]

#### **43. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 43.1 Subject to 43.2, a person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 (“**CRITPA**”) to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRITPA and does not apply to the Crown.
- 43.2 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of this Contract or any one or more Clauses of it.

#### **44. NOTICES**

- 44.1 Except as otherwise expressly provided within this Contract, no notice or other communication from one Party to the other shall have any validity under this Contract unless made in writing by or on behalf of the Party sending the communication.
- 44.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause 44.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of facsimile transmission or sooner where the other Party acknowledges receipt of such letters or facsimile transmission.

- 44.3 For the purposes of Clause 44.2, the address, email address or fax number of each Party shall be the address, email address and fax number set out in the Order Form.
- 44.4 Either Party may change its address for service by serving a notice in accordance with this Clause 44.
- 44.5 For the avoidance of doubt, any notice given under this Contract shall not be validly served if sent by electronic mail (email) and not confirmed by a letter.

#### **45. LEGISLATIVE CHANGE**

The Supplier shall neither be relieved of its obligations under this Contract nor be entitled to an increase in the Contract Charges as the result of a General Change in Law.

#### **46. STANDARDS**

- 46.1 The Supplier shall provide the Goods and Services and meet its responsibilities and obligations hereunder in accordance with the Standards as set out in Schedule 9 to this Contract.
- 46.2 The Supplier shall discuss with the Customer any conflict that the Supplier reasonably believes that there is or will be between any of the standards and any other obligation under this Contract, and shall comply with the Customer's decision on the resolution of that conflict.

#### **47. DISPUTES AND LAW**

##### **47.1 Governing Law and Jurisdiction**

The Contract shall be governed by and interpreted in accordance with the Laws of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English courts any dispute that arises in connection with the Contract.

##### **47.2 Dispute Resolution**

- 47.2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the level of representative of each Party specified in the Order Form.
- 47.2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 47.2.3 If the dispute cannot be resolved by the Parties pursuant to Clause 47.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 47.2.5 unless:

- 47.2.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or
  - 47.2.3.2 the Supplier does not agree to mediation.
- 47.2.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Supplier and the Staff shall comply fully with the requirements of the Contract at all times.
- 47.2.5 The procedure for mediation is as follows:
  - 47.2.5.1 a neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("**CEDR**") to appoint a Mediator;
  - 47.2.5.2 the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;
  - 47.2.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
  - 47.2.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
  - 47.2.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
  - 47.2.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

## SCHEDULE 1: V VARIATION FORM

**No of Order Form being varied:** .....

**Variation Form No:** .....

### **BETWEEN:**

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

and

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

1. The Order is varied as follows and shall take effect on the date signed by both Parties:
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

### **Signed by an authorised signatory for and on behalf of the Customer**

Signature \_\_\_\_\_

Date \_\_\_\_\_

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

Address \_\_\_\_\_

\_\_\_\_\_

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

Signature \_\_\_\_\_

Date \_\_\_\_\_

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

Address \_\_\_\_\_

\_\_\_\_\_

## **SCHEDULE 2: SECURITY MANAGEMENT PLAN**

In this Schedule the following provisions shall have the meanings given to them below:

<b>"Breach of Security"</b>	<p>in accordance with the security requirements in paragraph 2.8 of the Order Form and the Security Policy, the occurrence of:</p> <ul style="list-style-type: none"><li>(a) any unauthorised access to or use of the Services, the Premises, the Sites, the Supplier System and/or any ICT, information or data (including the Confidential Information and the Customer Data) used by the Customer and/or the Supplier in connection with this Contract; and/or</li><li>(b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including any copies of such information or data, used by the Customer and/or the Supplier in connection with this Contract;</li></ul>
<b>"ISMS"</b>	<p>The Information Security Management System as defined by ISO/IEC 27001. The scope of the ISMS will be as agreed by the Parties and will directly reflect the scope of the Services;</p>
<b>"Protectively Marked"</b>	<p>shall have the meaning as set out in the Security Policy Framework;</p>
<b>"Security Policy Framework"</b>	<p>means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division);</p>
<b>"Security Tests"</b>	<p>shall have the meaning set out in paragraph 5 of this SCHEDULE 2: ;</p>
<b>"Statement of Applicability"</b>	<p>shall have the meaning set out in ISO/IEC 27001 and as agreed by the Parties.</p>

### **1. INTRODUCTION**

#### **This Schedule covers:**

- 1.1 principles of protective security to be applied in delivering the Goods and Services;
- 1.2 the development, implementation, operation, maintenance and continual improvement of an ISMS;
- 1.3 the creation and maintenance of the Security Management Plan;

- 1.4 audit and testing of ISMS compliance with the security requirements (as set out in paragraph 2.7 of the Order Form);
- 1.5 conformance to ISO/IEC 27001 (Information Security Requirements Specification) and ISO/IEC27002 (Information Security Code of Practice) and;
- 1.6 obligations in the event of actual, potential or attempted breaches of security.

## **2. PRINCIPLES OF SECURITY**

- 2.1 The Supplier acknowledges that the Customer places great emphasis on the confidentiality, integrity and availability of information and consequently on the security provided by the ISMS.
- 2.2 The Supplier shall be responsible for the effective performance of the ISMS and shall at all times provide a level of security which:
  - 2.2.1 is in accordance with Good Industry Practice, Law and this Contract;
  - 2.2.2 complies with the Security Policy;
  - 2.2.3 complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) available from the Cabinet Office Security Policy Division (COSPD)
  - 2.2.4 meets any specific security threats to the ISMS;
  - 2.2.5 complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph 6 of this Schedule;
  - 2.2.6 complies with the security requirements as set out in paragraph 2.7 of the Order Form; and
  - 2.2.7 complies with the Customer's ICT standards.
- 2.3 Subject to Clause 46, the references to Standards, guidance and policies set out in paragraph 2.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.
- 2.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Customer's Representative of such inconsistency immediately upon becoming aware of the same, and the Customer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

### **3. ISMS AND SECURITY MANAGEMENT PLAN**

#### **3.1 Introduction**

- 3.1.1 The Supplier shall develop, implement, operate, maintain and continuously improve and maintain (and ensure that all Supplier's Staff and Sub-Contractors implement and comply with) an ISMS which will, without prejudice to paragraph 2.2, be approved, by the Customer, tested in accordance with 0, periodically updated and audited in accordance with ISO/IEC 27001.
- 3.1.2 The Supplier shall develop and maintain a Security Management Plan in accordance with this Schedule to apply during the Contract Period.
- 3.1.3 The Supplier shall comply with its obligations set out in the Security Management Plan and any other provision of the Framework Agreement relevant to security.
- 3.1.4 Both the ISMS and the Security Management Plan shall, unless otherwise specified by the Customer, aim to protect all aspects of the Goods and Services and all processes associated with the delivery of the Goods and Services, including the Premises, the Sites, the Supplier System and any ICT, information and data (including the Customer Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Contract.
- 3.1.5 The Supplier is responsible for monitoring and ensuring that it is aware of changes to the Security Policy. The Supplier shall keep the Security Management Plan up-to-date with the Security Policy as amended from time to time.

#### **3.2 Development of the Security Management Plan**

- 3.2.1 Within twenty (20) Working Days after the Commencement Date (or such other period specified in the Implementation Plan or as otherwise agreed by the Parties in writing) and in accordance with paragraph 4.2 (Amendment and Revision), the Supplier will prepare and deliver to the Customer for approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.
- 3.2.2 If the Security Management Plan, or any subsequent revision to it in accordance with paragraph 4.2 (Amendment and Revision), is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan. If the Security Management Plan is not Approved the Supplier shall amend it within ten (10) Working Days or such other period as the Parties may agree in writing of a notice of non-approval from the Customer and re-submit to the Customer for approval. The parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15)

Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the Customer. If the Customer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Customer pursuant to this paragraph 3.2.2 may be unreasonably withheld or delayed. However a refusal by the Customer to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 4 shall be deemed to be reasonable.

#### **4. CONTENT OF THE SECURITY MANAGEMENT PLAN**

- 4.1.1 The Security Management Plan will set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Goods and Services and all processes associated with the delivery of the Goods and Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Goods and Services comply with the provisions of this Contract (including this Schedule, the principles set out in paragraph 2.2 and any other elements of this Contract relevant to security or any data protection guidance produced by the Customer).
- 4.1.2 The Security Management Plan (including the draft version) should also set out the plans for transiting all security arrangements and responsibilities from those in place at the Commencement Date to those incorporated in the Supplier's ISMS at the date set out in the Implementation Plan for the Supplier to meet the full obligations of the security requirements set out in this Contract and paragraph 2.7 of the Order Form.
- 4.1.3 The Security Management Plan will 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 that standard.
- 4.1.4 The Security Management Plan shall be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the Services and shall only reference documents which are in the possession of the Customer or whose location is otherwise specified in this Schedule.

#### **4.2 Amendment and Revision of the ISMS and Security Management Plan**

- 4.2.1 The ISMS and Security Management Plan will be fully reviewed and updated by the Supplier annually, or from time to time to reflect:
  - 4.2.1.1 emerging changes in Good Industry Practice;
  - 4.2.1.2 any change or proposed change to the Supplier System, the Goods and Services and/or associated processes;



- 4.2.1.3 any new perceived or changed security threats;
- 4.2.1.4 any reasonable request by the Customer.
- 4.2.2 The Supplier will provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amendment of the ISMS and Security Management Plan at no additional cost to the Customer. The results of the review should include, without limitation:
  - 4.2.2.1 suggested improvements to the effectiveness of the ISMS;
  - 4.2.2.2 updates to the risk assessments;
  - 4.2.2.3 proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and
  - 4.2.2.4 suggested improvements in measuring the effectiveness of controls.
- 4.2.3 On receipt of the results of such reviews, the Customer will Approve any amendments or revisions to the ISMS or Security Management Plan in accordance with the process set out at paragraph 3.2.2.
- 4.2.4 Any change or amendment which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a Customer request or change to the requirement set out in paragraph 2.8 of the Order Form or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved in writing by the Customer.

## 5. TESTING

- 5.1 The Supplier shall conduct tests of the ISMS ("**Security Tests**") on an annual basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Customer.
- 5.2 The Customer shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Customer with the results of such tests (in a form approved by the Customer in advance) as soon as practicable after completion of each Security Test.
- 5.3 Without prejudice to any other right of audit or access granted to the Customer pursuant to this Contract, the Customer and/or its authorised representatives shall be entitled, at any time and without giving notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Customer may notify the Supplier of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Goods and Services. If such tests adversely affect the Supplier's ability to deliver the Goods

and Services to the agreed Service Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the tests.

- 5.4 Where any Security Test carried out pursuant to paragraphs 5.1 and 5.2 above reveals any actual or potential Breach of Security and/or security failure or weaknesses, the Supplier shall promptly notify the Customer in writing of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Customer's approval in accordance with paragraph 3.2.2, the Supplier shall implement such changes to the ISMS and the Security Management Plan is required in accordance with the timetable agreed with the Customer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan to address a non-compliance with the Security Policy or security requirements (as set out in paragraph 2.7 of the Order Form), the change to the ISMS or Security Management Plan shall be at no cost to the Customer. For the purposes of this paragraph 5, weaknesses means a vulnerability in security and failure means a possible breach of the Security Management Plan or security requirements.

## **6. COMPLIANCE WITH ISO/IEC 27001**

- 6.1 Where the Customer requests, the Supplier shall obtain independent certification of the ISMS to ISO/IEC 27001 within [twelve (12)] Months of the Commencement Date or such reasonable time period as to be agreed with the Customer and shall maintain such certification for the duration of the Contract.
- 6.2 [If certain parts of the ISMS do not conform to Good Industry Practice, or controls as described in ISO/IEC 27002 are not consistent with the Security Policy, and, as a result, the Supplier reasonably believes that it is not compliant with ISO/IEC 27001, the Supplier shall promptly notify the Customer of this and the Customer in its absolute discretion may waive the requirement for certification in respect of the relevant parts.]
- 6.3 The Customer shall be entitled to carry out such regular security audits as may be required, and in accordance with Good Industry Practice, in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001.
- 6.4 If, on the basis of evidence provided by such audits, it is the Customer's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the Supplier, then the Customer shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001. If the Supplier does not become compliant within the required time then the Customer has the right to obtain an independent audit against these standards in whole or in part.

- 6.5 If, as a result of any such independent audit as described in paragraph 6.3 the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Customer in obtaining such audit.

## **7. BREACH OF SECURITY**

- 7.1 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.
- 7.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 7.1, the Supplier shall:
- 7.2.1 immediately take all reasonable steps necessary to:
- 7.2.1.1 remedy such breach or protect the integrity of the ISMS against any such potential or attempted breach or threat; and
- 7.2.1.2 prevent an equivalent breach in the future.
- Such steps shall include any action or changes reasonably required by the Customer. In the event that such action is taken in response to a breach that is determined by the Customer acting reasonably not to be covered by the obligations of the Supplier under this Contract, then the Supplier shall be entitled to refer the matter to the Variation Procedure; and
- 7.2.2 As soon as reasonably practicable provide to the Customer full details (using such reporting mechanism as defined by the ISMS) of the Breach of Security or the potential or attempted Breach of Security.

**SCHEDULE 3: PARENT COMPANY  
GUARANTEE**

***[Insert the name of the Guarantor]***

**- and -**

**[◆                      ]**

***[Insert the name of the Customer]***

**DEED OF GUARANTEE**

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

BETWEEN:

- (1)     *[Insert the name of the Guarantor]* [a company incorporated in England and Wales with number [    ] whose registered office is at *[insert address of the Guarantor's registered office]*] [a company incorporated under the laws of *[insert country if not registered in England and Wales]*, registered in *[insert country where registered if not in England and Wales]* with number *[insert number]* at *[insert place of registration]*, whose principal office is at *[insert office address]* ("Guarantor"); in favour of
- (2)     *[Insert the name of the Customer]* whose principal office is at *[insert office address]* ("**Beneficiary**").

**WHEREAS:**

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

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

## **1. DEFINITIONS AND INTERPRETATION**

In this Deed of Guarantee:

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

**"Authority"** means the Minister for the Cabinet Office as represented by Government Procurement Service formerly Buying Solutions, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;

**"Guaranteed Agreement"** means the agreement for the provision of the Goods and Services made between the Supplier and the Customer comprising of an Order Form dated *[[insert date dd/mm/yyyy ]/[the same date as this Deed of Guarantee]]* and the Call-off Terms; and

***[Guidance Note to Customer: Delete the appropriate Clauses above depending on when the Order Form is dated]***

**"Guaranteed Obligations"** means all obligations of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to

the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;

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

## **2. GUARANTEE AND INDEMNITY**

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier will duly and punctually perform all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under the Guaranteed Agreement or in respect of the Guaranteed Obligations.
- 2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to

the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:

- 2.3.1 fully, punctually and specifically perform (either itself or, with the consent of the Beneficiary which shall not be unreasonably withheld or delayed, and provided that the Guarantor will nonetheless remain fully responsible for the performance of the Guaranteed Obligations, by an Affiliate or other third party) such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
- 2.3.2 fully indemnify and keep the Beneficiary fully indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.
- 2.4 As a separate and independent obligation, the Guarantor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

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

If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will (either itself or, with the consent of the Beneficiary which shall not be unreasonably withheld or delayed, and provided that the Guarantor will nonetheless remain fully responsible for the performance of the Guaranteed Obligations, by an Affiliate or other third party), at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the

Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

#### **4. DEMANDS AND NOTICES**

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

4.1.1 [insert address of the Guarantor in England and Wales]

4.1.2 Facsimile Number: [insert fax number]

4.1.3 For the Attention of: [insert name]

***[Guidance Note: Relevant information to be inserted above]***

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

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

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

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

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

4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile or electronic mail message was properly addressed and despatched, as the case may be.

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

#### **5. BENEFICIARY'S PROTECTIONS**

5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether such arrangement is made with or without the assent of the Guarantor) or by any amendment, variation, novation, supplement or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether such amendment, variation, novation, supplement, termination, forbearance or



indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- 5.2.1 it shall not be discharged by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
  - 5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
  - 5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
  - 5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.

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

## **6. RIGHTS OF SUBROGATION**

The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

- 6.1 of subrogation and indemnity;
- 6.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
- 6.3 to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until the Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

## **7. REPRESENTATIONS AND WARRANTIES**

- 7.1 The Guarantor hereby represents and warrants to the Beneficiary that:
- 7.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- 7.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;

- 7.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including without limitation entry into and performance of a contract pursuant to Clause 3 have been duly authorised by all necessary corporate action and do not contravene or conflict with:
- 7.1.3.1 the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
  - 7.1.3.2 any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
  - 7.1.3.3 the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets;
- 7.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 7.1.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

7.2 The Guarantor acknowledges and agrees that:

- 7.2.1 the warranties, representations and undertakings contained in this Deed of Guarantee are material and are designed to induce the Beneficiary into entering into the Guaranteed Agreement; and
- 7.2.2 the Beneficiary has been induced into entering into the Guaranteed Agreement and in doing so has relied upon on the warranties, representations and undertakings contained herein.

## **8. PAYMENTS AND SET-OFF**

- 8.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 8.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee from the day after the date on which payment was due up to and including the date of payment in full (as well after as before any judgment)

calculated from day to day at a rate per annum equal to the latest inter-bank lending rate (LIBOR) plus two (2%) percent from time to time in force.

- 8.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

## **9. GUARANTOR'S ACKNOWLEDGEMENT**

The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

## **10. ASSIGNMENT**

The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.

## **11. SEVERANCE**

If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

## **12. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that:

- 12.1 subject to Clause 12.2, this Deed of Guarantee is not intended to, and does not, give to any person who is not a party to this Deed of Guarantee any rights to enforce any provisions contained in this Deed of Guarantee except for any person to whom the benefit of this Deed of Guarantee is assigned or transferred in accordance with Clause 10; and
- 12.2 the Customer may, as agent and trustee for the Beneficiary, enforce on behalf of the Beneficiary any term of this Deed of Guarantee.

## **13. GOVERNING LAW & JURISDICTION**

- 13.1 This Deed of Guarantee shall be governed by and construed in all respects in accordance with English law.
- 13.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection

with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.

- 13.3 Nothing contained in this Clause 13 shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 13.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

***[Guidance Note: The following provision can be included to deal with the appointment of an English process agent by a non English incorporated Guarantor] [The Guarantor hereby irrevocably designates, appoints and empowers [insert name of Supplier] (the Supplier) [Guidance Note: A suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office, or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]***

***[Guidance Note: This provision is to be completed by the Supplier where the registered office of the Guarantor is not situated in England and Wales.]***

**IN WITNESS** whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by )

***[Insert name of the Guarantor]*** acting by ***[Insert/print names]***

Director

Director/Secretary

## **SCHEDULE 4: TESTING**

### **1. INTRODUCTION**

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

### **2. TESTING OVERVIEW**

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

### **3. TEST STRATEGY**

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

### **4. TEST PLANS**

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

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

## **5. TESTING**

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

## **6. TEST ISSUES**

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

## **7. TEST QUALITY AUDIT**

- 7.1 Without prejudice to its rights pursuant to Clause 29, the Customer or an agent or contractor appointed by the Customer may perform on-going quality audits in respect of any part of the Testing.

- 7.2 If the Customer has any concerns following an audit in accordance with paragraph 7.1 above the Customer will discuss such concerns with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities, and subsequently prepare a written report for the Supplier detailing the same to which the Supplier shall, within a reasonable timeframe, respond in writing.
- 7.3 In the event of an inadequate response to the written report from the Supplier, the Customer (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Customer.

## **8. OUTCOME OF TESTING**

- 8.1 The Customer will issue a Satisfaction Certificate when it is satisfied that a Milestone has been Achieved.
- 8.2 If any Milestones (or any relevant part thereof) do not pass the Test in respect thereof then:
- 8.2.1 the Supplier shall rectify the cause of the failure and re-submit the Deliverables (or the relevant part) to Testing, provided that the Parties agree that there is sufficient time for that action prior to the relevant Milestone Date; or
- 8.2.2 the Parties shall treat the failure as a Supplier Default.



## APPENDIX 1: SATISFACTION CERTIFICATE

To: Home Office

FROM: AJ Engineering Ltd

[insert Date dd/mm/yyyy]

Dear Sirs,

### SATISFACTION CERTIFICATE

Milestones: *[Guidance Note to Customer: Insert description of the relevant Deliverables/Milestones]*

We refer to the agreement ("**Contract**") relating to the provision of the Goods and Services between the **Home Office** ("**Customer**") and TBC ("**Supplier**") dated 30/06/2017.

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

[We confirm that all of the Milestones have been successfully Achieved by the Supplier in accordance with the Test relevant to those Milestones.]

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Customer].

## **SCHEDULE 5: DISASTER RECOVERY AND BUSINESS CONTINUITY**

### **1. PURPOSE OF THIS SCHEDULE**

- 1.1 This Schedule sets out the Customer's requirements for ensuring continuity of the business processes and operations supported by the Goods and Services in circumstances of Goods and Services disruption or failure and for restoring the delivery of Goods and Services through business continuity and as necessary disaster recovery procedures. It also includes the requirement on the Supplier to develop, review, test, change and maintain a BCDR Plan in respect of the Goods and Services.
- 1.2 The BCDR Plan shall be divided into three parts:
  - 1.2.1 Part A which shall set out general principles applicable to the BCDR Plan ("**General Principles**").
  - 1.2.2 Part B which shall relate to business continuity ("**Business Continuity Plan**"); and
  - 1.2.3 Part C which shall relate to disaster recovery ("**Disaster Recovery Plan**"); and
- 1.3 The BCDR Plan shall detail the processes and arrangements which the Supplier shall follow to ensure continuity of the business processes and operations supported by the Goods and Services following any failure or disruption of any element of the Goods and Services and the recovery of the Goods and Services in the event of a Disaster.

### **2. DEVELOPMENT OF BCDR PLAN**

- 2.1 The BCDR Plan shall unless otherwise required by the Customer in writing, be based upon and be consistent with the provisions of paragraphs 3 and 5 of this 0(Business Continuity and Disaster Recovery Provisions).
- 2.2 The Supplier shall ensure that its Sub-Contractors' disaster recovery and business continuity plans are integrated with the BCDR Plan.

### **3. PART A - GENERAL PRINCIPLES AND REQUIREMENTS**

- 3.1 The BCDR Plan shall:
  - 3.1.1 set out how its business continuity and disaster recovery elements link to each other;
  - 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the Goods and Services;

- 3.1.3 contain an obligation upon the Supplier to liaise with the Customer and (at the Customer's request) any Related Supplier with respect to issues concerning business continuity and disaster recovery where applicable;
- 3.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Customer and any of its other Related Suppliers as notified to the Supplier by the Customer from time to time;
- 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), email, phone and fax) for both portable and desk top configurations, where required by the Customer;
- 3.1.6 contain a risk analysis, including:
  - 3.1.6.1 failure or disruption scenarios and assessments and estimates of frequency of occurrence;
  - 3.1.6.2 identification of any single points of failure within the Goods and Services and processes for managing the risks arising therefrom;
  - 3.1.6.3 identification of risks arising from the interaction of the Goods and Services with the goods and services provided by a Related Supplier; and
  - 3.1.6.4 a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- 3.1.7 provide for documentation of processes, including business processes, and procedures;
- 3.1.8 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-Contractors) and for the Customer;
- 3.1.9 identify the procedures for reverting to "normal service";
- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than 0 % of data loss and to preserve data integrity;
- 3.1.11 identify the responsibilities (if any) that the Customer has agreed it will assume in the event of the invocation of the BCDR Plan; and
- 3.1.12 provide for the provision of technical advice and assistance to key contacts at the Customer as notified by the Customer from time to time to inform decisions in support of the Customer's business continuity plans.

- 3.2 The BCDR Plan shall be designed so as to ensure that:
- 3.2.1 the Goods and Services are provided in accordance with the Contract at all times during and after the invocation of the BCDR Plan;
  - 3.2.2 the adverse impact of any Disaster, Goods and Service failure, or disruption on the operations of the Customer is minimal as far as reasonably possible;
  - 3.2.3 it aligns with the relevant provisions of ISO/IEC17799:2000, BS15000 (as amended) and all other industry standards from time to time in force; and
  - 3.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 3.3 The BCDR Plan must be upgradeable and sufficiently flexible to support any changes to the Goods and Services or to the business processes facilitated by and the business operations supported by the Goods and Services.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Service Levels or to any increase in the Contract Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

#### **4. PART B - BUSINESS CONTINUITY ELEMENT - PRINCIPLES AND CONTENTS**

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Goods and Services remain supported and to ensure continuity of the business operations supported by the Goods and Services including but not limited to and unless the Customer expressly states otherwise in writing:
- 4.1.1 the alternative processes, (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
  - 4.1.2 the steps to be taken by the Supplier upon resumption of the Goods and Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 4.2 The Business Continuity Plan shall address the various possible levels of failures of or disruptions to the Goods and Services and the goods and services to be provided and the steps to be taken to remedy the different levels of failure and disruption. The Business Continuity Plan shall also clearly set out the conditions and/or circumstances under which the Disaster Recovery Plan is invoked.

#### **5. PART C - DISASTER RECOVERY ELEMENT - PRINCIPLES AND CONTENTS**

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Customer supported by the Goods and Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

- 5.2 The Disaster Recovery Plan shall only be invoked upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall include the following:
- 5.3.1 the technical design and build specification of the Disaster Recovery System;
  - 5.3.2 details of the procedures and processes to be put in place by the Supplier and any Sub-Contractor in relation to the Disaster Recovery System and the provision of the Disaster Recovery Goods and Services and any testing of the same including but not limited to the following:
    - 5.3.2.1 data centre and disaster recovery site audits;
    - 5.3.2.2 backup methodology and details of the Supplier's approach to data back-up and data verification;
    - 5.3.2.3 identification of all potential disaster scenarios;
    - 5.3.2.4 risk analysis;
    - 5.3.2.5 documentation of processes and procedures;
    - 5.3.2.6 hardware configuration details;
    - 5.3.2.7 network planning including details of all relevant data networks and communication links;
    - 5.3.2.8 invocation rules;
    - 5.3.2.9 Goods and Services recovery procedures;
    - 5.3.2.10 steps to be taken upon Goods and Services resumption to address any prevailing effect of the Goods and Services failure or disruption;
  - 5.3.3 any applicable Service Levels with respect to the provision of Disaster Recovery Services and details of any agreed relaxation upon the Service Levels during any period of invocation of the Disaster Recovery Plan;
  - 5.3.4 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
  - 5.3.5 access controls (to any disaster recovery sites used by the Supplier or any Sub-Contractor in relation to its obligations pursuant to this 0); and
  - 5.3.6 testing and management arrangements.

## 6. PROVISION, REVIEW AND AMENDMENT OF THE BCDR PLAN

- 6.1 The Supplier shall provide a draft of the BCDR Plan within twenty (20) Working Days following the Commencement Date.
- 6.2 The Supplier shall review part or all of the BCDR Plan (and the risk analysis on which it is based):
  - 6.2.1 on a regular basis and as a minimum once every six (6) Months;
  - 6.2.2 within three (3) Months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 8 of this Schedule; and
  - 6.2.3 where the Customer requests any additional reviews (over and above those provided for in paragraphs 6.2.1 and 6.2.2 of this Schedule) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Customer's written requirements. The costs of both Parties for any such additional reviews will be met by the Customer.
- 6.3 Each review pursuant to paragraph 6.1 of the BCDR Plan shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Goods and Services or any underlying business processes and operations facilitated by or supported by the Goods and 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 the occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or if no such period is required within such period as the Customer shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Customer a report ("**Review Report**") setting out:
  - 6.3.1 the findings of the review;
  - 6.3.2 any changes in the risk profile associated with the Goods and Services; and
  - 6.3.3 the Supplier's proposals ("**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any goods and services or systems provided by a third party.
- 6.4 The Supplier shall as soon as is reasonably practicable after receiving the Customer's Approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's

Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the project's risk profile.

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

- 7.1 The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every year during the Contract Period). Subject to paragraph 7.2, the Customer may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Customer considers it necessary, including where there has been any change to the Goods and Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
- 7.2 If the Customer requires an additional test of the BCDR Plan it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Customer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Customer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 7.3 Following each test, the Supplier shall send to the Customer a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Customer considers to be necessary as a result of those tests.
- 7.4 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Customer and shall liaise with the Customer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Customer in this regard. Where required by the Customer, each test shall be carried out under the supervision of the Customer or its nominee.
- 7.5 The Supplier shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the Customer. Copies of live test data used in any such testing shall be (if so required by the Customer) destroyed or returned to the Customer on completion of the test.
- 7.6 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Customer a report setting out:
  - 7.6.1 the outcome of the test;
  - 7.6.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
  - 7.6.3 the Supplier's proposals for remedying any such failures.

- 7.7 Following each test, the Supplier shall take all measures requested by the Customer, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Customer, by the date reasonably required by the Customer and set out in such notice.
- 7.8 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Supplier of any of its obligations under this Schedule 5 or otherwise.
- 7.9 The Supplier shall also perform a test of the BCDR Plan as part of the commissioning of the Goods and Services.

**8. INVOCATION OF THE BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN**

- 8.1 In the event of a complete loss of service or mobility to provide goods or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Customer promptly of such invocation). In all other instances the Supplier shall only invoke or test the BCDR Plan with the prior consent of the Customer.
- 8.2 Following a request from the Customer, the Supplier shall provide a written incident report and the BCDR Plan review following a plan invocation, but in any event within twenty (20) Working Days of full business recovery.



## **SCHEDULE 6: SERVICE LEVELS AND SERVICE CREDITS**

### **1. SCOPE**

This sets out the Service Levels which the Supplier is required to achieve when delivering the Services, the mechanism by which Service Failures will be managed and the method by which the Supplier's performance of the Services by the Supplier will be monitored. This Schedule comprises:

- 1.1 Part A: Service Levels;
- 1.2 Appendix to Part A - Service Levels and Service Credits; and
- 1.3 Part B: Performance Monitoring.

### **PART A Service Levels**

#### **1. GENERAL PROVISIONS**

- 1.1 The Supplier shall provide a proactive contract manager to ensure that all Service Levels and KPIs (Key Performance Indicators) are met to the highest standard throughout the Term of the Framework Agreement and Call-Off Agreement.
- 1.2 The Supplier shall provide support and advice through the provision of a dedicated contract manager, where required on matters relating to:
  - 1.2.1 Service availability;
  - 1.2.2 Accessibility;
  - 1.2.3 Turnaround times of all Services;
  - 1.2.4 Essential Downtime;
  - 1.2.5 Customer Support; and
  - 1.2.6 Accurate and timely billing of customers.
- 1.3 The Supplier accepts and acknowledges that failure to meet the Service Levels set out in this Framework Schedule will result in Service Credits being issued to Customers.

#### **2. PRINCIPAL POINTS**

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

- 2.1.3 incentivise the Supplier to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.

### 3. SERVICE LEVELS & SERVICE LEVELS FAILURES

- 3.1 The Appendix to this Part A of this Schedule sets out Service Levels the performance of which the Parties have agreed to measure.
- 3.2 The Supplier shall monitor its performance of each of the Services referred to in Appendix A by reference to the Service Level(s) for that part of the Service and shall send the Customer a report detailing the level of service which was achieved in accordance with the provisions of part B of this O.
- 3.3 The Supplier shall, at all times, provide the Services in such a manner that the Service Level for each Service is achieved.
- 3.4 If the Supplier has reasonable grounds to believe that it will not be able to achieve Service Levels, the Supplier shall:
  - 3.4.1 immediately notify the Customer in writing;
  - 3.4.2 immediately take all remedial action that is reasonable to mitigate the impact on the Customer and to rectify or prevent the Service Level Failure from taking place or recurring;
  - 3.4.3 if action taken under 3.4.1 and 3.4.2 has not already remedied the Service Level Failure, provide the Customer with a correction plan (the “**Correction Plan**”) within [five (5) Working Days (or such other period as the Parties agree in writing) from the day the Supplier notifies the Customer under Clause 3.4.1. The Supplier will set out in the Correction Plan the action that it will take to:
    - 3.4.3.1 rectify or prevent the Service Level Failure; and
    - 3.4.3.2 prevent the Service Level Failure from recurring; and
    - 3.4.3.3 obtain the Customer’s Approval of such Correction Plan; and
    - 3.4.3.4 carry out the Correction Plan Approved under paragraph 3.4.3 in accordance with its terms.
- 3.5 Approval and implementation of any Correction Plan by the Customer shall not relieve the Supplier of any responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such Approval and/or implementation.
- 3.6 If the level of performance of the Supplier of any element of the Services during Contract Period:
  - 3.6.1 fails to achieve a Service Level in respect of each element of the Service, then the Customer shall make a deduction from the Contract Charges in accordance with Appendix A to this OPart A; or
  - 3.6.2 constitutes a Critical Service Failure, the Customer shall be entitled to terminate this Contract pursuant to Clause 23.12.

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

- 4.1 Framework Schedule 3 (Charging Structure) sets out the mechanism used to calculate Service Credits payable to the Customer as a result of a failure to meet the Service Level in a given Service Period.
- 4.2 Appendix A of this 0 includes details of each Service Credit available to each Service Level if not met by the Supplier.
- 4.3 The Customer shall use performance reports supplied by the Supplier to verify the calculation and accuracy of the Service Credits, if any, applicable to each relevant Service Period.
- 4.4 Service Credits are a reduction of the amounts payable in respect of the Services and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with the provisions of Framework Schedule 3 (Charging Structure).

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

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

## APPENDIX TO PART A - NOT USED

### Service Levels

Performance Criteria	Key Indicator	Performance Measure	Service Credit for each Service Period/Goods Delivery
Accurate and timely billing of Customers	Accuracy /Timeliness	at least 98% at all times	0.5% Service Credit gained for each percentage under the specified performance measure
[Access to Customer Support]	[Availability]	[at least 98% at all times]	[0.5% Service Credit gained for each percentage under the specified performance measure]
[Essential Downtime to be kept to a minimum outside of core time]	[Availability]	[at least 98% of at all times]	[1% Service Credit gained for each percentage under the specified performance measure]
[Provision of Goods/specific Services]	Quality	at least 98% at all times	2% Service Credit gained for each percentage under the specified performance measure
Timely Delivery of Services and Goods [** hours a day, ** days a week.]	Service Availability	at least 98% at all times	2% Service Credit gained for each percentage under the specified performance measure

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

Formula -  $100\% - \% \text{ of Service Level Achieved} = x\%$  of the Contract Charges to be deducted from the next invoice payable by the Customer.

Worked example - 100% (eg Service Level requirement for data accuracy) - 75% (eg accuracy of data) = 25% of the Contract Charges to be deducted from the next invoice payable by the Customer.

## **PART B Performance Monitoring**

### **1. PRINCIPAL POINTS**

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

### **2. REPORTING OF SERVICE [LEVEL] FAILURES**

The Customer shall report all failures to Achieve Service Levels and any Critical Service Failure to the Customer in accordance with the processes agreed in paragraph 1.2 above.

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

- 3.1 The Supplier shall provide the Customer with reports in accordance with the process and timescales agreed pursuant to paragraph 1.2 above which shall contain, as a minimum, the following information in respect of the relevant period just ended:
  - 3.1.1 for each Service Level, the actual performance achieved over the Service Level for the relevant period;
  - 3.1.2 a summary of all failures to achieve Service Levels that occurred during that period;
  - 3.1.3 any Critical Service Failures and details in relation thereto;
  - 3.1.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
  - 3.1.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
  - 3.1.6 such other details as the Customer may reasonably require from time to time.
- 3.2 The Parties shall attend meetings to discuss Service Level reports ("**Performance Review Meetings**") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by

the Supplier and the Customer of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):

- 3.2.1 take place within one (1) week of the reports being issued by the Supplier;
  - 3.2.2 take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance;
  - 3.2.3 be attended by the Supplier's Representative and the Customer's Representative; and
  - 3.2.4 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Customer's representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's representative and the Customer's Representative at each meeting.
- 3.3 The Customer shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.
  - 3.4 The Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified period.

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

- 4.1 In order to assess the level of performance of the Supplier, the Customer may undertake satisfaction surveys in respect of the Supplier's provision of the Services.
- 4.2 The Customer shall be entitled to notify the Supplier of any aspects of their performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with the Contract.
- 4.3 All other suggestions for improvements to the Services shall be dealt with as part of the continuous improvement programme pursuant to Clause 9.

## **SCHEDULE 7: EXIT PLANNING AND SERVICE TRANSFER ARRANGEMENTS**

### **1. INTRODUCTION**

- 1.1 This Schedule describes provisions that should be included in the Exit Plan, the duties and responsibilities of the Supplier to the Customer leading up to and covering the expiry or termination (howsoever arising) (including partial termination) of this Contract and the transfer of provision of the Goods and/or Services to a Replacement Supplier.
- 1.2 The objectives of the Exit Planning and Service Transfer Arrangements are to ensure a smooth transition of the availability of the Goods and Services from the Supplier to a Replacement Supplier at the termination (howsoever arising) (including partial termination) or expiry of this Contract.

### **2. EXIT PLANNING AND SERVICE TRANSFER ARRANGEMENTS**

The Supplier agrees to indemnify and keep the Customer fully indemnified for itself and on behalf of any Replacement Supplier in respect of any claims, costs (including reasonable legal costs), demands, and liabilities arising from the provision of incorrect information to the Customer by the Supplier, to the extent that any such claim, cost, demand or liability directly and unavoidably arises from the use of the incorrect information in a manner that can reasonably be assumed to be proper in bidding for or providing services similar to the Goods and Services.

### **3. EXIT PLAN**

- 3.1 Further to Clause 5.11 the Customer shall review the Exit Plan within twenty (20) Working Days of receipt from the Supplier and shall notify the Supplier of any suggested revisions to the Exit Plan. In this respect, the Customer will act neither unreasonably, capriciously nor vexatiously. Such suggested revisions shall be discussed and resolved within ten (10) Working Days. The agreed Exit Plan shall be signed as approved by each Party (within thirty (30) Working Days after submission of the draft Exit Plan).
- 3.2 The Exit Plan shall provide comprehensive proposals for the activities and the associated liaison and assistance that will be required for the successful transfer of the Goods and Services. The Supplier shall ensure that the Exit Plan shall include as a minimum:
  - 3.2.1 a detailed description of how the Goods and Services will be ceased and transferred to the Customer and/or the Replacement Supplier as the case may be;
  - 3.2.2 details of the management structure to be employed by the Supplier to effectively transfer the provision of the Goods and the Services to the Customer and/or Replacement Supplier as the case may be;
  - 3.2.3 details of how relevant knowledge will be transferred to the Customer and/or the Replacement Supplier; and

- 3.2.4 details of Licensed Goods and contracts (if any) which will be available for transfer to the Customer and/or the Replacement Supplier upon expiry or termination of the Contract together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Goods and Services will be available for such transfer);
- 3.2.5 proposals for the training of key members of the Replacement Supplier's personnel in connection with the continuation of the provision of the Goods and Services following the expiry or termination (howsoever arising) of this Contract charged at rates agreed between the Parties at that time;
- 3.2.6 proposals for providing the Customer or a Replacement Supplier copies of all documentation:
  - 3.2.6.1 used in the provision of the Goods and Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and
  - 3.2.6.2 relating to the use and operation of the Goods and Services;
- 3.2.7 proposals for the methods of transfer of the Goods and Services to the Customer or a Replacement Supplier;
- 3.2.8 proposals for the assignment or novation of all Goods and Services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the Goods and Services;
- 3.2.9 proposals for the identification and return of all Property in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);
- 3.2.10 proposals for the disposal of any redundant Goods and Services and materials; and
- 3.2.11 proposals for the supply of any other information or assistance reasonably required by the Customer or a Replacement Supplier in order to effect an orderly hand over of the provision of the Goods and Services.
- 3.3 in the event that any Licensed Goods are to be transferred to the Replacement Supplier, the Supplier shall ensure that such transfer occurs seamlessly and in an orderly manner without causing any disruption to the provision of the Goods and Services to the Customer and that any such transfer is effected by the Supplier and Replacement Supplier in accordance with Law (together with any applicable regulations);
- 3.4 where a Replacement Supplier determines that any Licensed Goods must be replaced to enable it to perform the Services, the Supplier shall liaise with the Replacement Supplier to co-ordinate the removal of the Licensed Goods with the Replacement Supplier's installation of replacement goods and in such



circumstances the Supplier shall ensure that the removal and replacement of the Licensed Goods:

- 3.4.1 does not cause any damage to the Premises or any of the Customer's equipment (as set out in paragraph 5.2 of the Order Form) or other property of the Customer to the fullest extent that the Supplier is able;
  - 3.4.2 occurs seamlessly and in an orderly manner without causing any disruption to the provision of the Services to the Customer; and
  - 3.4.3 is effected by the Supplier and Replacement Supplier in accordance with Law and any applicable regulations.
- 3.5 The Exit Plan shall be reviewed and updated by the Supplier. In this regard, the Supplier shall provide a revised version of the Exit Plan to the Customer on or before 31st July and 31st January each Contractual Year (or more frequently as may be agreed between the Parties). The revised Exit Plan shall be reviewed and agreed in accordance with the provisions of paragraph 3.1 of this Schedule.

#### **4. ASSISTANCE ON EXPIRY OR TERMINATION**

On the expiry or termination of this Contract, the Supplier shall, where so requested by the Customer, provide assistance to the Customer to migrate the provision of the Goods and Services to a Replacement Supplier including as set out in the Exit Plan.

## **SCHEDULE 8: DIVERSITY & EQUALITY**

### **1. INTRODUCTION**

This Schedule sets out the Diversity and Equality requirements which are applicable to the provision of the Services. This Schedule comprises:

#### **1.1 Part A: Low Risk and / or Low Value Procurement**

## **PART A Low Risk and / or Low Value Procurement**

### **1. GENERAL**

- 1.1 The Supplier acknowledges that the Customer has a duty to promote equality and must at all times be seen to be actively promoting equality of opportunity for, and good relations between, all persons, irrespective of their race, gender, gender reassignment, disability, age, sexual orientation or religion/belief or in terms of pregnancy and maternity or marriage and civil partnership. The Supplier must ensure that each of its Sub-Contractors involved in delivery of this Contract are aware of, and acknowledge, that the Customer has a duty to promote equality.
- 1.2 In delivering the Services, the Supplier shall, and shall procure that its Sub-Contractors, assist and cooperate with the Customer in satisfying Equality Duties by fully complying with the requirements of this Schedule.

### **2. COMPLIANCE**

- 2.1 The Supplier acknowledges and agrees to comply with the provisions of the Equality Legislation.
- 2.2 The Supplier shall provide a copy of their Diversity and Equality Policy in accordance with paragraphs 2.5 and 2.6 of this Schedule, within six (6) Months of the Commencement Date, and on any revision within the Contract Period thereafter.
- 2.3 The Supplier will provide workforce monitoring data in accordance with paragraph 3 (and sub paragraphs) of this Schedule, within six (6) Months of the Commencement Date and annually thereafter during the Term of the Contract.
- 2.4 The Customer will consider and agree the submissions made by the Supplier when complying with paragraphs 2 and 3 of this Schedule. Any issues will be raised with the Supplier by the contract manager acting on behalf of the Customer. If an issue relates to a Sub-Contractor, the Supplier must raise and resolve the issue with the Sub-Contractor. Once submissions are Approved by the Customer the Supplier will formally review, revise and resubmit all information required in paragraph 2.2 and paragraph 2.3 on an annual basis. Diversity and equality aspects will also be discussed jointly by the Customer and the Supplier as an on-going item at the Contract review meetings.
- 2.5 The Supplier shall produce a diversity and equality policy within six (6) Months of the Commencement Date to which it shall adhere in delivering the Goods and Services, though it does not have to be specific to the contract, the Policy, as a minimum shall:
  - a) address the prevention of unlawful discrimination and promoting equality of opportunity in respect of:
    - i. Race

- ii. Gender
    - iii. Gender reassignment
    - iv. Disability
    - v. Age
    - vi. Sexual orientation
    - vii. Religion/Belief
    - viii. Pregnancy and Maternity
    - ix. Marriage and Civil Partnerships,
  - b) contain commitment and sign off from senior management,
  - c) apply to the treatment of Staff, Customers, Sub-Contractors, suppliers and other stakeholders,
  - d) identifies the structures (if any) already in place, or which will be in place (and by when) and what resources are, or will be (and by when), directed towards diversity and equality within the Supplier's organisation including in relation to:
    - i. Harassment
    - ii. Bullying
    - iii. Victimisation
    - iv. Recruitment procedures
    - v. Staff training and development, and
  - e) provides for the setting and monitoring of targets in relation to diversity and equality, and
  - f) details how the policy will be (and by when) communicated to Staff and Sub-Contractors.
- 2.6 In delivering the Goods and Services, the Supplier shall provide written evidence that demonstrate:
- a) reasonable adjustments are made, as required by Equality Legislation to make those Services accessible to disabled people and that in the case of Information Technology services, those services are in accordance with the Customer's standards;
  - b) all Staff have had appropriate training so that they understand the duties required by Equality Legislation not to discriminate and to promote equality
- 2.7 The Customer may request further information and assurance relating to Diversity & Equality at any point during the duration of this Contract.
- 2.8 The Supplier shall notify the Customer of the details of any diversity and equality cases and tribunals (including volumes and outcomes) relating to the Supplier and any Sub-Contractors.

### 3. MONITORING AND REPORTING

3.1 The Supplier shall provide workforce monitoring data as detailed in paragraph 3.2 of this Schedule. A template for data collected in paragraphs 3.2 and 3.3 will be provided by the Customer. Completed templates for the Supplier and each Sub-Contractor will be submitted by the Supplier with the diversity and equality delivery plan within six (6) Months of the Commencement Date and annually thereafter. Suppliers are required to provide workforce monitoring data for the workforce involved in delivery of this Contract. Data relating to the wider Supplier workforce and wider Sub-Contractors workforce would however be well received by the Customer. Suppliers and any Sub-Contractors are required to submit percentage figures only in response to paragraphs 3.2 a), 3.2 b) and 3.2 c).

3.2 The Supplier and Sub-Contractors will each provide separate information detailing:

a) the proportion of employees who are:

- i. female; and/or
- ii. disabled;
- iii. those who prefer not to state gender and/or disability.

b) the proportion of Staff who in terms of ethnicity are:

#### White

- i. white British;
- ii. white Irish;
- iii. of any other white background.

#### Mixed

- iv. white and black Caribbean;
- v. white and black African;
- vi. white and Asian;
- vii. of any other mixed background.

#### Asian or Asian British

- viii. Indian;
- ix. Pakistani;
- x. Bangladeshi;
- xi. of any other Asian background.

#### Black or Black British

- xii. Caribbean;
- xiii. African;
- xiv. of any other Black background.

#### Chinese or other ethnic group

- xv. Chinese;
- xvi. of any other ethnic group.

Prefer not to state

- xvii. Prefer not to state ethnicity.

For the avoidance of doubt) the percentage figures submitted under categories i) to xvii) of this paragraph 3.2b) (in each template in respect of the Supplier's employees and each Sub-Contractors employees) should total one hundred percent (100%).

- c) The Supplier will provide details of the proportion of its Sub-Contractors retained in relation to this Contract that are:
  - i. small to medium sized enterprises (meaning enterprises with less than two hundred and fifty (250) employees and a maximum annual turnover of forty (40) million pounds);
  - ii. ethnic minority enterprises (in each case meaning an enterprise fifty one per cent (51%) or more of which is owned by members of one (1) or more ethnic minority groups, or, if there are few owners, where at least fifty per cent (50%) of the owners are members of one (1) or more ethnic minority groups). For this purpose, ethnic minority groups means ethnic groups other than White as referred to at paragraph 3.2b) of this Schedule: and
  - iii. black ethnic minority enterprises (in each case meaning an enterprise fifty one per cent (51%) or more of which is owned by members of the Black or Black British ethnic group, or, if there are few owners, where at least fifty per cent (50%) of the owners are members of the Black or Black British ethnic group). For this purpose, the Black or Black British ethnic group has the meaning referred to at categories xii) to xiv) in paragraph 3.2b) of this Schedule.

For the avoidance of doubt, any given Sub-Contractor may fall into one (1), two (2), three (3) or all of the categories i) to iii) listed in paragraph 3.2(c) of this Schedule, depending on its composition

- 3.3 The Supplier shall, and shall procure that its Sub-Contractors will ensure at all times that they comply with the requirements of the DPA in the collection and reporting of the information to the Customer.

## **SCHEDULE 9: STANDARDS**

### **1. INTRODUCTION**

This sets out the Standards with which the Supplier shall comply in its provision of the Goods and Services and details the Supplier's obligations to comply with future Government requirements and standards.

### **2. COMPLYING WITH FUTURE GOVERNMENT REQUIREMENTS AND STANDARDS**

The Supplier shall comply with current and future Government requirements and standards in accordance with any Government guidance issued during the Contract Period of this procurement as developed and updated, from time to time.

### **3. CURRENT QUALITY AND TECHNICAL STANDARDS**

- 3.1 The Supplier shall at all times comply with the Quality Standards and Technical Standards.
- 3.2 The Supplier shall use its best endeavours in applying the best applicable techniques and Standards and performing this Contract with all reasonable care, skill and diligence, and in accordance with Good Industry Practice.
- 3.3 The Supplier warrants and represents that all Staff assigned to the delivery of the Goods and performance of the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper delivery of the Goods and performance of the Services.
- 3.4 The introduction of new methods or systems which impinge on the delivery of the Goods and the provision of the Services shall be subject to prior Approval.
- 3.5 The Supplier shall undertake its obligations arising under this Contract in accordance with the BS EN ISO 9001 Quality Management System standard, and all other quality and technical standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with and any other applicable quality standards, Government codes of practice and guidance.