

**SCHEDULE OF AMENDMENTS TO THE
JCT CONSULTANCY AGREEMENT (PUBLIC SECTOR) 2016
relating to Pilgrim Quarter, Newcastle**

ARTICLES

Article 1 Consultant's Obligations

After "Conditions" INSERT "as modified by the Schedule of Amendments annexed hereto."

INSERT the following at the end of this Article:

"The Conditions and Schedules shall be construed as varied accordingly and if there is any discrepancy between the Conditions or the Schedules and the Schedule of Amendments the wording of the Schedule of Amendments shall prevail."

[the above amendments to Article 1 to be endorsed on / added to the printed conditions]

Contract Particulars

2.11.1 delete "aggregate" and after "liability" insert "for any one claim" and after "£" insert "£10,000,000 and £20,000,000 in total"

8.1.1 Amend the basis of cover
Amount of indemnity required after "relates to claims or series of claims arising out of" delete "one event" and replace with "the same originating cause"

Section 1 Definitions and Interpretation

1.1 Amend the following definition:

Conditions at the end of the definition of "Conditions" insert "(all as amended by the Schedule of Amendments annexed hereto)"

Insert the following additional definitions:

"KPI" key performance indicators and/or other measurements specified in Annex C"

"Security Plan" the requirements and measures set out in Annex E"

"Senior Representatives an individual appointed on behalf of the Client and an individual appointed on behalf of the Consultant each of appropriate standing with authority to act pursuant to Clause 12.1A"

Insert the following as new clauses:

"1.7 Reliance

The Client and the Consultant each acknowledge and agree that in entering into this Contract it has not relied upon, and shall have no remedy in respect of any statement, representation, warranty or undertaking (whether negligently or innocently made) other than those statements

expressly set out in this Contract provided that this clause shall not exclude any liability for, or remedy in respect of, fraud or fraudulent misrepresentation.

1.8 **Severance**

If any term, condition or provision in this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Contract.

1.9 **Counterparts**

The Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

1.10 **Liability period**

No action or proceedings under or in connection with this Contract shall be commenced against the Consultant after the expiry of twelve (12) years from the date of practical completion of the Project pursuant to the terms of the Building Contract."

1.11 Replace the text in Clause 1.4 with the following text :

"Notwithstanding any provision to the contrary in this Contract, no person or entity shall have any rights in relation to this Contract under the Contracts (Rights of Third Parties) Act 1999, save the parties to this Contract."

Section 2 Consultant's General Obligations

2.1 **Performing the Service**

2.1 In line 5 after "the Programme" insert "KPIs". Insert the following at the end of the clause: "Without prejudice to the generality of the foregoing, the Consultant shall comply with the additional requirements set out in Schedule 3 Additional Requirements, Schedule 4 Business Continuity and Disaster Capability and the Security Plan".

2.1A Insert the following new clause:" The Consultant shall comply with all its duties under the CDM Regulations, shall be a "designer" as defined in the CDM Regulations and shall fulfil in relation to the Project all the obligations of a designer as set out in or reasonably to be inferred from the CDM Regulations and the guidance published by the Health and Safety Executive in relation to the CDM Regulations and no such compliance or fulfilment shall give rise to any claim for additional payment or additional time or otherwise."

2.2 **Compliance with instructions**

Insert the following at the end of the existing clause: "When the Consultant completes a stage of the Services, the Consultant shall advise the Client and shall not proceed to the next stage of the Services without the approval of the Client."

2.3 **Co-operation and supply of Design Information**

Insert new clause 2.3A as follows:

2.3A "If a Programme was not identified in the Contract Particulars, the Consultant shall submit a first Programme within two weeks of the date of this Contract. The Consultant shall update the Programme on a monthly basis (or as otherwise agreed by the Parties) and issue it to the Client in the format reasonably required by the Client. In addition to the requirements set out in the Contract Particulars, each Programme shall show:

- the order and timing of the work the Consultant plans to do to carry out the Services

(revised as appropriate to show actual progress and/or proposals for resolution of delays);

- the order and timing of information required from the Client as agreed with the Client or as stated in the Client's Brief;
- stage gateways requiring Client approval before proceeding to the next stage of the Services;
- dates when access to site is necessary to enable provision of the Services; and
- any other information required by the Client's Brief."

2.4 **Specification of Materials**

At the end of the clause insert: "The Consultant warrants and undertakes to the Client that it shall not specify for use or permit to be used by or on behalf of the Consultant in relation to the Project anything which, at the time of specification or use, is Deleterious. For the purposes of this clause, 'Deleterious' means any materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

- (i) posing a threat to the health and safety of any person;
- (ii) posing a threat to the structural stability, performance or physical integrity of the Project or any part or component of the Project;
- (iii) reducing, or possibly reducing, the normal life expectancy of the completed Project or any part or component of the Project;
- (iv) not being in accordance with any legislation, British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or
- (v) having been supplied or placed on the market in breach of the Construction Products Regulations."

Insert new clause 2.4A as follows:

- 2.4A "In carrying out the Services, the Consultant shall take full account of the Client's obligations notified to it with regard to the Client's net zero and sustainability goals. In particular but without limitation, the Consultant shall comply with the Environmental Objectives of the Client as defined in the relevant Third Party Agreement."

2.8 **Records and time charge estimates**

Insert new clause 2.8.3 as follows:

- 2.8.3 "The Consultant shall keep full records of its performance against the KPIs and also its performance against its social value obligations, where not included within the KPIs."

2.9 **Limitations on Consultant's obligations**

In clause 2.9.3 delete "failure or" in line 1 and at the end of clause 2.9.3 after "beyond his control" insert "provided the Consultant gives written notice to the Client as soon as he considers he is so prevented and uses all reasonable endeavours to mitigate any delay."

2.11 **Limitations of Consultant's liability**

Delete clause 2.11.1 and replace with the following clause 2.11.1:

- "2.11.1.1 Notwithstanding any other provision of this Contract, the Consultant's liability for any and all claims arising under or in connection with this Contract (whether in contract, in tort, in negligence, for breach of statutory duty, under indemnity, or otherwise (but excluding liability for personal injury or death, fraud or fraudulent misrepresentation) shall be limited to £10,000,000 for any one claim PROVIDED ALWAYS THAT the Consultant's total liability for any and all such claims shall be limited to £20,000,000 in the aggregate.

- 2.11.1.2 Where the Client and the Consultant have agreed prior to signing this Contract

that the Consultant shall enter into and provide collateral warranties for the benefit of other parties then it shall be a condition of such agreement that the provision of any and all warranties will be on the basis that such warranties will not confer on the beneficiary or beneficiaries collectively any greater benefit in quantum, duration or otherwise than is given to the Client under this Contract and the issuance of such warranties shall not act so as to increase the Consultant's aggregate liability under or in connection with this Contract as provided for at Clause 2.11.1.1."

Insert new clause 2.11.3 as follows:

- "2.11.3 Neither party shall be liable to the other for loss of production, loss of profits (actual or anticipated, direct or indirect), loss of product, loss of revenue, loss of contracts, liquidated damages or for any indirect or consequential loss or damage which may be suffered by the other party in connection with the Project. For the avoidance of doubt, the Parties agree that for the purposes of this Contract the following costs, expenses and/or loss of income shall be direct recoverable losses of the Client:
- Loss of use;
 - Loss of business and business interruption; and
 - Decamping or rehousing."

Section 4 Client's General Obligations

4.1 Supply of Client information

In clause 4.1 in line 1 insert "use reasonable endeavours" after "shall".

Section 7 Payment

7.2 Fee – instalments

Insert the following after the first sentence: "The Client may, acting reasonably, retain up to 10% from the Fee in respect of RIBA Stage 3 otherwise payable at the specified dates and the retained amount shall become payable when the Services have been completed."

7.6 Final Date for Payment

At the end of line 1 delete "14" and insert "21".

Section 9 Use of Consultant's Design Information, Confidentiality etc.

9.1 Use of Consultant's Design Information

9.1 Delete entire clause.

Section 10 Assignment, Novation, Third Party Rights and Collateral Warranties

10.1 Restrictions on assignment

Delete the existing clause and insert: "The Client shall be entitled to assign, charge or transfer all or any of the Client's rights or obligations under this Contract at any time and the Client shall notify the Consultant of any assignment, charge or transfer within twenty-eight (28) days of its date. The Consultant shall not assign or transfer any rights or obligations under this Contract to any person without the Client's prior written consent."

Insert new clause 10.4 as follows:

"10.4.1 The Consultant shall provide to the Client within 21 days of being requested to do so in writing by the Client a deed or deeds of collateral warranty from design sub-consultants directly engaged by the Consultant in favour of:

10.4.1.1 the Employer; and/or

10.4.1.2 any Beneficiary;

in the relevant form attached to this Contract with only such amendments as the Client may approve.

10.4.2 The Consultant shall if requested also provide a copy of the appointment contract to which any such deed of collateral warranty relates and documentary verification (in the form of a brokers letter or policy Schedule) of the sub-consultant's professional indemnity insurance as updated from time to time."

Section 11 Suspension by the Client and Termination

11.1 Suspension by the Client

In line 1 delete "14" and insert "7".

11.5 Termination

11.5.1 In line 1 delete "14" and insert "7".

11.5.3 In line 3 after "14 days" insert: "(or within 30 days where the defaulting party is the Client)"

Insert new clause 11.5.3A as follows:

11.5.3A "If the Consultant commits more than one breach of his obligations, the cumulative effect of such breaches being (i) sufficient to justify the inference that the Consultant would continue to deliver a sub-standard performance in relation to the requirements of Section 2 and/or Section 3 of this Contract over a reasonable period of the remaining portion of his Services or (ii) serious in the broadest sense of having a serious effect on the benefit which the Client would have otherwise derived in relation to the obligations of Section 2 and/or Section 3 of this Contract over a reasonable period of the remaining portion of his Services then the Client may give notice to the Consultant terminating the Consultant's engagement with immediate effect."

11.6 Consequences of termination

11.6.2.3 in line 2 after "clause" insert "11.5.3A or".

11.6.2.4 Delete this sub-clause.

Section 12 Settlement of Disputes

12.1 Mediation

Insert the following at the start of the clause:

12.1 "If the Client and Consultant agree, a dispute arising under or in connection with this Contract shall be referred to the Senior Representatives. The Party referring a dispute notifies the Senior Representatives and the other Party of the dispute it wishes to resolve. Each Party is required to submit its statement of case to the other within one week of notification. Each statement of case shall be limited to no more than 5 (five) sides of A4 paper together with supporting evidence, unless otherwise agreed by the Parties. The Senior Representatives shall attend as many meetings (which may be online) and use any procedure they consider necessary to try to resolve the dispute over a period of up to three weeks. At the end of this period the Senior Representatives shall produce a list of the issues agreed and not agreed. The Client and Consultant shall put into effect the issues agreed. No evidence of the statement of case or

discussions may be disclosed, used or referred to in any subsequent proceedings before an adjudicator, arbitrator or in legal proceedings.”

Schedule 1 Third Party Rights

Delete Schedule 1

Schedule 3 Additional Requirements

Insert the following as a new Schedule 3:

1 Interpretation

- 1.1 In this Schedule, unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below:

“BPSS”	the HMG Baseline Personnel Security Standard staff vetting procedures, issued by the Cabinet Office Security Policy Division and Corporate Development Group;
“Central Government Body”	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency;
“Charges”	the charges for the Services as specified in the Contract;
“Confidential Information”	all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
“Consultant Personnel”	all directors, officers, employees, agents, consultants of the Consultant and/or of any sub-consultant of the Consultant engaged in the performance of the Consultant's obligations under the Contract;
Consultant System	any information and communications technology system used by the Consultant in implementing and performing the Services including the software and the Consultant's equipment;
“Default”	any breach of the obligations of the relevant Party (including abandonment of this Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement: (a) in the case of the Client, of its employees, servants, agents; or (b) in the case of the Consultant, of its sub-consultants or any Consultant Personnel, in connection with or in relation to the subject-matter of this Contract and in respect of which such Party is liable to the other;

“Effective Date”	the date of this Contract;
Client Assets	the Client's infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Client and which is or may be used in connection with the provision or receipt of the Services;
“Client Data”	<p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Consultant by or on behalf of the Client; and/or</p> <p>(ii) which the Consultant is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(a) any Personal Data for which the Client is the Controller, or any data derived from such Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified.</p>
“GDPR”	the General Data Protection Regulation (Regulation (EU) 2016/679) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;
“Information”	has the meaning given under section 84 of the FOIA;
“Intellectual Property Rights”	patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;
“Law”	any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Consultant is bound to comply;
“Losses”	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
“Key Personnel”	any Consultant Personnel specified or otherwise notified as such by the Client to the Consultant in writing;
“Occasion of Tax Non-Compliance”	<p>(a) any Tax return of the Consultant and/or its sub-consultant and/or any non-submission of a Tax return (whether deliberate or by omission) by the Consultant and/or its sub-consultant to the Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:</p> <p>(i) a Relevant Tax Authority successfully challenging the Consultant or relevant sub-Consultant under the General Anti Abuse Rule or the Halifax Abuse Principle or TAAR or under any Tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti Abuse Rule or the Halifax Abuse Principle or TAAR;</p> <p>(ii) the failure of an avoidance scheme which the Consultant or relevant sub-Consultant was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or</p>

- (b) the Tax affairs of the Consultant or any of its sub-Consultants have given rise to a criminal conviction in any jurisdiction for Tax related offences within the last five (5) years which is not spent at the Effective Date or to a civil penalty for fraud or evasion within the last three (3) years;
- (c) For these purposes :
 - (i) a return is "submitted" when it is first submitted to the Relevant Tax Authority and any subsequent amendments or re-submissions are to be ignored; and
 - (ii) a Relevant Tax Authority will not be deemed to have "successfully challenged" the Consultant or a sub-Consultant until an appeal against such challenge is no longer possible.

"Personal Data" has the meaning given in the GDPR;

"Request for Information" has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);

"Reimbursable Expenses" reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Client's expenses policy current from time to time, but not including:

- (a) travel expenses incurred as a result of Consultant Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Client otherwise agrees in advance in writing; and
- (b) subsistence expenses incurred by Consultant Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;

"Relevant Tax Authority" HMRC, or, if applicable, a tax authority in the jurisdiction in which the Consultant is established, resident or liable to any Tax;

"Services" the services to be supplied by the Consultant to the Client under the Contract, including the provision of any Goods;

"Tax" means:

- (a) all forms of tax whether direct or indirect;
- (b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;
- (c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and
- (d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,

in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;

"Working Day" a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

2. Promoting Tax Compliance

- 2.1 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Client shall, following the receipt of a valid VAT invoice, pay to the Consultant a sum equal to the VAT chargeable in respect of the Services.
- 2.2 The Consultant shall at all times comply with all other Laws and regulations relating to Tax.

- 2.3 The Consultant shall provide to the Client the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, Consultant or sub-Consultant of the Consultant prior to the commencement of any work under this Contract by that agent, Consultant or sub-Consultant. Upon a request by the Client, the Consultant shall not employ or will cease to employ any agent, Consultant or sub-Consultant or sub-Consultant.
- 2.4 Where an amount of Tax, including any assessed amount, is due from the Consultant an equivalent amount may be deducted by the Client from the amount of any sum due to the Consultant under this Contract.
- 2.5 If, at any point, an Occasion of Tax Non-Compliance occurs and or any litigation, enquiry or investigation in which it or its sub-Consultants is/are (as appropriate) involved that is in connection with, or which may lead to, any Occasion of Tax Non-Compliance, the Consultant shall:
 - 2.5.1 notify the Client in writing of such fact within five (5) Working Days of its occurrence; and
 - 2.5.2 promptly provide to the Client:
 - (a) details of the steps which the Consultant 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 Client may reasonably require.

Records, Reports, Audits & Open Book Data

3 Audit Rights

- 3.1 The Client, acting by itself or through its Audit Agents, shall have the right during the performance of the Services and for a period of eighteen (18) months thereafter, to assess compliance by the Consultant and/or its key sub-Consultants of the Consultant's obligations under this Contract, including for the following purposes:
 - (a) to verify the accuracy of the Charges and any other amounts payable by the Client under this Contract (and proposed or actual variations to such Charges and payments);
 - (b) to verify the costs (including the amounts paid to all Sub-Consultants and any third party Consultants);
 - (c) to verify the Consultant's and each key Sub-Consultant's compliance with this Contract and applicable Law;
 - (d) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Client shall have no obligation to inform the Consultant of the purpose or objective of its investigations;
 - (e) to identify or investigate any circumstances which may impact upon the financial stability of the Consultant and/or any Key Sub-Consultants or their ability to perform the Services;
 - (f) to obtain such information as is necessary to fulfil the Client's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (g) to review any books of account and the internal contract management accounts kept by the Consultant in connection with this Contract;

- (h) to carry out the Client's internal and statutory audits and to prepare, examine and/or certify the Client's annual and interim reports and accounts;
- (i) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources;
- (j) to verify the accuracy and completeness of any Management Information delivered or required by this Contract;
- (k) to review any Performance Monitoring Reports and/or other records relating to the Consultant's performance of the Services and to verify that these reflect the Consultant's own internal reports and records;
- (l) to inspect the service delivery environment (or any part of it);
- (m) to review the Consultant's quality management systems (including all relevant Quality Plans and any quality manuals and procedures) and the Consultant's compliance with the Quality Standards;
- (n) to inspect the site for the purposes of ensuring that the Client's Assets are secure and that any register of assets is accurate, complete and up to date; and/or
- (o) to review the integrity, confidentiality and security of the Client Data.

3.2 Except where:

- (a) an audit is imposed on the Client by a regulatory body;
- (b) where the Client has reasonable grounds for believing that the Consultant has not complied with its obligations under this Contract; or
- (c) an audit is required to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security

the Client may not conduct an audit of the Consultant or of the same key Sub-Consultant more than twice in one calendar year pursuant to this Contract.

- 3.3 Nothing in Clause 3.2 shall prevent or restrict the Client's right to require that the Consultant provide financial Management Information at such frequency as determined by the Client and on a free of charge basis.
- 3.4 Nothing in this Contract shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Consultant and/or any of the key Sub-Consultants for the purposes of and pursuant to applicable Law.
- 3.5 The Client shall during each audit comply with those security, sites, systems and facilities operating procedures of the Consultant that the Client deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Consultant or delay the provision of the Services.
- 3.6 Subject to the Client's obligations of confidentiality, the Consultant shall on demand provide the Client and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-Consultants) in relation to each audit, including:
 - (a) all information requested by the Client within the scope of the audit;

- (b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - (c) access to the Consultant System; and
 - (d) access to Consultant Personnel.
- 3.7 The Consultant shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Consultant's performance of the Services against the applicable KPIs at a level of detail sufficient to verify compliance with the KPIs.
- 3.8 The Client shall endeavour to (but is not obliged to) provide at least fifteen (15) Working Days' notice of its intention to conduct an audit.
- 3.9 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under Clauses 3.1 to 3.9, unless the audit identifies a material Default by the Consultant in which case the Consultant shall reimburse the Client for all the Client's reasonable costs incurred in connection with the audit

4 Governance and Records

- 4.1 The Consultant shall:
- 4.1.1 attend progress meetings with the Client at the frequency and times specified by the Client and shall ensure that its representatives are suitably qualified to attend such meetings; and
 - 4.1.2 submit progress reports to the Client at the times and in the format specified by the Client.
- 4.2 The Consultant shall keep and maintain until 6 years after the end of this Contract, or as long a period as may be agreed between the Parties, full and accurate records of this Contract including the Services supplied under it and all payments made by the Client. The Consultant shall on request afford the Client or the Client's representatives such access to those records as may be reasonably requested by the Client in connection with this Contract.

5 Confidentiality, Transparency and Publicity

- 5.1 Subject to Clause 5.2, each Party shall:
- 5.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
 - 5.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Contract.
- 5.2 Notwithstanding Clause 5.1, a Party may disclose Confidential Information which it receives from the other Party:
- 5.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;
 - 5.2.2 to its auditors or for the purposes of regulatory requirements;
 - 5.2.3 on a confidential basis, to its professional advisers;
 - 5.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
 - 5.2.5 where the receiving Party is the Consultant, to the Consultant Personnel on a need to know basis to enable performance of the Consultant's obligations under the Contract provided that the Consultant shall procure that any Consultant Personnel to whom it discloses Confidential Information pursuant to this Clause 5.2.5 shall observe the Consultant's confidentiality obligations under the Contract; and

5.2.6 where the receiving Party is the Client:

- (a) on a confidential basis to the employees, agents, consultants and Consultants of the Client;
- (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Client transfers or proposes to transfer all or any part of its business;
- (c) to the extent that the Client (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- (d) in accordance with Clause 7.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality Contract or arrangement containing terms no less stringent than those placed on the Client under this Clause 5.

5.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Contract is not Confidential Information and the Consultant hereby gives its consent for the Client to publish this Contract in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Contract agreed from time to time. The Client may consult with the Consultant to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

5.4 The Consultant shall not, and shall take reasonable steps to ensure that the Consultant Personnel shall not:

- (a) make any press announcement or publicise the Contract or any part of the Contract in any way; or
 - (b) use the Client's name or brand in any promotion or marketing or announcement of orders,
- except with the prior written consent of the Client.

5.5 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

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

5.7 The Consultant shall assist and cooperate with the Client to enable the Client to publish this Contract.

6 Official Secrets Acts and related Legislation

6.1 The Consultant shall comply with, and shall ensure that its Consultant Personnel comply with:

- 6.1.1 the provisions of the Official Secrets Acts 1911 to 1989;

- 6.1.2 the obligations set out in Section 182 of the Finance Act 1989 and Section 18 of the Commissioners for Revenue and Customs Act 2005 to maintain the confidentiality of Client Data. Further, the Consultant acknowledges that (without prejudice to any other rights and remedies of the Client) a breach of the aforesaid obligations may lead to a prosecution under Section 182 of the Finance Act 1989 and/or Section 19 of the Commissioners for Revenue and Customs Act 2005; and
- 6.1.3 Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Consultant acknowledges that (without prejudice to any other rights and remedies of the Client) a breach of the Consultant's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.
- 6.2 The Consultant shall regularly (not less than once every six (6) months) remind all Consultant Personnel in writing of the obligations upon Consultant Personnel set out in Clause 6.1 above. The Consultant shall monitor the compliance by Consultant Personnel with such obligations.
- 6.3 The Consultant shall ensure that all Consultant Personnel who will have access to, or are provided with, Client Data sign (or have previously signed) a declaration, in a form acceptable to the Client, acknowledging that they understand and have been informed about the application and effect of Section 18 and 19 of the Commissioners for Revenue and Customs Act 2005. The Consultant shall provide a copy of each such signed declaration to the Client upon demand.
- 6.4 In the event that the Consultant or the Consultant Personnel fail to comply with this clause, the Client reserves the right to terminate the Contract with immediate effect.

7 Freedom of Information

- 7.1 The Consultant acknowledges that the Client is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
 - 7.1.1 provide all necessary assistance and cooperation as reasonably requested by the Client to enable the Client to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
 - 7.1.2 transfer to the Client all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 7.1.3 provide the Client with a copy of all Information belonging to the Client requested in the Request for Information which is in its possession or control in the form that the Client requires within 5 Working Days (or such other period as the Client may reasonably specify) of the Client's request for such Information; and
 - 7.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Client.
- 7.2 The Consultant acknowledges that the Client may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Consultant or the Services (including commercially sensitive information set out in Annex D) without consulting or obtaining consent from the Consultant. In these circumstances the Client shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Consultant advance notice, or failing that, to draw the disclosure to the Consultant's attention after any such disclosure.
- 7.3 Notwithstanding any other provision in the Contract, the Client shall be responsible for determining in its absolute discretion whether any Information relating to the Consultant or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

8 Client Data and Security Requirements

- 8.1 When handling Client data (whether or not Personal Data), the Consultant shall ensure the security of the data is maintained in line with the security requirements of the Client as notified to the Consultant from time to time, including any requirements set out in the Contract.
- 8.2 Where the Client is required to provide by e-mail to the Consultant or Consultant Personnel, any departmental or Client data or any other information with a security marking of "OFFICIAL-SENSITIVE", to enable it to deliver the Services, the Consultant shall not (and shall procure that the Consultant Personnel do not) store that information on its personal computer or any form of removable media.
- 8.3 Where there is any breach of this Clause 8 the Client reserves the right to terminate this Contract with immediate effect.

9 Premises and Equipment

- 9.1 If agreed between the Parties, and subject always to Clause 10 below, the Client shall provide the Consultant with reasonable access at reasonable times to its premises for the purpose of supplying the Services. The Client shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Client's premises the Consultant shall, and shall procure that all Consultant Personnel shall, comply with all the Client's security requirements.
- 9.2 The Consultant shall be solely responsible for the cost of carriage of Equipment to the Sites and to HMRC's Premises, including its off-loading; removal, safe disposal or storage (as appropriate) of all packaging; and all other associated costs. Likewise on termination or expiry of this Contract the Consultant shall be responsible for the removal and safe disposal of all relevant Equipment from the Sites and HMRC's Premises, including the cost of packing, loading, carriage, associated decommissioning and making good the Sites and/or HMRC's Premises following removal, and taking account of any sustainability requirements, including safe and secure removal of data and recycling requirements. For the avoidance of doubt, the Consultant shall ensure that all Equipment is (as applicable) collected, delivered, treated, recovered and disposed of in accordance with the Waste Electrical and Electronic Equipment Regulations ("WEEE") and that all Equipment shall be supplied inclusive of any costs or charges for compliance with the collection, delivery, treatment, recovery and environmentally sound disposal of such Equipment as required by WEEE.
- 9.3 All the Consultant's property, including Equipment, shall remain at the sole risk and responsibility of the Consultant.
- 9.4 The loss or destruction for any reason of any Consultant Equipment shall not relieve the Consultant of its obligation to supply the Services in accordance with this Contract.
- 9.5 For the purposes of this Clause 9, "Equipment" means all equipment, materials, consumables and plant, other than HMRC's Property, to be used by the Consultant in the delivery of the Services.

10 Consultant Personnel and Key Personnel

- 10.1 If the Client reasonably believes that any of the Consultant Personnel are unsuitable to undertake work in respect of the Contract, it may, by giving written notice to the Consultant:
 - 10.1.1 refuse admission to the relevant person(s) to the Client's premises;
 - 10.1.2 direct the Consultant to end the involvement in the provision of the Services of the relevant person(s); and/or
 - 10.1.3 require that the Consultant replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Client to the person removed is surrendered,

and the Consultant shall comply with any such notice.

10.2 The Consultant shall:

- 10.2.1 ensure that all Consultant Personnel are vetted in accordance with good industry practice, BPSS and any security requirements set out in the Contract;
- 10.2.2 if requested, provide the Client with a list of the names and addresses (and any other relevant information, including the capacities in which they are concerned with the Contract) of all persons who may require admission to the Client's premises in connection with the Contract; and
- 10.2.3 procure that all Consultant Personnel comply with any rules, regulations and requirements reasonably specified by the Client.

10.3 Any Key Personnel shall not be released from supplying the Services without the Contract of the Client, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.

10.4 Any replacements to the Key Personnel shall be subject to the prior written Contract of the Client (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services. The Consultant shall use all reasonable endeavours to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

10.5 Where Consultant Personnel are required to have a pass for admission to the Client's premises, the Client's representative shall, subject to satisfactory completion of approval procedures, arrange for passes to be issued.

11 Intellectual Property Rights

11.1 All Intellectual Property Rights in any materials provided by the Client to the Consultant for the purposes of this Contract shall remain the property of the Client but the Client hereby grants the Consultant a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Contract for the sole purpose of enabling the Consultant to perform its obligations under the Contract.

11.2 All Intellectual Property Rights in any materials created or developed by the Consultant pursuant to this Contract or arising as a result of the provision of the Services shall vest in the Consultant. If, and to the extent, that any Intellectual Property Rights in such materials vest in the Client by operation of law, the Client hereby assigns to the Consultant by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such Intellectual Property Rights all its Intellectual Property Rights in such materials (with full title guarantee and free from all third party rights).

11.3 The Consultant hereby grants the Client:

- 11.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all Intellectual Property Rights in the materials created or developed pursuant to this Contract and any Intellectual Property Rights arising as a result of the provision of the Services; and
- 11.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
 - (a) any Intellectual Property Rights vested in or licensed to the Consultant on the date of this Contract; and
 - (b) any Intellectual Property Rights created during the course of this Contract but which are neither created or developed pursuant to the Contract nor arise as a result of the provision of the Services,

including any modifications to or derivative versions of any such Intellectual Property Rights, which the Client reasonably requires in order to exercise its rights and take the benefit of this Contract including the Services provided.

11.4 The Consultant shall indemnify, and keep indemnified, the Client in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Client as a result of or in connection with any claim made against the Client for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Consultant or any Consultant Personnel.

11.5 The Consultant shall have no liability for any use of the Intellectual Property Rights other than for the purposes for which it was originally intended.

12 Compliance

12.1 The Consultant shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Consultant Personnel and other persons working on the Client's premises in the performance of its obligations under the Contract.

12.2 The Consultant shall promptly notify the Client of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Client shall promptly notify the Consultant of any health and safety hazards which may exist or arise at the Client's premises and which may affect the Consultant in the performance of its obligations under the Contract.

12.3 The Consultant shall:

12.3.1 comply with all the Client's health and safety measures while on the Client's premises; and

12.3.2 notify the Client immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Client's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

12.4 The Consultant shall:

12.4.1 perform its obligations under the Contract in accordance with all applicable equality Law and the Client's equality and diversity policy as provided to the Consultant from time to time; and

12.4.2 take all reasonable steps to secure the observance of Clause 12.4.1 by all Consultant Personnel.

12.5 The Consultant shall supply the Services in accordance with the Client's environmental policy as provided to the Consultant from time to time.

12.6 In performing its obligations under the Contract, the Consultant shall;

(a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including the Modern Slavery Act 2015;

(b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015; and

(c) notify the Client as soon as it becomes aware, and in any event within five (5) working days, of any actual or suspected breach of its obligations under Clause 12.6(a) and/ or (b) including details of the breach and the mitigation action it has taken or intends to take in order to:

- (i) remedy the breach; and
 - (ii) ensure future compliance with Clause 12.6(a) and (b).
- 12.7 If the Consultant fails to comply (or if the Client receives information which demonstrates that the Consultant has failed to comply) with any of the provisions in Clause 12.6 then this shall allow the Client to terminate the Contract pursuant to Clause 12.2.1.

13 Prevention of Fraud and Corruption

- 13.1 The Consultant shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or for showing or refraining from showing favour or disfavour to any person in relation to the Contract.
- 13.2 The Consultant shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Consultant Personnel and the Consultant (including its shareholders, members and directors) in connection with the Contract and shall notify the Client immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 13.3 If the Consultant or the Consultant Personnel engages in conduct prohibited by Clause 13.1 or commits fraud in relation to the Contract or any other contract with the Crown (including the Client) the Client may:
- 13.3.1 terminate the Contract and recover from the Consultant the amount of any loss suffered by the Client resulting from the termination, including the cost reasonably incurred by the Client of making other arrangements for the supply of the Services and any additional expenditure incurred by the Client throughout the remainder of the Contract; or
 - 13.3.2 recover in full from the Consultant any other loss sustained by the Client in consequence of any breach of this Clause.

14 Exit management

- 14.1 Upon termination or expiry of the Consultant's engagement the Consultant shall:
- (a) cease to use the Client Data;
 - (b) provide the Client with a complete and uncorrupted version of the Client Data in electronic form (or such other format as reasonably required by the Client);
 - (c) erase from any computers, storage devices and storage media all Client Data and promptly certify to the Client that it has completed such deletion. The Consultant shall also delete all copies of any Personal Data unless it is required to be retained by EU or member state laws;
 - (d) return to the Client such of the following as is in the Consultant's possession or control:
 - (i) all copies of any software licensed by the Client to the Consultant under this Contract;
 - (ii) all materials created by the Consultant under this Contract in which the Intellectual Property Rights are owned by the Client;
 - (iii) any equipment which belongs to the Client; and
 - (iv) any items that have been on-charged to the Client, such as consumables;
 - (e) vacate any Client premises;
 - (f) provide access during normal working hours to the Client for up to 12 months after expiry or termination to:
 - (i) such information relating to the Services as remains in the possession or control of the Consultant; and
 - (ii) such members of the Consultant Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Consultant, provided that the Client shall pay the reasonable costs of the Consultant actually incurred in responding to such requests for access.
- 14.2 Upon termination or expiry (as the case may be), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify

that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or for statutory compliance purposes.

- 14.3 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Client to the Consultant in relation to the Services shall be terminated with effect from termination of the Consultant's engagement.

Schedule 4 – Business Continuity and Disaster Capability

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Business Continuity Plan”	has the meaning given in Paragraph 2.2(a)(ii);
“Business Continuity Services”	has the meaning given in Paragraph 4.2(b);
“Disaster”	the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for a period of two (2) weeks or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
“Disaster Capability Plan”	has the meaning given in Paragraph 2.2(a)(iii);
“Disaster Capability Services”	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
“Related Service Provider”	any person who provides services to the Client in relation to this Contract from time to time which persons include as at the date of this Contract.
“Working Day”	a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

2 BCDC PLAN

2.1 Within forty (40) Working Days from the date of this Contract the Consultant shall prepare and deliver to the Client for the Client's written approval a plan, which shall detail the processes and arrangements that the Consultant shall follow to:

- (a) ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and
- (b) ensure the recovery of the Services in the event of a Disaster.

2.2 The BCDC Plan shall:

- (a) be divided into three parts:
 - (i) Part A which shall set out general principles applicable to the BCDC Plan;
 - (ii) Part B which shall relate to business continuity (the **“Business Continuity Plan”**); and
 - (iii) Part C which shall relate to disaster capability (the **“Disaster Capability Plan”**); and
- (b) unless otherwise required by the Client in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4 and 5.

2.3 Following receipt of the draft BCDC Plan from the Consultant, the Client shall:

- (a) review and comment on the draft BCDC Plan as soon as reasonably practicable; and

- (b) notify the Consultant in writing that it approves or rejects the draft BCDC Plan no later than twenty (20) Working Days after the date on which the draft BCDC Plan is first delivered to the Client.

2.4 If the Client rejects the draft BCDC Plan:

- (a) the Client shall inform the Consultant in writing of its reasons for its rejection; and
- (b) the Consultant shall then revise the draft BCDC Plan (taking reasonable account of the Client's comments) and shall re-submit a revised draft BCDC Plan to the Client for the Client's approval within twenty (20) Working Days of the date of the Client's notice of rejection. The provisions of Paragraph 2.3 and this Paragraph 2.4 shall apply again to any resubmitted draft BCDC Plan, provided that either Party may refer any disputed matters for resolution by the Senior Representatives pursuant to the procedure in Clause 12.1 at any time.

3 PART A OF THE BCDC PLAN: GENERAL PRINCIPLES AND REQUIREMENTS

3.1 The BCDC Plan shall:

- (a) set out how the business continuity and disaster capability elements of the BCDC Plan link to each other;
- (b) detail how the BCDC Plan links and interoperates with any overarching and/or connected disaster capability or business continuity plan of the Client and any of its other Related Service Providers in each case as notified to the Consultant by the Client from time to time;
- (c) identify the responsibilities (if any) that the Client has agreed it will assume in the event of the invocation of the BCDC Plan; and
- (d) provide details of how the invocation of any element of the BCDC Plan may impact upon the operation of the Services and any services provided to the Client by a Related Service Provider;
- (e) contain an obligation upon the Consultant to liaise with the Client and (at the Client's request) any Related Service Provider with respect to issues concerning business continuity and disaster capability where applicable;
- (f) set out key contact details (including roles and responsibilities) for the Consultant (and any Sub-contractors) and for the Client;
- (g) provide for the provision of technical advice and assistance to key contacts at the Client as notified by the Client from time to time to inform decisions in support of the Client's business continuity plans.
- (h) contain a communication strategy;
- (i) provide for documentation of processes, including business processes, and procedures;
- (j) contain a risk analysis, including:
 - (i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (ii) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
 - (iii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider; and

- (iv) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
 - (k) identify the procedures for reverting to "normal service";
 - (l) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
- 3.2 The BCDC Plan shall be designed so as to ensure that:
 - (a) the Services are provided in accordance with this Contract at all times during and after the invocation of the BCDC Plan;
 - (b) the adverse impact of any Disaster, service failure, or disruption on the operations of the Client is minimal as far as reasonably possible;
 - (c) it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force; and
 - (d) it details a process for the management of disaster capability testing.
- 3.3 The BCDC Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.
- 3.4 The Consultant shall not be entitled to any relief from its obligations under the KPIs or to any increase in the Fee to the extent that a Disaster occurs as a consequence of any breach by the Consultant of this Contract.

4 PART B OF THE BCDC PLAN - BUSINESS CONTINUITY PLAN

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Client expressly states otherwise in writing:
 - (a) the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
 - (b) the steps to be taken by the Consultant upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
 - (a) address the various possible levels of failures of or disruptions to the Services;
 - (b) set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the "**Business Continuity Services**");
 - (c) specify any applicable KPIs with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the KPIs in respect of other Services during any period of invocation of the Business Continuity Plan; and
 - (d) clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

5 PART C OF THE BCDC PLAN - DISASTER CAPABILITY PLAN

- 5.1 The Disaster Capability Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Consultant ensures continuity of the business operations of the Client supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Capability Plan shall be invoked only upon the occurrence of a Disaster.
- 5.3 The Disaster Capability Plan shall include an approach to business continuity and disaster recover that addresses the following:
- (a) loss of access to the Client Premises;
 - (b) loss of utilities to the Client Premises;
 - (c) loss of the Consultant's helpdesk system;
 - (d) loss of a sub-contractor;
 - (e) emergency notification and escalation process;
 - (f) contact lists;
 - (g) staff training and awareness;
 - (h) BCDC Plan testing;
 - (i) post implementation review process;
 - (j) any applicable KPIs with respect to the provision of the Disaster Capability Services and details of any agreed relaxation to the KPIs in respect of other Services during any period of invocation of the Disaster Capability Plan;
 - (k) details of how the Consultant shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Capability Plan is invoked;
 - (l) access controls to any disaster capability sites used by the Consultant in relation to its obligations pursuant to this Schedule; and
 - (m) testing and management arrangements.

6 REVIEW AND AMENDMENT OF THE BCDC PLAN

- 6.1 The Consultant shall review the BCDC Plan (and the risk analysis on which it is based):
- (a) on a regular basis and as a minimum once every six (6) months;
 - (b) within three (3) calendar months of the BCDC Plan (or any part) having been invoked pursuant to Paragraph 8; and
 - (c) where the Client requests any additional reviews (over and above those provided for in Paragraphs 6.1(a) and 6.1(b)) by notifying the Consultant to such effect in writing, whereupon the Consultant shall conduct such reviews in accordance with the Client's written requirements. Prior to starting its review, the Consultant shall provide an accurate written estimate of the total costs payable by the Client for the Client's approval. The costs of both Parties of any such additional reviews shall be met by the

Client except that the Consultant shall not be entitled to charge the Client for any costs that it may incur above any estimate without the Client's prior written approval.

- 6.2 Each review of the BCDC Plan pursuant to Paragraph 6.1 shall be a review of the procedures and methodologies set out in the BCDC Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDC Plan or the last review of the BCDC Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDC Plan. The review shall be completed by the Consultant within the period required by the BCDC Plan or, if no such period is required, within such period as the Client shall reasonably require. The Consultant shall, within twenty (20) Working Days of the conclusion of each such review of the BCDC Plan, provide to the Client a report (a "**Review Report**") setting out:
- (a) the findings of the review;
 - (b) any changes in the risk profile associated with the Services; and
 - (c) the Consultant's proposals (the "**Consultant's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDC Plan following the review detailing the impact (if any and to the extent that the Consultant can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
- 6.3 Following receipt of the Review Report and the Consultant's Proposals, the Client shall:
- (a) review and comment on the Review Report and the Consultant's Proposals as soon as reasonably practicable; and
 - (b) notify the Consultant in writing that it approves or rejects the Review Report and the Consultant's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Client.
- 6.4 If the Client rejects the Review Report and/or the Consultant's Proposals:
- (a) the Client shall inform the Consultant in writing of its reasons for its rejection; and
 - (b) the Consultant shall then revise the Review Report and/or the Consultant's Proposals as the case may be (taking reasonable account of the Client's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Consultant's Proposals to the Client for the Client's approval within 20 Working Days of the date of the Client's notice of rejection. The provisions of Paragraph 6.3 and this Paragraph 6.4 shall apply again to any resubmitted Review Report and Consultant's Proposals, provided that either Party may refer any disputed matters for resolution by the Senior Representatives pursuant to the procedure in Clause 12.1 at any time.
- 6.5 The Consultant shall as soon as is reasonably practicable after receiving the Client's approval of the Consultant's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Consultant's Proposals. Any such change shall be at the Consultant's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

7 TESTING OF THE BCDC PLAN

- 7.1 The Consultant shall test the BCDC Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 7.2, the Client may require the Consultant to conduct additional tests of some or all aspects of the BCDC Plan at any time where the Client

considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDC Plan.

- 7.2 If the Client requires an additional test of the BCDC Plan, it shall give the Consultant written notice and the Consultant shall conduct the test in accordance with the Client's requirements and the relevant provisions of the BCDC Plan. The Consultant's costs of the additional test shall be borne by the Client unless the BCDC Plan fails the additional test in which case the Consultant's costs of that failed test shall be borne by the Consultant.
- 7.3 The Consultant shall undertake and manage testing of the BCDC Plan in full consultation with the Client and shall liaise with the Client in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Client in this regard. Each test shall be carried out under the supervision of the Client or its nominee.
- 7.4 The Consultant shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Client. Copies of live test data used in any such testing shall be (if so required by the Client) destroyed or returned to the Client on completion of the test.
- 7.5 The Consultant shall, within twenty (20) Working Days of the conclusion of each test, provide to the Client a report setting out:
 - (a) the outcome of the test;
 - (b) any failures in the BCDC Plan (including the BCDC Plan's procedures) revealed by the test; and
 - (c) the Consultant's proposals for remedying any such failures.
- 7.6 Following each test, the Consultant shall take all measures requested by the Client, (including requests for the re-testing of the BCDC Plan) to remedy any failures in the BCDC Plan and such remedial activity and re-testing shall be completed by the Consultant, at no additional cost to the Client, by the date reasonably required by the Client and set out in such notice.
- 7.7 For the avoidance of doubt, the carrying out of a test of the BCDC Plan (including a test of the BCDC Plan's procedures) shall not relieve the Consultant of any of its obligations under this Contract.

8 INVOCATION OF THE BCDC PLAN

- 8.1 In the event of a complete loss of service or in the event of a Disaster, the Consultant shall immediately invoke the BCDC Plan (and shall inform the Client promptly of such invocation). In all other instances the Consultant shall invoke or test the BCDC Plan only with the prior consent of the Client.