

CONTRACT FOR THE PROVISION OF
HANDHELD SOLUTION

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GOODS AND SERVICES AGREEMENT

(1) THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE

AND

(2) SEPURA LIMITED

AGREEMENT

relating to the provision of handheld devices, including
development and ongoing maintenance services relating
to the Ambulance Radio Programme

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CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

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CONTENTS

| | |
|--|----|
| SECTION A - PRELIMINARIES | 5 |
| 1 DEFINITIONS AND INTERPRETATION | 5 |
| 2 DUE DILIGENCE | 8 |
| 3 WARRANTIES | 9 |
| SECTION B – THE SERVICES | 13 |
| 4 TERM | 13 |
| 5 SERVICES | 14 |
| 6 IMPLEMENTATION | 21 |
| 7 PERFORMANCE INDICATORS | 22 |
| 8 SERVICES IMPROVEMENT | 24 |
| 9 MAINTENANCE | 25 |
| SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS | 25 |
| 10 FINANCIAL AND TAXATION MATTERS | 25 |
| SECTION D - CONTRACT GOVERNANCE | 27 |
| 11 GOVERNANCE | 27 |
| 12 RECORDS, REPORTS, AUDITS & OPEN BOOK DATA | 27 |
| 13 CHANGE | 27 |
| SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN | 28 |
| 14 SUPPLIER PERSONNEL | 28 |
| 15 SUPPLY CHAIN RIGHTS AND PROTECTIONS | 32 |
| SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY | 42 |
| 16 INTELLECTUAL PROPERTY RIGHTS | 42 |
| 17 TRANSFER AND LICENCES GRANTED BY THE SUPPLIER | 43 |
| 18 LICENCES GRANTED BY THE AUTHORITY | 50 |
| 19 IPRS INDEMNITY | 50 |
| 20 AUTHORITY DATA AND SECURITY REQUIREMENTS | 51 |
| 21 CONFIDENTIALITY | 53 |

ARP HANDHELD SOLUTION
OFFICIAL

SIGNATURE VERSION

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

| | | |
|----|--|----|
| 22 | TRANSPARENCY AND FREEDOM OF INFORMATION | 55 |
| 23 | PROTECTION OF PERSONAL DATA | 56 |
| 24 | PUBLICITY AND BRANDING | 62 |
| | SECTION G - LIABILITY, INDEMNITIES AND INSURANCE | 63 |
| 25 | LIMITATIONS ON LIABILITY | 63 |
| 26 | INSURANCE | 66 |
| | SECTION H – REMEDIES AND RELIEF | 66 |
| 27 | RECTIFICATION PLAN PROCESS | 66 |
| 28 | DELAY PAYMENTS | 68 |
| 29 | STEP-IN RIGHTS | 69 |
| 30 | AUTHORITY CAUSE | 71 |
| 31 | FORCE MAJEURE | 73 |
| | SECTION I – TERMINATION AND EXIT MANAGEMENT | 74 |
| 32 | TERMINATION RIGHTS | 74 |
| 33 | CONSEQUENCES OF EXPIRY OR TERMINATION | 76 |
| | SECTION J - MISCELLANEOUS AND GOVERNING LAW | 78 |
| 34 | COMPLIANCE | 78 |
| 35 | ASSIGNMENT AND NOVATION | 79 |
| 36 | WAIVER AND CUMULATIVE REMEDIES | 79 |
| 37 | RELATIONSHIP OF THE PARTIES | 80 |
| 38 | PREVENTION OF FRAUD AND BRIBERY | 80 |
| 39 | SEVERANCE | 81 |
| 40 | FURTHER ASSURANCES | 82 |
| 41 | ENTIRE AGREEMENT | 82 |
| 42 | THIRD PARTY RIGHTS | 82 |
| 43 | NOTICES | 83 |
| 44 | DISPUTES | 85 |
| 45 | GOVERNING LAW AND JURISDICTION | 85 |

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OFFICIAL

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OFFICIAL

46 COUNTERPARTS/DUPPLICATES

85

SCHEDULES

1. **Definitions**
2. **Service Requirements**
 - 2.1 Services Description
 - 2.2 Performance Levels
 - 2.3 Standards
 - 2.4 Security Management
 - 2.5 Insurance Requirements
 - 2.6 Documentary Deliverables
 - 2.7 Catalogue and Ordering
 - 2.8 Future Projects
3. **Authority Responsibilities**
4. **Supplier Matters**
 - 4.1 Not Used
 - 4.2 Commercially Sensitive Information
 - 4.3 Notified Key Sub-contractors
 - 4.4 Third Party Contracts
5. **Software**
6. **Implementation and Testing**
 - 6.1 Implementation Plan
 - 6.2 Testing Procedures
7. **Financial Matters**
 - 7.1 Charges and Invoicing
 - 7.2 Payments on Termination
 - 7.3 Benchmarking
 - 7.4 Financial Distress
 - 7.5 Financial Reports and Audit Rights
8. **Governance**
 - 8.1 Governance
 - 8.2 Change Control Procedure
 - 8.3 Dispute Resolution Procedure
 - 8.4 Reports and Records Provisions
 - 8.5 Exit Management
 - 8.6 Service Continuity Plan and Corporate Resolution Planning
 - 8.7 Conduct of Claims
 - 8.8 Collaboration
9. **Employment**
 - 9.1 Staff Transfer
 - 9.2 Key Personnel
10. **Guarantee**
11. **Processing Personal Data**

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

THIS AGREEMENT is **made** on the date on which the last Party signed the signature section at the end of this document.

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE** of 39 Victoria Street, London SW1H 0EU, acting as part of the Crown (the "**Authority**"); and
- (2) **SEPURA LIMITED** a company registered in England and Wales under company number 04353801 whose registered office is at 9000 Cambridge Research Park, Beach Drive, Waterbeach, Cambridge, CB25 9TL (the "**Supplier**"),

(each a "**Party**" and together the "**Parties**").

INTRODUCTION

- (A) The ESMCP is replacing the current Airwave Network with the ESN.
- (B) The Authority is delivering additional programmes which, combined with the ESMCP, will create an end-to-end safety of life critical communications system for the English Ambulance Trusts, as well as providing options for other Service Recipients to receive Services under this Agreement.
- (C) The constituent programmes being delivered by the Authority are:
 - **ESN** – the replacement of the Airwave Network which is being delivered by the Home Office's ESMCP.
 - **CRS** – the delivery of the new integrated communications and control system to the English Ambulance Trusts, the Welsh Ambulance Service NHS Trust and the Scottish Ambulance Service. The contract for the delivery of CRS was awarded to Frequentis in May 2017.
 - **MDVS** – the delivering of the new NMA to the English Ambulance Trusts (and potentially the Welsh Ambulance Service NHS Trust and/or the Scottish Ambulance Service, if those bodies elect to participate in the MDVS programme). The scope of the MDVS programme also includes the delivery of vehicle hardware to run the NMA and the replacement of TETRA radio terminals with devices that can connect to the ESN.
- (D) Under this Agreement, the Authority now wishes to procure a supplier to provide handheld devices and related ongoing development and maintenance services which will be used by the Service Recipients on the ESN (once operational).
- (E) The Supplier is a provider of hand held devices and related development and maintenance services and has previous experience delivering such services to Service Recipients.
- (F) On 14 January 2020, the Authority advertised in the Official Journal of the European Union (reference 2020/S 011-020941, inviting prospective suppliers to submit proposals for the provision of hand held devices and related services.
- (G) On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Authority selected the Supplier to provide the Goods and Services and the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

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IT IS AGREED as follows:

SECTION A - PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in Schedule 1 (*Definitions*), the terms and conditions of this Agreement or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry (including ITIL Guidelines V4.0 and PRINCE2, as amended from time to time) where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In this Agreement, unless the context otherwise requires or is expressly stated:
- 1.3.1 the singular includes the plural and vice versa;
- 1.3.2 references to a gender includes the other gender and the neuter;
- 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
- 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- 1.3.5 any reference in this Agreement which immediately before Exit Day is a reference to (as it has effect from time to time) any EU:
- (a) regulation, decision, tertiary legislation or provision of the European Economic Area ("EEA") agreement ("**EU References**") which is to form part of domestic Law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after Exit Day as a reference to the EU References as they form part of domestic Law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic Law from time to time; and
- (b) institution or authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;
- 1.3.6 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
- 1.3.7 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- 1.3.8 the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

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- 1.3.9 unless otherwise provided and save for references in Annex 2 of Schedule 5 (*Software*), Annex 2 of Schedule 7.3 (*Benchmarking*), Annex 4 of Appendix 1 of Schedule 8.8 (*Collaboration*) and in Schedule 10 (*Guarantee*), references to Clauses and Schedules are references to the clauses and schedules of this Agreement and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and
- 1.3.10 references to any documents to be provided by any Other Consortium Member in connection with this Agreement, shall be deemed to include any Sub-contracts or guarantees.
- 1.4 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Agreement with a reference to the replacement hyperlink and/or provide the other Party with the updated hyperlink (whichever is easier).
- 1.5 If there is any conflict between the Clauses and the Schedules and/or any Annexes or Appendices to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- 1.5.1 the Clauses and Schedule 1 (*Definitions*);
- 1.5.2 Schedule 7.1 (*Charges and Invoicing*);
- 1.5.3 the Service Requirements, and Schedule 2.2 (*Performance Levels*) and their Annexes;
- 1.5.4 any other Schedules and their Annexes and Appendices (other than Part B of Schedule 2.1 (*Services Description*), which contains the Supplier Solution, and its Annexes);
- 1.5.5 the Documentary Deliverables (including the Contract Inception Report listed in Schedule 2.6 (*Documentary Deliverables*); and
- 1.5.6 Part B of Schedule 2.1 (*Services Description*) and its Annexes (if any). Annex A of Part B of Schedule 2.1 (*Services Description*) contains the Supplier Solution.
- 1.6 Notwithstanding Clause 1.5 (*Definitions and Interpretation*), where a Documentary Deliverable or Part B of Schedule 2.1 (*Services Description*) and its Annexes contains provisions which are more favourable to the Authority in relation to the rest of the Agreement, such provision of the Documentary Deliverable or Part B of Schedule 2.1 (*Services Description*) (as applicable) shall prevail. The Authority shall have the absolute right to determine whether any provision in a Documentary Deliverable or Part B of Schedule 2.1 (*Services Description*) is more favourable to it in relation to this Agreement.
- 1.7 The Schedules (and their Annexes and Appendices) form part of this Agreement.

Authority status

- 1.8 In entering into this Agreement the Authority is acting as part of the Crown.
- 1.9 The Authority shall not be deemed to be in Default pursuant to this Agreement to the extent that any such Default is due to the Default of the Supplier.

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Other Consortium Member status

- 1.10 Each Other Consortium Member, if any, is a signatory to this Agreement only for the purposes of its respective obligations under this Clause 1.10 to Clause 1.13 (inclusive) (*Other Consortium Member status*). Unless the contrary is expressly stated, and except for Clause 43 (*Notices*), references in this Agreement to “**Supplier**”, “**Party**” or “**Parties**” shall not include any Other Consortium Member.
- 1.11 Each Other Consortium Member, if any, shall be jointly and severally liable with the Supplier, and has primary liability to the Authority, for all:
- 1.11.1 representations, warranties, undertakings, covenants, indemnities, agreements and obligations made, given or entered into by the Supplier in and in respect of this Agreement (the “**Supplier Obligations**”);
- 1.11.2 expenses, legal fees and taxes incurred by the Authority in connection with the Authority seeking to enforce any Supplier Obligations against the Supplier and/or any Other Consortium Member; and
- 1.11.3 Supplier Obligations, whether future, past or present.
- 1.12 Each Other Consortium Member, if any, expressly acknowledges and agrees, without further notice from (or on behalf of) the Authority, that its respective liabilities under Clauses 1.10 to 1.13 (inclusive) (*Other Consortium Member status*) shall not be discharged or affected in any way, and its obligations shall remain in full force and effect, notwithstanding:
- 1.12.1 any legal limitation, disability, incapacity or other similar circumstances relating to the Supplier;
- 1.12.2 an Insolvency Event or Financial Distress Event of the Supplier;
- 1.12.3 any time, indulgence, concession or waiver granted to or composition with the Supplier;
- 1.12.4 the taking, holding, variation, compromise, renewal or release or refusal or neglect to perfect or enforce any rights, remedies or securities against the Supplier; and/or
- 1.12.5 any other act, omission, fact, circumstance, provision of statute or rule of law which (but for the operation of Clause 1.10 (*Other Consortium Member status*)) might affect the Parent Company's obligations and liabilities under Clause 1.10 (*Other Consortium Member status*) if the Parent Company's liability were to be secondary rather than primary.
- 1.13 There is no requirement on the Authority to:
- 1.13.1 take any action;
- 1.13.2 issue any proceedings; or
- 1.13.3 file any claim in the bankruptcy, administration, receivership, liquidation or other insolvency proceedings;
- against the Supplier before taking any steps to enforce its rights under Clauses 1.10 to 1.13 (inclusive) (*Other Consortium Member status*).

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2. DUE DILIGENCE

- 2.1 The Supplier acknowledges that:
- 2.1.1 the Authority has delivered or made available to the Supplier all of the Information and documents (in respect of the Authority and the Service Recipients) that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;
 - 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
 - 2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to:
 - (a) the Authority Requirements;
 - (b) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;
 - (c) the operating processes and procedures and the working methods of the Authority and each Service Recipient;
 - (d) the ownership, functionality, capacity, condition and suitability for use, in the provision of the Goods and Services, of the Authority Assets; and
 - (e) the existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Agreement and/or which the Supplier will require the benefit of for the provision of the Goods and Services; and
 - 2.1.4 it has advised the Authority in writing of:
 - (a) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Goods and Services;
 - (b) the actions needed to remedy each such unsuitable aspect; and
 - (c) a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,

and such actions, timetable and costs are fully reflected in this Agreement, including the Services Description and/or Authority Responsibilities as applicable.
- 2.2 The Supplier shall not be excused from the performance of any of its obligations under this Agreement or be entitled to recover any additional costs or charges on the grounds, or arising as a result, of any:
- 2.2.1 unsuitable aspects of the Operating Environment;
 - 2.2.2 misinterpretation of the Authority Requirements; and/or

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

3. WARRANTIES

3.1 The Authority represents and warrants that:

- 3.1.1 it has full capacity and authority to enter into and to perform this Agreement;
- 3.1.2 this Agreement is executed by its duly authorised representative;
- 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and
- 3.1.4 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).

3.2 The Supplier represents and warrants that:

- 3.2.1 it is, and each Other Consortium Members (if any) are, validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 3.2.2 it has full capacity and authority to enter into and to perform this Agreement, and that each Other Consortium Member (if any) has full capacity and authority to enter into any documents in connection with this Agreement;
- 3.2.3 this Agreement is executed by its duly authorised representative, and that any documents executed (or to be executed) by each Other Consortium Member (if any) in connection with this Agreement have been (or will be) executed by a duly authorised representative of that Other Consortium Member;
- 3.2.4 it, and each Other Consortium Member (if any), has all necessary rights, consents, authorisations, licenses, accreditations and regulatory approvals to enter into this Agreement and to supply the Goods and Services in accordance with the same;
- 3.2.5 it has not undergone a Corporate Change Event between the date that it submitted its response to the Bid Documents, and the Effective Date (other than where it has already notified the Authority);
- 3.2.6 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it, any of its Affiliates or any Other Consortium Member (if any), that might affect its ability to perform its obligations under this Agreement;
- 3.2.7 the execution, delivery and performance by the Supplier or any Other Consortium Member (if any) of any obligations under this Agreement, or any documents executed in connection with this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any other agreement by which it is bound;

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

- 3.2.8 any obligations imposed on:
- (a) the Supplier under this Agreement; or
 - (b) any Other Consortium Member (if any) under any documents executed in connection with this Agreement,
- constitute legal, valid and binding obligations enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law);
- 3.2.9 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the Bid Documents, its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;
- 3.2.10 it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is, or any Other Consortium Members (if any) are, involved that is in connection with any Occasion of Tax Non-Compliance;
- 3.2.11 it has all necessary IPRs in and to the Licensed Software, the Embedded Software, the Third Party IPRs, the Supplier Background IPRs (including any Supplier COTS Background IPRs), the Embedded IPRs, any Project Specific IPRs and all Relevant IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the:
- (a) provision of the Services and the performance of the Supplier's other obligations under this Agreement; and/or
 - (b) receipt of the Goods and Services by the Authority;
- 3.2.12 the Contract Inception Report is a true and accurate reflection of the Costs and Supplier Profit Margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the provision of the Goods and Services inconsistent with the Financial Model;
- 3.2.13 neither it, nor any Other Consortium Members are, subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform any of its respective obligations under this Agreement, or any documents executed in connection with this Agreement;
- 3.2.14 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) as at the Effective Date for the winding up of the Supplier and/or any Other Consortium Member 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 assets or revenue of the Supplier or any Other Consortium Member;
- 3.2.15 no Financial Distress Events (or any events that would have been deemed Financial Distress Events had this Agreement been in force at the relevant time) have occurred within the previous 12 Months, or are subsisting as at the Effective Date, and there are no current matters (of which it is aware) that would cause a Financial

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

Distress Event (other than those Financial Distress Events which the Supplier has notified to the Authority, and the Authority has Approved, prior to the Effective Date);

- 3.2.16 unless otherwise confirmed by the Authority in writing, it will ensure that the Goods comply with requirements five (5) to eight (8), as set out in Annex 1 of the Cabinet Office Procurement Policy Note – Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014), to the extent such requirements apply to the relevant Goods;
- 3.2.17 it shall ensure the Goods are handled, stored, manufactured and/or distributed using reasonable skill and care and in accordance with:
- (a) Good Industry Practice; and
 - (b) any specific instructions of the manufacturer of the Goods notified to the Supplier, including any instructions necessary for the Authority to receive the full benefit of any Manufacturer Warranty and/or Manufacturer Indemnity (as more particularly described in HH/OS/SUP/MWI/001 of Part A of Schedule 2.1 (*Services Description*));
- 3.2.18 it shall ensure that all facilities used in the handling, storage, manufacture and/or distribution of the Goods are kept in a state and condition necessary to enable the Supplier to comply with its obligations in accordance with this Agreement;
- 3.2.19 it will ensure sufficient stock levels to comply with its obligations under this Agreement;
- 3.2.20 it shall ensure that the transport and delivery of the Goods mean that they are delivered in good and useable condition;
- 3.2.21 any and all Goods shall
- (a) conform substantially to the obligations in Schedule 2.1 (*Services Description*) and the specifications, quality requirements and standards referred to in sub-Clause 5.3.1 (*Provision of Goods and Services*); and
 - (b) receive the benefit of all services listed in HH/OS/SUP/W/001 and sub-Paragraph 4.3.2 of Part A of Schedule 2.1 (*Services Description*),

for the periods of warranty identified in Clause 3.3 (*Warranty Periods*) below (as more particularly described in HH/OS/SUP/W/002 of Part A of Schedule 2.1 (*Services Description*)), as they apply to the relevant Goods, each period shall be known as the “**Warranty Period**”.

3.3 Warranty Periods

- 3.3.1 The applicable Warranty Period that shall apply in relation to:
- (a) an ESN Handheld Device (including the associated Batteries) shall:
 - i. commence on the Actual Delivery Date of the ESN Handheld Device; and
 - ii. subject to any extension pursuant to sub-Clause 3.3.3(a), end on the date that is three years from the date the Initial ESN Handheld

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

Device Warranty Charge was first paid by the Authority for the relevant ESN Handheld Device;

- (b) the Accessories and other Goods ordered by the Authority (including Vehicle Kit and motorcycle kit) shall:
 - i. commence on the Actual Delivery Date of the relevant Accessory or item of Goods; and
 - ii. subject to any extension pursuant to sub-Clause 3.3.3(b), expire at the end of the period identified in the Catalogue for the relevant item, save that the expiry of the relevant Warranty Period for the Vehicle Battery charger, Vehicle Kit and motorcycle kit shall be 3 years from the Actual Delivery Date;
- 3.3.2 Where an ESN Handheld Device, Accessories and/or other Catalogue Items are replaced by the Supplier during the applicable Warranty Period, the replaced item shall be covered by Warranty Support for a new full Warranty Period which shall commence on the date such item (as applicable) is received by the Authority and shall meet the standards that are set out in the requirement HH/OS/SUP/W/001 of Paragraph 4.3.1 of Part A of Schedule 2.1 (*Services Description*).
- 3.3.3 Subject to payment of the Warranties Charges and any Extended Warranty Charges, the Authority shall be entitled to request Extended Warranty Support for:
 - (a) up to 2 years from the original applicable Warranty Period for the ESN Handheld Devices (including the Batteries) in accordance with the Change Control Procedure / an Order under the Catalogue and, if requested, the Supplier shall provide such Extended Warranty Support for the duration of such extension period.
 - (b) the period requested by the Authority under an Order in relation to Accessories.

Documentary Deliverables

- 3.3.4 the Documentary Deliverables:
 - (a) are sufficient to meet the Authority Requirements and to enable the Goods and Specially Written Software to perform, and the Goods and Services to be provided, in accordance with the Authority Requirements;
 - (b) where the Supplier submits a Documentary Deliverable in its response to the Bid Documents, shall contain no deviations from the form submitted in its response to the Bid Documents except to the extent that such documentation has been superseded or varied by this Agreement; and
 - (c) will facilitate the successful provision of the Goods and Services and the interface of these with the Airwave Network and the ESN as contemplated by this Agreement.
- 3.4 The representations and warranties set out in Clauses 3.2.1 (*Warranties*) to 3.2.17 (*Warranties*) inclusive shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing. All other representations and warranties set out in Clause 3.2

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

(*Warranties*) shall be deemed to be made by the Supplier on a continuing basis throughout the Term.

- 3.5 Each of the representations and warranties set out in Clauses 3.1 and 3.2 (*Warranties*) shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
- 3.6 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 (*Warranties*) has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.7 The fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of any Default of that provision by the Supplier.
- 3.8 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

SECTION B – THE GOODS AND SERVICES

4. TERM

- 4.1 This Agreement shall:
- 4.1.1 come into force on the Effective Date, save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 21 (*Confidentiality*), 22 (*Transparency and Freedom Of Information*), 24 (*Publicity and Branding*), 25 (*Limitations On Liability*), 36 (*Waiver and Cumulative Remedies*), 37 (*Relationship Of The Parties*), 39 (*Severance*), 41 (*Entire Agreement*), 42 (*Third Party Rights*), 43 (*Notices*), 44 (*Disputes*) and 45 (*Governing Law and Jurisdiction*), which shall be binding and enforceable as between the Parties from the date of signature; and
- 4.1.2 unless terminated at an earlier date by operation of Law or in accordance with Clause 32 (*Termination Rights*), continue in force until terminated upon the latest of the end of the following periods:
- (a) Initial Term;
- (b) last Termination Assistance Period; and
- (c) Final Extension Period, if the Authority elects to extend the Term in accordance with Clause 4.2 (*Term*).
- 4.2 Subject to Clause 4.3 (*Term*), provided the Final Extension Period ends no later than two (2) years from the end of the Initial Term, the Authority may (at its sole discretion) extend the Term beyond the Initial Term by one or more Extension Periods by giving the Supplier at least sixty (60) Working Days' notice before the end of the Initial Term or the end of the relevant Extension Period (as applicable). Any extension of the Term contemplated by this Clause 4.2 (*Term*) shall not affect any subsisting Warranty Periods applicable to any Warranty Support.
- 4.3 The Authority is entitled to revoke any notice to extend the Term pursuant to Clause 4.2 (*Term*) by giving the Supplier written notice (a "**Revocation Notice**").

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

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- 4.4 Where the Authority has provided the Supplier with such Revocation Notice:
- 4.4.1 before twenty (20) Working Days has elapsed from the date of the Authority's notice to extend the Term, the Revocation Notice shall not be treated as a termination of the Agreement by the Authority under Clause 32.1.1 (*Termination by the Authority*); and
 - 4.4.2 after twenty (20) Working Days has elapsed from the date of the Authority's notice to extend the Term, the Revocation Notice shall be treated as a termination of the Agreement by the Authority under Clause 33.3 (*Payments by the Authority*), and the date of such termination shall be the date specified in the Revocation Notice.

Condition Precedent

- 4.5 Save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 21 (*Confidentiality*), 22 (*Transparency and Freedom Of Information*), 24 (*Publicity and Branding*), 25 (*Limitations On Liability*), 36 (*Waiver and Cumulative Remedies*), 37 (*Relationship Of The Parties*), 39 (*Severance*), 41 (*Entire Agreement*), 42 (*Third Party Rights*), 43 (*Notices*), 44 (*Disputes*) and 45 (*Governing Law and Jurisdiction*), this Agreement is conditional upon the valid execution and delivery to the Authority of the Guarantee (in the form of the Deed contained in Schedule 10 (*Guarantee*)) (the "**Condition Precedent**").
- 4.6 The Authority may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Supplier notice in writing.
- 4.7 The Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. If the Condition Precedent is not satisfied within twenty (20) Working Days after the date this Agreement is signed by both Parties then, unless that Condition Precedent is waived by the Authority in accordance with Clause 4.5 (*Condition Precedent*):
- 4.7.1 this Agreement shall automatically cease in full and shall be deemed to have never come into effect; and
 - 4.7.2 neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.
- 4.8 The Supplier shall consult with the Authority in relation to the steps it takes to satisfy the Condition Precedent set out in Clause 4.6 (*Condition Precedent*) and shall keep the Authority fully informed of its progress in satisfying the Condition Precedent and of any circumstances which are likely to result in either of the Condition Precedent not being satisfied by the date set out in Clause 4.7 (*Condition Precedent*).

5. GOODS AND SERVICES

Provision of Goods and Services

- 5.1 The Supplier shall provide:
- 5.1.1 the Implementation Services from the Effective Date;
 - 5.1.2 the Operational Services from the Go Live Date, subject to any ESN Delays or Trust Delays and the satisfactory completion of Milestone M4;

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ARP HANDHELD SOLUTION

OFFICIAL

- 5.1.3 the Optional Services for the period that such Optional Services are requested by the Authority as such period is identified in the relevant Change Request;
- 5.1.4 any Future Projects for the period as agreed between the Parties in accordance with the Change Control Procedure and/or Schedule 2.8 (*Future Projects*);
- 5.1.5 the relevant Goods and Services for the duration of the relevant Warranty Periods;
- 5.1.6 the Continued Support Services for the Continued Support Services Period in respect of the Residual In-Life Goods (where requested by the Authority in accordance with Schedule 8.5 (*Exit Management*)); and
- 5.1.7 any Termination Services, if requested by the Authority, from the date specified in the relevant Termination Assistance Notice.
- 5.2 The Supplier shall ensure that the Goods and Services:
 - 5.2.1 comply in all respects with the Services Description; and
 - 5.2.2 are supplied in accordance with the Supplier Solution and the provisions of this Agreement.
- 5.3 The Supplier shall:
 - 5.3.1 perform its obligations under this Agreement, including in relation to the supply of the Goods and Services in accordance with:
 - (a) all applicable Laws;
 - (b) Good Industry Practice;
 - (c) the Standards, Policies and Authority Requirements;
 - (d) the Baseline Security Requirements;
 - (e) the Quality Plans;
 - (f) the Performance Levels; and
 - (g) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.3.1(a) to (e) (*Provision of Goods and Services*);
 - 5.3.2 provide the Goods and Services in accordance with the Service Requirements using reasonable skill and care, efficient business processes and ways of working having regard to the obligation on the Authority to ensure value for money during the Term;
 - 5.3.3 provide the Goods in accordance with, and shall comply with each of its other obligations under, Schedule 2.7 (*Catalogue and Ordering*);
 - 5.3.4 provide any Future Projects in accordance with Clause 5.20 (*Service Recipients*) and Schedule 2.8 (*Future Projects*).
- 5.4 If the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.3.1 to 5.3.3 (*Provision of Goods and Services*), the Supplier shall

ARP HANDHELD SOLUTION
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CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier of which requirement the Supplier shall comply with.

- 5.5 If there are any quality, performance and/or safety related reports, notices, alerts or other communications issued by the Supplier or any regulatory or other body in relation to any Goods or Services, the Supplier shall promptly provide the Authority with a copy of any such reports, notices, alerts or other communications.
- 5.6 Upon receipt of any such reports, notices, alerts or other communications pursuant to Clause 5.5 (*Provision of Goods and Services*), the Authority shall be entitled to request further Information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.
- 5.7 Where the Authority has provided the Supplier with at least thirty (30) days' prior written notice, the Supplier shall permit any person authorised by the Authority and the Supplier (such authorisation by the Supplier not to be unreasonably withheld or delayed), to inspect the facilities used in the storage and/or handling of the Goods at all reasonable times at the Supplier's premises or at the premises of any Sub-contractor or agent of the Supplier in order to confirm that the Goods being supplied and/or handled are being supplied and/or handled in accordance with Good Industry Practice and in compliance with the requirements of this Agreement and/or that stock holding and quality assurance processes are in accordance with the requirements of this Agreement. The Authority acknowledges and understands that the Supplier operates from premises certified as List X and agrees to comply with all relevant security requirements applicable to List X contractors.

Goods

- 5.8 The Supplier shall ensure that Goods ordered by the Authority or a Service Recipient under this Agreement are new, consistent with any sample, and comply with all requirements set out in this Agreement (including the Services Description) together with all manufacturers' specifications.
- 5.9 Delivery of any and all Goods shall be completed when the relevant Goods have been unloaded at the agreed Delivery Location and such delivery has been received by a duly authorised agent, employee or location representative of the Authority. The Authority shall procure that such duly authorised agent, employee or location representative of the Authority is at the agreed Delivery Location on the Required Delivery Date in order to accept delivery.
- 5.10 The Supplier shall ensure that a delivery note shall accompany each delivery of any Goods. Such delivery note shall contain the Information specified in the order for the Goods made by the Authority or as otherwise agreed with the Authority in writing. Where such information requirements as to the content of delivery notes are not specified or separately agreed, such delivery notes shall, as a minimum, contain the Authority's order number, the name and address of the Authority and a description and quantity of the Goods in the order made by the Authority.
- 5.11 The Supplier shall be responsible for carriage, insurance, transport, all relevant licences, all related costs, and all other costs associated with (i) the delivery and unloading of the Goods at, the agreed Delivery Location, and (ii) collection of returns and returns to the original supplier, or third party supplier (as applicable). Without limitation to the foregoing provision of this Clause 5.11 (*Goods*) and sub-Clause 5.14.2 (*Supplier covenants*), the Supplier shall be responsible for obtaining all export and import licences for the Goods and shall be responsible for any delays due to such licences not being available when required. In the case of any Goods supplied from outside the United Kingdom, the Supplier shall ensure that accurate Information is provided to the Authority as to the country of origin of the Goods and shall be

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ARP HANDHELD SOLUTION

OFFICIAL

liable to the Authority for any duties, tariffs or taxes for which the Authority may be accountable.

- 5.12 All third party carriers engaged to deliver the Goods shall at no time be an agent of the Authority and, accordingly, the Supplier shall be liable to the Authority for the acts and omissions of all third party carriers engaged by it to deliver the Goods to the Authority and/or the Service Recipients (as applicable).

Risk

- 5.13 Without limiting Clause 5.14 (*Supplier covenants*), risk in:

- 5.13.1 a Deliverable shall pass to the Authority on the date:

- (a) of Approval of the Documentary Deliverable is given by the Authority in accordance with Annex 1 of Schedule 2.6 (*Documentary Deliverables*) (for any Documentary Deliverable);
- (b) that the Deliverable is signed off by the Authority in accordance with Paragraph 12.4 of Schedule 6.2 (*Testing Procedures*) (for any non-Documentary Deliverable for which the Parties have agreed Test Success Criteria or Testing will not apply); and
- (c) of acceptance (for any other Deliverable);

- 5.13.2 any item of Good shall only pass to the Authority on the Actual Delivery Date, subject to the provisions of Paragraph 7 (Inspection, Rejection and Return) of Schedule 2.7 (*Catalogue and Ordering*); and

- 5.13.3 any other tangible Goods shall remain with the Supplier at all times whilst those items are within the Supplier's, or the Supplier's nominated third party carrier's, possession or control in connection with the performance of the Supplier's obligations under this Agreement (including Clause 5.11 (*Goods*)).

Supplier covenants

- 5.14 The Supplier shall:

- 5.14.1 at all times allocate sufficient resources with the appropriate technical expertise to provide the Goods and Services in accordance with this Agreement;

- 5.14.2 save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 13 (*Change*), obtain, and maintain throughout the Term, all the consents, authorisations, approvals, licences, accreditations and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Goods and Services;

- 5.14.3 ensure that:

- (a) it shall continue to have all necessary rights in and to the Licensed Software, Embedded Software, the Third Party IPRs, the Supplier Background IPRs, the Embedded IPRs, (including any Supplier COTS Background IPRs), any Project Specific IPRs and all Relevant IPRs which are necessary for the provision of the Goods and Services and the performance of the Supplier's other obligations under this Agreement

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

and/or the receipt of the Goods and Services by the Authority and any Service Recipient;

- (b) the release of any new Software or any Upgrades in accordance with the Software Roadmap complies with the interface requirements in the Services Description and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 2.4 (*Security Management*)) shall notify the Authority three (3) Months before the release of any new Software or Upgrade;
 - (c) all Software, including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software, and perform in all material respects in accordance with the relevant specification; and
 - (d) any products or services recommended or otherwise specified by the Supplier for use by the Authority and Service Recipients in connection with the Goods and Services shall enable the Services to meet the Authority Requirements.
- 5.14.4 avoid (or, where avoidance is not possible, minimise to the fullest extent possible) any disruption to the provision of any Goods and Services, the IT Environment and/or the Authority's and each Service Recipient's operations when carrying out its obligations under this Agreement;
- 5.14.5 ensure that any Documentation and training provided by the Supplier to the Authority and all Service Recipients are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- 5.14.6 co-operate with the Other ARP Suppliers and provide reasonable Information (including any Documentation), advice and assistance in connection with the Goods and Services to any Other ARP Supplier to enable such Other ARP Supplier to create and maintain technical or organisational interfaces with the Supplier's provision of the Goods and Services and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the provision of the Goods and Services (or any of them) to the Authority, to each Service Recipient and/or to any Replacement Supplier;
- 5.14.7 hold on trust for the sole benefit of the Authority and Service Recipients, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Goods, Specially Written Software and/or the Services and, where any such warranties are held on trust, at the Supplier's cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
- 5.14.8 assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 5.14.7 (*Supplier covenants*);
- 5.14.9 provide the Authority and each Service Recipient with such assistance as the Authority may reasonably require during the Term in respect of the provision of the Goods and Services;

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

- 5.14.10 gather, collate and provide such Information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;
- 5.14.11 notify the Authority in writing as soon as reasonably possible (and in any event within one (1) Month) of any Corporate Change Event taking place in the Supplier or any Other Consortium Member;
- 5.14.12 notify the Authority in writing within ten (10) Working Days of their occurrence, of any actions, suits, proceedings (including any IPRs Claim) or regulatory investigations before any court, administrative body or arbitration tribunal pending or, to its knowledge, threatened against the Supplier, the Guarantor, any Key Sub-contractor or any Other Consortium Member that might affect the ability of the:
 - (a) Supplier, or any Other Consortium Member to perform any of its obligations under this Agreement, or any documents executed in connection with this Agreement;
 - (b) Authority to enforce its rights under the Guarantee; or
 - (c) Key Sub-contractor to perform any of its obligations and/or carry out its functions under its Key Sub-contract;
- 5.14.13 ensure that the Supplier, each of its Affiliates, Sub-contractors, Supplier Personnel, Processor Personnel or Key Personnel, and each Consortium Member (if any) do not embarrass the Authority or any Service Recipient or otherwise bring the Authority or any Service Recipient into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority or any Service Recipient, regardless of whether or not such act or omission is related to the Supplier's obligations under this Agreement;
- 5.14.14 comply with any eProcurement Guidance (to the extent it may apply to the Supplier) and shall carry out all reasonable acts required of the Supplier to enable the Authority to comply with any eProcurement Guidance; and
- 5.14.15 manage closure of termination of any Services and the end of life of any Goods to take account of the Authority's disposal requirements, including recycling and scope for re-use, and all applicable Standards.
- 5.15 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 5.16 Without prejudice to Clauses 19.2 and 19.3 (*IPRs Indemnity*) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:
 - 5.16.1 remedy any Default of its obligations in Clauses 5.14.2 to 5.14.4 (*Supplier covenants*) inclusive within three (3) Working Days of becoming aware of the Default or being notified of the Default by the Authority where practicable or, if requested by the Authority, within such other time period as may be agreed with the Authority acting reasonably (taking into account the nature of the Default that has occurred);
 - 5.16.2 remedy any Default of its obligations in Clause 5.14.1 and Clauses 5.14.5 to 5.14.10 (*Supplier covenants*) inclusive within twenty (20) Working Days of becoming aware of the Default or being notified of the Default by the Authority; and

ARP HANDHELD SOLUTION
OFFICIAL

OFFICIAL

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

and any failure of the Supplier to comply with its obligations under Clause 5.16.1 or Clause 5.16.2 (*Supplier covenants*) within the specified or agreed timeframe shall constitute a Notifiable Default.

Specially Written Software warranty

5.17 Without prejudice to Clauses 5.14 and 5.16 (*Supplier covenants*) and any other rights and remedies of the Authority howsoever arising, the Supplier warrants to the Authority that all components of the Specially Written Software shall:

5.17.1 be free from material design and programming errors;

5.17.2 provide the functionality set out in and perform in all material respects in accordance with the relevant specifications contained in the Services Description, Documentation and the Supplier Solution;

5.17.3 interface with the Authority System as set out in the Services Description, Documentation and the Supplier Solution; and

5.17.4 not infringe any Third Party IPRs.

Continuing obligation to provide the Goods and Services

5.18 The Supplier shall continue to perform its obligations under this Agreement and shall not suspend the supply of the Goods and Services, notwithstanding:

5.18.1 any withholding of the Charges by the Authority, including pursuant to Clauses 7.2.4(b) (*Performance Failures*), 7.4 (*Unacceptable KPI Failure*) and/or 15.13.2(a) (*Supply chain protection*) and/or Paragraph 1 Part B of Schedule 7.1 (*Charges and Invoicing*);

5.18.2 the existence of an unresolved Dispute; and/or

5.18.3 any failure by the Authority to pay any Charges.

Service Recipients

5.19 The Authority may require the Supplier to provide any or all of the Goods and Services to (and for the benefit of) any or all of the Service Recipients at any time during the Term. The Supplier acknowledges that the Authority is not obliged to require the provision of the Goods and Services to any Service Recipients and nothing shall prevent any Service Recipient from receiving goods and services from any third party or the Authority from procuring the same on their behalf.

5.20 Without limiting the Authority's discretion to undertake any Future Projects, the Parties shall undertake the inclusion of a Service Recipient under this Agreement as Future Projects, where the:

5.20.1 implementation and testing of the Supplier's provision of Goods and Services to the Service Recipient requires changes to the Implementation Plan or a separate implementation plan; and/or

OFFICIAL

- 5.20.2 Authority requires any other changes to the Agreement to reflect the provision of Goods and Services by the Supplier to the Service Recipients.

Power of attorney

- 5.21 By way of security for the performance of its obligations under Clauses 5.14.7 (*Supplier covenants*) and 5.14.8 (*Supplier covenants*) the Supplier hereby irrevocably appoints the Authority as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to delegate one or more of the powers conferred on it by this Clause 5.21 (*Power of attorney*) (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time.

Authority Responsibilities

- 5.22 The Authority shall comply with its responsibilities set out in Schedule 3 (*Authority Responsibilities*) in accordance with the provisions of that Schedule.

Documentary Deliverables

- 5.23 The Supplier shall develop, review, Update and amend the Documentary Deliverables in accordance with the provisions in Schedule 2.6 (*Documentary Deliverables*) and any relevant Submission Dates.

6. IMPLEMENTATION

Quality Plans

- 6.1 The Supplier shall develop, within fifteen (15) Working Days of the Effective Date, quality plans that ensure that all aspects of the provision of the Goods and Services are subject to quality management systems consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").
- 6.2 The Supplier shall obtain the Authority Representative's written approval of the Quality Plans before implementing them, which Approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Goods and Services are provided to the standard required by this Agreement.
- 6.3 Following Approval of the Quality Plans:
- 6.3.1 the Supplier shall design and deliver all Goods and Services (as applicable) in accordance with the Quality Plans; and
- 6.3.2 any changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

Implementation Plan and Delays

- 6.4 The Parties shall comply with the provisions of Schedule 6.1 (*Implementation Plan*), including in relation to the agreement and maintenance of the Detailed Implementation Plan.

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- 6.5 The Supplier shall:
- 6.5.1 comply with the Implementation Plan; and
 - 6.5.2 ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.6 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:
- 6.6.1 it shall:
 - (a) notify the Authority in accordance with Clause 27.1 (*Rectification Plan Process*);
 - (b) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
 - (c) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
 - 6.6.2 if the Delay or anticipated Delay relates to a Key Milestone, the provisions of Clause 28 (*Delay Payments*) shall apply.

Testing and Achievement of Milestones

- 6.7 The Parties shall comply with the provisions of Schedule 6.2 (*Testing Procedures*), including in relation to the procedures to determine whether a Milestone or Test has been Achieved.

7. PERFORMANCE INDICATORS

- 7.1 The Supplier shall:
- 7.1.1 provide the Goods and Services in such a manner so as to meet or exceed the Performance Level for each Performance Indicator; and
 - 7.1.2 comply with the provisions of Schedule 2.2 (*Performance Levels*) in relation to the monitoring and reporting on its performance against the Performance Indicators.

Performance Failures

- 7.2 If in any Service Period:
- 7.2.1 a KPI Failure occurs, Service Credits shall be deducted from the Charges in accordance with Paragraph 2 of Part C of Schedule 7.1 (*Charges and Invoicing*);
 - 7.2.2 a Severe KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with Clause 7.2.1 (*Performance Failures*));
 - 7.2.3 an SPI Failure occurs, the Supplier shall notify the Authority of the action (if any) it will take to rectify the SPI Failure and/or to prevent the SPI Failure from recurring; and/or

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- 7.2.4 a Material SPI Failure occurs:
- (a) the Supplier shall comply with the Rectification Plan Process; and
 - (b) the Authority may withhold a proportionate amount of the Charges in accordance with the process set out in Clause 10.8 (*Set-off and Withholding*) until the relevant Material SPI Failure is rectified to the reasonable satisfaction of the Authority, at which point the Authority shall pay the amount withheld.
- 7.3 Service Credits shall not be the Authority's exclusive financial remedy for a Performance Failure.

Unacceptable KPI Failure

- 7.4 If in any Service Period an Unacceptable KPI Failure occurs:
- 7.4.1 the Authority shall be entitled to withhold and retain as compensation for the Unacceptable KPI Failure a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period (such sum being "**Compensation for Unacceptable KPI Failure**"); and
 - 7.4.2 if the Authority withholds and retains such Compensation for Unacceptable KPI Failure, any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue, provided that the operation of this Clause 7.4 (*Unacceptable KPI Failure*) shall be without prejudice to any right which the Authority may have to terminate this Agreement and/or to claim damages from the Supplier as a result of such Unacceptable KPI Failure.
- 7.5 The Supplier:
- 7.5.1 agrees that the application of Clause 7.4 (*Unacceptable KPI Failure*) is commercially justifiable where an Unacceptable KPI Failure occurs; and
 - 7.5.2 acknowledges that it has taken legal advice on the application of Clause 7.4 (*Unacceptable KPI Failure*) and has had the opportunity to price for that risk when calculating the Charges.

Critical Performance Failure

- 7.6 If a Critical Performance Failure occurs, the Authority may exercise its rights to terminate this Agreement in whole or in part pursuant to Clauses 32.1 or 32.2 (*Termination by the Authority*).

Changes to Performance Indicators and Service Credits

- 7.7 Not more than once in each Contract Year the Authority may, on giving the Supplier at least three (3) Months' notice, convert one or more:

OFFICIAL

- 7.7.1 KPIs into a Subsidiary Performance Indicator; and/or
- 7.7.2 Subsidiary Performance Indicators into a KPI.
- 7.8 The Supplier shall not be entitled to object to any changes made by the Authority under Clause 7.7 (*Changes to Performance Indicators and Service Credits*), or increase the Charges as a result of such changes provided that the:
 - 7.8.1 total number of KPIs does not exceed twenty (20); and
 - 7.8.2 principal purpose of the change is to reflect changes in the Authority's business requirements and/or priorities or to reflect changing industry standards.
- 7.9 Where the Authority imposes changes under Clause 7.7 (*Changes to Performance Indicators and Service Credits*) that exceed the total number of KPIs limited by Clause 7.8.1 (*Changes to Performance Indicators and Service Credits*), and where the principal purpose of such change is not in accordance with Clause 7.8.2 (*Changes to Performance Indicators and Service Credits*), the Supplier shall be entitled to change the Charges in accordance with the Change Control Procedure.

8. SERVICES IMPROVEMENT

- 8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the provision of the Goods and Services in accordance with this Clause 8 (*Services Improvement*). As part of this obligation the Supplier shall identify and report to the ARP Programme Board once every twelve (12) Months on:
 - 8.1.1 the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the provision of the Goods and Services, and those technological advances potentially available to the Supplier and the Authority or any Service Recipient which the Parties may wish to adopt;
 - 8.1.2 new or potential improvements to the provision of the Goods and Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Goods and Services;
 - 8.1.3 new or potential improvements to the interfaces or integration of the provision of the Goods and Services with other goods and services provided by third parties or the Authority or any Service Recipient which might result in efficiency or productivity gains or in reduction of operational risk;
 - 8.1.4 changes in business processes and ways of working that would enable the Goods and Services to be delivered at lower cost and/or with greater benefits to the Authority or Service Recipients;
 - 8.1.5 changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of the Goods and Services; and/or
 - 8.1.6 commercially reasonable and technically possible new or potential improvements that could be made by the other suppliers to the Authority in connection with the ARP for the benefit of the wider programme.
- 8.2 The Supplier shall ensure that the Information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be

OFFICIAL

implemented. The Supplier shall provide any further Information that the Authority requests.

- 8.3 If the Authority wishes to incorporate any Improvement identified by the Supplier the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.

9. MAINTENANCE

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

SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

10. FINANCIAL AND TAXATION MATTERS

Charges and Invoicing

- 10.1 In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Goods and Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*).
- 10.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under this Agreement, including under Clauses 6.7 (*Testing and Achievement of Milestones*), 12 (*Records, Reports, Audits & Open Book Data*), 22 (*Transparency and Freedom of Information*), 23 (*Protection of Personal Data*) and Clause 29 (*Step-In Rights*).
- 10.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

VAT

- 10.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate (as applicable) and paid by the Authority following delivery of a valid VAT invoice.
- 10.5 The Supplier shall indemnify the Authority on a continuing basis against any liability (including any interest, penalties or costs directly incurred), that is levied, demanded

OFFICIAL

or assessed on the Authority at any time in respect of the Supplier's failure to account for, or to pay any VAT relating to, payments made to the Supplier under this Agreement. Any amounts due under this Clause 10.5 (VAT) shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

- 10.6 Without limiting Clause 10.4 (VAT), the Charges shall be inclusive of all other duties, sales taxes, charges and levies.

Set-off and Withholding

- 10.7 The Authority may set off any undisputed amount properly owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority.

- 10.8 If the Authority wishes to:

- 10.8.1 set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier pursuant to Clause 10.7 (*Set-off and Withholding*); or

- 10.8.2 exercise its right, pursuant to Clause 7.2.4(b) (*Performance Failures*) to withhold payment of a proportion of the Charges,

it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.

Benchmarking

- 10.9 The Parties shall comply with the provisions of Schedule 7.3 (*Benchmarking*) in relation to the benchmarking of any or all of the Goods and Services.

Financial Distress

- 10.10 The Parties shall comply with the provisions of Schedule 7.4 (*Financial Distress*) in relation to the assessment of the financial standing of the Supplier, and other specified entities and the consequences of a change to that financial standing.

Promoting Tax Compliance

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

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

- 10.11.2 promptly provide to the Authority:

- (a) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (b) such other Information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

OFFICIAL

10.12 Not Used.

SECTION D - CONTRACT GOVERNANCE

11. GOVERNANCE

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

Representatives

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

11.3 The initial Supplier Representative shall be the person named as such in Schedule 9.2 (*Key Personnel*). Any change to the Supplier Representative shall be agreed in accordance with Clause 14 (*Supplier Personnel*).

11.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within five (5) Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

Collaboration

11.5 The Parties shall comply with the provisions of Schedule 8.8 (*Collaboration*) in relation to their obligations of collaboration under this Agreement.

12. RECORDS, REPORTS, AUDITS & OPEN BOOK DATA

12.1 The Supplier shall comply with the provisions of:

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

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

12.2 The Parties shall comply with the provisions of:

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

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

13. CHANGE

Change Control Procedure

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

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Change in Law

- 13.2 The Supplier shall neither be relieved of its obligations to supply the Goods and Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of a:
- 13.2.1 General Change in Law; or
- 13.2.2 Specific Change in Law where the effect of that Specific Change in Law on the provision of the Goods and Services is reasonably foreseeable at the Effective Date.
- 13.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 13.2.2 (*Change in Law*)), the Supplier shall:
- 13.3.1 notify the Authority as soon as reasonably practicable of the likely effects of that change, including whether any:
- (a) Change is required to the provision of the Goods and Services, the Charges or this Agreement; and
- (b) relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Performance Levels; and
- 13.3.2 provide the Authority with evidence:
- (a) that the Supplier has minimised any increase in Costs or maximised any reduction in Costs, including in respect of the costs of its Sub-contractors;
- (b) as to how the Specific Change in Law has affected the cost of providing the Goods and Services; and
- (c) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (*Services Improvement*), has been taken into account in amending the Charges.
- 13.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 13.2.2 (*Change in Law*)) shall be implemented in accordance with the Change Control Procedure.

SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN

14. SUPPLIER PERSONNEL

- 14.1 Subject to Clause 14.3 (*Supplier Personnel*) below, the Supplier shall:
- 14.1.1 provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

- 14.1.2 ensure that all Supplier Personnel:
- (a) are appropriately qualified, trained and experienced to provide the Goods and Services with all reasonable skill, care and diligence;
 - (b) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements (as set out in Part A of Schedule 2.1 (*Services Description*) and Schedule 2.4 (*Security Management*) and the Baseline Security Requirements; and
 - (c) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 2.4 (*Security Management*) and the Baseline Security Requirements;
- 14.1.3 subject to Schedule 9.1 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;
- 14.1.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier;
- 14.1.5 without prejudice to the provisions in Clauses 14.4 to 14.7 (Key Personnel) and Paragraph 1.5 of Part E of Schedule 9.1 (*Staff Transfer*), use reasonable endeavours to minimise the number of changes in Supplier Personnel;
- 14.1.6 replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- 14.1.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- 14.1.8 procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the end of the Term.
- 14.2 If the Authority properly determines that any of the Supplier Personnel are unsuitable to undertake work in respect of this Agreement, it may:
- 14.2.1 refuse admission to the relevant person(s) to the Authority Premises; and/or
 - 14.2.2 direct the Supplier to end the involvement in the provision of the Goods and Services of the relevant person(s) with some or all of the Service Recipients.
- 14.3 The Supplier acknowledges and agrees that the Supplier Personnel may be vetted by the Authority, and that may mean that the relevant Supplier Personnel may be rejected by the Authority.

Key Personnel

- 14.4 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 9.2 (*Key Personnel*) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

- 14.5 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 14.6 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- 14.6.1 requested to do so by the Authority;
 - 14.6.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 14.6.3 the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
 - 14.6.4 the Supplier obtains the Authority's prior written Approval (such consent not to be unreasonably withheld or delayed).
- 14.7 The Supplier shall:
- 14.7.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - 14.7.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - 14.7.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Working Days' notice;
 - 14.7.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Goods and Services; and
 - 14.7.5 ensure that any replacement for a Key Role:
 - (a) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (b) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

Employment Indemnity

- 14.8 The Parties agree that the:
- 14.8.1 Supplier shall both during and after the Term indemnify the Authority and each Service Recipient against all Employee Liabilities that may arise as a result of any claims brought against the Authority or any Service Recipient by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel; and

OFFICIAL

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

Income Tax and National Insurance Contributions

- 14.9 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Agreement, the Supplier shall:
- 14.9.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- 14.9.2 indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Goods and Services by the Supplier or any Supplier Personnel.

Staff Transfer

- 14.10 The Parties do not envisage that there will be Relevant Transfers, and to the extent that there are, the Parties agree that:
- 14.10.1 where the commencement of the provision of the Goods and Services or any part of the provision of the Goods and Services results in one or more Relevant Transfers, Schedule 9.1 (*Staff Transfer*) shall apply as follows:
- (a) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A and Part D of Schedule 9.1 (*Staff Transfer*) shall apply;
 - (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B and Part D of Schedule 9.1 (*Staff Transfer*) shall apply;
 - (c) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A, B and D of Schedule 9.1 (*Staff Transfer*) shall apply; and
 - (d) Part C of Schedule 9.1 (*Staff Transfer*) shall not apply;
- 14.10.2 where commencement of the provision of the Goods and Services or a part of the provision of the Goods and Services does not result in a Relevant Transfer, Part C of Schedule 9.1 (*Staff Transfer*) shall apply, Part D of Schedule 9.1 (*Staff Transfer*) may apply and Parts A and B of Schedule 9.1 (*Staff Transfer*) shall not apply; and
- 14.10.3 Part E of Schedule 9.1 (*Staff Transfer*) shall apply on the expiry or termination of the provision of the Goods and Services or any part of the provision of the Goods and Services.

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15. SUPPLY CHAIN RIGHTS AND PROTECTIONS

Appointment of Sub-contractors

- 15.1 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors (including by complying with the Supplier's obligations under Clause 38.3.6 (*Prevention of Fraud and Bribery*) to ensure that the Supplier is able to:
 - 15.1.1 manage any Sub-contractors in accordance with Good Industry Practice;
 - 15.1.2 comply with its obligations under this Agreement in the provision of the Goods and Services; and
 - 15.1.3 assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement.
- 15.2 Prior to Sub-contracting any of its obligations under this Agreement, the Supplier shall notify the Authority in writing of:
 - 15.2.1 the proposed Sub-contractor's name, registered office and company registration number;
 - 15.2.2 the scope of any Goods and Services to be provided by the proposed Sub-contractor; and
 - 15.2.3 where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.
- 15.3 If requested by the Authority within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.2 (*Appointment of Sub-contractors*), the Supplier shall also provide:
 - 15.3.1 a copy of the proposed Sub-contract; and
 - 15.3.2 any further Information reasonably requested by the Authority.
- 15.4 The Authority may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.2 (*Appointment of Sub-contractors*) (or, if later, receipt of any further Information requested pursuant to Clause 15.3 (*Appointment of Sub-contractors*)), object to the appointment of the relevant Sub-contractor if the Authority reasonably believes that the:
 - 15.4.1 appointment of a proposed Sub-contractor may prejudice the provision of the Goods and Services and/or may be contrary to the interests of the Authority;
 - 15.4.2 proposed Sub-contractor is unreliable and/or has not provided reasonable Goods and Services to its other customers;
 - 15.4.3 proposed Sub-contractor employs unfit persons; and/or
 - 15.4.4 proposed Sub-contractor should be excluded in accordance with Clause 15.22 (*Exclusion of Sub-contractors*),

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

in which case, the Supplier shall not proceed with the proposed appointment. For the avoidance of doubt, the Parties acknowledge and agree that: (A) this Clause 15.4 and Clause 15.5 below shall not apply to: (i) the Key Sub-contractors set out in Schedule 4.3 (*Notified Key Sub-contractors*) at the Effective Date; and (ii) the pre-existing Sub-contractors listed in the table below in this Clause 15.4 which the Supplier has appointed as at the Effective Date; and (B) from the Effective Date onwards, this Clause 15.4 and Clause 15.5 below shall apply to: (i) the appointment of any new or replacement Key Sub-contractors; (ii) the replacement of any Sub-contractors in the table in this Clause 15.4 below; and/or (iii) the addition of any new Sub-contractors to the table in this Clause 15.4 below.

| No. | Sub-contractor name and address |
|-----|--|
| | REDACTED – COMMERCIAL SENSITIVE INFORMATION |
| | |
| | |
| | |
| | |

15.5 Subject to the final sentence of Clause 15.4 above, if the:

15.5.1 Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of ten (10) Working Days of receipt of:

- (a) the Supplier's notice issued pursuant to Clause 15.1 (*Appointment of Sub-contractors*); and
- (b) any further Information requested by the Authority pursuant to Clause 15.3 (*Appointment of Sub-contractors*); and

15.5.2 proposed Sub-contract is not a Key Sub-contract which shall require the written consent of the Authority in accordance with Clause 15.6 (*Appointment of Key Sub-contractors*),

the Supplier may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of provision of the Goods and Services, may notify the Authority that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of Schedule 4.4 (*Third Party Contracts*).

Appointment of Key Sub-contractors

15.6 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written Approval of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-contractor, including for the following reasons:

15.6.1 the appointment of a proposed Key Sub-contractor may prejudice the provision of the Goods and Services or may be contrary to the interests of the Authority;

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

- 15.6.2 the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
- 15.6.3 the proposed Key Sub-contractor employs unfit persons; and/or
- 15.6.4 the proposed Key Sub-contractor should be excluded in accordance with Clause 15.22 (*Exclusion of Sub-contractors*).
- 15.7 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 4.3 (*Notified Key Sub-contractors*). The Parties acknowledge and agree that the provisions of Clause 15.8 below shall not apply to the Key Sub-contractors listed in Schedule 4.3 (*Notified Key Sub-contractors*) as at the Effective Date, and that the provisions of Clause 15.8 shall only apply to: (i) the replacement of any of the Key Sub-contractors listed in Schedule 4.3 (*Notified Key Sub-contractors*) as at the Effective Date; and (ii) the appointment of any new Key Sub-contractors which are not listed in Schedule 4.3 (*Notified Key Sub-contractors*) as at the Effective Date.
- 15.8 Except where the Authority has given its prior written Approval and subject to the last sentence of Clause 15.7 above, the Supplier shall use its best endeavours to ensure that each Key Sub-contract shall include:
- 15.8.1 provisions which will enable the Supplier to discharge its obligations under this Agreement;
- 15.8.2 a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which can confer a benefit upon the Authority;
- 15.8.3 a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier;
- 15.8.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
- 15.8.5 obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
- (a) data protection requirements set out in Clause 20 (*Authority Data and Baseline Security Requirements*) and Clause 23 (*Protection of Personal Data*);
 - (b) FOIA requirements set out in Clause 22 (*Transparency and Freedom of Information*);
 - (c) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 5.14.13 (*Supplier covenants*);
 - (d) the keeping of records in respect of the Goods and Services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
 - (e) the conduct of Audits set out in Part C of Schedule 7.5 (*Financial Reports and Audit Rights*);

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

- 15.8.6 a provision enabling the Authority to publish to the general public the Transparency Information, and for the Key Sub-contractor to assist and co-operate with the Authority with such publication, on substantially the same terms as are set out in Clause 22 (*Transparency and Freedom of Information*);
- 15.8.7 provisions which:
- (a) enable the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 32.1.1 and 32.2 (*Termination by the Authority*);
 - (b) where the Key Sub-contract is terminated by the Supplier on a similar basis to Clause 32.1.1 (*Termination by the Authority*) or by the Key Sub-contractor on a similar basis to Clause 32.3 (*Termination by the Supplier*), limit the Supplier's obligation to make payments to the Key Sub-contractor (whether by way of compensation or otherwise) for the termination of the Key Sub-contractor to:
 - (i) the types of payments recoverable by the Supplier from the Authority under Clause 33.3 (*Payments by the Authority*) and Schedule 7.2 (*Payments on Termination*); and
 - (ii) caps which are the same as or lower than the caps imposed on the Supplier under Schedule 7.2 (*Payments on Termination*); and
 - (c) impose obligations on the Key Sub-contractor which are no less onerous than those imposed on the Supplier under Schedule 7.2 (*Payments on Termination*);
- 15.8.8 a provision allowing the Authority to obtain a copy of the latest version of the Key Sub-contract;
- 15.8.9 a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the Goods and Services provided to the Supplier under the Key Sub-contract without first seeking the written Approval of the Authority;
- 15.8.10 a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 29 (*Step-In Rights*);
- 15.8.11 a provision requiring the Key Sub-contractor to participate in, and (if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in), the Multi-Party Dispute Resolution Procedure; and
- 15.8.12 a provision requiring the Key Sub-contractor to:
- (a) promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
 - (i) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

- (ii) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,

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

- (b) co-operate with the Supplier and the Authority to give full effect to the provisions of Schedule 7.4 (*Financial Distress*), including:
 - (i) meeting with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of any part of the Goods and Services;
 - (ii) contributing to and complying with the Financial Distress Remediation Plan; and
 - (iii) providing the Information specified in Paragraph 4.3.2(b) of Schedule 7.4 (*Financial Distress*).

15.9 The Supplier shall not terminate or materially amend the terms of any Key Sub-contract without the Authority's prior written Approval (not to be unreasonably withheld or delayed).

15.10 The Supplier shall, within ten (10) Working Days of receiving a request from the Authority, provide a copy of the latest version of a Key Sub-contract to the Authority, provided that the Supplier or the relevant Key Sub-contractor is entitled to appropriately redact confidential information from the key Sub-contract to be provided to the Authority under this Clause 15.10. If the Key Sub-contract requested by the Authority under this Clause 15.10 relates to one of the Key Sub-contractors listed in in Schedule 4.3 (*Notified Key Sub-contractors*) as at the Effective Date, the release of such Key Sub-contract shall also be subject to the consent of the Key Sub-Contractor.

Supply chain protection

15.11 For the avoidance of doubt, the Parties acknowledge and agree that: (A) this Clause 15.11 shall not apply to: (i) the Key Sub-contractors set out in Schedule 4.3 (*Notified Key Sub-contractors*) at the Effective Date; and (ii) the pre-existing Sub-contractors listed in the table below in Clause 15.4 above which the Supplier has appointed as at the Effective Date; and (B) from the Effective Date onwards, this Clause 15.4 shall apply to: (i) the appointment of any new or replacement Key Sub-contractors; (ii) the replacement of any Sub-contractors in the table in Clause 15.4 above; and/or (iii) the addition of any new Sub-contractors to the table in Clause 15.4 above. Subject to the preceding sentence above in this Clause 15.11, the Supplier shall ensure that all Sub-contracts (which in this Clause 15.11 (*Supply chain protection*) include any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of all or part of this Agreement) contain provisions:

- 15.11.1 giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour Law;

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

- 15.11.2 requiring the Supplier or other party receiving Goods and Services under the contract to consider and verify invoices under that contract in a timely fashion;
 - 15.11.3 that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 15.11.2 (*Supply chain protection*), the invoice shall be regarded as valid and undisputed for the purpose of Clause 15.11.4 (*Supply chain protection*) after a reasonable time has passed;
 - 15.11.4 solely in relation to Sub-contractors which are SMEs based in the UK, requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
 - 15.11.5 which are at least equivalent to those imposed on the Supplier in Clause 38 (*Prevention of Fraud and Bribery*);
 - 15.11.6 giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
 - 15.11.7 requiring the Sub-contractor to include a Clause to the same effect as this Clause 15.11 (*Supply chain protection*) in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.
- 15.12 The Supplier shall:
- 15.12.1 solely in relation to Sub-contractors which are SMEs based in the UK, pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed;
 - 15.12.2 include within the Balanced Scorecard Report produced by it pursuant to Schedule 2.2 (*Performance Levels*) a summary of its compliance with Clause 15.12.1 (*Supply chain protection*), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.
- 15.13 If the Supplier notifies the Authority (whether in a Balanced Scorecard Report or otherwise) that the Supplier has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to:
- 15.13.1 notwithstanding any provision of Clause 21 (*Confidentiality*), publish the details of the late or non-payment (including on government websites and in the press); and/or
 - 15.13.2 at the Authority's sole discretion, take any of the following actions for such period of time as reasonably required by the Authority:
 - (a) retain such amount of the Charges which are equal to the undisputed amount payable by the Supplier to the Sub-contractor (the "**Retained Charges**") and pay the Retained Charges directly to the relevant Sub-contractor. For the avoidance of doubt, where the Authority has retained any Charges pursuant to this Clause 15.13.2(a) (*Supply chain protection*), the Authority shall be deemed to have satisfied its obligation to pay those Charges to the Supplier;
 - (b) require the Supplier to provide such financial information relating to the Supplier as the Authority may request; and/or

OFFICIAL

- (c) require the Supplier to establish suitable credit support arrangements acceptable to the Authority (which may include securing the Guarantee from a body acceptable to the Authority).

Termination of Sub-contracts

15.14 The Authority is entitled to:

15.14.1 without prejudice to the Authority's right to terminate all or part of this Agreement pursuant to Clauses 32.1.2 and 32.2.2 below, request that the Supplier complies with the Rectification Plan Process under Clause 27 below (and if requested, the Supplier shall comply with Clause 27 below) in relation to a Sub-contract where:

- (a) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 32.1.2 (*Termination by the Authority*);
- (b) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the provision of the Goods and Services or otherwise;
- (c) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour Law; and/or
- (d) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 15.22 (*Exclusion of Sub-contractors*); and

15.14.2 terminate a Key Sub-contract where there is a Corporate Change Event of the relevant Key Sub-contractor, unless:

- (a) the Authority has given its prior written Approval (such Approval not to be unreasonably withheld) to the particular Corporate Change Event, which subsequently takes place as proposed; or
- (b) the Authority has not served its notice of objection within six (6) Months of the later of the date the Corporate Change Event took place or the date on which the Authority was given notice of the Corporate Change Event,

provided that the provisions of this Clause 15.14.2 shall not apply to the Key Sub-contractors listed in Schedule 4.3 (*Notified Key Sub-contractors*) as at the Effective Date, and that the provisions of this Clause 15.14.2 shall only apply to: (i) the replacement of any of the Key Sub-contractors listed in Schedule 4.3 (*Notified Key Sub-contractors*) as at the Effective Date; and (ii) any new Key Sub-contractors which are not listed in Schedule 4.3 (*Notified Key Sub-contractors*) as at the Effective Date.

15.15 Subject to the following and Clause 15.16 (*Termination of Sub-contracts*), the Authority may require the Supplier to maintain a Sub-contract where the Supplier wishes to terminate a Sub-contract. Where the Supplier wishes to terminate a Sub-contract at any time, for any reason, it shall notify the Authority in writing ("**Sub-contract Termination Notice**") prior to serving notice to terminate the relevant Sub-

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

contract. The Sub-contract Termination Notice shall contain (as a minimum) details of:

- 15.15.1 the Sub-contract to be terminated;
 - 15.15.2 reasons for such termination;
 - 15.15.3 the likely impact of the termination on the provision of the Services or any Goods; and
 - 15.15.4 any relevant provisions in the Sub-contract relating to deadlines for service of such termination notice.
- 15.16 Within 5 Working Days (or any applicable deadline date notified to it in the Sub-contract Termination Notice, if earlier) of receipt of a Sub-contract Termination Notice, the Authority shall notify the Supplier whether it accepts, rejects or requests clarification in relation to the Sub-contract Termination Notice. Where the Authority:
- 15.16.1 accepts the Sub-contract Termination Notice, the Supplier may terminate the relevant Sub-contract;
 - 15.16.2 rejects the Sub-contract Termination Notice (which it may only do if it reasonably considers that the termination would have a material, detrimental impact on the provision of the Services or any Goods), the Supplier shall not serve notice on the Sub-contractor to terminate the relevant Sub-contract; or
 - 15.16.3 requests clarification, the Supplier must provide appropriate assurance (determined by the Authority) that the proposed termination of the Sub-contract would not impact the provision of the Services or any Goods to the detriment of the Authority, or that any replacement Sub-contractor is suitable to ensure sufficient continuity in the provision of the Services or any Goods, before the Authority can accept the Sub-contract Termination Notice (in which case, Clause 15.16.1 (*Termination of Sub-contracts*) will apply).
- 15.17 If the Authority does not respond to the Sub-contract Termination Notice within the period specified in Clause 15.16 (*Termination of Sub-contracts*), or the applicable period in Clause 15.15.4 (*Termination of Sub-contracts*) (where notified to it), the Sub-contract Termination Notice will be deemed to have been accepted.

Competitive Terms

- 15.18 If the Authority is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Goods and Services, then the Authority may:
 - 15.18.1 request the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
 - 15.18.2 subject to Clause 15.14 (*Termination of Sub-contracts*), enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.
- 15.19 If the Authority exercises either of its options pursuant to Clause 15.18 (*Competitive Terms*), then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.

OFFICIAL

- 15.20 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
- 15.20.1 the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Goods and Services; and
- 15.20.2 any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

Retention of Legal Obligations

- 15.21 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 15 (*Supply chain rights and protections*), the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own in connection with the Services under this Agreement. In respect of any element of the Goods and Services delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Agreement, shall include an obligation on the Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Goods and Services. For the avoidance of doubt, any provision of the Agreement referencing a Sub-contractor shall mean a Sub-contractor in accordance with its definition in Schedule 1 (*Definitions*) unless expressly stated otherwise in the relevant provision to be restricted to a Sub-contractor in the table in Clause 15.4 above or Schedule 4.3 (*Notified Key Sub-contractors*).

Exclusion of Sub-contractors

- 15.22 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:
- 15.22.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor; or
- 15.22.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may request the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

Advertising Sub-contracting Opportunities

- 15.23 The Supplier shall:
- 15.23.1 subject to Clauses 15.25 and 15.26 (*Advertising Sub-contracting Opportunities*), advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the Goods and Services above a minimum threshold of £100,000 that arise during the Term;
- 15.23.2 within ninety (90) days of awarding a Sub-contract to a Sub-contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;
- 15.23.3 monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;

OFFICIAL

- 15.23.4 provide reports on the Information at Clause 15.23.3 (*Advertising Sub-contracting Opportunities*), to the Authority in the format and frequency as reasonably specified by the Authority; and
- 15.23.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 15.24 Each advert referred to at Clause 15.23.1 (*Advertising Sub-contracting Opportunities*) above shall provide a full and detailed description of the Sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 15.25 The obligation at Clause 15.23.1 (*Advertising Sub-contracting Opportunities*) shall only apply in respect of Sub-contract opportunities arising after the Effective Date.
- 15.26 Notwithstanding Clause 15.23 (*Advertising Sub-contracting Opportunities*), the Authority may by giving its Approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

Management Charges and Information

- 15.27 The Parties acknowledge and agree that the provisions of this Clause 15.27 shall only apply to: (i) the Key Sub-contractors listed in Schedule 4.3 (*Notified Key Sub-contractors*), including as such list is amended from time to time; and (ii) the Sub-contractors listed in Clause 15.4 above, including as such list is amended from time to time. The Supplier shall only be obliged to provide the reports and Information under this Clause 15.27 in relation to any other Sub-contractors (other than those listed in Schedule 4.3 (*Notified Key Sub-contractors*) or in the table in Clause 15.4 above) on an exception only basis on reasonable request by the Authority. Subject to the preceding provisions of this Clause 15.27, in addition to any other Management Information requirements set out in this Agreement, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Reports to the Authority thirty (30) days prior to the end of each financial year. The Supply Chain Transparency Reports shall:
 - 15.27.1 contain all Information described in the Supply Chain Transparency Information Template;
 - 15.27.2 be in the format set out in the Supply Chain Transparency Information Template; and
 - 15.27.3 be in accordance with any guidance issued by the Authority from time to time.
- 15.28 The Supplier shall use the latest version of the Supply Chain Transparency Information Template (which may be updated by the Authority from time to time including the data required and/or format). The Authority shall give at least thirty (30) days' notice in writing to the Supplier of any such change and shall specify the date from which it must be used.

Support apprenticeships

- 15.29 The Supplier shall use reasonable endeavours to procure the employment of apprentices, and report to the Authority the numbers of apprentices employed and wider skills training provided, during the Term.
- 15.30 The Supplier shall procure the provision of any appropriate further skills training opportunities for employees delivering the Agreement.

OFFICIAL

Procurement Policy Note 01/18

- 15.31 The Government wants to level the playing field and increase the visibility of supply chain opportunities to assist suppliers, including SMEs, in bidding for public contracts. Procurement Policy Note 01/18 requires the Authority to include a Clause in this Agreement to require the Supplier to advertise on "Contracts Finder" any new Sub-contracting opportunities valued above a minimum threshold of £25,000 that arise after contract award of this Agreement.
- 15.32 Due to the nature and value of this procurement, it has been envisaged that there will be numerous Sub-contracting opportunities arising from this Agreement, which would be overly burdensome to the Supplier. The Authority will, therefore, increase the threshold to £100,000 for this procurement to prevent the frequency of advertising every opportunity that arises from this Agreement. This would assist the Supplier to carry on with its day-to-day activities without having to include procurement as part of its core activities.

SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

16. INTELLECTUAL PROPERTY RIGHTS

- 16.1 Except as expressly set out in this Agreement:
- 16.1.1 the Authority shall not acquire any right, title or interest in or to IPRs of the Supplier or its licensors, namely the:
- (a) Supplier Software;
 - (b) Third Party Software;
 - (c) Third Party IPRs;
 - (d) Supplier Background IPRs;
 - (e) Embedded Software; and
 - (f) Embedded IPRs;
- 16.1.2 the Supplier shall not acquire any right, title or interest in or to the IPRs of the Authority or their licensors, including the:
- (a) Authority Software;
 - (b) Authority Data; and
 - (c) Authority Background IPRs; and
- 16.1.3 Specially Written Software and Project Specific IPRs (except for any Know-How, trade secrets or Confidential Information contained therein) shall be the property of the Authority.
- 16.2 Where either Party acquires, by operation of Law, title to IPRs that is inconsistent with the allocation of title set out in Clause 16 (*Intellectual Property Rights*), it shall assign in writing such IPRs as it has acquired to the other Party on the request of the other Party (whenever made).

OFFICIAL

- 16.3 Neither Party shall have any right to use any of the other Party's (which shall include, where the other Party is the Authority, each of the Service Recipients) names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 16.4 Unless the Authority otherwise agrees in advance in writing:
- 16.4.1 all Specially Written Software and any software element of Project Specific IPRs shall be created in a format, or able to be converted into a format, which is suitable for publication by the Authority as Open Source software; and
- 16.4.2 where the Specially Written Software and any software element of Project Specific IPRs are written in a format that requires conversion before publication as Open Source software, the Supplier shall also provide the converted format to the Authority.
- 16.5 Where the Authority agrees that any Specially Written Software and/or any software element of Project Specific IPRs should be excluded from Open Source publication, the Supplier shall as soon as reasonably practicable provide written details of the impact that such exclusion will have on the Authority's ability to publish other Open Source software under Clause 17.23 (*Open Source Software*).

17. TRANSFER AND LICENCES GRANTED BY THE SUPPLIER

Specially Written Software and Project Specific IPRs

- 17.1 The Supplier hereby agrees to transfer to the Authority, or shall procure the transfer to the Authority of, all rights (subject to Clause 16.1.1 (*Intellectual Property Rights*)) in the Specially Written Software and the Project Specific IPRs including (without limitation):
- 17.1.1 the Documentary Deliverables;
- 17.1.2 the Documentation, Source Code and the Object Code of the Specially Written Software; and
- 17.1.3 all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the "**Software Supporting Materials**"),
- but not including any Know-How, trade secrets or Confidential Information.
- 17.2 The Supplier:
- 17.2.1 shall:
- (a) inform the Authority of all Specially Written Software and any element of Project Specific IPRs that constitutes a modification or enhancement to Supplier Software or Third Party Software;
- (b) deliver to the Authority the Specially Written Software and the software element of Project Specific IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the provision of the relevant Goods and Services and shall provide updates of the Source Code and of the

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

Software Supporting Materials promptly following each New Release of the Specially Written Software and the software element of any Project Specific IPRs, in each case on media that is reasonably acceptable to the Authority; and

- (c) without prejudice to Clause 17.9 (*Third Party Software and Third Party IPRs*), provide full details to the Authority of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any software element of Project Specific IPRs;
- 17.2.2 acknowledges and agrees that the ownership of the media referred to in Clause 17.2.1(b) (*Specially Written Software and Project Specific IPRs*) shall vest in the Authority upon their receipt by the Authority; and
- 17.2.3 shall execute all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly transferred to the Authority.

Supplier Software and Supplier Background IPRs

- 17.3 The Supplier shall not use any Supplier Non-COTS Software or Supplier Non-COTS Background IPRs in the provision of the Goods and Services unless it is detailed in Schedule 5 (*Software*).
- 17.4 The Supplier hereby grants to the Authority and each Service Recipient:
 - 17.4.1 subject to the provisions of Clause 17.17 (*Patents*), perpetual, royalty-free and non-exclusive licences to use (including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display):
 - (a) the Supplier Non-COTS Software for which the Supplier delivers a copy to the Authority for any purpose relating to the provision of the Goods and Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's and the Service Recipient's (or any other Central Government Body's) business or function; and
 - (b) the Supplier Non-COTS Background IPRs for any purpose relating to the provision of the Goods and Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's and the Service Recipient's (or any other Central Government Body's) business or function;
 - 17.4.2 a licence to use the Supplier COTS Software for which the Supplier delivers a copy to the Authority and Supplier COTS Background IPRs on the licence terms identified in a letter in or substantially in the form set out in Annex 1 to Schedule 5 (*Software*) and signed by or on behalf of the Parties on or before the Effective Date provided always that the Authority shall remain entitled to sub-license and to assign and novate the Supplier COTS Software and Supplier COTS Background IPRs on equivalent terms to those set out in Clauses 17.7 (*Authority's and each Service Recipient's right to sub-licence*), 17.8 (*Authority's and each Service Recipient's right to assign/novate licences*) and 17.13 (*Change in legal status*) in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs; and

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

- 17.4.3 a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.
- 17.5 At any time during the Term or following termination or expiry of this Agreement, the Supplier may terminate the licence granted in respect of the Supplier Non-COTS Software under Clause 17.4.1(a) (*Supplier Software and Supplier Background IPRs*) or in respect of the Supplier Non-COTS Background IPRs under Clause 17.4.1(b) (*Supplier Software and Supplier Background IPRs*) by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) to the Authority if the Authority or any Service Recipient any person to whom the Authority or any Service Recipient grants a sub-licence pursuant to Clause 17.7 (*Authority's and each Service Recipient's right to sub-licence*) commits any material Default of the terms of Clause 17.4.1(a) (*Supplier Software and Supplier Background IPRs*) or 17.4.1(b) (*Supplier Software and Supplier Background IPRs*) or 17.7.1(b) (*Authority's and each Service Recipient's right to sub-licence*) (as the case may be) which, if the Default is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Authority written notice specifying the Default and requiring its remedy.
- 17.6 If the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Clause 17.5 (*Supplier Software and Supplier Background IPRs*), the Authority and each Service Recipient shall:
- 17.6.1 immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);
- 17.6.2 at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within six (6) Months of the termination of the licence, the Authority and each Service Recipient may destroy the documents and other tangible materials that contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs (as the case may be); and
- 17.6.3 ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority and each Service Recipient) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs.

Authority's and each Service Recipient's right to sub-licence

- 17.7 Subject to Clause 17.17 (*Patents*) the Authority and each Service Recipient may sub-licence:
- 17.7.1 the rights granted under Clause 17.3 (*Supplier Software and Supplier Background IPRs*) to a third party (including for the avoidance of doubt, any Other ARP Supplier and any Replacement Supplier) provided that the sub-licence:
- (a) is on terms no broader than those granted to the Authority and each Service Recipient; and
- (b) authorises the third party to use the rights licensed in Clause 17.3 (*Supplier Software and Supplier Background IPRs*) only for purposes relating to the provision of the Goods and Services (or substantially

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

equivalent services) or for any purpose relating to the exercise of the Authority's and the Service Recipient's (or any other Central Government Body's) business or function;

- 17.7.2 the rights granted under Clause 17.3 (*Supplier Software and Supplier Background IPRs*) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that the:
- (a) sub-licence is on terms no broader than those granted to the Authority and each Service Recipient; and
 - (b) Authority has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 of Schedule 5 (*Software*) duly executed by the Approved Sub-Licensee.

Authority's and each Service Recipient's right to assign/novate licences

- 17.8 The Authority and each Service Recipient may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 17.3 (*Supplier Software and Supplier Background IPRs*) to:
- 17.8.1 a Central Government Body; or
 - 17.8.2 any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority or any Service Recipient.

Third Party Software and Third Party IPRs

- 17.9 The Supplier shall not use in the provision of the Goods and Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless it is detailed in Schedule 5 (*Software*) and the Supplier has in each case either:
- 17.9.1 first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Authority and each Service Recipient on a royalty-free basis and on terms no less favourable to the Authority and each Service Recipient than those set out in Clauses 17.4.1 and 17.5 (*Supplier Software and Supplier Background IPRs*) and Clause 17.8 (*Authority's and each Service Recipient's right to assign/novate licences*); or
 - 17.9.2 complied with the provisions of Clause 17.10 (*Third Party Software and Third Party IPRs*).
- 17.10 If the Supplier cannot obtain for the Authority and each Service Recipient a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Clause 17.9.1 (*Third Party Software and Third Party IPRs*), the Supplier shall:
- 17.10.1 notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use;

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

- 17.10.2 use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Authority has first Approved the terms of the licence from the relevant third party; and
- 17.10.3 if the Supplier cannot obtain for the Authority and each Service Recipient licence terms for the relevant Third Party Software and/or Third Party IPRs acceptable to the Authority, consult with the Authority on alternatives to the relevant Third Party Software and/or Third Party IPRs. Any alternative software Approved in accordance with this Clause 17.10.3 (*Third Party Software and Third Party IPRs*) shall be substituted for the relevant Third Party Software originally listed in Schedule 5 (*Software*) and shall henceforth be Third Party Software for the purposes of this Agreement, to which the provisions of Clauses 17.10 and 17.11 (*Third Party Software and Third Party IPRs*) (as applicable) shall apply.
- 17.11 The Supplier shall:
- 17.11.1 notify the Authority in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
- 17.11.2 unless instructed otherwise in writing by the Authority in any case within twenty (20) Working Days of notification pursuant to Clause 17.10.1 (*Third Party Software and Third Party IPRs*), use its reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.
- 17.12 Should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any IPRs for which the Authority does not have a suitable licence, then the Supplier must notify the Authority within ten (10) days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in.

Change in legal status

- 17.13 Any change in the legal status of the Authority or any Service Recipient which means that it ceases to be a Central Government Body, or contracting authority as defined in the Public Contracts Regulations 2015 as applicable, shall not affect the validity of any licence granted in Clause 17.3 (*Supplier Software and Supplier Background IPRs*). If the Authority ceases to be a Central Government Body or any Service Recipient ceases to be a contracting authority as defined in the Public Contracts Regulations 2015, the Successor Body to the Authority shall still be entitled to the benefit of the licence granted in Clause 17.3 (*Supplier Software and Supplier Background IPRs*).
- 17.14 If there is a change of the Authority's status pursuant to Clause 17.13 (*Change in legal status*), the rights acquired on that change of status shall not extend beyond those previously enjoyed by the Authority and each Service Recipient.

Termination and Replacement Suppliers

- 17.15 For the avoidance of doubt, the termination or expiry of this Agreement or the end of the Term shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 17 (*Transfer and Licences Granted By the Supplier*).

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

17.16 The Supplier shall, if requested by the Authority in accordance with Schedule 8.5 (*Exit Management*) and at the Supplier's cost:

17.16.1 grant (or procure the grant) to any Replacement Supplier of a licence to use any:

- (a) Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, Third Party Non-COTS IPRs, Third Party Non-COTS Software, Embedded IPRs and/or Embedded Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to the Authority and each Service Recipient in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Clause 17 (*Transfer and Licences Granted By the Supplier*) subject to receipt by the Authority of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5 (*Software*) duly executed by the Replacement Supplier; and
- (b) Supplier COTS Software and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and

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

Patents

17.17 Where a patent that is owned by the Supplier or any Other Consortium Member is infringed by the Authority, or any Replacement Supplier using the:

17.17.1 Specially Written Software or Embedded Software; or

17.17.2 Project Specific IPRs or Embedded IPRs,

the Supplier grants (or shall procure that the relevant Other Consortium Member shall grant within five (5) Working Days of the Supplier becoming aware of such infringement) to the Authority and the Replacement Supplier (as required) a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Agreement.

Escrow

17.18 The Supplier shall, and shall procure that each owner of the Deposited Software shall, not less than ten (10) Working Days following the relevant Go Live Date or such other periods as the Authority may require, deposit the Source Code of the Deposited Software in escrow either with the NCC or its equivalent on the basis of their standard single licensee escrow agreement or with any other reputable escrow services provider, as required or agreed by the Authority, on the basis of terms broadly equivalent to NCC's standard single licensee escrow agreement.

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

- 17.19 The Supplier shall ensure that (and shall procure that each owner of the Deposited Software shall ensure that) the deposited version of the Source Code is the current version of the Deposited Software and that the deposited version is kept up-to-date with all, New Releases, Updates and Upgrades for the Deposited Software. For the purposes of this Clause 17.19 (*Escrow*), all references to "New Release", "Update" and "Upgrade" shall include Deposited Software.
- 17.20 The Supplier shall pay, or shall procure that each owner of Deposited Software pays, the initial storage fees and the annual fees under the escrow agreement and the Authority shall pay the release fees.
- 17.21 Where the Supplier is unable to procure compliance with the provisions of Clause 17.18 (*Escrow*) in respect of any Third Party Software or Embedded Software that is Deposited Software, it shall provide the Authority with written evidence of its inability to comply with these provisions and shall agree with the Authority a suitable alternative to escrow that affords the Authority the nearest equivalent protection. The Supplier shall be excused from its obligations under Clause 17.18 (*Escrow*) only to the extent that the Parties have agreed on a suitable alternative.

Open Source Software

- 17.22 The Supplier shall ensure that the Software does not contain any Open Source software other than such of the Software as is identified as such in Schedule 5 (*Software*). The Supplier warrants that the Open Source software is licensed upon terms which permit the use of such Open Source software by the Supplier, the Authority and each of the Service Recipients for all purposes contemplated by this Agreement.
- 17.23 The Supplier agrees that the Authority may at its sole discretion publish as Open Source software all or part of the Specially Written Software and any software element of the Project Specific IPRs after the Effective Date.
- 17.24 The Supplier hereby warrants that the Specially Written Software and any software element of the Project Specific IPRs:
- 17.24.1 shall not cause any harm or damage to any party using anything published as Open Source and that the Specially Written Software and the Project Specific IPRs do not contain any Malicious Software;
- 17.24.2 do not contain any material which would bring the Authority into disrepute upon publication as Open Source;
- 17.24.3 do not contain any IPRs owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and the Project Specific IPRs ("**Non-Party IPRs**"); and
- 17.24.4 will be supplied in a format suitable for publication as Open Source (the "**Open Source Publication Material**") no later than the Effective Date.
- 17.25 The Supplier shall ensure that the Open Source Publication Material provided to the Authority does not include any Supplier Software or Supplier Background IPRs save that which the Supplier is willing to allow to be included in any Open Source publication. In such a case, the Supplier hereby acknowledges that any such Supplier Software or Supplier Background IPRs will become Open Source and will be licensed and treated as such following publication by the Authority and any third party that uses

OFFICIAL

the Open Source Publication Materials on the terms of the Open Source licence used by the Authority when publishing as Open Source.

- 17.26 The Supplier hereby indemnifies the Authority against all claims in which the Authority is, or is threatened to be, a party for any alleged infringement of any Non-Party IPRs arising from publication of the Specially Written Software and any software element of the Project Specific IPRs as Open Source under Clause 17.23 (*Open Source Software*).

18. LICENCES GRANTED BY THE AUTHORITY

- 18.1 The Authority hereby grants (or shall procure the grant) to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Software, the Authority Background IPRs, the Specially Written Software, the Project Specific IPRs and the Authority Data solely to the extent necessary for providing the Goods and Services in accordance with this Agreement, including the right to grant sub-licences to Sub-contractors provided that:
- 18.1.1 any relevant Sub-contractor has entered into a confidentiality undertaking with the Authority on the same terms as set out in Clause 21 (*Confidentiality*); and
- 18.1.2 the Supplier shall not, without the Authority's prior written Approval, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.
- 18.2 At the end of the Term, the licence granted pursuant to Clause 18.1 (*Licences Granted by the Authority*) and any sub-licence granted by the Supplier in accordance with Clause 18.1 (*Licences Granted by the Authority*) shall terminate automatically on such date and the Supplier shall:
- 18.2.1 immediately cease all use of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be);
- 18.2.2 at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data, provided that if the Authority has not made an election within six (6) Months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be); and
- 18.2.3 ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPRs and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Authority Software, Authority Background IPRs and/or Authority Data.

19. IPRS INDEMNITY

- 19.1 The Supplier shall at all times, during and after the Term, on written demand indemnify each Indemnified Person, and keep each Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- 19.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:

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ARP HANDHELD SOLUTION

OFFICIAL

- 19.2.1 procure the right for each Indemnified Person to continue using the relevant item which is subject to the IPRs Claim; or
- 19.2.2 replace or modify the relevant item with non-infringing substitutes provided that:
- (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (b) the replaced or modified item does not have an adverse effect on the provision of any other Goods and Services or the IT Environment;
 - (c) there is no additional cost to any relevant Indemnified Person; and
 - (d) the terms and conditions of this Agreement shall apply to the replaced or modified Goods and Services.
- 19.3 If the Supplier elects to procure a licence in accordance with Clause 19.2.1 (*IPRs Indemnity*) or to modify or replace an item pursuant to Clause 19.2.2 (*IPRs Indemnity*), but this has not avoided or resolved the IPRs Claim, then:
- 19.3.1 the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
- 19.3.2 without prejudice to the indemnity set out in Clause 19.1 (*IPRs Indemnity*), the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

20. AUTHORITY DATA AND BASELINE SECURITY REQUIREMENTS

- 20.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 20.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.
- 20.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority or any Service Recipient as requested by the Authority, in the format specified by the Authority, acting reasonably.
- 20.4 The Supplier shall preserve the security and integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor save that the Supplier shall delete all Authority Data held on any ESN Handheld Device that is returned to Supplier for repair or replacement.
- 20.5 Save for Authority Data that will be deleted as set out at 20.4, the Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the requirements of Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*). The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all reasonable times upon request and are delivered to the Authority (or to such other persons as the Authority may direct) at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

- 20.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Baseline Security Requirements.
- 20.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
- 20.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*) and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Authority's notice; and/or
 - 20.7.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*).
- 20.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.
- 20.9 The Supplier shall comply with the requirements of Schedule 2.4 (*Security Management*).
- 20.10 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- 20.11 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the provision of the Goods and Services, it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.
- 20.12 Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 20.11 (*Authority Data and Baseline Security Requirements*) the Supplier shall continue to provide the Goods and Services in accordance with its existing obligations.

Malicious Software

- 20.13 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software in the IT Environment (or as otherwise agreed by the Parties).
- 20.14 Notwithstanding Clause 20.13 (*Malicious Software*), if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any Losses and to restore the Supplier's provision of the Goods and Services in accordance with this Agreement, to the Authority's desired operating efficiency.

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

20.15 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 20.14 (*Malicious Software*) shall be borne by the Parties as follows:

20.15.1 by the Supplier where the Malicious Software has been introduced into the IT Environment by the Supplier, including through Third Party Software, (except where the Authority has waived the obligation set out in Clause 20.13 (*Malicious Software*) or originates from the Authority Data (whilst the Authority 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 Authority when provided to the Supplier; and

20.15.2 otherwise by the Authority.

21. CONFIDENTIALITY

21.1 For the purposes of this Clause 21 (*Confidentiality*), the term "**Disclosing Party**" shall mean a Party (including for the purposes of this Clause 21 (*Confidentiality*), only, each Service Recipient) which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party (including for the purposes of this Clause 21 (*Confidentiality*), only, each Service Recipient) which receives or obtains directly or indirectly Confidential Information.

21.2 Except to the extent set out in this Clause 21 (*Confidentiality*) or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:

21.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);

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

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

21.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

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

21.3.1 Recipient is required to disclose the Confidential Information by Law, provided that Clause 22 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;

21.3.2 need for such disclosure arises out of or in connection with:

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

(b) the examination and certification of the Authority's or any Service Recipient's accounts (provided that the disclosure is made on a

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority or any Service Recipient is making use of any Goods and Services provided under this Agreement; or

- (c) the conduct of a Central Government Body review in respect of this Agreement; or
- 21.3.3 Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 21.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 21.5 The Supplier may disclose the Confidential Information of the Authority and any Service Recipient on a confidential basis only to:
 - 21.5.1 Supplier Personnel who are directly involved in the provision of the Goods and Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;
 - 21.5.2 its auditors; and
 - 21.5.3 its professional advisers for the purposes of obtaining advice in relation to this Agreement.
- 21.6 Where the Supplier discloses Confidential Information of the Authority or any Service Recipient pursuant to Clause 21.5 (*Confidentiality*), it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.
- 21.7 The Authority and each Service Recipient may disclose the Confidential Information of the Supplier:
 - 21.7.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority, any Service Recipient or of the relevant Central Government Body;
 - 21.7.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 21.7.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 21.7.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 21.7.1 (*Confidentiality*) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
 - 21.7.5 on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to Clause 29 (*Step-In Rights*), and Exit Management rights;

ARP HANDHELD SOLUTION
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CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

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

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

21.7.8 to any Other ARP Supplier, on a confidential basis,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority and the Service Recipients under this Clause 21 (*Confidentiality*).

21.8 Nothing in this Clause 21 (*Confidentiality*) shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of IPRs.

22. TRANSPARENCY AND FREEDOM OF INFORMATION

22.1 The Parties acknowledge that the:

22.1.1 Transparency Reports; and

22.1.2 content of this Agreement, including any Changes agreed from time to time;

(together the "**Transparency Information**") do not constitute Confidential Information.

22.2 Any Information which is exempt from disclosure in accordance with the provisions of the FOIA (which shall be determined by the Authority) and any Commercially Sensitive Information shall amount to Confidential Information and not Transparency Information.

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

22.4 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 8.4 (*Reports and Records Provisions*).

22.5 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such Information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude Information from publication it will provide a clear explanation to the Supplier.

ARP HANDHELD SOLUTION
OFFICIAL

SIGNATURE VERSION

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

- 22.6 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the Information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 22.7 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Goods and Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such Information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 21.7.3 (*Confidentiality*) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within five (5) Working Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- 22.8 The Supplier acknowledges that the Authority and each Service Recipient are subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 22.8.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority and each Service Recipient to comply with its obligations under the FOIA and EIRs;
- 22.8.2 transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- 22.8.3 provide the Authority with a copy of all Information belonging to or held on behalf of the Authority or any Service Recipient which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- 22.8.4 not respond directly to a Request For Information unless authorised in writing to do so by the Authority.
- 22.9 The Supplier acknowledges that the Authority or any Service Recipient may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority (or the applicable Service Recipient) shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

23. PROTECTION OF PERSONAL DATA

Status of the Controller

- 23.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

obligations under this Agreement will determine the status of each Party under the Data Protection Legislation. A Party may act as:

- 23.1.1 "Controller" (where the other Party acts as the "Processor");
 - 23.1.2 "Processor" (where the other Party acts as the "Controller");
 - 23.1.3 "Joint Controller" (where both Parties are considered to jointly control the same Personal Data); or
 - 23.1.4 independent "Controller" of the Personal Data where the other Party is also "Controller" of the same Personal Data in its own right (but there is no element of joint control).
- 23.2 Without limiting Clause 23.1 (*Status of the Controller*), the Parties acknowledge and accept that with respect to any Personal Data provided by the Authority or a Service Recipient to the Supplier in connection with this Agreement:
- 23.2.1 the Authority is the Controller and the Supplier is the Processor unless otherwise specified in this Agreement or in Schedule 11 (*Processing Personal Data*); and
 - 23.2.2 the only Processing that the Supplier is authorised to do as Processor is listed in Schedule 11 (*Processing Personal Data*) by the Authority and may not be determined by the Supplier.

Where a Party is Controller and the other Party is Processor

- 23.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 23.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
- 23.4.1 a systematic description of the envisaged Processing operations and the purpose of the processing;
 - 23.4.2 an assessment of the necessity and proportionality of the Processing operations in relation to the provision of the Goods and Services;
 - 23.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 23.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 23.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 23.5.1 process that Personal Data only in accordance with Schedule 11 (*Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it is so required, the Processor shall promptly notify the Authority before Processing the Personal Data unless prohibited by Law;
 - 23.5.2 ensure that it has in place Protective Measures, including the measures set out in Clause 20 (*Authority Data and Baseline Security Requirements*), which have been

OFFICIAL

reviewed and approved by the Controller to protect against a Data Loss Event having taken account of the:

- (a) nature of the Personal Data to be protected;
- (b) Processing purposes;
- (c) risk of harm that might result from a Data Loss Event;
- (d) state of technological development; and
- (e) cost of implementing any measures;

23.5.3 ensure that:

- (a) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 11 (*Processing Personal Data*));
- (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Processor's duties under this Clause and Clauses 20.1 to 20.12 (*Authority Data and Baseline Security Requirements*) (inclusive) and 21 (*Confidentiality*);
 - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;

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

- (a) unless otherwise waived by the Authority in writing, the transfer shall comply with the NHS Offshoring Guidance;
- (b) where the Personal Data will be transferred to a location outside of the European Economic Area, the transfer is made pursuant to one or more of the following conditions:
 - (i) the transfer is made on the basis of an adequacy decision (in accordance with Article 45 of the GDPR);
 - (ii) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the GDPR or section 75 of the DPA) as determined by the Controller;

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

- (iii) the Data Subject has enforceable rights and effective legal remedies; and/or
 - (iv) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations);
 - (c) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
- 23.5.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller at the end of the Term in accordance with the Personal Data Return/Destruction Plan (where the Supplier is the Processor), unless the Processor is required by Data Protection Legislation to retain the Personal Data following the Term (in which case, such Personal Data shall only be retained in accordance with the minimum requirements prescribed by applicable Data Protection Legislation or as necessary to provide the Continued Support Services or applicable Warranty Support).
- 23.6 The Processor shall notify the Controller no later than five (5) days after it receives any:
- 23.6.1 Data Subject Request (or purported Data Subject Request);
 - 23.6.2 request to rectify, restrict, block or erase any Personal Data;
 - 23.6.3 other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 23.6.4 communication from the ICO or any other regulatory authority in connection with Personal Data processed under this Agreement; and/or
 - 23.6.5 request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law.
- 23.7 The Processor shall notify the Controller by no later than twenty (24) hours of it becoming aware of a Data Loss Event, or suspected Data Loss Event.
- 23.8 The Processor's obligation to notify under Clause 23.6 (*Where a Party is Controller and the other Party is Processor*) shall include the provision of further Information to the Controller in phases, as details become available.
- 23.9 Taking into account the nature of the Processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 23.6 (*Where a Party is Controller and the other Party is Processor*) (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 23.9.1 the Controller with full details and copies of the complaint, communication or request;

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

- 23.9.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- 23.9.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- 23.9.4 assistance as requested by the Controller following any Data Loss Event or suspected Data Loss Event; and/or
- 23.9.5 assistance as requested by the Controller with respect to any request from the ICO, or any consultation by the Controller with the ICO.
- 23.10 The Processor shall maintain complete and accurate records and Information to demonstrate its compliance with this Clause 23 (*Protection of Personal Data*).
- 23.11 The Processor shall allow for audits of its Processing activity by the Controller or the Controller's designated auditor.
- 23.12 The Processor shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 23.13 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
 - 23.13.1 notify the Controller in writing of the intended Sub-processor and Processing;
 - 23.13.2 obtain the written consent of the Controller;
 - 23.13.3 enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause 23.13 (*Where a Party is Controller and the other Party is Processor*) such that they apply to the Sub-processor; and
 - 23.13.4 provide the Controller with such Information regarding the Sub-processor as the Controller may reasonably require.
- 23.14 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 23.15 The Parties agree to take account of any guidance issued by the ICO. The Authority may on not less than thirty (30) Working Days' notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the ICO.

Where the Parties are Joint Controllers of Personal Data

- 23.16 If the Parties are Joint Controllers in respect of Personal Data under this Agreement, the Parties shall implement Clauses that are necessary to comply with Article 26 of the GDPR, and such Clauses will be based on the provisions set out in Appendix 1 of Schedule 11 (*Processing Personal Data*).

Where the Parties are independent Controllers of Personal Data

- 23.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller, each Party undertakes to comply with the applicable Data

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

Protection Legislation in respect of their Processing of such Personal Data as Controller.

- 23.18 Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in Default.
- 23.19 Where a Party has provided Personal Data to the other Party in accordance with Clause 23.17 (*Where the Parties are independent Controllers of Personal Data*), the recipient of the Personal Data will provide all such relevant documents and Information relating to its data protection policies and procedures as the other Party may reasonably require.
- 23.20 The Parties shall be responsible for their own compliance with Articles 13 and 14 of the GDPR in respect of the Processing of Personal Data for the purposes of this Agreement.
- 23.21 The Parties shall only provide Personal Data to each other:
- 23.21.1 to the extent necessary and proportionate to perform the respective obligations under this Agreement;
- 23.21.2 in compliance with the Data Protection Legislation (including by ensuring all required fair Processing information has been given to affected Data Subjects); and
- 23.21.3 where it has recorded it in Schedule 11 (*Processing Personal Data*).
- 23.22 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.
- 23.23 A Party Processing Personal Data for the purposes of this Agreement shall maintain a record of its Processing activities in accordance with Article 30 of the GDPR and shall make the record available to the other Party upon reasonable request.
- 23.24 Where a Party receives a Data Subject Request to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Agreement (the **"Request Recipient"**):
- 23.24.1 the other Party shall provide any Information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
- 23.24.2 where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
- (a) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

- (b) provide any Information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 23.25 Each Party shall promptly notify the other Party upon it becoming aware of any Data Loss Event relating to Personal Data provided by the other Party pursuant to this Agreement and shall:
 - 23.25.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Loss Event;
 - 23.25.2 implement any measures necessary to restore the security of any compromised Personal Data;
 - 23.25.3 work with the other Party to make any required notifications to the ICO and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
 - 23.25.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 23.26 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Agreement as specified in Schedule 11 (*Processing Personal Data*).
- 23.27 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Agreement which is specified in Schedule 11 (*Processing Personal Data*).
- 23.28 Notwithstanding the general application of Clauses 23.2 (*Status of the Controller*) to 23.15 (*Where a Party is Controller and the other Party is Processor*) to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an independent Controller of Personal Data in accordance with Clause 23.17 to 23.26 (*Where the Parties are independent Controllers of Personal Data*).

24. PUBLICITY AND BRANDING

- 24.1 The Supplier shall not, and shall ensure that each Other Consortium Member does not:
 - 24.1.1 make any press announcements or publicise this Agreement or its contents in any way; or
 - 24.1.2 use the Authority's or any Service Recipient's name or brand in any promotion or marketing or announcement of orders,without the prior written Approval of the Authority, which shall not be unreasonably withheld or delayed.
- 24.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Goods and Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

OFFICIAL

SECTION G - LIABILITY, INDEMNITIES AND INSURANCE

25. LIMITATIONS ON LIABILITY

Unlimited liability

- 25.1 Nothing in this Agreement shall be construed as limiting liability for:
- 25.1.1 death or personal injury caused by negligence, or that of a person's employees, agents or Sub-contractors (as applicable);
 - 25.1.2 fraud or fraudulent misrepresentation by a person or its employees;
 - 25.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 25.1.4 any liability to the extent it cannot be limited or excluded by Law.
- 25.2 The Supplier's liability in respect of:
- 25.2.1 the indemnities in Clause 10.5 (VAT), Clause 14.8 (*Employment Indemnity*), Clause 14.9 (*Income Tax and National Insurance Contributions*), Clause 19 (*IPRs Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*); and/or
 - 25.2.2 any Default of Clauses 21 (*Confidentiality*), 23 (*Protection of Personal Data*) and/or Schedule 11 (*Processing Personal Data*),
- shall be unlimited.
- 25.3 The Authority's liability in respect of the indemnities in Clause 14.8 (*Employment Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*) shall be unlimited.

Financial and other limits

- 25.4 Subject to Clause 25.1 (*Unlimited liability*), Clause 25.2 (*Unlimited liability*) and Clause 25.7 (*Consequential Losses*) and the following wording:
- 25.4.1 the Supplier's aggregate liability in respect of any damage to the Authority Premises or loss of any Authority Assets (but excluding any loss or damage to the Authority Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed £10 million;
 - 25.4.2 the Supplier's aggregate liability in respect of all other Losses incurred by the Authority or a Service Recipient under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed:
 - (a) in relation to all Defaults occurring during the period commencing on the execution date of this Agreement to the date of issue by the Authority of the Milestone Achievement Certificate for Milestone M5 (Service Ready) (such period shall be known as the "**First Liability Period**"), an amount equal to the greater of:

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- (i) 150% of the total Charges paid and/or due to be paid by the Authority to the Supplier under this Agreement during the First Liability Period; or
 - (ii) two million pounds (£2 million);
- (b) in relation to all Defaults occurring in each twelve (12) Month period commencing from the end of the First Liability Period (each of such twelve (12) Month period from the end of the First Liability Period shall be known as a “**Subsequent Liability Period**”), an amount equal to the greater of:
 - (i) 150% of the total Charges paid and/or due to be paid by the Authority to the Supplier under this Agreement during the relevant Subsequent Liability Period in which the Defaults occurred; or
 - (ii) four million pounds (£4 million); and
- (c) notwithstanding the provisions of sub-Clause 25.4.2(b) (*Financial and other limits*) above, if a Subsequent Liability Period goes beyond the Term of this Agreement, then all Defaults occurring during the period commencing from the beginning of such Subsequent Liability Period to the end of the Term (such period shall be known as the “**Partial Liability Period**”), an amount equal to the greater of:
 - (i) 150% of the total Charges paid and/or due to be paid by the Authority to the Supplier under this Agreement during the Subsequent Liability Period existing immediately prior to the Partial Liability Period; or
 - (ii) four million pounds (£4 million); and
- (d) notwithstanding the provisions of sub-Clause 25.4.2(b) (*Financial and other limits*) above, in relation to Defaults occurring after the end of the Term, including during any Continued Support Services Period and applicable Warranty Periods, an amount equal to the greater of:
 - (i) 150% of the total Charges paid and/or due to be paid by the Authority to the Supplier under this Agreement in the twelve (12) Month period immediately prior to the last day of the Term; or
 - (ii) four million pounds (£4 million);

provided that where any Losses referred to in Clause 25.4.2 (*Financial and other limits*) have been incurred by the Authority or a Service Recipient as a result of the Supplier's abandonment of this Agreement or the Supplier's wilful Default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement, the references in such Clause to 150% shall be deemed to be references to 200%.

- 25.5 Deductions from any Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 25.4.2 (*Financial and other limits*).
- 25.6 Subject to Clauses 25.1 (*Unlimited liability*), 25.3 (*Unlimited liability*) and 25.7 (*Consequential Losses*) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

- 25.6.1 the total aggregate liability of the Authority and the Service Recipients in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of early termination of this Agreement by the Authority pursuant to Clause 32.1.1 (*Termination by the Authority*) shall in no event exceed the following amounts in relation to the:
- (a) Unrecovered Costs Payment, the amount set out in Paragraph 4.3 of Schedule 7.2 (*Payments on Termination*); and
 - (b) Contract Breakage Costs Payment, the amounts set out in Paragraphs 3 and 4.2 of Schedule 7.2 (*Payments on Termination*).
- 25.6.2 the aggregate liability of the Authority and the Service Recipients in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of all Defaults of the Authority shall in no event exceed:
- (a) in relation to Defaults occurring in the First Liability Period, an amount equal to the total Charges paid or due to be paid by the Authority to the Supplier under this Agreement during the First Liability Period;
 - (b) in relation to Defaults occurring in the relevant Subsequent Liability Period, an amount equal to the total Charges paid and/or due to be paid by the Authority to the Supplier under this Agreement in the relevant Subsequent Liability Period in which the Defaults occurred;
 - (c) notwithstanding the provisions of Clause 25.6.2(b) (*Financial and other limits*) above, in relation to Defaults occurring in the Partial Liability Period, an amount equal to the total Charges paid and/or due to be paid by the Authority to the Supplier under this Agreement during the Subsequent Liability Period existing immediately prior to the Partial Liability Period; and
 - (d) notwithstanding the provisions of Clause 25.6.2(b) (*Financial and other limits*) above, in relation to all Defaults occurring after the end of the Term, an amount equal to the total Charges paid and/or due to be paid by the Authority to the Supplier under this Agreement in the twelve (12) Month period immediately prior to the last day of the Term.

Consequential Losses

- 25.7 Subject to Clauses 25.1, 25.2 and 25.3 (*Unlimited liability*) and Clause 25.8 (*Consequential Losses*), neither Party (which in the case of the Authority, shall include the Service Recipients) shall be liable to the other Party for any:
- 25.7.1 indirect, special or consequential Loss; or
 - 25.7.2 loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 25.8 Notwithstanding Clause 25.7 (*Consequential Losses*) but subject to Clause 25.4 (*Financial and other limits*), the Supplier acknowledges and agrees that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority or a Service Recipient to the extent that they arise as a result of a Default by the Supplier:
- 25.8.1 any additional operational and/or administrative costs and expenses incurred by the Authority or a Service Recipient, including costs relating to time spent by or on behalf

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

of the Authority or a Service Recipient in dealing with the consequences of the Default;

- 25.8.2 any wasted expenditure or charges;
- 25.8.3 the additional cost of procuring Replacement Goods and Services for the remainder of the Term and/or replacement Goods, which shall include any incremental costs associated with such Replacement Goods and Services above those which would have been payable under this Agreement;
- 25.8.4 any compensation or interest paid to a third party by the Authority;
- 25.8.5 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; and
- 25.8.6 any Losses suffered by the Authority as a result of any:
 - (a) Requirement to Recall;
 - (b) act, omission or failure by the Supplier to provide additional, specialist ad-hoc support requested by the Authority as an Ad-hoc Service under HH/OPT/AHS/001 of Schedule 2.1 (*Services Description*));
 - (c) any costs incurred in recalling, replacing and/or repairing any Rejected Catalogue Items; and/or
 - (d) the Authority relying on Ad-hoc Services (under HH/OPT/AHS/001) of Schedule 2.1 (*Services Description*)).

Conduct of indemnity claims

- 25.9 Where under this Agreement one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 8.7 (*Conduct of Claims*) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

Mitigation

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

26. INSURANCE

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

SECTION H – REMEDIES AND RELIEF

27. RECTIFICATION PLAN PROCESS

- 27.1 If:

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- 27.1.1 there is, or is reasonably likely to be, a Delay or performance deterioration;
- 27.1.2 in any Service Period there has been:
 - (a) a Severe KPI Failure; and/or
 - (b) a Material SPI Failure; and/or
- 27.1.3 the Supplier fails to Achieve the requirements of any of those Key Milestones listed at (i) in the definition of Key Milestone (as contained in Schedule 1 (*Definitions*)) by the relevant Milestone Dates;
- 27.1.4 the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

(each a "**Notifiable Default**"), the Supplier shall notify the Authority of the Notifiable Default as soon as practicable (if the Authority is not already aware) but in any event within three (3) Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event, the Authority may not terminate this Agreement in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process.

Notification

- 27.2 If the:
 - 27.2.1 Supplier notifies the Authority pursuant to Clause 27.1 (*Rectification Plan Process*) that a Notifiable Default has occurred; or
 - 27.2.2 Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, unless the Notifiable Default also constitutes a Supplier Termination Event and the Authority serves a Termination Notice, the Supplier shall comply with the Rectification Plan Process.

- 27.3 The "**Rectification Plan Process**" shall be as set out in Clauses 27.4 (*Submission of the draft Rectification Plan*) to 27.9 (*Agreement of the Rectification Plan*).

Submission of the draft Rectification Plan

- 27.4 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 27.2 (*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier Disputes that it is responsible for the Notifiable Default.
- 27.5 The draft Rectification Plan shall set out:
 - 27.5.1 full details of the Notifiable Default that has occurred, including a Root Cause Analysis;

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- 27.5.2 the actual or anticipated effect of the Notifiable Default; and
- 27.5.3 the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).
- 27.6 The Supplier shall promptly provide to the Authority any further Documentation that the Authority reasonably requires to assess the Supplier's Root Cause Analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an Expert in accordance with Paragraph 6 of Schedule 8.3 (*Dispute Resolution Procedure*).

Agreement of the Rectification Plan

- 27.7 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
 - 27.7.1 is insufficiently detailed to be capable of proper evaluation;
 - 27.7.2 will take too long to complete;
 - 27.7.3 will not prevent reoccurrence of the Notifiable Default; and/or
 - 27.7.4 will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.
- 27.8 The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within five (5) Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.
- 27.9 If the Authority consents to the Rectification Plan:
 - 27.9.1 the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
 - 27.9.2 the Authority may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Default.

28. DELAY PAYMENTS

- 28.1 If a Key Milestone has not been Achieved by its relevant Milestone Date, the provisions of Paragraph 1 of Part C of Schedule 7.1 (*Charges and Invoicing*) shall apply in relation to the payment of Delay Payments.
- 28.2 Delay Payments shall not be the Authority's exclusive financial remedy for the Supplier's failure to Achieve a Key Milestone by its Milestone Date and the Parties agree that the Authority is entitled to claim damages for such failure to Achieve a Key Milestone by its Milestone Date along with any other rights and remedies the Authority may have under this Agreement.

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29. STEP-IN RIGHTS

- 29.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a "**Step-In Notice**") that it will be taking action under this Clause 29 (*Step-In Rights*), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 21 (*Confidentiality*)). The Step-In Notice shall set out the following:
- 29.1.1 the action the Authority wishes to take and in particular the Goods and Services that it wishes to control (the "**Required Action**");
 - 29.1.2 the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier's Default;
 - 29.1.3 the date on which it wishes to commence the Required Action;
 - 29.1.4 the time period which it believes will be necessary for the Required Action;
 - 29.1.5 whether the Authority will require access to the Supplier's premises and/or the Sites; and
 - 29.1.6 to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier's obligations to provide the Goods and Services during the period that the Required Action is being taken.
- 29.2 Following service of a Step-In Notice, the Authority shall:
- 29.2.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
 - 29.2.2 keep records of the Required Action taken and provide Information about the Required Action to the Supplier;
 - 29.2.3 co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Goods and Services in relation to which the Authority is not assuming control; and
 - 29.2.4 act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this Clause 29 (*Step-In Rights*).
- 29.3 For so long as and to the extent that the Required Action is continuing, then:
- 29.3.1 the Supplier shall not be obliged to provide the Goods and Services to the extent that they are the subject of the Required Action;
 - 29.3.2 no Deductions shall be applicable in relation to any Charges in respect of the provision of the Goods and Services that are the subject of the Required Action and the provisions of Clause 29.4 (*Step-In Rights*) shall apply to Deductions from Charges in respect of the provision of other Goods and Services;
 - 29.3.3 the Authority shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Authority's costs of taking the Required Action;

CONTRACT FOR THE PROVISION OF
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- 29.3.4 the Supplier shall cooperate fully with the Authority and any third party appointed by the Authority under Clause 29.1 (*Step-In Rights*) to facilitate the steps taken;
- 29.3.5 the Supplier shall grant and procure that any Sub-contractor or relevant third party grants such licences and permissions as are reasonably required provided that these result in no additional cost to the Authority; and
- 29.3.6 the Supplier shall afford (and procure that its Sub-contractors afford as applicable) to the Authority and any third party appointed by the Authority under Clause 29.1 (*Step-In Rights*) such cooperation, access to and use of (as applicable):
- (a) such equipment, goods, services, premises, personnel, documents, Information and other items as are reasonably required to provide the Goods and Services;
 - (b) the Supplier's IPRs used in relation to the provision of the Goods and Services (excluding any Source Code); and
 - (c) premises, equipment, personnel, documents, Information or other items as are reasonably required.
- 29.4 If the Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in the:
- 29.4.1 degradation of the provision of any Goods and Services not subject to the Required Action; or
- 29.4.2 failure to Achieve a Milestone,
- beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.
- 29.5 Before ceasing to exercise its step in rights under this Clause 29 (*Step-In Rights*) the Authority shall deliver a written notice to the Supplier (a "**Step-Out Notice**"), specifying:
- 29.5.1 the Required Action it has actually taken; and
- 29.5.2 the date on which the Authority plans to end the Required Action (the "**Step-Out Date**") subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Goods and Services and the Supplier's plan developed in accordance with Clause 29.6 (*Step-In Rights*).
- 29.6 The Supplier shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the Step-Out Date, develop for Approval a draft plan (a "**Step-Out Plan**") relating to the resumption by the Supplier of the provision of the Goods and Services, including any action the Supplier proposes to take to ensure that the affected parts of the provision of the Goods and Services satisfy the requirements of this Agreement.
- 29.7 If the Authority does not Approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not Approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for Approval. The Authority shall not withhold or delay Approval of the draft Step-Out Plan unnecessarily or unreasonably.

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

29.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause 29 (*Step-In Rights*), provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:

29.8.1 limbs (c) or (d) of the definition of a Step-In Trigger Event; or

29.8.2 limbs (e) or (f) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Supplier's Default).

30. AUTHORITY CAUSE

30.1 Notwithstanding any other provision of this Agreement, if the Supplier has failed to:

30.1.1 Achieve any Milestone by its Milestone Date;

30.1.2 provide the Goods and Services in accordance with the Performance Levels; and/or

30.1.3 comply with its obligations under this Agreement,

(each a "**Supplier Non-Performance**"), and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause 30 (*Authority Cause*):

30.1.4 the Supplier shall not be treated as being in Default of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;

30.1.5 the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:

(a) to terminate this Agreement pursuant to Clause 32.1.2 (*Termination by the Authority*); or

(b) to take action pursuant to Clause 29 (*Step-In Rights*);

30.1.6 where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:

(a) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause;

(b) if the Authority, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause; and

(c) if the Milestone is a Key Milestone, the Supplier shall have no liability to pay any Delay Payments associated with the Key Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Authority Cause; and

30.1.7 where the Supplier Non-Performance constitutes a Performance Failure:

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

- (a) the Supplier shall not be liable to accrue Service Credits;
- (b) the Authority shall not be entitled to withhold any of the Charges pursuant to Clause 7.2.4(b) (*Performance Failures*);
- (c) the Authority shall not be entitled to withhold and retain any Compensation for Unacceptable KPI Failure pursuant to Clause 7.4.1 (*Unacceptable KPI Failures*); and
- (d) the Supplier shall be entitled to invoice for the Charges for the provision of the relevant Goods and Services affected by the Authority Cause,

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

30.2 In order to claim any of the rights and/or relief referred to in Clause 30.1 (*Authority Cause*), the Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a "**Relief Notice**") setting out details of:

- 30.2.1 the Supplier Non-Performance;
- 30.2.2 the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Agreement;
- 30.2.3 any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
- 30.2.4 the relief claimed by the Supplier.

30.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief, consulting with the Supplier where necessary.

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

30.5 Without prejudice to Clause 5.18 (*Continuing obligation to provide the Goods and Services*), if a Dispute arises as to:

- 30.5.1 whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or
- 30.5.2 the nature and/or extent of the relief claimed by the Supplier,

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

30.6 Any Change that is required to the Charges pursuant to this Clause 30 (*Authority Cause*) shall be implemented in accordance with the Change Control Procedure.

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31. FORCE MAJEURE

- 31.1 Subject to the remaining provisions of this Clause 31 (*Force Majeure*) (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*)), a Party (the Affected Party) may claim relief under this Clause 31 (*Force Majeure*) from liability for failure to meet its obligations under this Agreement for as long as, and only to the extent that, the performance of those obligations is directly affected by a Force Majeure Event. Subject to Clause 31.9 (*Force Majeure*) below, any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 31.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 31.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 31 (*Force Majeure*) to the extent that the consequences of the relevant Force Majeure Event:
- 31.3.1 are capable of being mitigated by the Supplier, including through the Service Continuity Services or any other Services, but the Supplier has failed to do so; and/or
 - 31.3.2 should have been foreseen and prevented or avoided by a prudent provider of goods and services (similar to the Goods and Services) to emergency service organisations and operating in accordance with the Standards.
- 31.4 Subject to Clause 31.5 (*Force Majeure*) as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Goods and Services affected by the Force Majeure Event.
- 31.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 31.6 Where, as a result of a Force Majeure Event:
- 31.6.1 an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
 - (a) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause 32.1.3 (*Termination by the Authority*); and
 - (b) neither Party shall be liable for any Default arising as a result of such failure;

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31.6.2 the Supplier fails to perform its obligations in accordance with this Agreement:

- (a) the Authority shall not be entitled:
 - (i) to receive Delay Payments pursuant to Clause 28 (*Delay Payments*) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
 - (ii) to receive Service Credits, to withhold any of the Charges pursuant to Clause 7.2.4(b) (*Performance Failures*) or withhold and retain any of the Charges as compensation pursuant to Clause 7.4.1 (*Unacceptable KPI Failure*) to the extent that a Performance Failure has been caused by the Force Majeure Event. If the Authority exercises its rights under Clause 29 (*Step-In Rights*) in connection with the Supplier's failure to meet the relevant obligation(s) under this Agreement due to a Force Majeure Event, then solely in relation to such Force Majeure Event, Clause 29.3.3 (*Step-In Rights*) shall be deleted and replaced with the following provision: "the Authority shall be entitled to subtract from the Charges any applicable Deductions and the Authority's costs of taking the Required Action"; and
- (b) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Goods and Services (or part of the Goods and Services) continue to be provided in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.

31.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.

31.8 Relief from liability for the Affected Party under this Clause 31 (*Force Majeure*) shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 31.7 (*Force Majeure*).

31.9 The Parties acknowledge and agree that for the purposes of this Clause 31 (*Force Majeure*):

31.9.1 COVID-19, including any related UK government Laws or guidance, shall not constitute a Force Majeure Event; and

31.9.2 any pandemics, whether related to COVID-19 or otherwise, including any related UK government Laws or guidance, shall not constitute a Force Majeure Event.

SECTION I – TERMINATION AND EXIT MANAGEMENT

32. TERMINATION RIGHTS

Termination by the Authority

32.1 The Authority may terminate this Agreement by issuing a Termination Notice to the Supplier at any time:

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- 32.1.1 for convenience, including where the Agreement should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU (if and to the extent applicable during the Term);
- 32.1.2 if a Supplier Termination Event occurs;
- 32.1.3 if a Force Majeure Event endures for a continuous period of more than 90 days; or
- 32.1.4 if the Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

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

32.2 Where the Authority:

- 32.2.1 is terminating this Agreement under Clause 32.1.2 (*Termination by the Authority*) due to the occurrence of either limb (b) and/or (g) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default;
- 32.2.2 has the right to terminate this Agreement under Clause 32.1.1 (*Termination by the Authority*), it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement, including any part of the provision of the Goods and Services or the provision of the Goods and Services to any Service Recipient; and/or
- 32.2.3 has the right to terminate this Agreement under Clause 32.1.2 or Clause 32.1.3 (*Termination by the Authority*), it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement to the extent that it relates to any part of the provision of the Goods and Services which are materially affected by the relevant circumstances.

Termination by the Supplier

- 32.3 The Supplier may, by issuing a Termination Notice to the Authority, terminate this Agreement if the Authority fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds £500,000 and such amount remains outstanding thirty (30) Working Days after the receipt by the Authority of a notice of non-payment from the Supplier and this Agreement or the provision of the relevant Goods and Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than thirty (30) Working Days from the date of the issue of the Termination Notice). If the operation of Clause 32.2.2 (*Termination by the Authority*) would result in a Partial Termination, the provisions of Clause 32.4 (*Partial Termination*) shall apply.

Partial Termination

- 32.4 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on the provision of any other Goods and Services and the Charges, provided that:

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- 32.4.1 the Supplier shall not be entitled to an increase in the Charges in respect of the provision of Goods and Services that have not been terminated;
- 32.4.2 any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and
- 32.4.3 the Supplier shall not be entitled to reject the Change.

33. CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

- 33.1 The provisions of Clauses 5.17 (*Specially Written Software warranty*), 10.4 and 10.5 (VAT), 10.7 and 10.8 (*Set-off and Withholding*), 12 (*Records, Reports, Audits & Open Book Data*), 14.8 (*Employment Indemnity*), 14.9 (*Income Tax and National Insurance Contributions*), 16 (*Intellectual Property Rights*), 17 (*Transfer and Licences Granted by the Supplier*), 19.1 (*IPRs Indemnity*), 21 (*Confidentiality*), 22 (*Transparency and Freedom of Information*), 23 (*Protection of Personal Data*), 25 (*Limitations on Liability*), 33 (*Consequences of Expiry or Termination*), 39 (*Severance*), 41 (*Entire Agreement*), 42 (*Third Party Rights*), 43 (*Notices*), 44 (*Disputes*) and 45 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 2.6 (*Documentary Deliverables*), 7.1 (*Charges and Invoicing*), 7.2 (*Payments on Termination*), 7.5 (*Financial Reports and Audit Rights*), 8.3 (*Dispute Resolution Procedure*), 8.4 (*Reports and Records Provisions*), 8.5 (*Exit Management*) including the provisions relating to the Continued Support Services, 9.1 (*Staff Transfer*) and 11 (*Processing Personal Data*), any subsisting Product Warranties for the duration of their respective Warranty Periods, and each Party's accrued rights and liabilities shall survive the termination or expiry of this Agreement.

Exit Management

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

Payments by the Authority

- 33.3 If this Agreement is terminated by the Authority pursuant to Clause 32.1.1 (*Termination by the Authority*) (including a Partial Termination by the Authority in connection with Clause 32.1.1 and 32.2.2 (*Termination by the Authority*) above) or by the Supplier pursuant to Clause 32.3 (*Termination by the Supplier*), the Authority shall pay the Supplier the following payments (which shall be the Supplier's sole remedy for the termination of this Agreement):
 - 33.3.1 the Termination Payment;
 - 33.3.2 payments in respect of any Assets in accordance with Schedule 8.5 (*Exit Management*); and
 - 33.3.3 payments in respect of unpaid Charges for Goods and Services received up until the end of the Term; and
 - 33.3.4 any interest incurred by the Supplier after the Termination Date on any payments owing from the Authority under Clauses 33.3.1 to 33.3.3 up until the date of payment by the Authority, such interest to be calculated at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis.

CONTRACT FOR THE PROVISION OF
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OFFICIAL

- 33.4 Save for a Partial Termination by the Authority in connection with Clauses 32.1.1 (*Termination by the Authority*) (which shall be subject to the provisions of Clause 33.3 (*Payments by the Authority*) above), if a Partial Termination by the Authority occurs, the Authority serves a Termination Notice, or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:
- 33.4.1 payments in respect of any Assets or apportionments in accordance with Schedule 8.5 (*Exit Management*); and
- 33.4.2 payments in respect of unpaid Charges for Goods and Services received up until the end of the Term; and
- 33.5 any interest incurred by the Supplier after the Termination Date on any payments owing from the Authority under Clauses 33.4.1 to 33.4.2 up until the date of payment by the Authority, such interest to be calculated at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis. The costs of termination incurred by the Parties shall lie where they fall if:
- 33.5.1 either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clauses 32.1.3 or 32.2.2 (*Termination by the Authority*); or
- 33.5.2 the Authority terminates this Agreement under Clause 32.1.4 (*Termination by the Authority*).
- 33.6 If the Authority notifies the Supplier of a Partial Termination, the Termination Payment shall be pro-rated in a reasonable manner in accordance with the Financial Model, to reflect such Partial Termination.

Payments by the Supplier

- 33.7 In the event of termination or expiry of this Agreement, the Supplier shall repay to the Authority:
- 33.7.1 all Charges it has been paid in advance in respect of Goods and Services not provided by the Supplier as at the date of expiry or termination; and
- 33.7.2 where the Authority has issued a Milestone Adjustment Payment Notice, an amount equal to the aggregate Milestone Adjustment Payment Amounts for that Milestone Adjustment Payment Notice, as agreed between the Parties or as determined through the Dispute Resolution Procedure pursuant to Paragraph 1.6.1(b) of Part B of Schedule 7.1 (*Charges and Invoicing*).

Non-retained Deliverables

- 33.8 If the Authority issues a Milestone Adjustment Payment Notice pursuant to Paragraph 1.6.1(b) of Part B of Schedule 7.1 (*Charges and Invoicing*):
- 33.8.1 the Authority shall:
- (a) securely destroy or return to the Supplier all Non-retained Deliverables that are in tangible form; and
- (b) ensure that all Non-retained Deliverables that are held in electronic, digital or other machine-readable form cease to be readily accessible (other than

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing all such Non-retained Deliverables,

in each case as soon as reasonably practicable after repayment of the aggregate Milestone Adjustment Payment Amounts repayable pursuant to that Milestone Adjustment Payment Notice; and

- 33.8.2 all licences granted pursuant to Clause 17 (*Transfer and licences granted by the Supplier*) in respect of Specially Written Software and Project Specific IPRs and any Supplier Non-COTS Software and/or Supplier Background IPRs shall terminate upon such repayment to the extent that they related to the Non-retained Deliverables.

SECTION J - MISCELLANEOUS AND GOVERNING LAW

34. COMPLIANCE

Health and Safety

- 34.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the provision of the Goods and Services) in accordance with:
- 34.1.1 all applicable Law regarding health and safety; and
- 34.1.2 the Health and Safety Policy whilst at the Authority Premises
- 34.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

Equality and Diversity

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

OFFICIAL

Official Secrets Act and Finance Act

34.4 The Supplier shall comply with the provisions of:

34.4.1 the Official Secrets Acts 1911 to 1989; and

34.4.2 section 182 of the Finance Act 1989.

35. ASSIGNMENT AND NOVATION

35.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written Approval of the Authority.

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

35.2.1 any Central Government Body; or

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

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 35.2 (*Assignment and Novation*).

35.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 35.4 (*Assignment and Novation*)) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

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

36. WAIVER AND CUMULATIVE REMEDIES

36.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

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

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37. RELATIONSHIP OF THE PARTIES

- 37.1 Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.
- 37.2 Notwithstanding anything to the contrary in this Agreement, the Supplier acknowledges that it is not, and nor will it be, the exclusive supplier of the Goods and Services or any other similar goods and services to the Authority and that the Authority may perform, or engage a third party to provide any or all of the Goods, the whole or any part of the Services or any similar goods and services.

38. PREVENTION OF FRAUD AND BRIBERY

- 38.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:
- 38.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- 38.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 38.2 The Supplier, and using best endeavours procure that the Supplier Personnel, shall not during the Term of this Agreement:
- 38.2.1 commit a Prohibited Act; and/or
- 38.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 38.3 The Supplier shall during the Term of this Agreement:
- 38.3.1 establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- 38.3.2 have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finances Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under the Criminal Finances Act 2017;
- 38.3.3 keep appropriate records of its compliance with its obligations under Clause 38.3.1 (*Prevention of Fraud and Bribery*) and make such records available to the Authority on request;
- 38.3.4 take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017;

CONTRACT FOR THE PROVISION OF
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- 38.3.5 keep appropriate records of any gifts or hospitality, whether directly or indirectly given or received in connection with this Agreement, and make such records available to the Authority on request. The Supplier shall be responsible for notifying the Authority of any gift or hospitality, whether directly or indirectly given or received in connection with this Agreement, which has a value of more than £50; and
- 38.3.6 conduct reasonable and proportionate due diligence on each Sub-contractor, before engaging with that Sub-contractor in connection with this Agreement, to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act.
- 38.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 38.1 and/or 38.2 (*Prevention of Fraud and Bribery*), or has reason to believe that it has or any of the Supplier Personnel have:
- 38.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- 38.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- 38.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 38.5 If the Supplier makes a notification to the Authority pursuant to Clause 38.4 (*Prevention of Fraud and Bribery*), the Supplier, and using best endeavours procure that the Supplier Personnel, shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 12 (*Records, Reports, Audits & Open Book Data*).
- 38.6 If the Supplier, or the Supplier's Personnel (whether acting in the Supplier's knowledge or otherwise) is in Default under Clauses 38.1 and/or 38.2 (*Prevention of Fraud and Bribery*), the Authority may by notice:
- 38.6.1 require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
- 38.6.2 immediately terminate this Agreement.
- 38.7 Any notice served by the Authority under Clause 38.6 (*Prevention of Fraud and Bribery*) shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

39. SEVERANCE

- 39.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall:

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

- 39.1.1 to the maximum extent possible, be read down to ensure that the remaining parts of that provision and the remaining provisions of this Agreement are not void or unenforceable; and
- 39.1.2 to the extent such remaining parts and provisions are unable to be read down, be deemed to be deleted to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
- 39.2 If any deemed deletion under Clause 39.1 (*Severance*) is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 39.3 If the Parties are unable to agree on the revisions to this Agreement within five (5) Working Days of the date of the notice given pursuant to Clause 39.2 (*Severance*), the matter shall be dealt with in accordance with Paragraph 4 of Schedule 8.3 (*Dispute Resolution Procedure*) except that if the Dispute Resolution Board is unable to resolve the Dispute within thirty (30) Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 39.3 (*Severance*).

40. FURTHER ASSURANCES

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

41. ENTIRE AGREEMENT

- 41.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 41.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 41.3 Nothing in this Clause 41 (*Entire Agreement*) shall exclude any liability in respect of misrepresentations made fraudulently.

42. THIRD PARTY RIGHTS

- 42.1 The provisions of this Agreement confer benefits on each Service Recipient and the persons named in those provisions other than the Parties (each such person and each Service Recipient a "**Third Party Beneficiary**") and are intended to be enforceable by Third Party Beneficiaries by virtue of the CRTPA (each such provision a "**Third Party Provision**").
- 42.2 Subject to Clause 42.1 (*Third Party Rights*), a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but

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this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

- 42.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written Approval of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- 42.4 Any amendments or modifications to this Agreement may be made, and any rights created under Clause 42.1 (*Third Party Rights*) may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

43. NOTICES

- 43.1 Any notices sent under this Agreement must be in writing.
- 43.2 Subject to Clause 43.4 (*Notices*), the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

| Manner of Delivery | Deemed time of service | Proof of service |
|--|--|--|
| Email | 9.00am on the first Working Day after sending, provided the other Party's email system generates a confirmation message to the sending Party's email system that the message has been delivered. | Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message. |
| Personal delivery | On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day. | Properly addressed and delivered as evidenced by signature of a delivery receipt |
| Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next working day service providing proof of delivery | At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm). | Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt |

- 43.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Parties for the purpose of service of notices under this Agreement. For the avoidance of doubt, in order to be valid:
- 43.3.1 for e-mail notices: service of notices to the Authority must be sent to all of the Authority addressees and all of the e-mail addresses in the table below;

CONTRACT FOR THE PROVISION OF
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OFFICIAL

- 43.3.2 for e-mail notice under Clause 43.4 below: the notice must be sent to all of the Authority addressees and all of the e-mail addresses in the table below and it must also be by personal delivery or recorded delivery to all those addressees at those addresses;
- 43.3.3 for postal notices: service of notices to the Authority must be sent to all of the Authority addressees and addresses in the table below; and
- 43.3.4 for notices by personal delivery: the notice must be delivered to all the Authority addressees and all of the addresses in the table below:

| | Supplier | Authority |
|----------------|---|--|
| Contact | REDACTED – COMMERCIALY SENSITIVE INFORMATION | <ul style="list-style-type: none"> • ARP Programme Director; • ARP Head of Finance; and • ARP ESN Handheld Contract Manager. |
| Address | 9000 Cambridge Research Park, Beach Drive, Waterbeach, Cambridge CB25 9TL | <p>1. Ambulance Radio Programme, Barnsley Business & Innovation Centre, Building 1, Innovation Wy, Wilthorpe Rd, Barnsley S75 1JL; and</p> <p>2. Ambulance Radio Programme, PART GROUND FLOOR (SOUTH WING), EQUINOX BUILDING, BRISTOL, GLOUCESTERSHIRE, ENGLAND, BS32 4QL.</p> |
| Email | REDACTED – COMMERCIALY SENSITIVE INFORMATION | commercial@arp.nhs.uk ; finance@arp.nhs.uk ; and pmo@arp.nhs.uk . |

- 43.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 43.2 (*Notices*):
- 43.4.1 Step-In Notices;
- 43.4.2 Force Majeure Notices;
- 43.4.3 Termination Notices; and
- 43.4.4 Dispute Notices.
- 43.5 This Clause 43 (*Notices*) does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method

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of Dispute resolution (other than the service of a Dispute Notice under Schedule 8.3 (*Dispute Resolution Procedure*)).

44. DISPUTES

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

45. GOVERNING LAW AND JURISDICTION

- 45.1 This Agreement and any issues, Disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the Laws of England and Wales.
- 45.2 Subject to Clause 44 (*Disputes*) and Schedule 8.3 (*Dispute Resolution Procedure*) (including the Authority's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

46. COUNTERPARTS/DUPLICATES

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

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

This Agreement has been duly executed by the Parties on the date on which the last Party has signed below:

| | |
|---|--|
| SIGNED for and on behalf of SEPURA LIMITED by a director | <p>Signature: _____</p> <p>Name (block capitals): REDACTED – COMMERCIALY SENSITIVE INFORMATION</p> <p>Date of Signature: _____</p> <p>Position: REDACTED – COMMERCIALY SENSITIVE INFORMATION</p> |
| SIGNED for and on behalf of THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE | <p>Signature: _____</p> <p>Name (block capitals): REDACTED – COMMERCIALY SENSITIVE INFORMATION</p> <p>Date of Signature: _____</p> <p>Position: REDACTED – COMMERCIALY SENSITIVE INFORMATION</p> |

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SCHEDULE 2.1

SERVICES DESCRIPTION

HANDHELD SOLUTION SERVICE REQUIREMENTS

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SIGNATURE VERSION

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

Contents

| | |
|--------------------------------------|----------|
| PART A – SERVICE REQUIREMENTS | 4 |
| 1 INTRODUCTION | 91 |
| 2 SCOPE | 93 |
| 2.1 BACKGROUND | 93 |
| 2.2 SERVICES | 94 |
| IMPLEMENTATION SERVICES | 94 |
| OPERATIONAL SERVICES | 94 |
| OPTIONAL SERVICES | 94 |
| FUTURE PROJECTS | 94 |
| 2.3 AMBULANCE TRUSTS | 95 |
| 3 IMPLEMENTATION SERVICES | 96 |
| 3.1 INTRODUCTION | 96 |
| 3.2 PLANNING AND DESIGN | 96 |
| 3.2.1 PLANNING AND WORKSHOPS | 96 |
| 3.2.2 HANDHELD SOLUTION DESIGN | 97 |
| 3.2.3 HANDHELD DEVICE DELIVERY PLAN | 99 |
| 3.2.4 SERVICE MANAGEMENT DESIGN | 99 |
| 3.2.5 TRAINING | 101 |
| 3.2.6 SOLUTION DOCUMENTATION | 102 |
| 3.2.7 RISK MANAGEMENT DOCUMENTATION | 104 |
| 3.2.8 TEST DOCUMENTATION | 104 |
| 3.2.9 DOCUMENTATION UPDATES | 104 |
| 3.3 TEST | 104 |
| 3.3.1 TESTING AND TRIALS | 104 |
| 4 OPERATIONAL SERVICES | 105 |
| 4.1 ESN HANDHELD DEVICES (SUPPLY) | 105 |
| 4.1.1 GENERAL | 105 |

ARP HANDHELD SOLUTION
OFFICIAL

SIGNATURE VERSION

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

| | | |
|--------|---|-----|
| 4.1.2 | DISPLAY | 106 |
| 4.1.3 | PHYSICAL & ENVIRONMENTAL | 106 |
| 4.1.4 | BUTTONS AND CONTROLS | 107 |
| 4.1.5 | STORAGE | 111 |
| 4.1.6 | CAMERA | 111 |
| 4.1.7 | BATTERY & CHARGING | 111 |
| 4.1.8 | AUDIO | 115 |
| 4.1.9 | CONNECTIVITY | 115 |
| 4.1.10 | OFF-NETWORK CAPABILITY | 117 |
| 4.1.11 | DEVICE MANAGEMENT | 119 |
| 4.1.12 | AIRWAVE OPERATION | 119 |
| 4.2 | ACCESSORIES (SUPPLY) | 122 |
| 4.2.1 | GENERAL | 122 |
| 4.2.2 | PHYSICAL & ENVIRONMENTAL | 123 |
| 4.2.3 | CARRY CASES | 124 |
| 4.2.4 | CARRY CLIPS/DOCKS | 124 |
| 4.2.5 | HEADSETS | 125 |
| 4.2.6 | VEHICLE KITS | 125 |
| 4.2.7 | MOTORCYCLE KITS | 126 |
| 4.2.8 | REMOTE SPEAKER/MICROPHONES ("RSM") | 126 |
| 4.2.9 | NOT USED | 126 |
| 4.2.10 | BATTERY CHARGERS | 126 |
| 4.3 | SUPPORT SERVICES | 127 |
| 4.3.1 | WARRANTY | 127 |
| 4.3.2 | RETURN AND REPAIR | 128 |
| 4.3.3 | MANUFACTURER WARRANTIES AND INDEMNITIES | 130 |
| 4.3.4 | SPARES MANAGEMENT | 131 |
| 4.3.5 | PRODUCT ROADMAP | 131 |

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

| | | |
|-----------------------------------|--|-----------|
| 4.3.6 | SOFTWARE SUPPORT SERVICES | 133 |
| 4.3.7 | SERVICE MANAGEMENT | 134 |
| 4.3.8 | HANDHELD DEVICE SUPPORT DESK | 134 |
| 4.3.9 | CATALOGUE | 134 |
| 4.3.10 | PERFORMANCE REVIEWS | 135 |
| 4.3.11 | ACTIVITY REPORTING | 135 |
| 4.3.12 | DOCUMENTATION AND TRAINING MATERIALS | 136 |
| 4.3.13 | GOVERNANCE, CHANGE MANAGEMENT AND BACK OFFICE SERVICES | 137 |
| 5 | OPTIONAL SERVICES | 137 |
| 5.1 | OPTIONAL SERVICES | 137 |
| 5.2 | SUPPORT DESK INTEGRATION | 137 |
| 5.3 | FURTHER TESTING SERVICE | 138 |
| 5.4 | END OF LIFE DISPOSAL SERVICE | 138 |
| 5.5 | AD-HOC SERVICES | 139 |
| 5.6 | ESN UPGRADE | 139 |
| 6 | FUTURE PROJECTS | 140 |
| PART B – SUPPLIER SOLUTION | | 53 |

OFFICIAL

This Schedule consists of a Part A and a Part B. Part A contains the Service Requirements of the Authority and Part B contains the Supplier Solution.

PART A – SERVICE REQUIREMENTS

1 INTRODUCTION

- 1.1 This Part A contains the Service Requirements. In this Schedule capitalised terms have the meanings set out in Schedule 1 (*Definitions*) and the rules of interpretation set out in Clauses 1.1 and 1.2.
- 1.2 The services under Part A of this Schedule are made up of the following:
- 1.2.1 Implementation Services;
 - 1.2.2 Operational Services;
 - 1.2.3 Optional Services; and
 - 1.2.4 Future Projects.
- 1.3 Scope of the Services
- 1.3.1 Unless different commencement dates are expressly identified in the Implementation Plan for any applicable parts of the Services, commencing on the Effective Date the Supplier shall fulfil the following services, functions, responsibilities, requirements and deliverables (as the same may evolve during the Term including adding, removing, supplementing, enhancing, modifying and/or replacing any services and/or activities or deliverables in accordance with this Agreement or as otherwise approved in accordance with the Change Control Procedure, from time to time):
- (a) the services, functions, responsibilities, requirements and deliverables that the Supplier is required to carry out as specified in Part A (Service Requirements) of this Schedule or any other part of this Agreement, including the relevant Schedules, Annexes and Appendices of this Agreement;
 - (b) any incidental services, functions, responsibilities, requirements and deliverables not specified in the Agreement as within the scope of Supplier's responsibilities but that are reasonably and necessarily required for, or related to, the proper and timely performance and provision of the services, functions, responsibilities, requirements and/or deliverables set out in Paragraph 1.3.1(a) of Part A of this Schedule above;
 - (c) any services, functions, requirements, responsibilities and/or deliverables agreed pursuant to Schedule 8.2 (Change Control Procedure); and
 - (d) subject to Paragraph 1.4 of Part A of this Schedule, the services, functions, responsibilities, requirements and deliverables that the Supplier shall carry out as specified in Part B (Supplier Solution) of this Schedule, Schedule 2.4 (Security Management), Schedule 6.1 (Implementation Plan), and Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning).
- 1.4 If there is any conflict between the scope of the services, functions, responsibilities, requirements and deliverables under: (i) Paragraphs 1.3.1(a) and 1.3.1(b) of Part A of this Schedule above; and (ii) Paragraph 1.3.1(d) of Part A of this Schedule above, the provisions of Paragraphs 1.3.1(a) and 1.3.1(b) of Part A of this Schedule above shall apply and prevail.

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- 1.5 The Supplier shall meet and fulfil all of the Service Requirements in this Part A (and the Supplier confirms that the Supplier Solution set out in Part B of this Schedule meets and fulfils all of the Service Requirements in this Part A), as the same may evolve during the Term and as they may be supplemented, enhanced, modified or replaced in accordance with this Agreement, but excluding any Authority Responsibilities and Dependencies.
- 1.6 If there is any conflict between the provisions of Part A of this Schedule and the provisions of Part B of this Schedule, the provisions of Part A of this Schedule shall apply and prevail, except that the Authority is entitled to accept the provision of any conflicting element of Part B where such conflict is in the favour of, or otherwise beneficial to, the Authority.
- 1.7 The Supplier acknowledges that pursuant to Paragraph 6.1 of Schedule 6.1 (*Implementation Plan*), and notwithstanding anything to the contrary set out in the Implementation Plan and/or the ESN Handheld Device Forecast, the Authority is entitled to suspend the Go Live Date. In those circumstances, the procedure set out in Paragraph 6.2 of Schedule 6.1 (*Implementation Plan*) shall apply.

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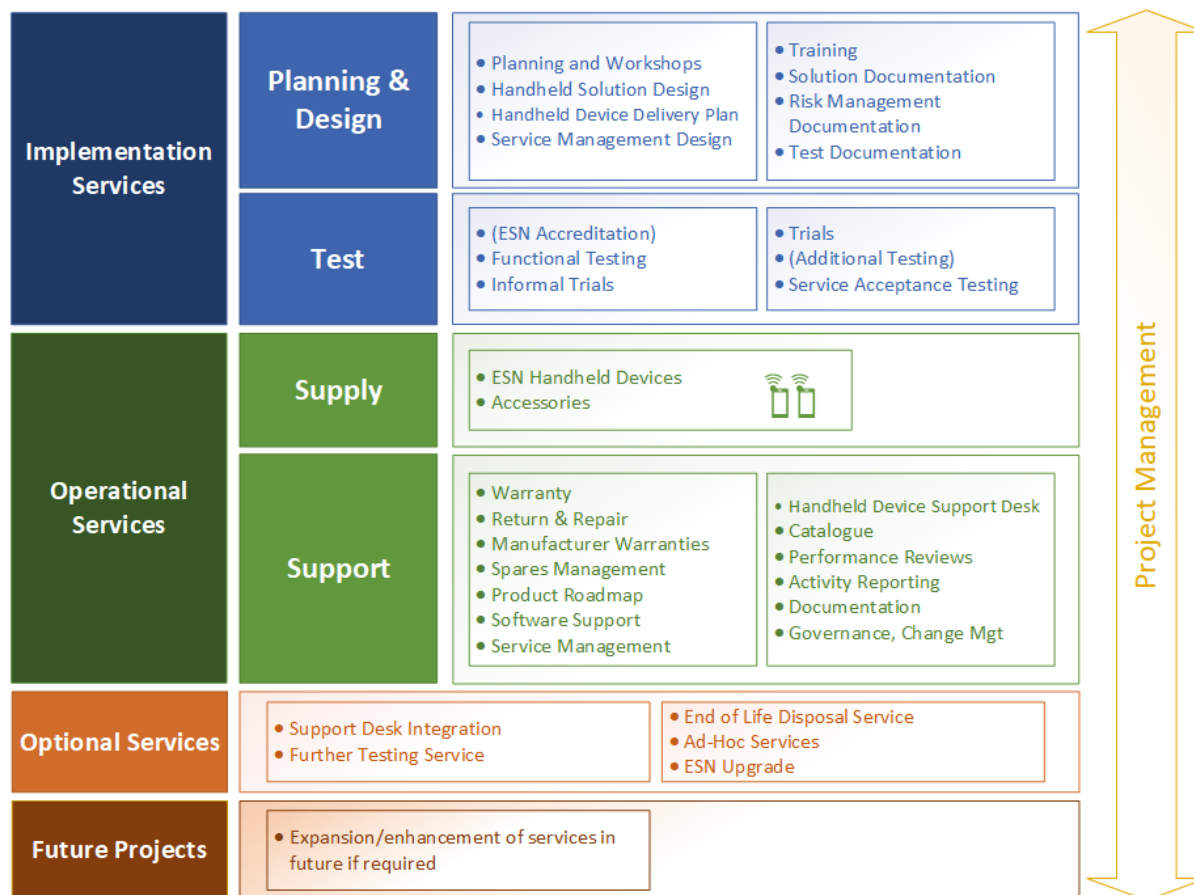
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2 SCOPE

2.1 BACKGROUND

2.1.1 The diagram below is intended to indicate the scope of the Services set out in this Schedule. To the extent that there is a conflict between the diagram below in this Paragraph 2.1.1 and the provisions of this Schedule (excluding the diagram below), the provisions of this Schedule (excluding the diagram below) shall apply and prevail. The Parties agree that the diagram below is not legally binding and is for information purposes only.



Version: 16 December 2022

2.1.2 The Ambulance Radio Programme (“**ARP**”) provides NHS ambulance services with emergency mobile communications associated services. The current network services (using the 'Airwave' TETRA network) are due to be replaced by the new ESN being introduced through a cross-government programme hosted by the Home Office.

2.1.3 One of ARP's projects is the procurement and deployment of an NMA for use by frontline emergency ambulance crews.

2.1.4 A separate contract is underway for vehicle hardware that will support the NMA and emergency mobile voice communications in Vehicles.

2.1.5 ARP requires the supply of ESN Handheld Devices for access to UK public 4G and 5G mobile networks, the Airwave Network and, subject to Paragraph 5.6 of this Schedule below, ESN voice services (via the ESN Voice Application) and for supporting handheld

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applications which may use ESN data services (such as the NMA), Accessories and associated support services as described in this Schedule.

- 2.1.6 The diagram in this Paragraph 2.1.6 shows the indicative forecast for the number of ESN Handheld Devices which may be procured by the Authority under this Agreement and is for information purposes only. The Supplier shall provide the ESN Handheld Devices in accordance with the ESN Handheld Devices Forecast, the initial version of which is set out in Schedule 2.7 (*Catalogue and Ordering*), and which are based on and derived from the forecast in this Paragraph 2.1.6.

| Trust | Month 1 | Month 2 | Month 3 | Month 4 | Month 5 | Month 6 | Month 7 | Month 8 | Month 9 | Month 10 | Month 11 | Month 12 | Month 13 | Month 14 | Month 15 | Month 16 | Month 17 | Month 18 | Month 19 | Month 20 | Month 21 | Month 22 | Month 23 | Month 24 | Trust total |
|----------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|-------------|
| Trust 1 | 120 | 150 | 120 | 120 | 150 | 120 | 150 | 120 | 50 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1,100 |
| Trust 2 | 0 | 0 | 0 | 120 | 150 | 120 | 150 | 120 | 90 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 750 |
| Trust 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 100 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 100 |
| Trust 4 | 0 | 0 | 0 | 0 | 0 | 0 | 100 | 200 | 200 | 250 | 200 | 200 | 200 | 250 | 200 | 250 | 50 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2,100 |
| Trust 5 | 0 | 0 | 0 | 0 | 0 | 0 | 200 | 200 | 200 | 250 | 200 | 200 | 200 | 250 | 150 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1,850 |
| Trust 6 | 0 | 0 | 0 | 0 | 0 | 0 | 200 | 200 | 200 | 250 | 200 | 200 | 200 | 250 | 100 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1,800 |
| Trust 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 250 | 200 | 200 | 200 | 50 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 900 |
| Trust 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 250 | 200 | 200 | 200 | 250 | 200 | 250 | 100 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1,650 |
| Trust 9 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 250 | 200 | 200 | 200 | 250 | 200 | 250 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1,550 |
| Trust 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 160 | 200 | 160 | 200 | 160 | 160 | 200 | 160 | 50 | 0 | 0 | 0 | 1,450 |
| Trust 11 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 160 | 200 | 160 | 200 | 160 | 160 | 200 | 60 | 0 | 0 | 0 | 0 | 1,300 |
| National | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 250 | 200 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 450 |
| Monthly Total: | 120 | 150 | 120 | 240 | 300 | 240 | 800 | 840 | 740 | 1,850 | 1,400 | 1,200 | 1,520 | 1,700 | 1,170 | 1,150 | 470 | 320 | 400 | 220 | 50 | 0 | 0 | 0 | 15,000 |

Version: 29 Mar 2021

2.2 SERVICES

- 2.2.1 Part A to this Schedule sets out the intended scope of the Services to be provided by the Supplier and the Service Requirements.
- 2.2.2 The Supplier shall provide the following Services as detailed in this Schedule (as such Services are more particularly described in Paragraphs 3 to 6 of Part A of this Schedule):

Implementation Services

- (a) Planning and Design
- (b) Test

Operational Services

- (c) ESN Handheld Devices (supply)
- (d) Accessories (supply)
- (e) Support

Optional Services

- (f) Support Desk Integration
- (g) Further Testing Service
- (h) End of Life Disposal Service
- (i) Ad-Hoc Services
- (j) ESN Upgrade

Future Projects

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- (k) Addition to, expansion or enhancement of the Services that may be requested by the Authority in accordance with Schedule 2.8 (*Future Projects*).

2.3 AMBULANCE TRUSTS

- 2.3.1 From the Effective Date, the Supplier shall provide the Services to each of the English Ambulance Trusts and any successor bodies thereto that perform any of the functions previously performed by any of the foregoing bodies.
- 2.3.2 The Supplier may also be required to provide the Services to the Welsh Ambulance Service NHS Trust (WAST) and/or the Scottish Ambulance Service (SAS) as a Future Project where the provisions of Clause 5.20 (*Service Recipients*) apply.
- 2.3.3 For the avoidance of doubt, the Supplier is obliged to provide Services to any Service Recipients if requested by the Authority in accordance with the requirements of Clause 5.20 (*Service Recipients*).

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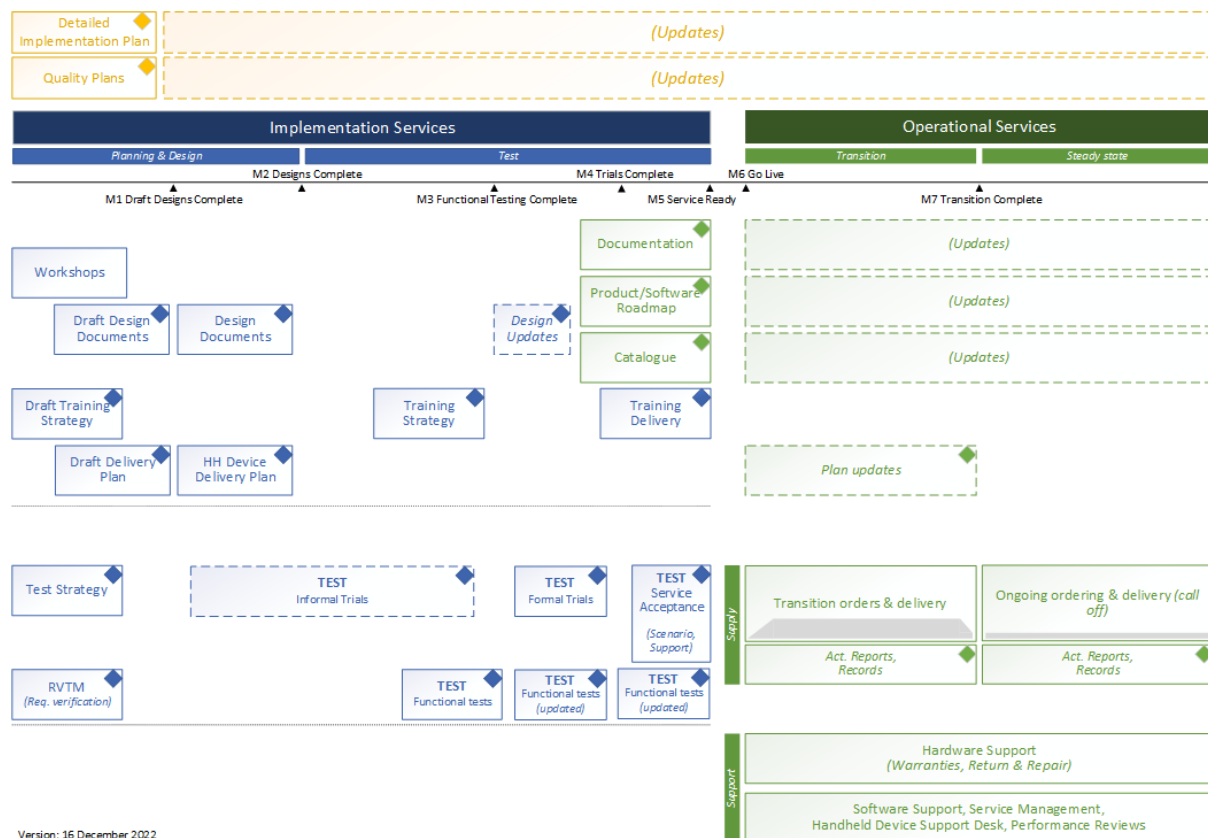
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3 IMPLEMENTATION SERVICES

3.1 INTRODUCTION

3.1.1 The Implementation Services shall be provided in accordance with the Service Requirements set out in this Paragraph 3, the terms of Schedule 6.1 (*Implementation Plan*), the Detailed Implementation Plan and any other Terms and Conditions in the Agreement that apply to the Implementation Services.

3.1.2 The diagram below is intended to indicate the delivery sequence of the Implementation Services and Operational Services set out in this Schedule. To the extent that there is a conflict between the diagram below in this Paragraph 3.1.2 and the provisions of the Schedules (excluding the diagram below), the provisions of the Schedules (excluding the diagram below) shall apply and prevail. The Parties agree that the diagram below is not legally binding and is for information purposes only.



3.2 PLANNING AND DESIGN

3.2.1 Planning and Workshops

| # | Requirement |
|----------------|---|
| HH/MOB/PPW/001 | The Supplier shall perform a detailed analysis of the Authority Requirements. |

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| # | Requirement |
|----------------|---|
| HH/MOB/PPW/002 | <p>The Supplier shall set up and run Planning and Design Workshops (as defined in this Service Requirement), at such frequency and of such duration as may be required by the Authority from time to time, to review, discuss and document:</p> <ul style="list-style-type: none"> (a) the Handheld Solution Design, Handheld Device Delivery Plan, Service Management Design, Training Strategy, Risk Management Documentation and Test Documentation; (b) all impacts from the Supplier's activities under this Agreement on the Authority, Ambulance Trusts and any Other ARP Supplier and/or any other relevant third party; (c) all Dependencies by the Supplier on the Authority and any Other ARP Supplier and/or any other relevant third party; and (d) the timescales for completing the Implementation Services, <p>(each a "Planning and Design Workshop" and together, the "Planning and Design Workshops").</p> |
| HH/MOB/PPW/003 | <p>The Supplier acknowledges and agrees the Authority may nominate any Other ARP Supplier and/or any other relevant third party, as applicable, to attend any Planning and Design Workshop. Where an Other ARP Supplier and/or such other relevant third party attends a Planning and Design Workshop, the Supplier shall cooperate in good faith with and provide such assistance as is reasonably necessary to enable the Other ARP Supplier and/or such other relevant third party to participate and contribute effectively at that Planning and Design Workshop, including by acting in accordance with the Supplier's obligations under Schedule 8.8 (<i>Collaboration</i>).</p> |

3.2.2 Handheld Solution Design

| # | Requirement |
|----------------|---|
| HH/MOB/HSD/001 | <p>The Supplier shall develop a Handheld Solution Design to describe the ESN Handheld Device (or ESN Handheld Devices if multiple variants are available) and the Accessories.</p> |
| HH/MOB/HSD/002 | <p>The Handheld Solution Design shall include (for ESN Handheld Devices and all Accessories) a description of:</p> <ul style="list-style-type: none"> (a) physical attributes; (b) functional capabilities; (c) hardware and software specifications; (d) standards; and (e) any options or range of variations applicable, including Accessories. |
| HH/MOB/HSD/003 | <p>The Handheld Solution Design shall include the rationale for the Handheld Solution Design and a description of how the Handheld Solution Design meets the Authority Requirements, including:</p> <ul style="list-style-type: none"> (a) use of the Airwave Network for voice and data functionality prior to the Authority's request for the ESN Upgrade; |

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| # | Requirement |
|----------------|--|
| | <p>(b) use of LTE telephony functionality and data services on the Authority-selected 4G and 5G mobile network prior to the Authority's request for the ESN Upgrade;</p> <p>(c) operation of the NMA;</p> <p>(d) support for other applications;</p> <p>(e) device management; and</p> <p>(f) for the ESN Voice Upgrade Optional Service (where requested by the Authority):</p> <p style="padding-left: 40px;">use of the ESN Voice Application for ESN voice functionality and related ESN capabilities;</p> <p style="padding-left: 40px;">access to the ESN prioritised bearers; and</p> <p style="padding-left: 40px;">device management for devices accessing ESN.</p> |
| HH/MOB/HSD/004 | The Handheld Solution Design shall include a description of the operational and ergonomic aspects of the ESN Handheld Device and associated Accessories. |
| HH/MOB/HSD/005 | <p>The Handheld Solution Design shall identify and detail any development work required in order for the ESN Handheld Devices and/or any Accessories to meet the Authority's Requirements and the Standards, including:</p> <p>(a) details of any work required to complete development of the physical design of the ESN Handheld Device and/or Accessories;</p> <p>(b) details of any work required to complete development of the functional capabilities of the ESN Handheld Device and/or Accessories;</p> <p>(c) details of the Supplier's approach to integrating use of the NMA on the ESN Handheld Device;</p> <p>(d) any other design/development activities to be completed, including certification activities required by applicable Laws; and</p> <p>(e) where the ESN Voice Upgrade Optional Service is requested by the Authority:</p> <p style="padding-left: 40px;">details of the Supplier's approach to integrating the ESN Voice Application for use with the ESN Handheld Device (and Accessories as appropriate), including details of any outstanding work to be completed; and</p> <p style="padding-left: 40px;">details of the Supplier's approach to integrating use of the NMA on the ESN Handheld Device alongside the ESN Voice Application (including the End User experience and addressing any conflicts or contention).</p> |
| HH/MOB/HSD/006 | The Supplier shall identify any recommended antivirus protection in the Handheld Solution Design. Antivirus licences (where required) will be provided by the Authority. |

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3.2.3 Handheld Device Delivery Plan

| # | Requirement |
|-----------------|---|
| HH/MOB/HDDP/001 | The Supplier shall develop a plan and schedule for ESN Handheld Device and Accessories supply and delivery during the Implementation Period (" Handheld Device Delivery Plan ") in conjunction with the Authority. |
| HH/MOB/HDDP/002 | <p>The Supplier shall include the following in the Handheld Device Delivery Plan for each Service Recipient:</p> <ul style="list-style-type: none"> (a) ESN Handheld Devices and Accessories to be delivered; (b) Timescales in accordance with the ESN Handheld Device Forecast (as updated from time to time in accordance with Schedule 2.7 (<i>Catalogue & Ordering</i>)); (c) resources required; (d) arrangements for Ordering, build and configuration, and shipping; and (e) any Dependencies and/or third-party responsibilities (e.g. Ambulance Trust, Authority and any Other ARP Supplier) where applicable. |

3.2.4 Service Management Design

| # | Requirement |
|----------------|---|
| HH/MOB/SMD/001 | The Supplier shall develop a Service Management Design for delivery of the Services. |
| HH/MOB/SMD/002 | <p>The Service Management Design shall, as a minimum:</p> <ul style="list-style-type: none"> (a) provide an overview of the Supplier's arrangements for management of the Services and provision of any Deliverables; (b) describe the operating model deployed by the Supplier including organisational design and governance; (c) describe how the Supplier's Service Management Design operates within the ARP Service Management Framework; (d) provide details of the service management interfaces and demarcation of responsibilities for service management between the Supplier and third parties, including the Authority, Ambulance Trusts and any Other ARP Supplier; (e) describe the Supplier's application of ITIL processes, including: <ul style="list-style-type: none"> service asset and configuration management; incident management; |

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| # | Requirement |
|-----|--|
| | <p>event management;</p> <p>service validation and testing;</p> <p>problem management;</p> <p>change management;</p> <p>release and deployment management;</p> <p>request fulfilment;</p> <p>knowledge management;</p> <p>service level management;</p> <p>capacity management; and</p> <p>reporting;</p> |
| (f) | <p>describe the controls in place for:</p> <p>recording and auditing of activities;</p> <p>information and security management; and</p> <p>access control and policy management.</p> |
| (g) | <p>describe service continuity arrangements, including:</p> <p>provisions for service continuity for Service Management IT and processes;</p> <p>provisions for resilience, load-balancing and disaster recovery and arrangements for business continuity to be maintained during any period of disruption; and</p> <p>details of how the Supplier will monitor, manage and deliver performance in accordance with the requirements of Schedule 2.2 (<i>Performance Levels</i>);</p> |
| (h) | <p>describe service desk arrangements, including:</p> <p>methods by which the Authority and any Other ARP Supplier can communicate with the Supplier in alignment with the ARP Service Management Framework;</p> <p>the Supplier's nominated points of contact; and</p> |

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| # | Requirement |
|----------------|---|
| | the Supplier's scripts and tools used to undertake service management and maximise the automated diagnosis and resolution of incidents; |
| | (i) describe the Supplier's continuous improvement process; and |
| | (j) describe the standards, systems and processes to which the Supplier adheres to demonstrate alignment with the ARP Service Management Framework as appropriate and Good Industry Practice in accordance with the requirements of Schedule 2.3 (<i>Standards</i>). |
| HH/MOB/SMD/003 | Where the Authority requests Support Desk Integration as an Optional Service, the Supplier shall extend the Service Management Design to include a description of the Supplier's design for interfacing to and integrating with the ARP Service Management System to meet the requirements of this Paragraph 3.2.4. |

3.2.5 Training

| # | Requirement |
|----------------|---|
| HH/MOB/TRA/001 | <p>The Supplier shall develop a training strategy and standard syllabus covering the scope, frequency and nature of training to be provided to ensure that:</p> <p>(a) End Users; and</p> <p>(b) ARP personnel or Other ARP Suppliers providing related support and maintenance;</p> <p>are able to carry out their roles effectively and safely ("Training Strategy").</p> |
| HH/MOB/TRA/002 | <p>The Training Strategy shall, as a minimum, describe:</p> <p>(a) the scope, objectives, key principles and assumptions associated with the training process, and how Training Materials and courses should be developed;</p> <p>(b) recommended training for operation, configuration and maintenance/support of the ESN Handheld Device and all Accessories, including Vehicle fits and installation;</p> <p>(c) any additional training recommended or offered by the Supplier;</p> <p>(d) how training Documentation and the knowledge base will be provided and maintained; and</p> <p>(e) how the Supplier will support knowledge transfer to the Authority, Service Recipients and Other ARP Suppliers.</p> |
| HH/MOB/TRA/003 | <p>The Supplier shall develop and maintain training materials in the form of courses, Documentation, computer-based training as appropriate in accordance with the Training Strategy ("Training Materials").</p> |

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| # | Requirement |
|----------------|---|
| HH/MOB/TRA/004 | The Supplier's Training Materials shall include use of the ESN Handheld Device and Accessories, installation (where relevant), and maintenance/support, including the topics identified for the Solution Documentation in Paragraph 3.2.6. |
| HH/MOB/TRA/005 | The Supplier shall provide a briefing session on the Training Materials to the Authority's nominated personnel). |
| HH/MOB/TRA/006 | The Supplier shall ensure that Training Materials developed by the Supplier shall also be made available for Ambulance Trust and other Service Recipient support personnel or other personnel nominated by the Authority. |
| HH/MOB/TRA/007 | The Supplier shall ensure that the Training Materials are provided in an editable format that will permit the Authority and/or the Service Recipient to subsequently tailor the Training Materials to the specific requirements of each Service Recipient, where these differ between Service Recipients. |

3.2.6 Solution Documentation

| # | Requirement |
|---------------|---|
| HH/MOB/SD/001 | <p>The Supplier shall provide End User guidance Documentation for the safe operation of the ESN Handheld Device and Accessories, including:</p> <ul style="list-style-type: none"> (a) 'quick start' guidance; (b) information on how to manage the display, fonts, brightness and orientation; (c) connection to the Airwave Network; (d) use of Accessories; (e) ESN Handheld Device-specific key shortcuts; (f) connected ESN Handheld Device pairing procedures; (g) details of the applications provided with this ESN Handheld Device, and how such applications can be Upgraded (where required); (h) End User configuration settings; (i) Battery change procedures; (j) recommended Battery charging procedures, including information about Battery charging times and estimated Battery life on a full charge with ordinary use, and how to optimise Battery life; (k) notification and alert management, including sound and display settings; (l) storage control and management; (m) correction procedures for screen "freeze" and/or device "crashing"; and (n) health and safety, regulatory and CE marking; and (o) where the ESN Voice Upgrade Optional Service is requested by the Authority: |

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ARP HANDHELD SOLUTION

OFFICIAL

| # | Requirement |
|---------------|--|
| | <p>connection to the ESN; and</p> <p>updates to the guidance provided in accordance with this paragraph HH/MOB/SD/001 to take account of operation with ESN.</p> |
| HH/MOB/SD/002 | The Supplier shall provide an ESN Handheld Device operating manual including details of the full technical, physical and environmental specifications and all applicable Accessories. |
| HH/MOB/SD/003 | The Supplier shall provide detailed installation Documentation for Accessories requiring installation, e.g. Vehicle Kits. |
| HH/MOB/SD/004 | <p>The Supplier shall provide a maintenance manual for the ESN Handheld Device and Accessories, including:</p> <ul style="list-style-type: none"> (a) cleaning; (b) Battery management and life optimisation; (c) ESN Handheld Device management; (d) software and firmware Updates; (e) details of how End Users can manage, reduce, clear and optimise the ESN Handheld Device storage; (f) common faults and diagnosis; (g) end-of-life disposal requirements; and (h) general requirements to prolong the life of the ESN Handheld Device (including the Battery). |
| HH/MOB/SD/005 | The Supplier shall provide a signed declaration of conformity document for the ESN Handheld Device and Accessories which must include details of compliance to all relevant regulations, Authority Requirements and Standards. |
| HH/MOB/SD/006 | The Supplier shall provide and maintain information which allows the Authority, ESN suppliers, Other ARP Suppliers and Service Recipients to configure network services as appropriate to allow use of the ESN Handheld Device, including a list of all URLs and ports used by the ESN Handheld Device. |
| HH/MOB/SD/007 | The Supplier shall provide all Documentation in an editable electronic format either downloadable or on physical media. To the extent that any Documentation contains Personal Data, the Documentation shall be provided in accordance with the technical security requirements of Clause 23 (<i>Protection of Personal Data</i>) and/or Schedule 11 (<i>Processing of Personal Data</i>). If any Documentation contains Confidential Information this shall be provided in accordance with the requirements of Clause 21 (<i>Confidentiality</i>) and any security protocols required under Schedule 2.4 (<i>Security Management</i>). |

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3.2.7 Risk Management Documentation

| # | Requirement |
|----------------|--|
| HH/MOB/RMD/001 | The Supplier shall develop Risk Management Documentation in accordance with the requirements of Schedule 2.4 (<i>Security Management</i>). |

3.2.8 Test Documentation

| # | Requirement |
|---------------|--|
| HH/MOB/TD/001 | The Supplier shall develop Test Documentation in accordance with the requirements of Schedule 6.2 (<i>Testing Procedures</i>). |

3.2.9 Documentation Updates

| # | Requirement |
|-----------------|--|
| HH/MOB/DOCU/001 | The Supplier shall review and update all Documentation as appropriate to take account of changes arising during the Implementation Period. |

3.3 TEST

3.3.1 Testing and Trials

| # | Requirement |
|-----------------|--|
| HH/MOB/TEST/001 | The Supplier shall carry out Testing and Trials in accordance with the requirements of Schedule 6.2 (<i>Testing Procedures</i>). |
| HH/MOB/TEST/002 | The Supplier shall provide the Authority with ESN Handheld Devices (each including two (2) Batteries) for the Informal Trials, Formal Trials and Early Trials where identified in Schedule 6.2 (<i>Testing Procedures</i>). |
| HH/MOB/TEST/003 | ESN Handheld Devices provided for the Informal Trials, Formal Trials and Early Trials may have different physical or functional attributes from the ESN Handheld Device supplied after the Go Live Date where this has been agreed with the Authority. |
| HH/MOB/TEST/004 | By not more than 30 days after the Go Live Date (unless an alternative time is agreed with the Authority), the ESN Handheld Devices that have been supplied to support the Informal Trials, Formal Trials or Early Trials shall be replaced with new ESN Handheld Devices and associated Batteries provided in accordance with sub-Paragraph 4.1.1 below and Schedule 2.7 (<i>Catalogue and Ordering</i>). The ESN Handheld Devices previously provided for Trials will then be returned to the Supplier by the Authority in due course. |
| HH/MOB/TEST/005 | Any ESN Handheld Devices supplied for Trials prior to the Go Live Date (including replacement ESN Handheld Devices provided in |

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| # | Requirement |
|---|---|
| | accordance with HH/MOB/TEST/004) shall be deemed to have been supplied on the Go Live Date for the purposes of the ESN Handheld Devices Warranty. |

4 OPERATIONAL SERVICES

4.1 ESN HANDHELD DEVICES (SUPPLY)

4.1.1 General

| # | Requirement |
|------------------|--|
| HH/OS/HD/GEN/001 | The Authority may place, and the Supplier shall fulfil, Catalogue Orders for any ESN Handheld Devices with the Supplier in accordance with Schedule 2.7 (<i>Catalogue and Ordering</i>). |
| HH/OS/HD/GEN/002 | <p>ESN Handheld Devices shall be supplied fully configured with the latest software and configuration agreed with the Authority, with SIM cards (provided by the Authority) installed and capable:</p> <p>(a) for Airwave Network operation, with the relevant SIM card installed for the 4G and 5G public mobile network selected by the Authority and all information necessary for network registration provided to the Authority or relevant Other ARP Suppliers; and</p> <p>(b) if the ESN Upgrade Optional Service is requested by the Authority, for ESN operation with the ESN SIM card installed, registered and enrolled on the ESN.</p> |
| HH/OS/HD/GEN/003 | <p>The Supplier shall supply each ESN Handheld Device with two (2) Batteries included and the Supplier shall ensure that:</p> <p>(a) eighty five percent (85%) of the Minimum Order Volume of ESN Handheld Devices shall be supplied with two (2) High Capacity Batteries and fifteen (15%) of the Minimum Order Volume of ESN Handheld Devices shall be supplied with two (2) Standard Capacity Batteries; and</p> <p>(b) at least eighty five percent (85%) of each batch of ESN Handheld Devices delivered to the Authority in accordance with the ESN Handheld Device Forecast shall be supplied with two (2) High Capacity Batteries.</p> |
| HH/OS/HD/GEN/004 | ESN Handheld Devices shall comply with the standards set out in Schedule 2.3 (<i>Standards</i>). |
| HH/OS/HD/GEN/005 | From the Go Live Date, ESN Handheld Devices shall be capable of voice and data operation with the Airwave Network alongside LTE operation on the UK 4G and 5G public mobile network selected by the Authority. If the ESN Upgrade Optional Service is requested by the Authority, the provisions of Paragraph 5.6 of Part A of this Schedule below shall apply. |

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4.1.2 Display

| # | Requirement |
|------------------|--|
| HH/OS/HD/DIS/001 | The ESN Handheld Device display screen shall be scratch and shatter resistant to at least the quality of Gorilla Glass™ 5 performance or equivalent. |
| HH/OS/HD/DIS/002 | The ESN Handheld Device screen shall be large enough to render the ESN Voice Application and the NMA. |
| HH/OS/HD/DIS/003 | The ESN Handheld Device screen size shall be at least 5 inches diagonal. |
| HH/OS/HD/DIS/004 | The ESN Handheld Device display screen shall be readable in lighting conditions ranging from direct bright sunlight to complete darkness and shall be able to adjust the screen brightness automatically to suit ambient conditions and conserve Battery life. |
| HH/OS/HD/DIS/005 | The ESN Handheld Device display brightness shall be able to be set manually. |
| HH/OS/HD/DIS/006 | The ESN Handheld Device screen shall support screen rotation to work at 0, 90, 180 and 270 degrees. |
| HH/OS/HD/DIS/007 | The ESN Handheld Device screen shall be fully readable at angles of ± 50 degrees. |
| HH/OS/HD/DIS/008 | The ESN Handheld Device touchscreen shall be able to be operated by End Users wearing clinical gloves. |
| HH/OS/HD/DIS/009 | The ESN Handheld Device touchscreen shall be operable in wet climatic conditions. |
| HH/OS/HD/DIS/010 | The ESN Handheld Device shall support standard Android accessibility options including: (a) high contrast; (b) large text; and (c) colour inversion, to support people with impaired vision and colour blindness. |
| HH/OS/HD/DIS/011 | The ESN Handheld Device shall provide a tri-colour LED for notification purposes. |

4.1.3 Physical & Environmental

| # | Requirement |
|-----------------|---|
| HH/OS/HD/PE/001 | The ESN Handheld Device shall be fully functional in prolonged use through an ambient temperature range of -10 to $+55$ degrees Celsius with a 95% humidity when operational. |

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| # | Requirement |
|-----------------|--|
| HH/OS/HD/PE/002 | It shall be possible to charge the ESN Handheld Device through an ambient temperature range of 0 to +55 degrees Celsius. |
| HH/OS/HD/PE/003 | The ESN Handheld Device shall continue to operate after multiple drops in compliance with MIL-STD 810G Method 516.6 procedure IV – transit drops and must not shatter and generate sharp splinters. |
| HH/OS/HD/PE/004 | The ESN Handheld Device shall be protected against ingress to the standards identified in Schedule 2.3 (<i>Standards</i>). |
| HH/OS/HD/PE/005 | The ESN Handheld Device shall be capable of being cleaned, disinfected and decontaminated using commonly available cleaning products including medical wipes. |
| HH/OS/HD/PE/006 | The ESN Handheld Device shall be capable of being worn on the body (e.g. lapel or belt mount) or carried in a pocket or on body armour. |
| HH/OS/HD/PE/007 | The Supplier shall provide, as an Accessory a means to attach the ESN Handheld Device to uniforms via a range of methods of attachments that are compatible with current systems in use at the Effective Date, including the Klickfast system, either directly or via the use of a case. |
| HH/OS/HD/PE/008 | The Supplier shall allow for easy (single handed) and rapid (within 3 seconds) removal of the ESN Handheld Device from its location by the End User from its attachment to the uniform or from the carrying capability. |
| HH/OS/HD/PE/009 | The ESN Handheld Device shall provide an attachment point to allow the ESN Handheld Device to be attached via a cord for operational security of maintaining it about the operator's person. |
| HH/OS/HD/PE/010 | The ESN Handheld Device shall weigh less than 425g including with a High Capacity Battery incorporated. |

4.1.4 Buttons and Controls

General

| # | Requirement |
|-----------------|---|
| HH/OS/HD/BC/001 | <p>The ESN Handheld Device shall provide physical controls (e.g. buttons, rotary knobs) for the following functions as a minimum:</p> <ul style="list-style-type: none"> (a) power on/off (b) volume up/down (c) Push to Talk (PTT) (d) Emergency Button (e) Talkgroup change/select (f) configurable 1 – may be configured to operate a particular function e.g. “request to speak” (g) configurable 2 – may be configured to operate a particular function e.g. “priority request to speak”. |

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| # | Requirement |
|-----------------|--|
| HH/OS/HD/BC/002 | The Supplier shall ensure that mechanical switches are tactile to the End User, particularly where it is assumed gloves will be worn. |
| HH/OS/HD/BC/003 | Where multiple switches are provided, the switches shall be identifiable by touch (e.g. PTT, Emergency Button, request to speak, volume up & volume down). |
| HH/OS/HD/BC/004 | The ESN Handheld Device shall be capable of single hand-held operation, including use of the PTT and Emergency Button. |
| HH/OS/HD/BC/005 | The switches shall provide haptic feedback to provide End Users with a tactile indication of activation of the associated switch. |

Power

| # | Requirement |
|-----------------|--|
| HH/OS/HD/BC/006 | The ESN Handheld Device shall have a physical power button which must be prevented from accidental operation and require a long press of 2 or more seconds for activation. |

Volume

| # | Requirement |
|-----------------|--|
| HH/OS/HD/BC/007 | The ESN Handheld Device shall have physical buttons to adjust the audio level that can be operated with a gloved hand. |

Push to Talk ("PTT")

| # | Requirement |
|-----------------|---|
| HH/OS/HD/BC/008 | The ESN Handheld Device shall have a dedicated physical PTT button located on the left-hand side of the ESN Handheld Device, logically positioned so that it can easily be located and felt through gloved hands. |
| HH/OS/HD/BC/009 | The PTT button shall provide a positive sensation when pressed. |
| HH/OS/HD/BC/010 | The ESN Handheld Device PTT function shall be able to be operated using the PTT button when the ESN Handheld Device is locked or unlocked. |
| HH/OS/HD/BC/011 | The Supplier shall ensure that, while pressing the PTT button, no other buttons can easily be accidentally pressed on the opposite side of the ESN Handheld Device. |
| HH/OS/HD/BC/012 | The Supplier shall ensure that the location and design of the PTT button as far as possible prevents PTT from being inadvertently activated when the ESN Handheld Device is in the pocket of the End |

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| # | Requirement |
|-----------------|--|
| | User's uniform or when the edge of the ESN Handheld Device is in contact with a surface |
| HH/OS/HD/BC/013 | The Supplier shall ensure that pressing the PTT button does not cause the screen of the ESN Handheld Device to illuminate. |

Emergency Button

| # | Requirement |
|-----------------|---|
| HH/OS/HD/BC/014 | The ESN Handheld Device shall have a clearly identifiable (e.g. brightly coloured) dedicated physical Emergency Button located on top of the ESN Handheld Device, logically positioned so that it can easily be located and felt through a gloved hand. |
| HH/OS/HD/BC/015 | The Emergency Button shall provide the End User with a positive sensation when pressed. |
| HH/OS/HD/BC/016 | The ESN Handheld Device Emergency Button shall be able to be operated when the ESN Handheld Device is locked or unlocked. |
| HH/OS/HD/BC/017 | The ESN Handheld Device Emergency Button shall have a configurable delay to avoid accidental activation covering a range of at least 0–3 seconds. |
| HH/OS/HD/BC/018 | The Supplier shall ensure that if the Emergency button is pressed whilst the ESN Handheld Device is in airplane mode that airplane mode will be deactivated. |

Talkgroup Select

| # | Requirement |
|-----------------|---|
| HH/OS/HD/BC/020 | The ESN Handheld Device shall allow the Talkgroup to be changed using buttons. Where the buttons are also used for other functions, there must be a clear distinction between the different modes of use of the buttons to ensure that the required functionality is activated. |

Configurable Buttons

| # | Requirement |
|-----------------|--|
| HH/OS/HD/BC/021 | The ESN Handheld Device shall have at least two additional physical buttons (in addition to the power, volume, PTT, emergency button, and Talkgroup controls) and not multi-functional buttons, which can be assigned to other functions (for example, to send a pre-defined message, request to speak or take a picture). |
| HH/OS/HD/BC/022 | The Supplier shall ensure that the configurable buttons can flexibility be assigned to: |

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| # | Requirement |
|---|---|
| | (a) functions of the ESN Handheld Device (for example take a picture); and (b) where the ESN Voice Upgrade Optional Service is requested by the Authority, functions provided by the ESN Voice Application (e.g. to send a pre-defined short message). |

Device Locks

| # | Requirement |
|-----------------|--|
| HH/OS/HD/BC/023 | The ESN Handheld Device shall provide a physical means to lock the ESN Handheld Device and such means to remain locked without operator deliberate intervention, including preventing automatic disabling of the ESN Handheld Device. This does not need to be a dedicated button. |
| HH/OS/HD/BC/024 | The ESN Handheld Device shall be configured to enable the End User to lock the ESN Handheld Device and require the End User to enter an unlock code (>5 digits) or provide an equivalent high-security mechanism to unlock the ESN Handheld Device. |
| HH/OS/HD/BC/025 | The ESN Handheld Device shall require the End User to enter a (> 5 digits) or equivalent high-security mechanism on start-up before the ESN Handheld Device can be used. |
| HH/OS/HD/BC/026 | The ESN Handheld Device shall be able to be configured such that the ESN Handheld Device will automatically lock within a configurable period of inactivity and require an unlock code (>5 digits) or swipe action / pattern unlock to be entered to access the ESN Handheld Device. |
| HH/OS/HD/BC/027 | The ESN Handheld Device shall be able to be configured to permanently wipe all data from the ESN Handheld Device if the unlock code is incorrectly entered more than a defined number of times. |
| HH/OS/HD/BC/028 | The ESN Handheld Device lock policy shall be controlled and configured via the device management solution specified by and/or agreed with the Authority. |

Not Used

| # | Requirement |
|-----------------|-------------|
| HH/OS/HD/BC/029 | Not Used. |

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4.1.5 Storage

| # | Requirement |
|------------------|---|
| HH/OS/HD/STO/001 | The ESN Handheld Device shall have an internal data storage capability of at least 64 GB. |
| HH/OS/HD/STO/002 | The ESN Handheld Device shall have a minimum memory size (RAM) of 4GB. |
| HH/OS/HD/STO/003 | The ESN Handheld Device shall provide an audible and visual indication when the ESN Handheld Device storage is low. |

4.1.6 Camera

| # | Requirement |
|------------------|---|
| HH/OS/HD/CAM/001 | The ESN Handheld Device shall have a rear-facing camera with a number of total pixels of at least 10MP. |
| HH/OS/HD/CAM/002 | The ESN Handheld Device shall have a forward-facing camera with a number of total pixels of at least 5MP. |
| HH/OS/HD/CAM/003 | The ESN Handheld Device rear camera shall have an LED flash. |
| HH/OS/HD/CAM/004 | The ESN Handheld Device shall be able to record HD video from either camera and playback HD video at a resolution of at least 720p@25fps. |

4.1.7 Battery & Charging

| # | Requirement |
|------------------|--|
| HH/OS/HD/BAT/001 | <p>The ESN Handheld Device shall have a securely fixed but removable Battery that:</p> <ul style="list-style-type: none">(a) is not concealed by a cover that requires removal to access the Battery;(b) can be removed and replaced by the End User without the use of special tools;(c) facilitates daily (or more frequent) removal over the lifetime of the ESN Handheld Device (at least 5,000 instances) without detriment to the ESN Handheld Device, retention mechanism or Battery structure; and(d) has a robust retention mechanism to prevent accidental detachment (e.g. when the ESN Handheld Device is attached to the End User and pressed against the body or a surface) and retains the Battery in situ and fully functioning if the ESN Handheld Device is dropped from <120cm. |
| HH/OS/HD/BAT/002 | <p>Airwave Network</p> <p><u>Part A of HH/OS/HD/BAT/002 – High Capacity Batteries</u></p> |

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| # | Requirement |
|---|--|
| | <p>The High Capacity Battery shall have a life of at least twelve (12) hours between recharging for voice communications and light use of applications when the ESN Handheld Device is operating with the Airwave Network and LTE applications, subject to the following usage parameters:</p> <p>(a) audio, either:</p> <p style="padding-left: 40px;">50% Bluetooth connection active with one paired audio device); OR</p> <p style="padding-left: 40px;">device loudspeaker volume set to 75% maximum; and</p> <p>(b) PTT voice transmit: 5%;</p> <p>(c) PTT voice receive: 5%;</p> <p>(d) PTT voice idle: 90%;</p> <p>(e) screen on (full brightness): 15% of the time;</p> <p>(f) High Capacity Battery consumption of miscellaneous applications or ESN Handheld Device use as tethering access point over 12 hours: 1Gb Data Transfer (screen on 15% of the time);</p> <p>(g) GPS active to support Airwave Network location reporting and LTE applications; and</p> <p>(h) High Capacity Battery subjected to up to 500 cycles (from 15% charge to 100% charge) of charging or up to two years of use when randomly charged throughout the day.</p> <p>This usage profile assumes that:</p> <p>(a) the screen does not light up during PTT activity;</p> <p>(b) ESN Handheld Device is in reasonable coverage (for the Airwave Network to meet the Airwave link budget with a max 1W Tx, and for LTE better than -100dBm RSRP);</p> <p>(c) primary LTE data use for the NMA; and</p> <p>(d) TETRA TMO maximum Tx 1W (using open loop power control); TETRA DMO maximum Tx 1W.</p> <p><u>Part B of HH/OS/HD/BAT/002 – Standard Capacity Batteries</u></p> <p>The Standard Capacity Battery shall have a life of at least eight (8) hours between recharging for voice communications and light use of applications when the ESN Handheld Device is operating with the Airwave Network and LTE applications, subject to the following usage parameters:</p> <p>(a) audio, either:</p> <p style="padding-left: 40px;">50% Bluetooth connection active with one paired audio device); OR</p> <p style="padding-left: 40px;">device loudspeaker volume set to 75% maximum; and</p> <p>(b) PTT voice transmit: 5%;</p> <p>(c) PTT voice receive: 5%;</p> |

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| # | Requirement |
|------------------|--|
| | <p>(d) PTT voice idle: 90%;</p> <p>(e) screen on (full brightness): 15% of the time;</p> <p>(f) Standard Capacity Battery consumption of miscellaneous applications or ESN Handheld Device use as tethering access point over 8 hours: 1Gb Data Transfer (screen on 15% of the time);</p> <p>(g) GPS active to support Airwave Network location reporting and LTE applications; and</p> <p>(h) Standard Capacity Battery subjected to up to 500 cycles (from 15% charge to 100% charge) of charging or up to two years of use when randomly charged throughout the day.</p> <p>This usage profile assumes that:</p> <p>(a) the screen does not light up during PTT activity;</p> <p>(b) ESN Handheld Device is in reasonable coverage (for the Airwave Network to meet the Airwave link budget with a max 1W Tx, and for LTE better than -100dBm RSRP);</p> <p>(c) primary LTE data use for the NMA; and</p> <p>(d) TETRA TMO maximum Tx 1W (using open loop power control); TETRA DMO maximum Tx 1W.</p> |
| HH/OS/HD/BAT/003 | <p>ESN Network</p> <p><u>Part A of HH/OS/HD/BAT/003 – High Capacity Batteries</u></p> <p>If the ESN Upgrade Optional Service is requested by the Authority in accordance with Paragraph 5.6 of Part A of this Schedule below, the High Capacity Battery shall have a life of at least 12 hours between recharging for voice communications and light use of applications when the ESN Handheld Device is operating with ESN, subject to the following usage parameters:</p> <p>(a) audio, either:</p> <p style="padding-left: 40px;">50% Bluetooth connection active with one paired audio device); OR</p> <p style="padding-left: 40px;">device loudspeaker volume set to 75% maximum; and</p> <p>(b) PTT voice transmit: 10%;</p> <p>(c) PTT voice receive: 10%;</p> <p>(d) PTT voice idle: 80%;</p> <p>(e) screen on (full brightness): 15% of the time;</p> <p>(f) High Capacity Battery consumption of miscellaneous applications or ESN Handheld Device use as tethering access point over 12 hours: 2Gb Data Transfer (screen on 15% of the time);</p> <p>(g) GPS active to support the ESN Voice Application location reporting; and</p> <p>(h) High Capacity Battery subjected to up to 500 cycles (from 15% charge to 100% charge) of charging or up to two years of use when randomly charged throughout the day.</p> <p>This usage profile assumes that:</p> |

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| # | Requirement |
|------------------|--|
| | <p>(a) the screen does not light up during PTT activity (ESN Voice Application set to “background mode”);</p> <p>(b) ESN Handheld Device is in reasonable coverage (better than –100dBm RSRP); and</p> <p>(c) radio being active to idle timer: 45 seconds.</p> <p><u>Part B of HH/OS/HD/BAT/003 – Standard Capacity Batteries</u></p> <p>If the ESN Upgrade Optional Service is requested by the Authority in accordance with Paragraph 5.6 of Part A of this Schedule below, the Standard Capacity Battery shall have a life of at least 8 hours between recharging for voice communications and light use of applications when the ESN Handheld Device is operating with ESN, subject to the following usage parameters:</p> <p>(a) audio, either:</p> <p style="padding-left: 40px;">50% Bluetooth connection active with one paired audio device); OR</p> <p style="padding-left: 40px;">device loudspeaker volume set to 75% maximum; and</p> <p>(b) PTT voice transmit: 10%;</p> <p>(c) PTT voice receive: 10%;</p> <p>(d) PTT voice idle: 80%;</p> <p>(e) screen on (full brightness): 15% of the time;</p> <p>(f) Standard Capacity Battery consumption of miscellaneous applications or ESN Handheld Device use as tethering access point over 8 hours: 2Gb Data Transfer (screen on 15% of the time);</p> <p>(g) GPS active to support the ESN Voice Application location reporting; and</p> <p>(h) Standard Capacity Battery subjected to up to 500 cycles (from 15% charge to 100% charge) of charging or up to two years of use when randomly charged throughout the day.</p> <p>This usage profile assumes that:</p> <p>(a) the screen does not light up during PTT activity (ESN Voice Application set to “background mode”);</p> <p>(b) ESN Handheld Device is in reasonable coverage (better than –100dBm RSRP); and</p> <p>(c) radio being active to idle timer: 45 seconds.</p> |
| HH/OS/HD/BAT/004 | The Supplier shall ensure that Batteries have a minimum of 80% of the initial capacity after 500 cycles (from 15% charge to 100% charge) of charging or for a period of two years when randomly charged throughout the day. |
| HH/OS/HD/BAT/005 | The ESN Handheld Device shall provide a visual indication of the Battery charge level. |
| HH/OS/HD/BAT/006 | The ESN Handheld Device shall incorporate charging pins for charging in a cradle, which are sufficiently robust enough to permit daily |

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ARP HANDHELD SOLUTION

OFFICIAL

| # | Requirement |
|------------------|---|
| | insertion into the cradle over the life of the ESN Handheld Device and shall not present a safety hazard if shorted. |
| HH/OS/HD/BAT/007 | The ESN Handheld Device shall remain fully functional whilst charging. |
| HH/OS/HD/BAT/008 | The ESN Handheld Device shall support Battery hot swap operation with the ESN Handheld Device maintaining all operational states if the Battery is changed within 15 seconds. |
| HH/OS/HD/BAT/009 | The ESN Handheld Device shall be able to be charged from a USB port (in addition to the primary charging mechanism using charging pins). |
| HH/OS/HD/BAT/010 | The ESN Handheld Device shall provide a configurable physical and audio indication when the Battery charge level falls below 20%. |
| HH/OS/HD/BAT/011 | The Supplier shall provide a means to test the condition of Batteries. |

4.1.8 Audio

| # | Requirement |
|------------------|---|
| HH/OS/HD/AUD/001 | The ESN Handheld Device shall incorporate multiple microphones for the purposes of noise cancellation such that when an End User is operating in a noisy environment e.g. average street noise at 75dBA, the voice message is intelligible and can be clearly understood when worn on the shoulder or held in the hand up to 15cms away from the speaker's mouth. |
| HH/OS/HD/AUD/002 | The Supplier shall use its best endeavours to ensure the ESN Handheld Device is capable of producing an audio output of speech of 95dBA at a distance 0.25m. |
| HH/OS/HD/AUD/003 | The ESN Handheld Device shall have a loudspeaker function which allows a group of individuals to participate in a voice communication via the ESN Handheld Device (both listening and talking) from distances of between 10cm and at least 1.5m from the ESN Handheld Device within an office environment (50dBA background noise). |
| HH/OS/HD/AUD/004 | The ESN Handheld Device and Accessories shall protect End Users from exposure to sudden high-volume bursts of device-generated audio and provide warnings when selected output levels could exceed recommended levels, so as to comply with the "The Control of Noise at Work Regulations 2005" (especially "Exposure limit values and action values" under chapter 4).or equivalent or successor statutory provisions. |

4.1.9 Connectivity

Bluetooth

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| # | Requirement |
|------------------|---|
| HH/OS/HD/CON/001 | The ESN Handheld Device shall support Bluetooth version 5.0 or higher with support for Bluetooth Low Energy. |
| HH/OS/HD/CON/002 | When Bluetooth discovery mode the ESN Handheld Device shall automatically timeout after a defined period. |
| HH/OS/HD/CON/003 | ESN Handheld Device shall be capable of simultaneously connecting and operating with at least 4 devices simultaneously via Bluetooth which are manufacturer agnostic. |
| HH/OS/HD/CON/004 | The ESN Handheld Device shall support use of the following Bluetooth Profiles: PAN, BNEP, SPP, SAP, A2DP, ATT, GAP, GATT, HFP, HID, HSP, MAP, PBAP. |

USB

| # | Requirement |
|------------------|--|
| HH/OS/HD/CON/005 | The ESN Handheld Device shall provide a USB-C port. |
| HH/OS/HD/CON/006 | The ESN Handheld Device shall support a USB 2 interface. |
| HH/OS/HD/CON/007 | The ESN Handheld Device shall support a USB 3 interface. |

Wi-Fi

| # | Requirement |
|------------------|--|
| HH/OS/HD/CON/008 | The ESN Handheld Device shall support Wi-Fi 5 (IEEE 802.11ac). |
| HH/OS/HD/CON/009 | The ESN Handheld Device shall support Wi-Fi client mode and access point modes. |
| HH/OS/HD/CON/010 | Not Used. |
| HH/OS/HD/CON/011 | The ESN Handheld Device shall support the following aspects of Wi-Fi security in client and access point mode: (a) WPA-2 PSK; (b) WPA-2 Enterprise (with the ability to configure via the device management solution specified by and/or agreed with the Authority); (c) CCMP (encryption protocol); (d) EAP-TLS; and (e) EAP-PEAP. |

NFC

| # | Requirement |
|------------------|--|
| HH/OS/HD/CON/012 | The ESN Handheld Device shall support Near Field Communications compliant with GSMA TS.26 version 15.0 or later. |

Audio Jack

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| # | Requirement |
|------------------|--|
| HH/OS/HD/CON/013 | The ESN Handheld Device shall provide a Rugged Accessory Connector for audio stereo output, mono input and PTT and voice call setup/termination control. Mono output devices will combine the stereo channels. |

4.1.10 Off-Network Capability

General

| # | Requirement |
|------------------|---|
| HH/OS/HD/ONC/001 | The ESN Handheld Device shall include a capability for direct device-to-device communications without reliance on any network infrastructure (" Off-Network Capability "). |

Functionality

| # | Requirement |
|------------------|---|
| HH/OS/HD/ONC/002 | The Off-Network Capability shall support "push-to-talk" voice communications between groups of ESN Handheld Devices. |
| HH/OS/HD/ONC/003 | The Off-Network Capability shall support multiple secure talk groups, limited only by the radio spectrum available (" Off-Network Talkgroups "). |
| HH/OS/HD/ONC/004 | When using the Off-Network Capability, the ESN Handheld Device shall be able to transmit and receive voice communication to/from all members of the selected Off-Network Talkgroup. |
| HH/OS/HD/ONC/005 | Voice communications using the Off-Network Capability shall be encrypted to limit participants to authorised users of the selected Off-Network Talkgroup. |
| HH/OS/HD/ONC/006 | The number of ESN Handheld Devices that are members of any Off-Network Talkgroup shall be unlimited, provided that: (a) members have appropriate security credentials to access the Off-Network Talkgroup; and (b) members participating in communications are within range at the time of any communication. |
| HH/OS/HD/ONC/007 | The Off-Network Capability shall include an emergency alert function whereby all members of the relevant Off-Network Talkgroup are alerted if one member has activated the Emergency Button. |

Physical and Form Factor

| # | Requirement |
|------------------|---|
| HH/OS/HD/ONC/009 | The Off-Network Capability shall be provided in a manner that makes the capability available to the End User in a single hand-held form |

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ARP HANDHELD SOLUTION

OFFICIAL

| # | Requirement |
|------------------|--|
| | factor and as integral part of the ESN Handheld Device (although this may be achieved through the addition of a separate Off-Network Capability module). |
| HH/OS/HD/ONC/010 | Where a separate module is added to provide the Off-Network Capability, this shall be physically attached to the ESN Handheld Device and not capable of being removed by the End User without the use of tools. |
| HH/OS/HD/ONC/011 | All requirements applicable to the ESN Handheld Device, including physical, environmental and Battery requirements in this Schedule, shall be deemed to apply to the ESN Handheld Device including the Off-Network Capability. |

User Interface

| # | Requirement |
|------------------|--|
| HH/OS/HD/ONC/012 | The End User interface for the Off-Network Capability shall be common with other functions of the ESN Handheld Device, including use of the same buttons for push to talk, emergency call, a common microphone, speaker and accessories (e.g. headsets). |
| HH/OS/HD/ONC/013 | The End User interface shall provide: <ul style="list-style-type: none"> (a) a control with easy access to toggle between network mode and the Off-Network Capability; (b) a control with easy access to select Off-Network Talkgroups; (c) a clear indication to the End User of the current mode of operation; (d) a clear indication of the currently selected Off-Network Talkgroup when operating the Off-Network Capability; and (e) a clear visual indication of the Battery charge level. |

Standards and Performance

| # | Requirement |
|------------------|--|
| HH/OS/HD/ONC/014 | The Off-Network Capability shall comply with the standards set out in Schedule 2.3 (<i>Standards</i>). |
| HH/OS/HD/ONC/015 | The communications range of the Off-Network Capability shall be at least 500m between ESN Handheld Devices in flat terrain (preferably at least 1km) without the need for repeaters. |

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4.1.11 Device Management

| # | Requirement |
|-----------------|---|
| HH/OS/HD/DM/001 | The ESN Handheld Device shall be capable of, and configured for, management using the device management solution specified by and/or agreed with the Authority. |
| HH/OS/HD/DM/002 | The Supplier shall provide a configuration facility for the ESN Handheld Device configurable buttons. |
| HH/OS/HD/DM/003 | The function of the ESN Handheld Device configurable buttons shall be able to be configured during post delivery ESN Handheld Device configuration and setup phase. |
| HH/OS/HD/DM/004 | Not Used |
| HH/OS/HD/DM/005 | For any ESN Handheld Device configuration that is not accessible via the Authority's device management solution, the Supplier shall provide configuration tools for the Authority and Service Recipients (subject to appropriate authorisation) to be able to configure the ESN Handheld Device (and Accessories as appropriate). |
| HH/OS/HD/DM/006 | The Supplier shall ensure that the Bluetooth interface on the ESN Handheld Device can be enabled or disabled remotely via the device management solution. |
| HH/OS/HD/DM/007 | Not Used. |

4.1.12 Airwave Operation

Trunked Mode Capability

| # | Requirement |
|------------------|---|
| HH/OS/HD/AIR/001 | The ESN Handheld Device shall be capable of trunked mode operation using the Airwave Network. |
| HH/OS/HD/AIR/002 | When operating with the Airwave Network, the ESN Handheld Device shall as a minimum: (i) comply with the Airwave standards listed in Schedule 2.3 (<i>Standards</i>); and (ii) support the capabilities in this Paragraph 4.1.12. |

Voice Capabilities

| # | Requirement |
|------------------|--|
| HH/OS/HD/AIR/003 | The ESN Handheld Device shall support Airwave half-duplex point-to-point calls, including through providing: (a) audible alerting and accept/reject capability; and (b) use of the PTT to accept a call. |
| HH/OS/HD/AIR/004 | The ESN Handheld Device shall support Airwave half-duplex Talkgroup calls. |

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| # | Requirement |
|------------------|--|
| HH/OS/HD/AIR/005 | <p>The ESN Handheld Device shall support at least 3000 Airwave Talkgroups and such Talkgroups shall be:</p> <ul style="list-style-type: none"> (a) presented with a clear, searchable user interface; (b) selectable by Talkgroup number; and (c) displayed as appropriate to the current mode (i.e. trunked mode Talkgroups only for TETRA trunked mode and direct mode Talkgroups only for TETRA direct mode). |
| HH/OS/HD/AIR/006 | <p>The ESN Handheld Device shall support Airwave private telecommunications network (“PTN”) calls to a single destination.</p> |
| HH/OS/HD/AIR/007 | <p>For Airwave PTN calls, the ESN Handheld Device shall support:</p> <ul style="list-style-type: none"> (a) audible alerting and accept/reject capability; and (b) full duplex to half duplex conversion for working with an accessory, e.g. RSM. |
| HH/OS/HD/AIR/008 | <p>The ESN Handheld Device shall support a phone book of at least 2000 entries and:</p> <ul style="list-style-type: none"> (a) shall be capable of storing multiple types of numbers (including Airwave Network / and PTN numbers); (b) shall allow for at least 200 entries to be user editable; and (c) shall allow users the option to select numbers from the phone book and/or call history to both initiate an Airwave point-to-point or a PTN call. |
| HH/OS/HD/AIR/009 | <p>The ESN Handheld Device shall support Airwave emergency Talkgroup calls, including ensuring that such emergency calls can be initiated by the use of the Emergency Button.</p> |
| HH/OS/HD/AIR/010 | <p>For Airwave emergency Talkgroup calls, the ESN Handheld Device shall support:</p> <ul style="list-style-type: none"> (a) an audible alert to the user; (b) ‘hot mic’ operation for a configurable period; (c) initiation of the emergency call on the Talkgroup; (d) transmission of a TETRA emergency status message; (e) transmission of a location status message; (f) a configurable option for some Talkgroups to switch the ESN Handheld Device to a nominated alternate Talkgroup in the event of emergency activation; (g) override of any “transmit inhibit” mode selected; (h) an audible and visual alert presented on all ESN Handheld Devices on the Talkgroup; and (i) clearance of the emergency status by the Airwave Network (e.g. network timeout clear down by dispatcher). |
| HH/OS/HD/AIR/011 | <p>The ESN Handheld Device shall support Airwave ambience listening calls, providing transmit only of ambient audio with no device indication of activity during ambience listening calls. Simulation of ‘power off’ during ambience listening calls is not required and acceptance of incoming or initiation of outgoing Airwave or LTE calls will terminate any ambience listening call.</p> |

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| # | Requirement |
|------------------|---|
| HH/OS/HD/AIR/012 | The ESN Handheld Device shall support Dynamic Group Number Assignment (DGNA) with fallback to a pre-configured Talkgroup when a Talkgroup created via DGNA has been removed. |
| HH/OS/HD/AIR/013 | The ESN Handheld Device shall provide configurable (by the End User) options (such options shall be equivalent to the TETRA capabilities existing as at the Effective Date) to store and display call histories for incoming and outgoing Airwave point-to-point and PTN calls. |

Data Capabilities

| # | Requirement |
|------------------|---|
| HH/OS/HD/AIR/014 | The ESN Handheld Device shall support TETRA status messaging including automatic status messaging for emergency and transmit inhibit on/off. |
| HH/OS/HD/AIR/015 | The ESN Handheld Device shall support extended status messaging using TETRA short data service (" SDS "), to include status code, timestamp and location. |
| HH/OS/HD/AIR/016 | Extended time-stamped status messages shall be selectable by End Users from a list and sent to a pre-configured address (ISSI). |
| HH/OS/HD/AIR/017 | The ESN Handheld Device shall support pre-configured time-stamped status messages which can be triggered either by buttons and/or by soft keys on the ESN Handheld Device, and which may be pre-configured to different destination addresses (ISSI). |
| HH/OS/HD/AIR/018 | The ESN Handheld Device shall support free-form SDS messaging between End Users to any selectable destination, including: (a) single 140-character SDS messages; and (b) extended concatenated SDS messages. |

Location Capabilities

| # | Requirement |
|------------------|--|
| HH/OS/HD/AIR/019 | The ESN Handheld Device shall support Automatic Personnel Location Systems (APLS) by providing location SDS messages to a pre-configured system/address in formats that can be selected to suit the application, including the 'Sepura Compact' format and the ETSI Location Information Protocol (LIP). |
| HH/OS/HD/AIR/020 | The ESN Handheld Device shall be configurable to disable automatic updates and/or to initiate updates based on a pre-configured timeout and/or distance moved. |
| HH/OS/HD/AIR/021 | The ESN Handheld Device shall provide a location update to the appropriate system/address on activation of an emergency call. |

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| # | Requirement |
|------------------|---|
| HH/OS/HD/AIR/022 | The ESN Handheld Device shall be configurable to send a location update to the appropriate system/address whenever a time-stamped status message is sent. |
| HH/OS/HD/AIR/023 | The ESN Handheld Device shall present the current location on the screen in OS format. |

Other Functions

| # | Requirement |
|------------------|--|
| HH/OS/HD/AIR/024 | The ESN Handheld Device shall use the satellite location (GPS) signal to derive its time reference and the network time as a fallback when no satellite signal is available. |
| HH/OS/HD/AIR/025 | The ESN Handheld Device shall support TETRA stun which shall disable Airwave Operation on the ESN Handheld Device. |
| HH/OS/HD/AIR/026 | The ESN Handheld Device shall support Transmit Inhibit mode and shall send appropriate TETRA status messages for Transmit Inhibit on/off. |
| HH/OS/HD/AIR/027 | The ESN Handheld Device shall support the Authority's 'Crew Alerting' application whereby an 'alert' SDS message received is recognised by the ESN Handheld Device and an appropriate message and audible/visible alert is presented to the End User for acknowledgement with a suitable reply (such reply to be agreed with the Authority) returned to the application. |
| HH/OS/HD/AIR/028 | The ESN Handheld Device shall support remote over-the-air configuration and changes, including: <ul style="list-style-type: none"> (a) location reporting – enable/disable/update/additional; and (b) current Talkgroup change. |

4.2 Accessories (Supply)

4.2.1 General

| # | Requirement |
|-----------------|--|
| HH/OS/ACC/G/001 | The Authority may place, and the Supplier shall fulfil, Catalogue Orders for any Accessories with the Supplier in accordance with Schedule 2.7 (<i>Catalogue and Ordering</i>). |
| HH/OS/ACC/G/002 | Accessories provided shall include: <ul style="list-style-type: none"> (a) carry cases; (b) carry clips/docks (c) headsets; (d) Vehicle Kits; (e) motorcycle kits; (f) RSMs; |

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| # | Requirement |
|-----------------|---|
| | (g) Standard Capacity Batteries; (h) High Capacity Batteries; and (i) Battery chargers and charging cables (for secondary charging mechanism). |
| HH/OS/ACC/G/003 | Accessories provided may also include additional Accessories that are compatible with and recommended for use with the ESN Handheld Device where these have been included on the Catalogue. |
| HH/OS/ACC/G/004 | The Accessories shall be supplied fully configured with the latest configuration agreed with the Authority. |
| HH/OS/ACC/G/005 | Accessories shall comply with the standards set out in Schedule 2.3 (<i>Standards</i>). |

4.2.2 Physical & Environmental

| # | Requirement |
|------------------|---|
| HH/OS/ACC/PE/001 | The Supplier shall ensure that Accessories have suitably robust housings to prevent damage both in the use and storage. |
| HH/OS/ACC/PE/002 | Accessories shall continue to operate after multiple drops in compliance with MIL-STD 810G Method 516.6 procedure IV – transit drops and must not shatter and generate sharp splinters. |
| HH/OS/ACC/PE/003 | The Accessories shall be protected against ingress to the standards identified in Schedule 2.3 (<i>Standards</i>). |
| HH/OS/ACC/PE/004 | The Supplier shall ensure that wired connections to any Accessories can be securely attached to the ESN Handheld Device or case such that it cannot be disconnected either accidentally or by an assailant (e.g. via the use of a locking screw on the connector or similar, or a bracket or case that attaches securely to the ESN Handheld Device to secure the connector). |
| HH/OS/ACC/PE/005 | The secure mechanism for attachment of Accessories shall not require special skills or any tools for attachment or detachment. |
| HH/OS/ACC/PE/006 | The secure mechanism for attachment of Accessories shall not affect the usability of the ESN Handheld Device including: <ul style="list-style-type: none"> (a) not obstructing any of the physical controls on the ESN Handheld Device or the ESN Handheld Device screen; (b) not obstructing any of the other ports on the ESN Handheld Device including the external charging contacts; (c) not obstructing or degrading the performance of the ESN Handheld Device microphone(s) and loudspeaker(s); and (d) not increasing the physical size of the ESN Handheld Device in such a way as to impede single-handed use. |

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OFFICIAL

| # | Requirement |
|------------------|--|
| HH/OS/ACC/PE/007 | The Supplier shall ensure all items that are connected by electrical cabling feature suitable strain relief techniques to protect solder connections from being damaged. |
| HH/OS/ACC/PE/008 | Accessories shall be capable of being cleaned, disinfected and decontaminated using commonly available cleaning products including medical wipes. |

4.2.3 Carry Cases

| # | Requirement |
|------------------|---|
| HH/OS/ACC/CC/001 | The Supplier shall provide a water-resistant case suitable for use with the ESN Handheld Device that provides physical protection for the ESN Handheld Device, can be easily cleaned, and allows the End User easy access to the ESN Handheld Device's functions. |
| HH/OS/ACC/CC/002 | The Supplier shall ensure that the case allows a means to attach the ESN Handheld Device to uniforms via a wide range of methods of attachments that are compatible with the current systems in use at the Effective Date, including the Klickfast system. |
| HH/OS/ACC/CC/003 | The Supplier shall ensure that the ESN Handheld Device case provides a means to securely attach wired audio accessories in situations where this is not provided directly by the ESN Handheld Device. Such accessories can be securely attached to the ESN Handheld Device case via a thumb screw or similar. |
| HH/OS/ACC/CC/004 | The Supplier shall offer black and bright/fluorescent yellow options for the case. |

4.2.4 Carry Clips/Docks

| # | Requirement |
|------------------|--|
| HH/OS/ACC/CD/001 | <p>The Supplier shall provide a means for End Users to carry or wear the ESN Handheld Device while maintaining the ability to safely carry out all required functions. Examples of carrying capabilities used include:</p> <ul style="list-style-type: none">(a) shoulder mounted;(b) waist mounted;(c) lanyard;(d) body armour; and(e) webbing gilet. |
| HH/OS/ACC/CD/002 | <p>The Supplier shall provide a range of clips/docks for ESN Handheld Devices to attach to End User uniforms that are compatible with the current systems in use at the Effective Date, including the Klickfast system, either directly or via a case, including:</p> <ul style="list-style-type: none">(a) belt loops;(b) tag mountings; and |

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ARP HANDHELD SOLUTION

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| # | Requirement |
|------------------|---|
| | (c) webbing mountings. |
| HH/OS/ACC/CD/003 | The Supplier shall ensure that the ESN Handheld Device and the case allow for easy single-handed and rapid 3 seconds removal of the ESN Handheld Device from its location by the End User from its attachment to the uniform or from the carrying capability. |
| HH/OS/ACC/CD/004 | The Supplier shall inhibit unauthorised and/or accidental removal of the ESN Handheld Device (with or without a case) from the uniform or carrying capability. |

4.2.5 Headsets

| # | Requirement |
|-----------------|--|
| HH/OS/ACC/H/001 | The Supplier shall provide a range of wired headsets for use with the ESN Handheld Device, including the following capabilities: (a) in-line microphone with embedded answer / PTT button; (b) compatibility with wind and noise reduction apps; and (c) noise isolating ear gels for best fit and comfort. |
| HH/OS/ACC/H/002 | The Supplier shall provide wired and wireless headsets for use with emergency responder motorcycle helmets. |

4.2.6 Vehicle Kits

| # | Requirement |
|------------------|---|
| HH/OS/ACC/VK/001 | The Supplier shall provide a Vehicle charging cradle which is compatible with ESN Handheld Device, can be safely and securely mounted in Vehicles, and allows the ESN Handheld Device to be used with hands-free push to talk while in the cradle (subject always to compliance with relevant Law). |
| HH/OS/ACC/VK/002 | The Vehicle charging cradle shall not obstruct the screen of the ESN Handheld Device, to allow an End User to interact with the screen (subject always to compliance with relevant Law). |
| HH/OS/ACC/VK/003 | The Vehicle charging cradle shall provide: (a) a connection to the Vehicle power supply with termination suitable for an automotive environment; and (b) an external USB and audio connection to the ESN Handheld Device so that, with a suitable wired accessory set, hands-free operation of the ESN Handheld Device can be achieved. |
| HH/OS/ACC/VK/004 | The Supplier shall provide, if requested by the Authority, a Vehicle charging cradle which includes connectivity from the ESN Handheld Device to an external antenna via inductive coupling or another mechanism. |

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4.2.7 **Motorcycle Kits**

| # | Requirement |
|------------------|--|
| HH/OS/ACC/MK/001 | The Supplier shall provide a motorcycle kit which is compatible with ESN Handheld Device, enabling the ESN Handheld Device to be installed for use with a motorcycle, including suitable handlebar controls/display and headset. |

4.2.8 **Remote Speaker/Microphones ("RSM")**

| # | Requirement |
|-------------------|---|
| HH/OS/ACC/RSM/001 | The Supplier shall provide a RSM accessory (wired or wireless) which provides access to basic voice functions when attached to the ESN Handheld Device. |
| HH/OS/ACC/RSM/002 | The RSM shall include controls for the following as a minimum: (a) push to talk; (b) "request to speak"; (c) volume control; and (d) emergency button. |
| HH/OS/ACC/RSM/003 | The Supplier shall provide a means to attach the RSM to uniforms via a range of methods of attachments that are compatible with the current systems in use at the Effective Date, including, Klickfast system; either directly or via a case. |

4.2.9 **Not Used**

| # | Requirement |
|-------------------|-------------|
| HH/OS/ACC/HCB/001 | Not Used. |

4.2.10 **Battery Chargers**

| # | Requirement |
|------------------|---|
| HH/OS/ACC/BC/001 | The Supplier shall provide various means of charging the ESN Handheld Devices, Vehicle-mounted ESN Handheld Devices, and single/multiple (stand-alone) Batteries using power from a standard UK electrical mains power socket or from a Vehicle battery (12V and 24V DC). These shall include: (a) in-Vehicle single ESN Handheld Device charging means; (b) in Vehicle multiple ESN Handheld Device charging means; (c) mains-powered single ESN Handheld Device charging means; (d) mains-powered multiple ESN Handheld Device charging means; (e) in Vehicle single battery charging means; |

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ARP HANDHELD SOLUTION

OFFICIAL

| # | Requirement |
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| | (f) in Vehicle multiple battery charging means; (g) mains-powered single battery means; and (h) mains-powered multiple battery charging means. |
| HH/OS/ACC/BC/002 | The Supplier shall provide a charging capability suitable for installation in a Vehicle and capable of recharging a single ESN Handheld Device. |
| HH/OS/ACC/BC/003 | The Supplier shall provide a charging capability suitable for installation in a Vehicle and capable of recharging two ESN Handheld Devices carried in the Vehicle. |
| HH/OS/ACC/BC/004 | The Supplier shall provide a charging capability suitable for installation in a Vehicle and capable of recharging one or two ESN Handheld Device Batteries (Standard Capacity Battery or High Capacity Battery) carried in the Vehicle. |
| HH/OS/ACC/BC/005 | All chargers for use in Vehicles shall hold the ESN Handheld Device or Battery securely in place whilst the Vehicle is in motion and maintain full charging functionality during the life of the accessory in the presence of normal Vehicle shocks and vibrations. |
| HH/OS/ACC/BC/006 | The Supplier shall provide a desktop charger suitable for charging a single ESN Handheld Device from a standard UK mains 230V AC supply. |
| HH/OS/ACC/BC/007 | The Supplier shall provide a multi-way 230V UK mains charging capability to enable the recharging of multiple ESN Handheld Devices at a time. This could vary from being able to charge from 2 to 24 ESN Handheld Devices managed on an individual basis. |
| HH/OS/ACC/BC/008 | The Supplier shall provide a multi-way 230V UK mains charging capability to enable the recharging of multiple Batteries at a time. This could vary from being able to charge from 2 to 24 Batteries managed on an individual basis. |
| HH/OS/ACC/BC/009 | The Supplier shall ensure that all chargers monitor the individual Battery charging process to ensure optimal life of the Battery and detect/identify faulty Batteries. |

4.3 SUPPORT SERVICES

4.3.1 Warranty

| # | Requirement |
|-----------------|---|
| HH/OS/SUP/W/001 | <p>The Supplier shall provide warranties such that the ESN Handheld Device, (including the Batteries), Accessories and other Catalogue Items (collectively "Warranty Support"):</p> <p>(a) are of good quality and free from Defects in design, materials, workmanship and manufacture under normal Vehicle-related operational use and service;</p> <p>(b) only incorporate materials, parts, components and other items which are new;</p> |

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

| # | Requirement |
|-----------------|--|
| | (c) comply with and perform in accordance with the specifications which are current at the date of purchase; and (d) comply with all applicable requirements of this Agreement. |
| HH/OS/SUP/W/002 | Warranty Support shall apply for applicable Warranty Periods, as more particularly described in Clause 3.3 (<i>Warranty Periods</i>). |
| HH/OS/SUP/W/003 | The ESN Handheld Device Warranty shall include replacement of the Batteries as required during the Warranty Period, should Batteries fail or fall below the performance requirements described in Paragraph 4.1.7. |

4.3.2 Return and Repair

| # | Requirement |
|------------------|--|
| HH/OS/SUP/RR/001 | If the Authority notifies the Handheld Device Support Desk of faulty ESN Handheld Devices, components of the ESN Handheld Devices, Accessories, or any other Goods, then in respect of items covered by Warranty Support, the Supplier shall provide a replacement delivered to a location nominated by the Authority in line with the timelines identified in Schedule 2.2 (<i>Performance Levels</i>). |
| HH/OS/SUP/RR/002 | <p>In respect of:</p> <p>(a) any ESN Handheld Devices or Accessories that are not covered by Warranty Support, either because the Warranty Period has expired or that is agreed by the Authority not to be covered by Warranty Support in accordance with requirement HH/OS/SUP/RR/005 of this Paragraph 4.3.2,</p> <p>then the Supplier will contact the Authority Representative to determine the appropriate action. This will be either to:</p> <p>(b) undertake a paid-for repair (if applicable) having first provided a quotation for the price of all reasonable parts, and labour:</p> <p style="padding-left: 40px;">(i) in accordance with the Charges for Catalogue Items and requirement HH/OS/SUP/RR/003 of this Paragraph 4.3.2 (such Charges to include all associated shipping and delivery charges); or</p> <p style="padding-left: 40px;">(ii) on an exceptional basis where the costs of any specific repair services to ESN Handheld Device, Accessories and/or other Goods are not provided in the Catalogue, then on an ad hoc quotation basis that shall be subject to Approval; or</p> <p>(c) where the ESN Handheld Device, Accessories and/or other Goods are beyond economic repair, dispose of the ESN Handheld Device, Accessories and/or other Goods securely and in an environmentally safe and friendly manner in accordance with the Waste Electrical and Electronic</p> |

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ARP HANDHELD SOLUTION

OFFICIAL

| # | Requirement |
|------------------|---|
| | Equipment Regulations 2013 and provide the Authority with certification of its secure disposal. |
| HH/OS/SUP/RR/003 | <p>Where the Supplier provides a quotation for paid-for repairs in accordance with requirement HH/OS/SUP/RR/002 of this Paragraph 4.3.2:</p> <ul style="list-style-type: none"> (a) where the repair is primarily a screen replacement, the Charge for Catalogue Items for “Out of Warranty Repair category A – Screen Replacement” shall apply; (b) where the repair is primarily a Battery replacement, the Charge for Catalogue Items for “Out of Warranty Repair category B – Battery Replacement” shall apply; (c) where the repair is primarily to fix any connector damage, the Charge for Catalogue Items for “Out of Warranty Repair category C – Connector Damage issue” shall apply; and (d) where the repair is primarily cosmetic (e.g. hard button replacement), the Charge for Catalogue Items for “Out of Warranty Repair category D – Cosmetic” shall apply. |
| HH/OS/SUP/RR/004 | <p>Where the Supplier reasonably believes the relevant item of Goods has been damaged outside of the scope of the applicable Warranty Support due to:</p> <ul style="list-style-type: none"> (a) unauthorised modifications; (b) clear evidence of having been used by the operator outside of its published maximum electrical or environmental ratings, or with hardware that is electrically or mechanically incompatible; (c) clear evidence of installation (where applicable) contrary to the Supplier's installation guidelines; or (d) the ESN Handheld Device or Accessories being physically damaged and such damage, in the reasonable opinion of the Supplier, being outside the normal wear and tear expected in the Operating Environment, <p>then the Supplier shall notify the Authority Representative with a supporting report including the evidence (e.g. photographs) supporting the Supplier's opinion.</p> |
| HH/OS/SUP/RR/005 | <p>If the Authority acting reasonably agrees that relevant item of Goods has been damaged outside of the scope of the applicable Warranty Support, then the Authority will pay for the repair or replacement as appropriate in accordance with requirement HH/OS/SUP/RR/003 of this Paragraph 4.3.2. Where the Authority does not so agree with the Supplier's assessment of the relevant Goods being damaged outside of the scope of the applicable Warranty Support then the relevant Goods will be repaired or replaced as appropriate in accordance with the applicable Warranty Support.</p> |
| HH/OS/SUP/RR/006 | <p>Replacement ESN Handheld Devices, Accessories and/or other Catalogue Items shall be:</p> <ul style="list-style-type: none"> (a) new, taken from the Supplier's spares holding; or (b) repaired to be “as new”, meeting the standards set out in requirement HH/OS/SUP/W/001 of Paragraph 4.3.1 and |

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| # | Requirement |
|------------------|---|
| | shall be provided from relevant Goods previously purchased and returned for repair by the Authority. |
| HH/OS/SUP/RR/007 | Replacement ESN Handheld Devices (including any SIM cards), Accessories and/or other Catalogue Items shall be delivered configured to a standard agreed in writing with the Authority. |
| HH/OS/SUP/RR/008 | Replacement ESN Handheld Devices, Accessories and/or other Catalogue Items shall be covered by the relevant Warranty Support for a period of ninety (90) days or the remainder of the original Warranty Period (whichever is longer) and shall meet the standards that are set out in requirement HH/OS/SUP/W/001 of sub-Paragraph 4.3.1. |
| HH/OS/SUP/RR/009 | Save as set out in requirement HH/OS/SUP/RR/003 of this Paragraph 4.3.2, the Supplier shall bear all carriage, insurance, transport, all relevant licences, all related costs, and all other costs associated with return of the Defective ESN Handheld Devices or Accessories to the Supplier's nominated repair centre and for delivery of any repaired or replacement ESN Handheld Devices or Accessories back to the Authority. |
| HH/OS/SUP/RR/010 | The Supplier shall ensure that adequate packaging is used to protect the ESN Handheld Device, Accessories and/or other Goods during transit to and from the Authority nominated locations and the Supplier's nominated repair centre. |
| HH/OS/SUP/RR/011 | The Supplier shall arrange for the repair of the returned items and shall test the repaired equipment to confirm that the repair has resolved the reported issue prior to returning the items to the Supplier's stock/spares holding or the Authority (as applicable). |
| HH/OS/SUP/RR/012 | Where no fault is found, the Supplier shall test the returned items and return them to the Supplier's stock/spares holding or the Authority (as applicable). |
| HH/OS/SUP/RR/013 | The Supplier shall maintain records of all returns and repairs, including details of the Goods returned, faults found and fixes applied. |

4.3.3 Manufacturer Warranties and Indemnities

| # | Requirement |
|-------------------|---|
| HH/OS/SUP/MWI/001 | <p>Without limiting Paragraphs 4.3.1 or 4.3.2 or the Supplier's obligation to provide the Warranty Support, the Supplier shall provide the Authority and the Service Recipients with:</p> <ul style="list-style-type: none"> (a) the full benefit of any warranties and indemnities provided by the manufacturer of all Goods (each a "Manufacturer Warranty" or "Manufacturer Indemnity"); and (b) all reasonable cooperation and assistance to enable the Authority and the Service Recipients to enjoy the full benefit of any Manufacturer Warranty or Manufacturer Indemnity |

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

| # | Requirement |
|-------------------|---|
| | including, where requested to do so by the Authority, by liaising with the manufacturer on the Authority's behalf. |
| HH/OS/SUP/MWI/002 | The Supplier shall provide to the Authority, by no later than ten (10) Working Days following the Go Live Date, a register which sets out each Manufacturer Warranty and Manufacturer Indemnity for the Goods which have been made available to the Authority and the Service Recipients under this Agreement, including Hardware which is available to be Ordered as a Catalogue Item (" Manufacturer Warranties and Indemnities Register "). |

4.3.4 Spares Management

| # | Requirement |
|-------------------|---|
| HH/OS/SUP/SPM/001 | The Supplier shall manage its internal spares holding at an appropriate level in order to be able to provide timely replacements where required in accordance with the applicable Warranty Support requirements. |
| HH/OS/SUP/SPM/002 | Where requested by the Authority, the Supplier shall provide guidance on recommended levels of Authority spares holdings for ESN Handheld Devices and Accessories and consumable spares (which the Authority may elect to purchase through Orders). |

4.3.5 Product Roadmap

| # | Requirement |
|------------------|---|
| HH/OS/SUP/PR/001 | The Supplier shall make the Authority aware in good time and provide at least 6 months' notice of planned ESN Handheld Device or Accessories updates by way of a roadmap document which shall be available to the Authority (" ESN Handheld Device Product Roadmap ") and at least 18 months' notice of any planned withdrawal of products from sale (any such product being an " End of Life Product "). |
| HH/OS/SUPPR/002 | The Product Roadmap shall include: <ul style="list-style-type: none"> (a) details of the new or revised functionality of the ESN Handheld Device or Accessories; (b) mapping against relevant industry standards (e.g. 3GPP releases); (c) its key characteristics and benefits; (d) its impact on existing operating procedures; (e) its ability to interwork with the Authority's existing equipment; and (f) any modifications that might be required to existing designs and installations (e.g. compatibility with Batteries, Accessories, use in Vehicle kits). |
| HH/OS/SUP/PR/003 | The Supplier shall take all reasonable steps to prevent any item of ESN Handheld Device or Accessories from becoming an End of Life |

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

| # | Requirement |
|------------------|--|
| | Product where such items are still in use by the Authority or relevant Service Recipient and are within the Warranty Period. |
| HH/OS/SUP/PR/004 | <p>Where the Supplier has determined to withdraw an End of Life Product, and where a like-for-like replacement is not being provided, the Supplier shall:</p> <ul style="list-style-type: none"> (a) inform the Authority at least eighteen (18) months ahead of the planned withdrawal date to allow time to undertake an initial impact assessment; (b) make a number of replacement items available to the Authority and Service Recipients as soon as possible to allow the Authority and Service Recipients to gain an appreciation of the replacement item; (c) provide detailed technical specifications of the proposed replacement items to the Authority twelve (12) months ahead of the planned withdrawal date; (d) provide the Authority with the opportunity to undertake a last-time purchase of the End of Life Product in sufficient quantities to address foreseeable needs and associated failure rates; and (e) where the Authority proposes to require the Supplier to provide a replacement item under this Agreement, the Parties shall use the Change Control Procedure to agree how such replacement shall be effected including as to the following: <ul style="list-style-type: none"> (i) the supply of the replacement item at least three (3) months in advance of the replacement date for Testing; (ii) the provision of technical support as necessary for the integration of the replacement item; (iii) the planning and execution of Testing in accordance with the requirements of Schedule 6.2 (<i>Testing Procedures</i>) to demonstrate the effective use of the replacement item to meet the Authority Requirements; (iv) upon Achievement of the relevant Tests, and at the Authority's request, the addition of the replacement ESN Handheld Device or Accessory as applicable to the Catalogue at a Charge that is the same or lower than the Charges listed in the Catalogue applicable to the End of Life Product that it replaces; (v) the provision of updated Documentation as appropriate for the replacement item; and (vi) the provision of any training necessary as a consequence of the addition of the replacement item, <p>provided that where items of the End of Life Product are in use by the Authority and/or Service Recipient and those items are within the</p> |

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

| # | Requirement |
|------------------|--|
| | Warranty Period at the time of the replacement, the Authority shall not be liable to pay any Charges in respect of the activities and Services described in requirement HH/OS/SUP/PR/004 (e) of this Paragraph 4.3.5 and the Supplier shall provide these at its own cost and expense. |
| HH/OS/SUP/PR/005 | Notwithstanding the withdrawal of the End of Life Product, the Supplier will continue to provide the full range of Support Services to the Authority on the End of Life Product. |

4.3.6 Software Support Services

| # | Requirement |
|------------------|--|
| HH/OS/SUP/SS/001 | <p>The Supplier shall provide to the Authority and maintain on an ongoing basis a roadmap of planned Software Updates and Upgrades in respect of:</p> <ul style="list-style-type: none">(a) the operating systems, associated drivers and any supporting applications/software tools provided with the ESN Handheld Devices;(b) the operating systems, associated drivers and any supporting applications/software tools provided with any of the Accessories; and(c) any other software used in the delivery of the Services, <p>(the “Software Roadmap”).</p> |
| HH/OS/SUP/SS/002 | <p>The Supplier shall ensure that the Software Roadmap includes all Software Updates and Upgrades necessary to:</p> <ul style="list-style-type: none">(a) maintain Airwave and GCF certification, compatibility with the NMA, and ESN certification if the ESN Upgrade Optional Service is adopted by the Authority, including New Releases during the Term; and(b) address any security issues identified during the Term. |
| HH/OS/SUP/SS/003 | The Supplier shall provide software fixes, Updates and security-related Updates on a regular basis in accordance with the Software Roadmap. |
| HH/OS/SUP/SS/004 | The Supplier shall provide Updates as quickly as possible where the operational integrity of the ESN Handheld Device or Accessories may be affected. |
| HH/OS/SUP/SS/005 | The Supplier shall provide accompanying release notes for all Software Updates. |
| HH/OS/SUP/SS/006 | The Supplier shall ensure that any software Updates are backward compatible with the ESN Handheld Device, Accessories, hardware, firmware, operating system, applications and interfaces as applicable. |

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

| # | Requirement |
|------------------|--|
| HH/OS/SUP/SS/007 | <p>The Supplier shall test, as far as reasonably practicable, all Software Updates prior to recommending their deployment for Authority to ensure that the Update:</p> <ul style="list-style-type: none">(a) resolves the issue or Defect or delivers the required functionality;(b) does not, as far as possible, impact the existing performance, features, functionality or interfaces; and(c) does not have any untoward impact on other applications used by the Authority. |

4.3.7 Service Management

| # | Requirement |
|------------------|--|
| HH/OS/SUP/SM/001 | The Supplier shall manage the Services in accordance with the Service Management Design. |
| HH/OS/SUP/SM/002 | The Supplier shall perform the service management necessary for the successful performance of all Services under this Agreement. |

4.3.8 Handheld Device Support Desk

| # | Requirement |
|--------------------|--|
| HH/OS/SUP/HDSD/001 | The Supplier shall provide a Handheld Device Support Desk offering a single point of contact for the Handheld Solution. |
| HH/OS/SUP/HDSD/002 | The Supplier shall operate the Handheld Device Support Desk during daytime hours (9:00–17:00) on Working Days. |
| HH/OS/SUP/HDSD/003 | <p>The Supplier shall ensure that the Authority and any Other ARP Supplier can communicate with the Handheld Device Support Desk by methods including:</p> <ul style="list-style-type: none">(a) telephone; and(b) email. |
| HH/OS/SUP/HDSD/004 | The Handheld Device Support Desk shall receive calls from the ARP Service Desk and shall provide updates to the ARP Service Desk in accordance with the service management procedures agreed between the Parties. |

4.3.9 Catalogue

| # | Requirement |
|-------------------|--|
| HH/OS/SUP/CAT/001 | The Supplier shall provide, maintain and manage a Catalogue in accordance with the provisions of Schedule 2.7 (<i>Catalogue & Ordering</i>). |

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ARP HANDHELD SOLUTION

OFFICIAL

4.3.10 Performance Reviews

| # | Requirement |
|-------------------|--|
| HH/OS/SUP/PRM/001 | The Supplier shall monitor performance of the Services against specified Performance Indicators in accordance with Schedule 2.2 (<i>Performance Levels</i>) and Schedule 8.1 (<i>Governance</i>). |
| HH/OS/SUP/PRM/002 | The Supplier shall attend and participate in regular monthly national Performance Review Meetings chaired by the Authority (to be reduced to Quarterly meetings after the end of the Implementation Period). If requested by the Authority (e.g. if there are exceptional performance issues), the Supplier shall also attend and participate in Performance Review Meetings chaired by the Authority for any Ambulance Trust. |
| HH/OS/SUP/PRM/003 | The Supplier shall agree the agenda for each Performance Review Meeting with the Authority at least five (5) Working Days prior to the scheduled date of such Performance Review Meeting. |
| HH/OS/SUP/PRM/004 | <p>The Performance Review Meeting shall cover the performance of the Services, and should include:</p> <ul style="list-style-type: none">(a) activity reports for the previous period, including Orders and returns processed;(b) performance against relevant Performance Levels;(c) trends regarding incidents and Problems affecting End Users;(d) any key issues identified by the Supplier;(e) Ambulance Trust feedback, priorities and any concerns raised;(f) forthcoming activities, demand and any specific planning required;(g) billing and reconciliation; and(h) service improvement activities. |
| HH/OS/SUP/PRM/005 | During the Implementation Period, the Performance Review Meetings shall cover ESN Handheld Device delivery progress and performance, including activity reports for the previous period and performance against the Handheld Device Delivery Plan and relevant Performance Levels. |
| HH/OS/SUP/PRM/006 | At the request of the Authority the Supplier shall participate in ad-hoc service review meetings to address specific issues affecting the Services, including specific attendees from Ambulance Trusts and Other Authority Suppliers as may be nominated by the Authority. |

4.3.11 Activity Reporting

| # | Requirement |
|------------------|--|
| HH/OS/SUP/AR/001 | The Supplier shall record all Service activities and provide reporting on a monthly basis in a format agreed with the Authority. |
| HH/OS/SUP/AR/002 | Activity reports shall include: |

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ARP HANDHELD SOLUTION

OFFICIAL

| # | Requirement |
|------------------|---|
| | <p>(a) details of all Goods delivered against Orders in the period, including:</p> <p style="padding-left: 40px;">category of Goods (ESN Handheld Devices, different Accessories);</p> <p style="padding-left: 40px;">release/build details; and</p> <p style="padding-left: 40px;">destination Service Recipient (with reference to the Handheld Device Delivery Plan where appropriate);</p> <p>(b) details of any delivery rejections;</p> <p>(c) details of all returns received and repairs/replacements delivered with category (fault classification, Warranty Support classification, rectification applied, etc.);</p> <p>(d) overall metrics including Goods delivered, in transit, in repair, held as stock, etc.; and</p> <p>(e) any disposals carried out.</p> |
| HH/OS/SUP/AR/003 | <p>The Supplier shall provide supporting details for repairs carried out when requested by the Authority in an agreed format, including:</p> <p>(a) details of Service Recipient;</p> <p>(b) fault details captured;</p> <p>(c) classification;</p> <p>(d) work carried out;</p> <p>(e) supporting documentary and photographic evidence; and test certification.</p> |
| HH/OS/SUP/AR/004 | <p>The Supplier shall provide detailed reports and certificates for all disposals carried out when requested by the Authority.</p> |

4.3.12 Documentation and Training Materials

| # | Requirement |
|------------------|---|
| HH/OS/SUP/DT/001 | <p>The Supplier shall make the Solution Documentation available on an ongoing basis and update the Documentation as required to reflect any updates and changes during the Term.</p> |
| HH/OS/SUP/DT/002 | <p>The Supplier shall make available on an ongoing basis all Training Materials (e.g. training Documentation, End User guides, on-line help facilities) and keep such Training Materials up to date to reflect any changes during the Term.</p> |
| HH/OS/SUP/DT/003 | <p>All Documentary Deliverables shall be maintained in accordance with Schedule 2.6 (<i>Documentary Deliverables</i>) throughout the Term.</p> |

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

4.3.13 Governance, change management and back office services

| # | Requirement |
|-------------------|--|
| HH/OS/SUP/GCM/001 | The Supplier shall comply with the relevant governance provisions required to provide the Services in accordance with this Agreement, including the provisions of Schedule 8.1 (<i>Governance</i>) and Schedule 8.2 (<i>Change Control Procedure</i>). |

5 OPTIONAL SERVICES

The Optional Services are set out below in this Paragraph 5.

5.1 OPTIONAL SERVICES

| # | Requirement |
|---------------|--|
| HH/OPT/OS/001 | The Supplier acknowledges and agrees that the Optional Services described in this Paragraph 5 are known service packages that the Supplier has submitted pricing for, as more particularly set out in Schedule 7.1 (<i>Charges and Invoicing</i>), and such Optional Services will be ordered in accordance with HH/OPT/OS/002. |
| HH/OPT/OS/002 | The Authority is entitled to request that the Supplier provides the Optional Services by giving written notice to the Supplier (i.e. not through the Change Control Procedure) at any time during the Term. |
| HH/OPT/OS/003 | The Supplier acknowledges and agrees that Optional Services are different from Future Projects as described in Paragraph 6 of this Schedule, for which the Authority is entitled to request the Supplier to provide during the Term through the Change Control Procedure, such details around the scope of services and/or pricing to be agreed during the Change Control Procedure. |

5.2 SUPPORT DESK INTEGRATION

| # | Requirement |
|----------------|--|
| HH/OPT/SDI/001 | If requested by the Authority, the Supplier shall provide system-to-system integration between the Handheld Device Support Desk facilities and the ARP Service Management System (" Support Desk Integration ") as an Optional Service. |
| HH/OPT/SDI/002 | Where Support Desk Integration is provided, the Supplier shall integrate with the interfaces of the ARP Service Management System to provide automatic exchange of Handheld Device Support Desk information to support the operation of end-to-end service management in accordance with the ARP Service Management Framework. |
| HH/OPT/SDI/003 | The Support Desk Integration shall include but not necessarily be limited to the exchange of the following to/from the ARP Service Management System: |

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

| # | Requirement |
|---|---|
| | <ul style="list-style-type: none"> (a) incident management, service request, problem management and change management data; (b) service asset and configuration management, including full asset details; and (c) reports. |

5.3 FURTHER TESTING SERVICE

| # | Requirement |
|----------------|--|
| HH/OPT/FTS/001 | If requested by the Authority prior to Milestone M5 (Service Ready), the Supplier shall provide a Further Testing Service to carry out Further Testing of the ESN Handheld Device and/or Accessories in addition to the Testing carried out in accordance with the requirements of Schedule 6.2 (<i>Testing Procedures</i>). |
| HH/OPT/FTS/002 | <p>The Further Testing Service may include:</p> <ul style="list-style-type: none"> (a) ESN Handheld Device/Accessory performance testing; (b) coverage performance testing in different scenarios or environments; (c) electromagnetic compatibility testing; and (d) specific absorption rate/ICNIRP testing. |

5.4 END OF LIFE DISPOSAL SERVICE

| # | Requirement |
|----------------|--|
| HH/OPT/DIS/001 | <p>If requested by the Authority, the Supplier shall provide an End of Life Disposal Service for any:</p> <ul style="list-style-type: none"> (a) ESN Handheld Devices, Accessories or other Goods considered by the Authority to be 'end of life' that are sent to the Supplier for disposal; and/or (b) faulty ESN Handheld Devices or Accessories returned to the Supplier for repair that are (i) found to be beyond economic repair and (ii) are not covered for disposal under the relevant Warranty Support because the Warranty Period has expired. |
| HH/OPT/DIS/002 | <p>The ESN Handheld Devices, Accessories and/or other Goods identified by the Authority for the End of Life Disposal Service shall be disposed of:</p> <ul style="list-style-type: none"> (a) securely; (b) in an environmentally safe and friendly manner; (c) in accordance with the Waste Electrical and Electronic Equipment Regulations 2013; and (d) in accordance with applicable Data Protection Legislation. |
| HH/OPT/DIS/003 | The Supplier shall provide the Authority with detailed reports and certificates of secure disposal for all disposals carried out using the End of Life Disposal Service. |

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

5.5 AD-HOC SERVICES

| # | Requirement |
|----------------|---|
| HH/OPT/AHS/001 | If requested by the Authority, the Supplier shall offer an Optional Service to provide additional specialist ad-hoc support, for example, consultancy services, on a Rate Card basis where requested by the Authority. |
| HH/OPT/AHS/002 | The Supplier shall offer specialist personnel to provide ad-hoc support with different skill levels to suit specific support requirements. Technical support skill levels shall be assessed in accordance with the SFIA Foundation's "Skills Framework for the Information Age" (SFIA) version 7 (and any subsequent versions thereof) and the Charges for ad-hoc support at different skill levels shall be as defined in the Catalogue. |
| HH/OPT/AHS/003 | Ad-hoc support will be carried out on weekdays during daytime hours (8-hour periods between 07:00–19:00). |

5.6 ESN UPGRADE

5.6.1 If the Authority requests this ESN Upgrade Optional Service, the Authority Requirements under this Paragraph 5.6 shall apply.

5.6.2 For the avoidance of doubt, from the date of Milestone E4 (*ESN Upgrade Complete*) all other Authority Requirements in this Schedule 2.1 shall continue to apply unless otherwise expressly stated in this Schedule 2.1.

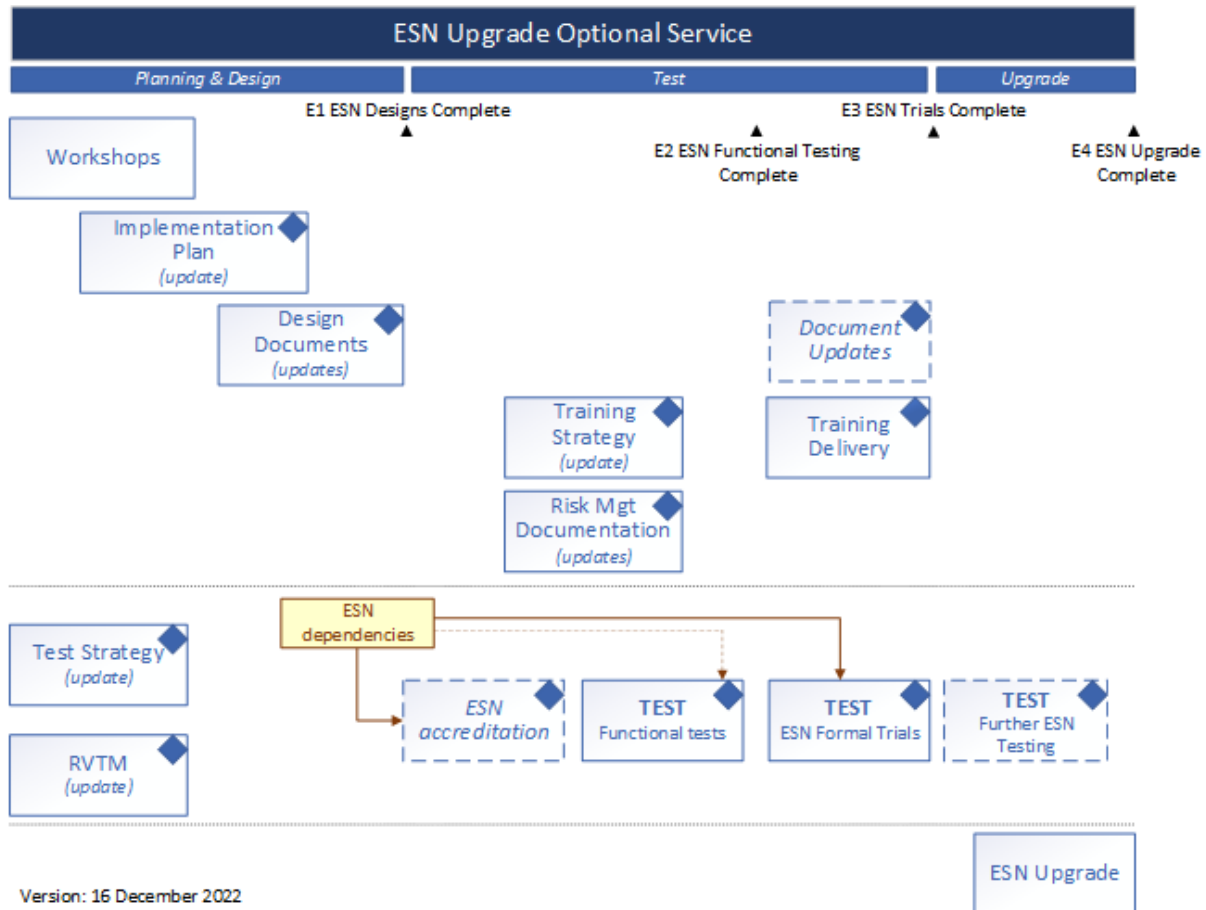
| # | Requirement |
|----------------|---|
| HH/OPT/ESN/001 | If requested by the Authority, the Supplier shall provide an upgrade for the ESN Handheld Device to support: (a) operation using the ESN; and (b) use of the ESN Voice Application in accordance with the Service Requirements set out in this Paragraph 5.6. |
| HH/OPT/ESN/002 | The Supplier shall develop, test and implement an ESN Upgrade in accordance with the provisions of this Agreement and in line with the timescales identified in Schedule 6.1 (<i>Implementation Plan</i>) and the standards in Schedule 2.3 (<i>Standards</i>) to enable operation with the ESN and use of the ESN Voice Application. |
| HH/OPT/ESN/003 | The Supplier shall: (a) define a recommended upgrade procedure for applying the ESN Upgrade to ESN Handheld Devices that are already in operational use; and (b) support the Authority and/or relevant Other Authority Suppliers applying the ESN Upgrade across the ESN Handheld Devices already purchased by the Authority. |

5.6.3 The diagram below is intended to indicate the delivery sequence of the ESN Upgrade Optional Service set out in this Schedule. To the extent that there is a conflict between

CONTRACT FOR THE PROVISION OF
ARP HANDHELD SOLUTION

OFFICIAL

the diagram below in this Paragraph 5.6.3 and the rest of the provisions of this Agreement (excluding the diagram below), the rest of the provisions of this Agreement (excluding the diagram below) shall apply and prevail. The Parties agree that the diagram below is not legally binding and is for information purposes only.



6 FUTURE PROJECTS

| # | Requirement |
|---------------|---|
| HH/FUT/FP/001 | The Supplier shall provide Future Projects where requested by the Authority in accordance with the provisions of Schedule 2.8 (<i>Future Projects</i>). |

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