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# **Contract for the Provision of CRM HOSTING Services**

This Contract for the provision of ICT Services includes:

Part A - Contract Data

Part B - The Schedules

Schedule 1 – Service Requirements

Schedule 2 - Service Levels

Schedule 3 – Contract Charges

Schedule 4 – Governance

Schedule 5 – Exit Management

Schedule 6 – Dispute Resolution

Schedule 7 – Change Control Procedure

Schedule 8 – Authority Responsibilities and Authority Assets

Schedule 9 – Security

Schedule 10 – Records Provision

Schedule 11 – Definitions

Part C – Terms and conditions

1. Contract start date, length and methodology
2. Overriding provisions
3. Transfer and sub-contracting
4. Contractor Staff
5. Due diligence
6. Warranties, representations and acceptance criteria
7. Business continuity and disaster recovery
8. Payment terms and VAT
9. Recovery of sums due and right of set-off
10. Insurance
11. Confidentiality
12. Conflict of Interest
13. Intellectual Property Rights
14. Data Protection and Disclosure
15. Authority Data
16. Records and audit access
17. Freedom of Information (FOI) requests
18. Standards and Quality
19. Security
20. Guarantee
21. Incorporation of Terms
22. Managing Disputes
23. Termination
24. Consequences of termination and expiry
25. Contractor's status
26. Notices
27. Exit plan
28. Handover to replacement contractor
29. Force Majeure
30. Entire Agreement
31. Liability
32. Waiver and cumulative remedies
33. Fraud
34. Prevention of bribery and corruption
35. Legislative change
36. Publicity, branding, media and official enquiries
37. Non Discrimination
38. Premises
39. Equipment
40. Contracts (Rights of Third Parties) Act

- 41. Law and jurisdiction
- 42. Environmental requirement
- 43. NOT USED
- 44. Interpretation
- 45. NOT USED
- 46. Transparency and Access to Records
- 47. Relationship of the Parties
- 48. NOT USED
- 49. Freedom of Information Act
- 50. Promoting Tax compliance.
- 51. Official Secrets Act
- 52. NOT USED
- 53. Complaints handling and resolution
- 54. Severability

**PARTIES:**

(1) THE CARE QUALITY COMMISSION of 3<sup>rd</sup> Floor, 151 Buckingham Palace Road, London, SW1W 9SZ (the "Authority");

**AND**

(2) COMPUTACENTER (UK) LIMITED registered in England and Wales under number 01584718 whose registered office is Hatfield Avenue, Hatfield, Hertfordshire, United Kingdom, AL10 9TW (the "Contractor")

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

**WHEREAS**

- i. This Contract is issued by the Authority in accordance with the VEAT Notice Reference 2017-23507 dated 07/09/2017.
- ii. The Contractor is an expert in the field of digital hosting services and experienced Contractor to the Authority.
- iii. This Contract is for the provision of managed hosting services by the Contractor to the Authority.

**Formation of Contract**

1.1 By signing and returning this the Contractor agrees to enter into a Contract with the Authority comprising of the following documents, which in the event of conflict shall be interpreted with the following order of precedence:

- 1.1.1 Part A – The Contract Data
- 1.1.2 Part B – The Schedules
- 1.1.3 Part C – The Terms and Conditions

1.2 The Parties agree that they have read the Contract Data, the Schedules and the Terms and Conditions by signing below and agree to be bound by this Contract upon signature by both Parties.

1.3 The terms and conditions of the Contract and Contract Data will supersede those of the Contractor Terms and Conditions.

**SIGNED:**

	<b>Contractor:</b>	<b>Authority:</b>
<b>Name:</b>		
<b>Title</b>		
<b>Signature:</b>		
<b>Date:</b>		

**Part A - Contract Data**

<b>Contract ref.</b>	CQC ICTC 722
<b>Contract title</b>	CRM Hosting
<b>Contract description</b>	Managed CRM Hosting Services
<b>Start date</b>	01/11/2017
<b>End date</b>	This Contract shall expire on: 1.2.1 31/10/2018; or 1.2.2 where the Authority exercises the option to extend the Agreement for a further 12 months, by giving three (3) months' notice in writing to the Contractor prior to 31/10/2018, the second (2) anniversary of the Commencement Date.
<b>Contract value</b>	Year one £720,636.00 Year two (if extended) £720,636.00
<b>Charging method</b>	Monthly
<b>Purchase order No.</b>	TBC

## Principle contact details

### Authority

#### From: the Authority

Name: [REDACTED]  
Address: 151 Buckingham Palace Road, London, SW1W 9SZ  
Phone: [REDACTED]  
e-mail: [REDACTED]

#### To: the Contractor

Name: [REDACTED]  
Address: Hatfield Business Park, Hatfield Avenue, Hatfield, AL10 9TW  
Phone: [REDACTED]  
e-mail: [REDACTED]  
Company Number 01584718

**Together:** the "Parties"

### Contract term

#### Commencement date:

This Contract commences on 1<sup>st</sup> November 2017 and is valid for 12 months.

#### Termination:

In accordance with Contract clause 23 the notice period required for Termination is at least 90 working days from the date of written notice for disputed sums or at least 30 days from the date of written notice for termination without cause.

### Authority contractual details

This Contract is for the Services outlined below. It is acknowledged by the Parties that the volume of the Services utilized by the Authority may vary from time to time during the course of this Contract, subject always to the terms of the Contract.

#### Services required:

- This Contract is for the provision of Services according to the technology code of practice (<https://www.gov.uk/service-manual/technology/code-of-practice.html>)
- according to the government service design manual (<https://www.gov.uk/service-manual>) including:

#### 2.1 Infrastructure as a Service (IaaS)

2.1 Infrastructure as a Service (IaaS) Contractors will provide processing, storage, networks, and other

fundamental computing resources where the Authority is able to deploy and run arbitrary software, which can include operating systems and applications. The Authority does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, and deployed applications; and possibly limited control of select networking components (eg, host firewalls).

<b>Additional Services:</b>	The Authority may request additional activities to be performed relevant/ ancillary to the scope of the Services. Such activities will be subject to additional charges in accordance with Schedule 3 (Contract Charges). The scope of such additional activities and any associated additional charges shall be agreed between the parties prior to the additional services commencing.
<b>Location:</b>	The Contractor shall deliver the Services from its Data Centre (address: Computacenter, Metroplex business Park, Unit 120, Broadway, Salford, Manchester, M50 2UW) and its premises at Hatfield Business Park, Hatfield Avenue, Hatfield AL10 9TW
<b>Quality standards:</b>	The Contractor Quality Management System (QMS) has been established to comply with the requirements of ISO 9001, ISO 20000, ISO 27001 and is intended to support the effective operation of the business and operational processes. The scope of certification can be found on certificate license FS 14666
<b>Technical standards</b>	The Contractor shall deliver the Services in accordance with the technical requirements set out in Schedule 1 (Service Requirements), Annex 1. The Contractor service standards are based on the Information Technology Infrastructure Library (ITIL) which is a set of concepts and practices for managing Information Technology (IT) services (ITSM), IT development and IT operations.
<b>On-boarding</b>	Not used
<b>Off-boarding</b>	See Schedule 5
<b>Limit on Contractor's liability:</b>	<p>In accordance with Contract clause 31.5 the Limit on Contractor's liability for direct loss, destruction, corruption, degradation or damage to the Authority Data or Personal Data or any copy of such Authority Data is as follows:</p> <p>The annual aggregate liability of either Party for all defaults resulting in direct loss of or damage to the property of the other Party including technical infrastructure, assets, equipment or IPR but excluding any loss or damage to the Authority Data or Authority Personal Data under or in connection with this Contract shall in no event exceed</p>

£5 million.

The annual aggregate liability (other than liability governed in accordance with paragraph above) for all defaults resulting in direct loss, destruction, corruption, degradation or damage to the Authority Data or Authority Personal Data or any copy of such Authority Data, caused by the Contract's defaults under or in connection with this Contract shall in no event exceed the greater of £5 million or fifty percent (50%) of all the Charges paid or payable, had this Contract been properly performed, by the Authority to the Contractor during the Contract Term.

The annual aggregate liability under this Contract of either Party for all defaults, with the exception of the liability for the matters referred to in the paragraphs above, shall in no event exceed the greater of £100,000 or one hundred and twenty five per cent (125%) per cent of all the Charges paid or payable (including all Charges that would have been payable had this Contract been properly performed) by the Authority to the Contractor during the Contract Term.

**Insurance:**

**Minimum Insurance Period**

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

To comply with its obligations under this Agreement and as a minimum, where requested by the Authority in writing the Contractor shall ensure that:

-professional indemnity insurance is held by the Contractor and by any agent, Sub-Contractor or consultant involved in the supply of the Services and that such professional indemnity insurance has a minimum limit of indemnity of five million pounds sterling (£5,000,000) for each individual claim or such higher limit as the Authority may reasonably require (and as required by Law) from time to time;

-employers' liability insurance with a minimum limit of ten million pounds sterling (£10,000,000) or such higher minimum limit as required by Law from time to time; and

-public liability insurance is held by the Contractor and by any agent, Sub-Contractor or consultant involved in the supply of the Services and that such public liability insurance has a minimum limit of indemnity of five million pounds sterling (£5,000,000) for each individual claim or such higher limit as the Authority may reasonably require (and as required by Law) from time to time;

**Authority's  
Responsibilities**

The Authority is responsible for the obligations set out in Part B, Schedule 1 and Schedule 8 (Authority Responsibilities and Authority Assets).

The Authority shall comply with all its obligations as set out in this Contract. The Contractor shall not be liable for any failure to perform

(or any delay in performing) any of its obligations under the Contract provided that the Contractor can reasonably demonstrate that the failure or delay by the Authority in performing any Authority responsibility.

<b>Authority's equipment</b>	The Authority's equipment to be used in connection with this Contract includes (see Schedule 8)
<b>Contractor's Information</b>	The following is a list of the Contractor's commercially sensitive information
<b>Commercially sensitive information:</b>	Contractor's pricing and Charging details and any Contractor solution specific elements or personnel information
<b>Contract Charges and payment</b>	The Contract Charges and payment details are below. See Schedule 3 for a full breakdown
<b>Payment method (GPC or BACS):</b>	The method of payment for this Contract is BACS.
<b>Payment profile:</b>	The payment profile for this Contract is monthly in arrears.
<b>Invoice details:</b>	The Contractor shall issue electronic invoices monthly in arrears. In accordance with Contract clause 8, the Authority will pay the Contractor within 30 calendar days of receipt of a valid invoice.
<b>Who and where to send invoices to:</b>	Invoices shall be sent to: Care Quality Commission T70 Payables F175 Phoenix House Topcliffe Lane Wakefield West Yorkshire WF3 1WE.
<b>Invoice information required</b>	All invoices must include a Purchase Order Number.
<b>Invoice frequency</b>	Invoice will be sent to the Authority monthly.
<b>Contract value:</b>	The value of this Contract is £720,636.00
<b>Contract Charges:</b>	See Schedule 3.

**Performance of the service and deliverables**

The Contractor shall deliver the Services so as to meet the Service Requirements set out in Part B, Schedule 1 and achieve the Service Levels set out in Schedule 2.

**Collaboration agreement**

The Authority does not require the Contractor to enter into a Collaboration Agreement.

**Warranties, representations**

As per Contract clause 6.

## **Part B - The Schedules**

### **Schedule 1 Service Requirements Part A**

#### **1 Performance of the Services**

1.1 During the Contract Period, the Contractor shall provide the Services to the Authority and each Authority User from time to time in accordance with:

- (a) the applicable parts of this Schedule 1 (Service Requirements) (Service Requirements);
- (b) the relevant Service Levels as set out in Schedule 1 (Service Levels); and
- (c) applicable legislation, including (but not limited to):
  - (i) Computer Misuse Act (1990) etc
  - (ii) Data Protection Act (1998)
  - (iii) Copyright Designs and Patents Act (1988)
  - (iv) Health and Safety Act
  - (v) Human Rights Act (1998)
  - (vi) Regulation of Investigatory Powers Act (2000)
  - (vii) Freedom of Information Act (2000)
  - (viii) Equality Act

in each case as amended or replaced from time to time.

#### **2 Standard of the Services**

2.1 The Contractor shall perform the Services in accordance with:

- (a) Good Industry Practice;
- (b) the Authority's security requirements as set out in Schedule 9; and
- (c) the Contractor's own established procedures and practices (where the same do not conflict with the direct requirements of the Authority).

2.2 In the event that the Contractor fails to provide the Services or fails to comply with its obligations under the Contract, the Authority may, without prejudice to its other rights, require the Contractor to re-perform the Services or to comply with its obligations.

### **3 Service Elements**

3.1 The Services shall comprise each of the following service elements:

- (a) hosting of the Infrastructure in accordance with paragraph 5 and Part B of this Schedule 1 (Service Requirements);
- (b) management of the Infrastructure in accordance with paragraph 6 and Part B of this Schedule 1 (Service Requirements);
- (c) maintenance of and updates to the Infrastructure in accordance with paragraph 7 and Part B of this Schedule 1 (Service Requirements);
- (d) Contractor Helpdesk and Incident support in accordance with paragraph 8 and Part B of this Schedule 1 (Service Requirements);
- (e) back-up and data recovery in accordance with paragraph 9 and Part B of this Schedule 1 (Service Requirements);
- (f) service management as set out in paragraph 10 and Part B of this Schedule 1 (Service Requirements);
- (g) reporting in accordance with paragraph 11 of this Schedule 1 (Service Requirements); and

3.2 For the avoidance of doubt, the Services to be provided by the Contractor shall include such access to specialist support as is required to support the Infrastructure. This shall include, but not be limited to, access to specialist Oracle database administrator (DBA) support.

### **4 Operations Manual**

4.1 The Contractor shall produce within 3 months of the Commencement Date and shall maintain during the Contract Period a manual describing its operations in respect of each element of the Services in sufficient detail as would be required to allow an expert IT data hosting Contractor to take over and manage the Services (the **Operations Manual**).

### **5 Data Centre Hosting**

5.1 The Contractor shall provide the racks and equipment necessary to host the Authority Assets as are set out in Schedule 8, Part B which make up the hardware elements of the Infrastructure (the "**Authority Hardware**") and as may be updated or upgraded from time to time by:

- (a) the Authority; or
- (b) the Contractor in accordance with this Schedule 1 (Service Requirements)

in each case pursuant to the Change Control Procedure.

5.2 The Authority Hardware shall be housed by the Contractor in its Data Centre and such Data Centre shall have the following physical characteristics:

- (a) Raised floor;
- (b) Full-air-conditioning;
- (c) Fire and water detection systems;
- (d) Fire protection and suppression;
- (e) Un-interruptible power supply;
- (f) Diesel generator;
- (g) Intruder prevention methods, e.g., Alarms;
- (h) CCTV routed to operational bridge;
- (i) Security personnel for sites without permanent operations staff;
- (j) Secure controlled physical access;

5.3 The Contractor shall configure its firewall by agreement with the Authority to enable the security of the WAN link connection to the Infrastructure.

5.4 The Contractor shall not allow any connectivity to the Infrastructure, other than via the Authority's WAN connection or from such management and administrative networks, owned and operated by the Contractor as the Contractor requires to carry out their obligations in respect of this Contract.

5.5 The hosting services to be provided by the Contractor pursuant to this paragraph 5 are provided under the assumptions that:

- (a) all Data Centre cabling must be supplied and installed by the Contractor.
- (b) all Data Centre interconnects must be supplied and installed by the Contractor.
- (c) failure of an element of the Infrastructure which is provided by the Authority and is only capable of single power supply shall be excluded from the calculation of the relevant Service Levels;
- (d) the Authority shall procure, maintain and operate a Wide Area Network (WAN), providing a connection between the Authority Premises and the Contractor Data Centre.
- (e) the Authority shall be responsible for the availability and correct functioning of the WAN up to and including WAN demarcation point, this being the LAN side Ethernet port on the routing device that provides ingress from the Authority Premises and delivery points to the Contractor Data Centre; and
- (f) insurance of the Authority Hardware housed within the Contractor Data Centre will remain the responsibility of the Authority.

## **6 Management of the Infrastructure**

- 6.1 The Contractor shall manage the Infrastructure (in the UK only) in such a way that the Infrastructure managed by the Contractor is capable of delivering and does deliver a fully functional and operational service to all Authority Users at their place of consumption in accordance with the Service Levels set out in Schedule 2 (Service Levels) to this Contract.
- 6.2 The Authority requires that its Authority Users are able to use the Applications during the Core Hours and to facilitate this the Contractor shall ensure that the Infrastructure is fully functional and operational to support the Applications during the Core Hours. The Contractor shall ensure that any routine maintenance and/or utility processes are conducted Outside Core Hours.

### **System Monitoring**

- 6.3 The Contractor shall provide and operate monitoring tools to monitor the Infrastructure (including to monitor load on the Infrastructure through CPU, Memory, disk space and storage file system utilisation) so as to meet the agreed Service Levels set out in Schedule 2 (Service Levels).
- 6.4 The Contractor shall ensure that the load on the Infrastructure remains within industry classified safe thresholds. For the avoidance of doubt, monitoring of the load placed upon the WAN will not be monitored by the Contractor.
- 6.5 The Contractor shall provide notification to the Authority via an agreed method (which may include via the escalation matrix set out at paragraph 8.5 below and/or via email or such other method as shall be agreed upon between the parties) upon the identification of each and every:
- (a) Backup Failure; and
  - (b) physical security risk and/or breach.
- 6.6 The Contractor shall ensure that automated checks are performed in accordance with a schedule agreed between the parties to regularly confirm that the Infrastructure (including but not limited to the Authority Hardware and enabling software elements of the Infrastructure) is functioning correctly and that access from the Infrastructure through the WAN demarcation point has not been terminated.

### **Problem/Incident Management**

- 6.7 The Contractor shall perform incident management to the ITIL v3 standard. This includes ensuring that faults are corrected, preventing any recurrence of these faults, and the application of preventative maintenance to reduce the likelihood of these faults occurring in the first instance.
- 6.8 The Contractor shall also provide reactive fault diagnosis and proactive trend analysis to identify, record, report on and rectify root causes of Incidents and to prevent future Incidents and problems.

6.9 The Contractor shall provide support for any Incidents that arise from Infrastructure Release Management activities in accordance with the relevant Service Levels set out in Schedule 2 (Service Levels).

## **7 Maintenance and Updates**

7.1 The Contractor will diagnose and repair problems and carry out routine maintenance on the Authority Hardware. Any Authority requested specific maintenance tasks may attract an additional Charge payable by the Authority on a time and material basis in accordance with Schedule 3 (Charges). Where additional charges are payable, the parties shall agree the scope of the maintenance to be carried out and the Contractor shall provide an estimate of the time required to carry out the requested maintenance. This estimate shall be reviewed and approved by the Authority prior to the Contractor incurring any costs.

7.2 Where other equipment is defined by the manufacturer as user replaceable, (eg batteries), The Contractor will provide a quote for this, including engineering resource charges. Upon approval by way of a purchase order from The Authority, The Contractor will procure and replace the item.

7.3 The Contractor will maintain the Infrastructure operating systems by deploying patches and upgrades in line with the agreed Change Management process. This excludes whole or Point Version releases of software which is out of scope. Where there is a need for a whole or Point Version release of software to upgrade the Infrastructure operating systems, the parties shall agree the scope and charges for such work in accordance with the Change Control Procedure and such work shall be carried out in accordance with the rate card set out in Schedule 2 (Charges).

7.4 The Contractor shall provide and maintain an anti-virus solution on all Infrastructure. The software and licensing of the relevant anti-virus solution shall be supplied by the Authority.

7.5 The Contractor shall provide and operate monitoring tools to monitor back-ups and other utility routines to ensure these are successful and complete and shall raise an Incident at the appropriate severity level to rectify each and every failure.

7.6 If and when required by the Authority, the Contractor shall at the Authority's direction, restore the Infrastructure or any aspect thereof, to a mutually agreed separate area owned by the Authority to check the status of any restores prior to overwriting the target environment.

## **Infrastructure Change Management and Release Management**

- 7.7 The Contractor shall integrate its Change Management process with that of the Authority.
- 7.8 The Contractor shall perform Configuration Management and present information to the Authority upon request.
- 7.9 The Contractor shall seek approval from the Authority in writing of all planned changes which may impact Infrastructure Availability.
- 7.10 The Contractor shall perform Infrastructure Release Management in accordance with the process agreed with the Authority.
- 7.11 From time to time the Authority may require updates to the Applications and/or to the Infrastructure. Where updates to Applications entail any changes and/or updates to the Infrastructure, or where the Authority so reasonably requests, the Contractor shall provide the appropriate resources to enable it to work closely with the Authority and any third party supplier engaged by the Authority to facilitate the implementation of the Authority's required changes. The Contractor's services in this respect shall be charged on a Time and Material basis in accordance with the rate card set out in Schedule 3 (Charges).
- 7.12 The Contractor shall apply operating system security patches on a timely basis to remove known vulnerabilities. For the avoidance of doubt applying an operating system security patch shall be considered as a Change (in accordance with the Change Control Procedures set out in Schedule 7).
- 7.13 The Contractor shall ensure that agreed regression testing is completed before applying software version updates, patches or changes to the Production Environment and prior to any significant structural changes to the Infrastructure.
- 7.14 The Contractor shall liaise with the Authority's nominated Change Manager to assist in creating and implementing deployment plans for any changes to the Infrastructure or to any Application which may require the Contractor's support and/or assistance.

## **8 Contractor Helpdesk and Incident Support**

- 8.1 The Contractor shall provide support in respect of any Incident via a helpdesk ("the Contractor Helpdesk"). The Contractor Helpdesk shall be available during Working Hours and shall resolve and fix Incidents in accordance with the Service Levels set out in Schedule 2 (Service Levels).
- 8.2 Queries from Authority Users shall not be routed directly to the Contractor Helpdesk but shall instead be directed to the Authority's Service Desk. The Authority's Service Desk shall carry out an initial triage and diagnosis of the query and shall route Incidents which solely relate to the Infrastructure and/or require the Contractor's support in respect of aspects of the Incident which relate to the Infrastructure to the Contractor's Helpdesk.
- 8.3 Upon receipt of an Incident from the Authority Service Desk, which will include an indication of its severity and likely cause, the Contractor shall categorise the Incident according to the information provided by the Authority Service Desk. Response and target fix times for the

Contractor shall be communicated to the Authority Service Desk once the call is logged and an Incident Reference Number is provided.

8.4 The Contractor shall define each Infrastructure Incident severity as follows:

Category	Description
Severity 1	Any Incident where the failure of a resilient Production Component of the Infrastructure has resulted in the Applications and/or Infrastructure being unavailable to Authority Users.
Severity 2	Any Incident where there has been a failure of a Non Production Component of the Infrastructure or a non production, service impacting, failure which in either case has resulted in modules of the Service (specified by the Authority) being unavailable to Authority Users but such Incident, following initial investigation, can be cleared
Severity 3	Any Incident which has resulted in the severe functionality defect of the Services but which is non service impacting.
Severity 4	Any Incident which has arisen as a result of a request for further investigation or request for change but which is non service impacting.

8.5 The Contractor shall manage escalations through the Authority Service Desk according to the following table. For Major Incidents, or escalation of Incidents that have not been able to be resolved, calls will be escalated to the following members of Staff in this order and within the specified timescales:

Service downtime that will impact Availability during Core Hours	Authority	Contractor
Less than 30 mins	IT Service Management Team	Service Manager
More than 30 mins	IT Service Managers	Contractor Service Delivery Manager
More than 1 hour	Head of Infrastructure	Contractor Client Director
More than 8 hours	Director of Finance, Commercial & Infrastructure	Contractor Client Director

8.6 The Contractor shall allow interaction with the Contractors Helpdesk by telephone and by e-mail.

## **9 Backup**

- 9.1 The Contractor shall fully document schedules for the backup of data, software and operating systems, for use in the event of an Infrastructure or Application failure or data corruption. All backups carried out by the Contractor shall be to industry standard media and the means and the media employed shall be subject to Authority approval.
- 9.2 The Contractor shall ensure that all back-ups are completed and verified with no effect on the required Availability or response times of the Infrastructure or Applications.
- 9.3 The Contractor shall ensure that it is possible to restore the Applications to specific points in time based on the backup schedule. Retention periods for backups are:
- (a) Daily full back-up; retained for 1 month
  - (b) Weekly full back-up; retained for 1 month
  - (c) Monthly full back-up; retained for 12 months
- 9.4 The Contractor shall manage backup and restore of all servers to a schedule that shall be agreed between the parties within 1 month of the Commencement Date, plus on an ad hoc basis if the Authority requires at an additional charge (in accordance with Schedule 3 (Charges) per request.
- 9.5 The Contractor shall manage backup media and store it off-site, with media being removed from site at least once per day.
- 9.6 The Contractor shall ensure that the Authority is informed about any Severity 1 Incident relating to the Infrastructure within 30 minutes during Core Hours and 1 hour Outside Core Hours.
- 9.7 The Contractor shall confirm that in the event of a Severity 1 Incident there will be no data loss up to and including the last verified back up (this being where the tape has been removed from site). Where a single component fails, no data that has been written to disk will be lost.
- 9.8 Recovery and restart procedures shall include recovery from the last completely processed transaction in order to maintain integrity of the Applications' databases. The Contractor shall also define, within the Operations Manual, their interpretation of a 'complete transaction' and how transaction logging is employed to both provide data security and integrity.

## **10 Service Management**

- 10.1 The Contractor shall record and monitor the progress of Infrastructure Incidents and Changes.
- 10.2 The Contractor shall provide regular status updates to the Authority and shall comply with the provisions of Schedule 6 (Governance).
- 10.3 The Contractor shall close Incidents which impacted availability after confirmation with the Authority.

- 10.4 The Contractor shall review with the Authority all open Incidents on a regular basis.
- 10.5 The Contractor shall maintain the Authority and Contractor contacts data (including but not limited to named callers, phone numbers, addresses).

## **11 Reporting**

11.1 The Contractor shall provide reporting on a monthly basis on performance of the Services to include:

- (a) Average Speed of Answer
- (b) Number of Incidents reported each month
- (c) Service Level Reports monthly to the Authority detailing the availability of:
  - (i) production Infrastructure
  - (ii) non-production Infrastructure
  - (iii) backup performance summary
  - (iv) Incident management statistics
  - (v) Change Management statistics
  - (vi) outage reports
  - (vii) capacity analysis

## **12 Access to Contractor Data Centres**

- 12.1 Planned access to the Contractor Data Centre by the Authority shall require logging a Change Request with the Contractor Helpdesk and shall be subject to such Change Request being approved. If planned access is required then the Authority shall provide at least 48 hours' notice.
- 12.2 Emergency access to Contractor Data Centre shall be via a Change Request made to the Contractor Helpdesk using the agreed method issued by a duly authorised Authority employee.
- 12.3 Access requests to the Contractor Data Centre shall be authenticated by the Contractor using the Access Control authorised user list shown in this Schedule 1 (Service Requirements). Users requesting access and not on the authorised list will be declined and the request will be escalated to the Authority.
- 12.4 Once authorised, access to the Contractor Data Centre must be supported by production of valid EU Drivers' licenses or valid passport to verify identity.
- 12.5 Whilst the Authority's staff and/or contractors are on the Contractor's premises they shall ensure that as little interference as is reasonably practicable is caused to any activity which

may be taking place at the Contractor's premises and the Authority shall procure that its staff and/or contractors shall comply with any health, safety or security rules, requirements or policies which are displayed at the Contractor's premises or specifically brought to its notice. Failure to comply with the provisions of this section may result in removal of the relevant Authority staff or contractors from and denial of access to the Contractor's Data Centres.

### **13 Data Centre downtime**

#### **Planned**

- 13.1 The Authority must request Planned Downtime via the Change Control Procedure
- 13.2 The Contractor will only withdraw availability of the Data Centre Hosting Service if an operational need arises. Where the need, if unfulfilled, threatens the Contractor's ability to supply the Services at the required quality of service on an on-going basis, Contractor will contact the Authority to notify the day and time on which the outage will take place.
- 13.3 The following notice periods apply both during Core Hours and Outside of Core Hours:
- (a) 0 to 6 hours downtime: at least four weeks
  - (b) 6 to 12 hours downtime: at least six weeks
  - (c) Greater than 12 hours: at least eight weeks
- 13.4 For emergency situations where this notice cannot be given, the planned downtime will be subject to an accelerated Change Control Procedure.
- 13.5 Contractor will use reasonable endeavours to minimise such downtime and will take into account any representations made by the Authority as to the timings of such outages. The Authority should be aware that such outages may affect a large number of Contractor's customers and it may not be possible to satisfy all timing requests from customers. Contractor's decision is final.
- 13.6 Agreed Planned Downtime shall be excluded from Availability calculations.

#### **Unplanned**

- 13.7 In the event that it is necessary to withdraw the availability of the Infrastructure from Authority Users at short notice due to unforeseen issues, the Contractor shall inform the Authority as soon as possible, and, wherever feasible, before such withdrawal. The Contractor shall keep the Authority informed regarding the expected time of resumption of Service.

### **14 Access Control authorised user list**

- 14.1 The following table details the Authority employees who are authorised to request planned access and emergency access to the Contractor Data Centres and the Authority employees who are allowed access (once duly authorised):

Name	Job Title	Contact details	Authorised to:
[Redacted]			Request planned access Request emergency access Authorise CQC staff who are allowed access
			Request planned access Request emergency access Authorise CQC staff who are allowed access
			Request planned access Request emergency access Authorise CQC staff who are allowed access

**15 Static Data Cut**

15.1 Following the migration of the static data cut environment to Production, the monthly activities will continue to be performed, but as part of these Service Requirements, the charges for which are now included in the Monthly Service Charge.

## Service Requirements

### Part B

#### RESPONSIBILITY MATRIX

1. The table below details the responsibility matrix for the Services.

Key:

- P = Perform
- A = Approve
- C = Co-Operate
- R = Make Recommendations
- T = Trigger

Detailed Services: Hosting and Connectivity of Infrastructure at Manchester Data Centre	Responsibility	
	Contractor	Authority
Monitor network performance	P	
Manage Firewall policies	P	T
Manage data centre environment	P	

Detailed Services: Management of Infrastructure at Manchester Data Centre	Responsibility	
	Contractor	Authority
Monitor infrastructure using BMC Patrol console	P	
Respond to alerts generated via Patrol	P	
Review BMC thresholds	P	A
Recommend BMC threshold changes as appropriate	P	

<b>Detailed Services: Management of Infrastructure at Manchester Data Centre</b>	<b>Responsibility</b>	
	<b>Contractor</b>	<b>Authority</b>
Patch level management	P	A
Virus protection	P	C
Manage Contractor Subcontractors	P	
Manage license requirements	R	P
Request Changes	P	T
Implement Changes to Manchester Infrastructure	P	A
Manage SAN	P	
Manage database layer	P	

<b>Detailed Services: Incident Management</b>	<b>Responsibility</b>	
	<b>Contractor</b>	<b>Authority</b>
Report Incidents to the Contractor Helpdesk		P
Answer Service calls from Authority Helpdesk, classify type and severity of call in conjunction with user	P	T
Respond to alerts from Contractor monitoring tools	P	
Record Incidents and/or alerts	P	T
Distribute to Resolver Groups for resolution	P	
Monitor and manage incidents through to resolution	P	
Provide updates to key contacts on the progress of Priority 1 incidents (MIM)	P	
Update Incident details	P	
Prioritise Incidents	P	
Escalation	P	

<b>Detailed Services: Incident Management</b>	<b>Responsibility</b>	
	<b>Contractor</b>	<b>Authority</b>
Assess Impact of alert / Incident	P	
Resolve Infrastructure Incidents	P	
Manage Contractor Subcontractors	P	
Produce timely and accurate Management Information	P	
Ownership of related process and procedures	P	
Measure compliance	P	
Resolve CRM Infrastructure incidents		P
Resolve Contractor Incidents in scope	P	

<b>Detailed Services: Backup and Storage Management</b>	<b>Responsibility</b>	
	<b>Contractor</b>	<b>Authority</b>
Design and Implement backup schedules	P	
Administer backup process	P	
Manage backup media requirements	P	
Manage off-site media storage requirements	P	
Manage and implement restore requests	P	T
Manage and implement changes to backup schedules	P	
Provision of media	T	P

<b>Detailed Services: Change Management of Infrastructure</b>	<b>Responsibility</b>	
	<b>Contractor</b>	<b>Authority</b>

<b>Detailed Services: Change Management of Infrastructure</b>	<b>Responsibility</b>	
	<b>Contractor</b>	<b>Authority</b>
Raise Request for Change	P	
Manage all Requests for Change	P	
Assess Requests for Change	T	P/A
Implement Requests for Change	P	P
Manage Change Control documentation	P	
Record all Request for Change details in the change management system	P	
Manage the up keep of the change management system	P	
Detailed Management Information Systems reporting	P	
Measure compliance to the change management process	P	

<b>Detailed Services: Capacity Management</b>	<b>Responsibility</b>	
	<b>Contractor</b>	<b>Authority</b>
Design and implementation of thresholds	P	C
Monitor thresholds	P	
Establish baselines	R/P	A
Review thresholds and recommend change	P	
Trends and forecasting	P	
Utilisation reporting	P	
Business requirements and volumes	R	P
Detailed Management Information Systems reporting	P	

<b>Detailed Services: Service Delivery Management</b>	<b>Responsibility</b>	
	<b>Contractor</b>	<b>Authority</b>
Operational delivery against agreed service levels	P	
Operational processes and procedures	P	
Management of operational staff	P	
Single point of contact for operational escalations	P	
Service improvement program	P	
Assessment of additional service requirements	P	T
Manage underpinning subcontractors	P	
Manage and host monthly service review meetings	P	
Provide monthly detailed service reports	P	
Dispute resolution management	P	C
Contract management	P	P

<b>Detailed Services: Authority Hardware Support</b>	<b>Responsibility</b>	
	<b>Contractor</b>	<b>Authority</b>
Incident diagnosis	P	
Incident allocation to Resolver Group	P	
Resolution of Incidents relating to Authority Hardware in accordance with SLA	P	
Appropriate levels of spare parts to be made available for Customer Authority Hardware support service	P	
Authority Hardware restoration to Authority's standards	P	
Monitor and report on recurring Authority	P	

Detailed Services: Authority Hardware Support	Responsibility	
	Contractor	Authority
Hardware Incidents		
Adding new Authority Hardware on to Supported Authority Hardware listing for support	A/P	T/P
Inventory management controls	P	
Authorisation of consumables	T	P



## **Annex 2 to Schedule 1**

### **Authority Premises**

#### **CQC Head Office**

151 Buckingham Palace Road  
London  
SW1W 9SZ

#### **National Customer Service Centre & North East Region**

National Authority Service Centre  
Citygate  
Gallowgate  
Newcastle upon Tyne NE1 4PA

#### **East Midlands and East Region**

The Axis Building  
Upper Parliament Street  
Nottingham NG1 6LF  
Note: The Mental Health Operations Team also works within this office.

#### **North West Region**

Guild Centre  
Lord's Walk  
Preston  
Lancashire  
PR1 1RA

#### **South West Region**

Fourth Floor  
Colston 33  
Colston Avenue  
Bristol BS1 4UA

#### **West Midlands Region**

15th floor  
McLaren Building  
46 Priory Queensway  
Dale End  
Birmingham  
B4 7LR

#### **Yorkshire and Humberside region**

St Paul's House  
23 Park Square South  
Leeds LS1 2ND

## **Schedule 2 Service Levels**

### **1 SCOPE**

This Schedule 2 (Service Levels) sets out the Service Levels which the Contractor is required to achieve when delivering the Services, the mechanism by which the achievement of the Service Levels will be measured and monitored. This schedule comprises:

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

### **PART A**

#### **1 OBJECTIVES**

The objectives of the Service Levels and Service Credits are to:

- 1.1 ensure that the Services are of a consistently high quality and meet the requirements of the Authority;
- 1.2 provide a mechanism whereby the Authority can attain meaningful recognition of inconvenience and/or loss resulting from the Contractor's failure to deliver the level of Service for which it has contracted to deliver; and
- 1.3 incentivise the Contractor to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.

#### **2 SERVICE LEVELS**

- 2.1 The Appendix to this Part A of this schedule sets out Service Levels for the following aspects of the Services (the Relevant Services), the performance of which the parties have agreed to measure:  
  
Availability of the Infrastructure to allow Authority Users to access the Applications and associated Interfaces; and provision of problem and Incident management and the Contractor Helpdesk.
- 2.2 The Contractor shall monitor its performance of each of the Services referred to in paragraph 2.1 by reference to the Service Level(s) for that Service and shall send the Authority a report detailing the level of service which was achieved in accordance with the provisions of part B of this Schedule 2.

2.3 The Contractor shall provide the Services in such a manner that the Service Level for each Service is achieved.

2.4 If the level of performance of the Contractor of any element of a Service:

2.4.1 is below the Service Level in respect of each element of the Service, the appropriate number of Service Credits will accrue to the Contractor in respect of that element of the Service; or

2.4.2 constitutes a Critical Service Failure, this shall represent a Material Breach and the Authority shall be entitled to terminate this Contract pursuant to Contract clause 23 and/or seek damages in addition to any Service Points which have already been accrued by the Contractor and which accrue and for which Service Credits are payable by the Contractor to the Authority.

### 3 SERVICE CREDITS

#### 3.1 Service Credits

The Contractor shall ensure that it meets the contracted Service Levels. If the Contractor does not meet the applicable Service Levels, the Authority will have rights to financial remedies by way of Service Credits. The intent is to ensure the right level of executive focus to the Authority by the Contractor to resolve sub-standard performance.

3.1.1 The availability of the Production Infrastructure during Core Hours is subject to service credits if it equals or falls below 98.5% (excluding planned and agreed outages) measured over a 3 month period (the Service Period) and reported on a monthly basis in accordance with Part B of this Schedule.

3.1.2 The Contractor will apply a credit on an increasing scale for Availability below 98.5%, (excluding planned and agreed outages) to be capped at 10% of the quarterly Charge for the Services in the event that the Availability over the Service Period was 90% or below.

Availability of Production Infrastructure in Core Hours	% of Quarterly Charge to credit
> 98.5%	0.0%
≤ 98.5%	0.5%
≤ 97.5%	1.0%
≤ 96.5%	1.5%
≤ 95.5%	2.0%
≤ 94.5%	2.5%
≤ 93.5%	3.0%
≤ 93.0%	3.5%
≤ 92.5%	4.0%
≤ 92.0%	5.0%

≤ 91.5%	6.0%
≤ 91.0%	7.0%
≤ 90.5%	8.0%
≤ 90.0%	10.0%

If:

3.1.2.1 Availability is reported to have fallen below 90% (excluding planned and agreed outages) in 3 or more consecutive Service Level Reports; or

3.1.2.2 during any one Service Period, Availability (excluding planned and agreed outages) falls below 85%

in each case, such failure shall be classed as a Critical Service Failure.

#### **4 SERVICE CREDIT CALCULATION**

4.1 The Authority shall use the performance reports provided pursuant to Part B of this schedule to, among other things, verify the calculation and accuracy of the Service Credits, if any, applicable to each relevant Service Period.

4.2 Service Credits are a reduction of the amounts payable in respect of the Services and do not include VAT. The Contractor shall set-off the value of any Service Credits against the appropriate invoice to which the Service Credit relates.

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

The Contractor confirms that it has modelled the Service Credits and has taken them into account in setting the level of the Charges. Both parties agree that the Service Credits are a reasonable method of price adjustment to reflect poor performance and that they are not liquidated damages.

#### **6 MAINTENANCE**

6.1 When the Contractor wishes to carry out any maintenance to the Services (other than Emergency Maintenance), it shall ensure that:

6.1.1 the timing of the planned maintenance is agreed as per the Change Control Procedure (Permitted Maintenance).

6.2 Any Permitted Maintenance or Emergency Maintenance will be excluded from the calculation of any Service Level or Service Credit.

#### **7 EXCUSED PERFORMANCE**

7.1 If the Contractor fails to achieve any of the Service Levels in any Service Period then, for the avoidance of doubt, each such failure shall be deemed to be a Service Failure.

7.2 The Contractor shall advise the Authority in writing of any events or circumstances which it claims give rise to Excused Performance and shall do so as soon as reasonably practicable after becoming aware of any such events or circumstances

and, in any event, within ten 10 Working Days after the end of the relevant Service Period in accordance with paragraph 3 (Performance Monitoring and Performance Review) of Part B to this Schedule 2 (Service Levels). Failure to so advise the Authority shall prevent the Contractor from claiming that the relevant events or circumstances give rise to Excused Performance.

- 7.3 The Contractor shall, be entitled to Excused Performance in respect of a Service Failure if and to the extent (and subject to the Contractor demonstrating to the reasonable satisfaction of the Authority) that:
- 7.3.1 the Service Failure was caused by a Force Majeure Event which the Contractor could not have foreseen, prevented or mitigated and which directly affected the Contractor's ability to provide the Services in respect of the relevant Service Levels, provided that the Contractor has timely and effectively implemented any applicable disaster recovery or business recovery plan that would enable the Contractor to resume providing the Services to the Service Levels; or
  - 7.3.2 the underlying cause of the Service Failure was due to an act or omission of (a) the Authority, its employees or contractors or (b) a third party service provider (except to the extent that the Contractor has any service and/or management obligations in respect of such third party and has failed to comply with such obligations).
- 7.4 Notwithstanding the cause of any Excused Performance, the Contractor shall use its reasonable endeavours and take all reasonable steps within its control to mitigate the impact to the Authority of any Services failing to achieve the Service Levels.

**APPENDIX TO PART A**

**1 Service Levels and Severity levels**

**1.1 Infrastructure Availability**

The overall infrastructure availability targets for the Production Environment are as follows:

	Period	Infrastructure Availability Service Level	Target Maximum Infrastructure Outage per single Incident
1	Core Hours	99.50%	4 hours
2	All other hours	98.00%	4 hours

The Core Hours Availability target for the Production Environment shall be subject to Service Credits.

**Note**

The minimum Infrastructure Availability shall be measured across a 3 month rolling period.

The overall Infrastructure Availability targets for the Non-Production Environments (development, test, user acceptance testing, pre-production and training) are as follows:

	Period	Target Infrastructure Availability	Target Maximum Infrastructure Outage per single Incident
1	Core Hours	95%	24 hours
2	Outside Core Hours	95%	24 hours

1.2 The Contractor shall provide problem and Incident management and the Contractor Helpdesk in support of the Infrastructure to the following Service Levels:

Category	Description	Response Time	Resolution Time	SLA	Hours of Cover
<b>Severity 1</b>	Any Incident where the failure of a resilient Production Component of the Infrastructure has resulted in the Applications and/or	15 minutes	4 Hours	90%	24x365

Category	Description	Response Time	Resolution Time	SLA	Hours of Cover
	Infrastructure being unavailable to Authority Users.				
<b>Severity 2</b>	Any Incident where there has been a failure of a Non Production Component of the Infrastructure or a non production, service impacting, failure which in either case has resulted in modules of the Service (specified by the Authority) being unavailable to Authority Users but such Incident, following initial investigation, can be cleared	30 minutes	8 Hours	90%	24x365
<b>Severity 3</b>	Any Incident which has resulted in the severe functionality defect of the Services but which is non service impacting.	30 minutes	12 Hours	90%	24x365
<b>Severity 4</b>	Any Incident which has arisen as a result of a request for further investigation or request for change but which is non service impacting.	1 hour	Scheduled outage to resolve	95%	24x365

1.3 The minimum Contractor Helpdesk and problem/incident management SLAs shall be measured across a 3 month rolling period.

1.4 The required resolution time specified in the above table shall be the target time that is required to restore Infrastructure Availability.

1.4.1 If Authority is unable to provide an outage window within the target resolution time then this will be considered an exception and an outage will be agreed with the Authority.

- 1.4.2 Where a solution has been provided by a 3rd party (e.g. ATOS, Infosys) and no action was effected by the Contractor then any Incidents raised with the Contractor relating to the 3rd Party solution will be deemed an exception.
- 1.5 The Contractor shall receive Incidents from the Authority Helpdesk, and from automated system monitoring alerts which it shall maintain.
- 1.6 The Contractor shall provide a target Service Level of 30 seconds average speed of answer (ASA).

## 2 AVAILABILITY

- 2.1 The Contractor shall measure the Availability of the Infrastructure and shall monitor it in accordance with the Performance Monitoring System.
- 2.2 The Infrastructure shall be Available (and "Available" shall be interpreted accordingly) when Authority Users are able to access and utilise all of the Applications during the Core Hours.
- 2.3 Availability shall be measured as a percentage of the total time in a Service Period, in accordance with the following formula:

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

Where:

- MP = Total number of minutes, excluding Permitted Maintenance, within the relevant Service Period; and
- SD = Total number of minutes of Service Downtime, excluding Permitted Maintenance, in the relevant Service Period.

## **PART B**

### **1 Performance Monitoring**

- 1.1 The Contractor will monitor the load on the Infrastructure through CPU, memory and storage file system utilisation**

The Contractor shall monitor the Infrastructure to identify:

- faults
- load, by means of measuring the servers utilisation of CPU, memory and disk space useable by the installed operating system.

- 1.2 The Contractor shall provide reports monthly to the Authority detailing:**

Availability of:

- production Infrastructure
- non-production Infrastructure
- backup performance summary
- Incident management statistics
- Change Management statistics
- outage reports
- capacity analysis

- 1.3 The Contractor shall provide a report within 5 Working Days of all Severity 1 Incidents, as defined in Section 1.2 of Appendix A to Part A of Schedule 2. These reports will contain a detailed chronology of the period leading up to, during and following the Incident to the point of service recovery; identification of the root cause of the Incident and a description of the actions carried out (or a plan for the actions to be carried out) by the Contractor to prevent reoccurrence.**

- 1.4 Out of Scope**

Everything not specifically stated to be in scope is out of scope.

Monitoring of the load placed upon the WAN will not be monitored by the Contractor.

## **2 REPORTING OF INCIDENTS**

- 2.1 The Authority Service Desk shall report all Incidents to the Contractors Helpdesk.
- 2.2 The Contractor shall ensure that all Incidents are logged immediately on receipt of notification, on the Contractor's Incident management tool.
- 2.3 Where the Contractor's Helpdesk receives more than one report of the Incident then all such reports shall be logged on the Contractor's Incident management tool.
- 2.4 The Contractor shall ensure that, as a minimum, the following details are recorded by the Contractor in respect of each Incident provided such information has been provided by the Authority Service Desk at the time the Incident is being logged:
  - 2.4.1 a unique Incident number ;
  - 2.4.2 the date and time the report is received at the Contractor's Helpdesk;
  - 2.4.3 the nature and location of the Incident;
  - 2.4.4 the person/organisation making the report;
  - 2.4.5 the severity level assigned to the Incident by the Contractor ;
  - 2.4.6 an estimate of the number of Authority Users which are affected by the Incident ;
  - 2.4.7 the action intended to be taken or which has been taken to rectify the Incident;
  - 2.4.8 details of any communication with the Authority's Representative in connection with the Incident;
  - 2.4.9 notes/comments regarding any mitigating circumstances with regard to the Incident;

## **3 PERFORMANCE MONITORING AND REVIEW**

- 3.1 Within 10 Working Days of the end of each month, the Contractor shall provide a Service Level report to the Authority's Representative (the Service Level Report).
- 3.2 The Service Level Report shall contain, as a minimum, the following information in respect of the Service Period just ended:
  - 3.2.1 the monitoring which has been performed in accordance with the Performance Monitoring System with a summary of any issues identified by such monitoring;
  - 3.2.2 for each Service Level, the actual performance achieved over the Service Period, and that achieved over the previous 3 Service Periods;

- 3.2.3 a summary of all Incidents that occurred during the Measurement Period;
  - 3.2.4 the level of each Incident which occurred;
  - 3.2.5 which Incidents remain outstanding and progress in resolving them;
  - 3.2.6 for any Severity 1 Incident occurring in the Service Period, the cause of the fault and any action being taken to reduce the likelihood of recurrence;
  - 3.2.7 for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
  - 3.2.8 for any Incidents for which the Contractor believes Excused Performance will apply, the underlying cause and origin of such Incidents. The Contractor shall ensure that each such Performance Monitoring Report will be accompanied by appropriate data and information which substantiate the circumstances or events giving rise to Excused Performance;
  - 3.2.9 the Service Credits to be applied in respect of that Service Period indicating the Incident(s) to which the Service Credits relate;
  - 3.2.10 a rolling total of the number of Incidents that have occurred and the amount of Service Credits that have been incurred by the Contractor over the past six months;
  - 3.2.11 relevant particulars of any aspects of the performance by the Contractor which fail to meet the requirements of the Contract; and
  - 3.2.12 such other details as the Authority may reasonably require from time to time as mutually agreed by the Parties.
- 3.3 The Service Level Report shall be reviewed and its contents agreed by the Parties at the Service Review Meeting.
  - 3.4 The parties shall attend Service Review Meetings on a monthly basis (unless otherwise agreed). The Service Review Meetings will be the forum for the review by the Contractor and the Authority of the Service Level Reports
  - 3.5 The Authority shall be entitled to raise any reasonable additional questions and/or request any further information regarding any Incident.
  - 3.6 The Contractor shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance by the Contractor and the calculations of the amount of Service Credits for any specified period.

#### **4 RECORDS**

- 4.1 The Contractor shall keep appropriate documents and records (included but not limited to help desk records, Service Level Reports, Change records) in relation to the Services being delivered and the other requirements to be satisfied pursuant to this

Contract. Without prejudice to the generality of the foregoing, the Contractor shall maintain accurate records of call histories in relation to the monitoring of the Services for a minimum of 12 months and provide prompt access to such records to the Authority upon the Authority's request. The records and documents of the Contractor referred to in this paragraph 4.1 shall be available for inspection by the Authority and/or its nominee at any time and the Authority and/or its nominee may make copies of any such records and documents.

- 4.2 In addition to the requirement in paragraph 4.1 of this Part B to maintain appropriate documents and records, the Contractor shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance of the Contractor and the calculations of the amount of Service Credits for any specified period.

## **5 SUPPORT AND MAINTENANCE**

The Contractor will provide hardware support for the Authority's Assets as listed in Schedule 8 for the duration of the Contract Period in accordance with paragraph 7.1 of Part A of Schedule 1 (Service Requirements).

**Schedule 3  
Charges**

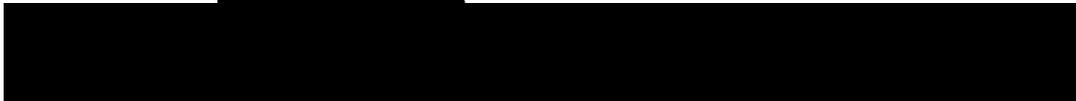
For each individual Service, the applicable Call-Off Contract Charges (in accordance with the Contractor's Digital Marketplace pricing document) cannot be amended during the term of the Call-Off Contract. The detailed breakdown for the provision of Services during the term of will include (but will not be limited to):

**1 Purpose of Part A**

1.1 The purpose of this Part A of the schedule is to set out the provisions relating to the Charges applicable to the Services.

1.2 The Charges for the Services shall consist of:

(i)



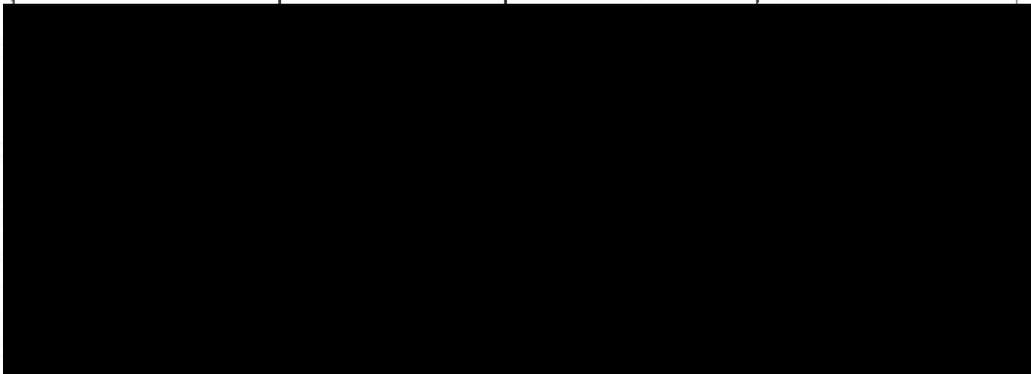
(ii) variable charges on a time and material basis in accordance with paragraph 3 (Time and Materials Charges).

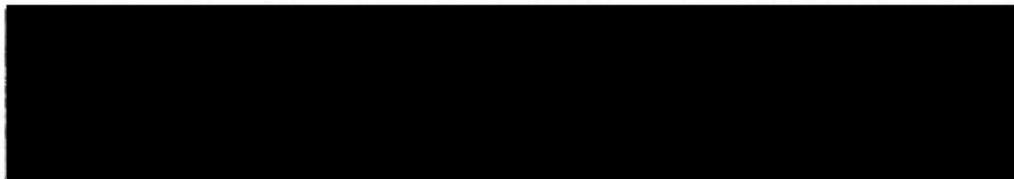
**2 Monthly Service Charge**

2.1 The Monthly Service Charge shall be inclusive of all services elements set out in Section 1 (Service Requirements) (with the exception of those service elements which are expressly stated to be subject to charging on a time and materials basis) and all service management.

2.2 As from the Commencement Date, the Contractor shall raise invoices in respect of the Monthly Service Charge in accordance with the following time table:

Invoice Date	Period Invoice Covers	Managed Service (Excl VAT)	Managed Service (Incl VAT)
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Total		£720,636	£864,756
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2.3 The Authority shall make payment of the Monthly Service Charge in accordance with Part B (Invoicing and Payment) of this Schedule.

### 3 Time and Material Charges

3.1 Where service elements are expressly subject to Time and Materials Charges, the Rate Card of the Contractor as shown below shall apply. Where the required Contractor resource is not shown in the below Rate Card, the Contractor shall provide the price for the same upon request by the Authority.



3.2 Time and Materials Charges which are incurred on a Working Day outside of Working Hours or on a Saturday, shall incur charges at the x1.5 Premium rate shown in the above table.

3.3 Time and Materials Charges which are incurred on a Sunday and/or on a statutory bank holiday in the UK, shall incur charges at the x2 Premium rate shown in the above table.

3.4 A minimum of ten Working Days notice is required for all requests for time and materials resource and will only be confirmed upon receipt of a purchase order covering the quoted charges as approved by the Authority.

3.5 The Authority shall reimburse the Contractor for Reimbursable Expenses reasonably incurred by the Contractor at the rates and in accordance with the Authority's policy current from time to time. The Authority shall provide a copy of such rates and policy to the Contractor upon request.

### 4 Charges for Change Control

4.1 Where a Change is requested then the Contractor will prepare a quotation for the cost which shall:

- (a) include estimated volumes of each type of resource to be employed and the applicable rate card; and
- (b) include full disclosure of any assumptions underlying such quotation.

- 4.2 If the Change is adopted by the Authority in accordance with Schedule 7 (Change Control) then the Contractor will propose an addendum to this Contract.

**5 Termination Charges**

- 5.1 The provisions of this paragraph 5 shall apply only in respect of a Termination where the Authority has terminated this Contract pursuant to clause 23 of the Contract Terms and Conditions (Termination). Termination without Cause shall not include any expiry of this Contract which arises due to the decision of the Authority not to exercise its option to renew the Contract pursuant to Contract term of the Contract Data.
- 5.2 Where the Authority has terminated the Contract pursuant to clause 23 of the Contract Terms and Conditions, the Contractor shall be entitled to charge the Authority the relevant charge as calculated in accordance with the table below. The relevant termination charge shall be the amount shown in the table below in this paragraph 5 in respect of the relevant month in which the Termination takes effect.
- 5.3 The charges set out in the table below in this paragraph 5 shall be the only charges payable by the Authority in respect of the Termination and the Contractor shall not be entitled to charge any further sums (including but not limited to) in respect of unavoidable costs and/or loss of profit, the Termination Charge being calculated at a level to recompense the Contractor for such Termination without Cause.

**Termination Charges:**

Month of the Contract in which Termination takes effect	Relevant Termination Charge payable by Authority
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## **Part B – Invoicing and Payment**

### **1 Purpose of Part B**

- 1.1 This part of the schedule sets out the method by which the Contractor shall raise invoices to the Authority for payment, together with the requirements which apply to such invoices, and the payment terms thereof.
- 1.2 The Contractor shall be entitled to raise an invoice in respect of any payment which falls payable to the Contractor pursuant to the Contract provided that each invoice is delivered to the Authority within 5 Working Days after:
- (a) In respect of Monthly Service Charges, the end of the calendar month to which the relevant Monthly Service Charge relates; and
  - (b) In respect of Time and Materials Charges, the end of the month in respect of Time and Materials Charges consumed in that month.
- 1.3 In any event, all invoices must be provided to the Authority within six (6) months of completion of delivery of the relevant Services to which the invoice relates. Invoices delivered after expiry of this period shall be invalid and the Authority shall have no liability in respect of such invoices.
- 1.4 The Contractor shall invoice the Authority in respect of Services in accordance with the timescales specified for issue of invoices for the Charges as detailed in Part A of this schedule.
- 1.5 The Contractor shall ensure that each invoice contains the following information:
- (a) the date of the invoice;
  - (b) a unique invoice number;
  - (c) the month or other period(s) to which the relevant Charges relate;
  - (d) the reference number of the purchase order issued by the Authority to which it relates (if any);
  - (e) the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
  - (f) details of any Service Credits or similar deductions that shall apply to the Charges detailed on the invoice;
  - (g) a contact name and telephone number of a responsible person in the Contractor's finance department in the event of administrative queries; and
  - (h) the banking details for payment to the Contractor via electronic transfer of funds (such as name and address of bank, sort code, account name and number).

- 1.6 Each invoice shall at all times be accompanied by sufficient information to enable the Authority to reasonably assess whether the Charges detailed thereon are properly payable. Any such assessment by the Authority shall not be conclusive. The Contractor undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.
- 1.7 All Contractor invoices shall be expressed in pounds sterling or such other currency as shall be permitted by the Authority in writing.
- 1.8 The Authority shall only regard an invoice as valid if it complies with the provisions of this schedule. Where any invoice does not conform to the Authority's requirements set out in this schedule, the Authority will return the disputed invoice to the Contractor. The Contractor shall promptly issue a replacement invoice which shall comply with the requirements of this Schedule.
- 1.9 Subject to the provisions of this schedule, the Authority shall make payment to the Contractor within thirty (30) days of receipt of a valid invoice by the Authority at its nominated address for invoices.

## **Schedule 4 Governance**

### **1 Governance Framework**

1.1 The Contractor and the Authority shall operate a governance framework comprising the following;

- (a) Monthly Service Review meeting
- (b) Quarterly Contract Review meeting
- (c) Extraordinary meetings as necessary and requested by Authority

### **2 Monthly Service Review meeting**

2.1 The Monthly Service Review meeting is a formal meeting between Authority and Contractor Service Managers to review service performance as measured against the contract. Minutes will be taken and actions recorded.

2.2 Attendees: Authority and Contractor Service Managers, others as required and invited.

2.3 Purpose: To review the Monthly Service Report detailing the delivered service performance as measured against the contract service levels; to review and agree work to address any on-going performance issues; and to review and agree continual service improvement activity.

### **3 Quarterly Service Review meeting**

3.1 The Quarterly Contract Review meeting is a more strategic meeting between the Authority and Contractor Heads of Department. It will review and discuss contractual and commercial performance against the contract. Minutes will be taken and actions recorded.

3.2 Attendees: Authority and Contractor Heads of Department and Service Managers.

3.3 Purpose: To review the contractual and commercial health of the relationship; to discuss areas for business development and improvement.

### **4 Extraordinary meetings**

4.1 Extraordinary meetings will occur as necessary. Meetings arranged, possibly a short notice to address urgent and/or high impact issues or incidents.

4.2 Attendees: Authority and Contractor representatives as appropriate.

4.3 Purpose: To address and agree action in response to extraordinary events whether technical, contractual or external to CRM that either already have, or have the potential to, impact service performance and delivery.

**5 Continual Service Improvement**

- 5.1 The Contractor and the Authority will carry out continual service improvement (CSI) to regularly capture, review and execute measures that improve the quality, performance, usability and relevance of Seibel CRM during the Contract Period.
- 5.2 The Contractor and the Authority will maintain a CSI Register to capture and record potential opportunities to improve the service. CSI items and suggestions can be added to the CSI Register at any time by any Authority or Contractor representative.
- 5.3 As part of the Monthly Service Review, the Contractor and the Authority shall review the CSI Register and agree new CSI activities that will be carried out as well as review progress of CSI activities that are already in progress.

**Schedule 5**  
**Exit Management**

**1 Overview**

- 1.1 The Contractor is required to ensure the orderly transition of the Services from the Contractor to the Authority and/or any replacement supplier in the event of termination or expiry of this Contract. This schedule sets out the principles of the exit and service transfer arrangements that are intended to achieve such orderly transition and which shall form the basis of the Exit Plan. For the avoidance of doubt, the Contractor shall be responsible for the overall management of the exit and service transfer arrangements.
- 1.2 The Contractor, at the Authority's expense, shall carry out the necessary activities to transfer responsibility for the delivery of the Services to the Authority and/or a new service provider (as required by the Authority) upon the earlier of the following:
- (a) expiry of this Contract on the Expiry Date; or
  - (b) termination of this Contract in accordance with this Contract.
- 1.3 This Schedule defines the scope of an Exit Plan and how such a plan will be created and revised to ensure that it remains workable at any time upon termination or expiry. Where only the principles of such Exit Plan are set out then the parties will reach agreement on detailed terms and conditions in respect of such principles and such agreement shall not be unreasonably delayed or withheld.

**2 Exit Plan**

- 2.1 The Contractor shall, with input as relevant, from the Authority, create within 3 months of the Commencement Date an Exit Plan which envisages the requirements in relation to an exit of the Services covered by this Contract.
- 2.2 The Authority shall review the content of the Exit Plan submitted to it by the Contractor in accordance with paragraph 2.1 above and the Authority and the Contractor shall, acting reasonably and in good faith, seek to agree the contents of the Exit Plan within 30 days of submission of the same by the Contractor under paragraph 2.1. Should the Authority and the Contractor be unable to reach agreement, the matter will be referred to the Dispute Resolution Process contained in Schedule 6.
- 2.3 The Contractor shall review the Exit Plan with the Authority periodically during the Term, as a minimum once every 6 months, and shall update it in order to reflect and take account of any Changes to the Services and/or their method of delivery.

**3 Scope of Exit Plan**

- 3.1 The Exit Plan shall contain:
- (a) a list and timetable of activities for the Contractor and the Authority to undertake during the Termination Assistance Period in sufficient detail to ensure that each party can comply with the terms of this Schedule 5 and to allow the smooth transition of the

Services to any replacement contractor(s) with no disruption to the business of the Authority;

- (b) details of which Contractor activities shall be provided free of charge (which shall include returning to the Authority all Specifically Created Material and all Authority Material to the Authority), and which activities shall be chargeable in accordance with paragraph 7 below;
- (c) full details of dependencies on the Authority and on the Contractor for the successful implementation of the Exit Plan;
- (d) such other details as the Authority and the Contractor consider appropriate when agreeing the terms of the Exit Plan; and
- (e) without prejudice to paragraph 8, the Termination Assistance that the Contractor will reasonably be required to provide to the Authority.

3.2 During any period when the Exit Plan has not been agreed by the Authority and the Contractor, the Exit Plan shall be deemed to be, and the Authority and the Contractor shall comply with, the terms detailed in this Schedule.

#### **4 Notification of Requirements for Termination Assistance**

4.1 The Authority shall have the right to require the provision of Termination Assistance by giving written notice to the Contractor at least one month prior to the Expiry Date of this Contract or at any time following service of a notice of Termination (a "Termination Assistance Request"). The Termination Assistance Request shall specify:

- (a) the date from which Termination Assistance is required, provided that such date is no earlier than:
  - (i) in the case of Termination, a date which is 10 (ten) days from the date of service of the Termination Assistance Request; and
  - (ii) in the case of expiry only (and not earlier Termination), 1 (one) month prior to expiry(the "Activation Date");
- (b) the nature and extent of the Termination Assistance required in accordance with paragraph 8;
- (c) if not already provided, confirmation as to whether the Terminating Services are to be continued in accordance with paragraph 5; and
- (d) the period during which the Authority envisages that Termination Assistance will be required, provided that such period will continue no longer than 3 months after the date that the Contractor ceases to provide the Terminating Services (the "Deactivation Date").

4.2 The period between the Activation Date and Deactivation Date shall be the Termination Assistance Period.

4.3 For the sake of clarity, in this Schedule "Termination Assistance" excludes "Terminating Services"

## **5 Continuation of the Terminating Services**

5.1 In the event of the early Termination or the expiry of this Contract (for whatever reason), the Contractor shall, and shall ensure that all of its subcontractors (if any) and staff shall, to the extent requested by the Authority, in addition to supplying any other Termination Assistance pursuant to this Schedule 5, continue to perform the Terminating Services for the period specified in the notice of Termination and/or the Termination Assistance Request, which period shall not exceed 3 months after either the date on which Termination becomes effective or the Expiry Date.

5.2 Where the Authority requires the Contractor to continue the provision of some or all of the Terminating Services, such Terminating Services shall be provided at no detriment to the applicable Service Levels.

## **6 Exit Management and the implementation of the Exit Plan**

6.1 The Authority and the Contractor shall each advise the other in writing within 10 (ten) Working Days of the Activation Date of the identity of its staff responsible for the management of the exit from the Contract (the **Exit Managers**).

6.2 The Exit Managers shall promptly review the Exit Plan, and shall determine whether any amendments to the Exit Plan are required and shall discuss any other issues or matters relevant to the provision of Termination Assistance by the Contractor in accordance with the Exit Plan and this Schedule.

6.3 Upon agreement of any amendments to the Exit Plan, or if no such amendments are required, immediately following such review, the Contractor shall commence the implementation of the Exit Plan.

6.4 In order to facilitate implementation of the Exit Plan, the Contractor shall maintain:

- (a) A list of all assets used in providing the Services (including those that are owned by the Contractor);
- (b) such documentation as is necessary to detail the technical aspects of the Services. This documentation shall be of sufficient detail to permit the Authority and any replacement contractor of the Services to understand how the Contractor provides the Services and to enable the smooth transition of the Services with the minimum of disruption to the Authority;
- (c) details of other relevant third party contracts; and

in each case, the Authority may audit such documentation prior to implementation of the Exit Plan. The Contractor shall provide to the Authority such information, documents and details promptly upon request by the Authority.

## **7 Costs**

- 7.1** In respect of and for the duration of the continuance of the provision of the Terminating Services pursuant to paragraph 5, the Authority shall continue to pay the Charges in respect of the Terminating Services in accordance with Schedule 3 (Charges).
- 7.2** The Contractor shall be entitled to charge the Authority on a time and materials basis in accordance with Schedule 3 (Charges) for the provision of any Termination Assistance provided that:
- (a) the Contractor shall use reasonable endeavours to reallocate resources to provide any Termination Assistance without additional costs;
  - (b) where additional cost is incurred, the Contractor can demonstrate to the Authority that such charges are reasonable; and
  - (c) the scope of the Termination Assistance and estimated fees in respect of the same have been previously authorised by the Authority.

## **8 Termination Assistance**

- 8.1** The Contractor shall fully co-operate with and assist the Authority and/or any replacement supplier(s) in ensuring the smooth handover and continued running of the Services during the Termination Assistance Period. In particular, the Contractor shall, and shall procure that its subcontractors (if any) shall, render all such assistance to the Authority and/or the replacement supplier(s) as the Authority may reasonably require including (but not limited to) the following:
- (a) implementing and complying with the Exit Plan;
  - (b) providing an inventory of application software and documentation;
  - (c) undertaking knowledge transfer from key individuals;
  - (d) allowing the Authority and/or any replacement supplier access to staff and/or Contractor Premises, upon reasonable notice and at reasonable times, as may be reasonably necessary to fulfil the objective of this schedule;
  - (e) vacating all Authority Premises;
  - (f) preparing documentation and/or any equipment for collection and returning all Authority Materials and Authority Assets (including Specifically Created Material and all of those Authority Assets as are listed in Schedule 8, Part B to Contract);
  - (g) providing help and further information to any replacement supplier(s) for up to 6 months following the transfer of the Services;
  - (h) dealing with final invoicing;
  - (i) at the end of the Termination Assistance Period (or earlier where requested by the Authority) erasing from any computers, storage devices and storage media that are to

be retained by the Contractor after the end of the Termination Assistance Period any Specially Created Material and all Authority Data;

## **9 Transfer of assets and data**

### **9.1 At the end of the Termination Assistance Period:**

- (a) (or earlier if so request by either party), each party shall return to the other party all Confidential Information of the other party and will 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, Terminating Services and/ or Termination Assistance;
- (b) except where Contract provides otherwise or where terminated earlier by the Authority, all licences, leases and authorisations granted by the Authority to the Contractor in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period;
- (c) all equipment used and owned by the Contractor to deliver the service to the Authority will, unless specifically identified otherwise, remain the property of the Contractor.
- (d) the Contractor shall return to the Authority any equipment owned by the Authority that has been used in the provision of the Services including but not limited to those Authority Assets as are set out in Schedule 8.
- (e) the Authority, at the Contractor's discretion, may purchase at the then net book value equipment owned by the Contractor which is used by the Contractor solely for the purpose of providing the Services.
- (f) where the Authority requires, the Contractor shall license to the Authority or shall use reasonable endeavours to procure the grant of a licence to the Authority of any software used by the Contractor which is used solely for the purpose of providing the Services and/or receiving the Services and the property and rights (including intellectual property rights) in which is not already owned or licensed to the Authority, for the use by the Authority following the Termination or expiry of this Contract and the end of any Termination Assistance Period.
- (g) the Contractor shall transfer to the Authority any current and historic documentation and management information relating to the provision of the Services as per the terms of this Contract. This information shall be transferred to the Authority at no charge.
- (h) where the Authority requires, the Contractor shall use reasonable endeavours to secure the novation to the Authority of any third party contracts used by the Contractor solely for the purpose of providing the Services and/or allowing the Authority to receive the Services.

- (i) the Contractor shall hand over to the Authority all data relating to the Infrastructure, such data to include database records, configuration information of the Infrastructure and all back-up copies of such data. The Contractor shall provide such data on industry standard media and format.

**10 Communication**

- 10.1 Arrangements for communication with staff, relevant trade unions, contractors and the Authority's will be made so as to avoid any detrimental impact upon the Parties' business as a result of undertaking any transfer contemplated by the Exit Plan. The Parties will agree prior to any release of information the manner and timing for releasing information.

**11 Disputes Relating to Termination Services**

- 11.1 Where there is any dispute between the parties regarding any matter set out in this Schedule, such dispute shall be resolved in accordance with Schedule 6

**Schedule 6  
Dispute Resolution**

- 1** Any question which may arise concerning the construction, meaning or effect of this Agreement or any matter arising out of or in connection with this Contract, in the first instance shall be referred in writing to the Contractor's and Authority's nominated managers for discussion and resolution within two weeks.
- 2** If the matter is not resolved within that time, it will be referred to the next level of the Contractor's and Authority's IT management who must meet within two weeks of such referral to attempt to resolve the matter. If the matter is not resolved at that meeting the escalation continues with one week maximum time interval up to the most senior level of management (for the avoidance of doubt, in the case of Authority the most senior level of management for these purposes shall refer to IT managers only.) If the unresolved matter is having a serious effect on the Services, both parties will use reasonable endeavours to reduce the elapsed time in completing the process.
- 3** The levels of escalation are as set out in the below table with each row representing escalating seniority (the first being the lowest level of seniority and the fourth row being the highest level):

Authority	Contractor

- 4** If any of the above are unable to attend the meeting, a substitute may attend provided that such substitute is authorised to settle the unresolved matter.
- 5** Any dispute, controversy or claim arising out of or relating to this Contract, or the breach, termination, or invalidity thereof which has not been resolved in accordance with paragraph 1 and 2 above, shall be resolved through mediation in accordance with clause 53 of the Contract.
- 6** Neither party may initiate any legal action until the procedures set out in paragraphs 1, 2 and 3 above have been completed unless such party has reasonable cause to do so to avoid damage to its business.

**Schedule 7**  
**Change Control Procedure**

**GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE**

This schedule sets out the procedure for dealing with Changes.

- 1.1 Operational Changes shall be processed in accordance with paragraph 8 below. If either Party is in doubt about whether a change falls within the definition of an Operational Change then it will be processed as a Change.
- 1.2 Under this Change Control Procedure:
  - 1.2.1 either Party may request a Change which they shall initiate by issuing a Change Request in accordance with paragraph 3;
  - 1.2.2 the Contractor will assess and document the potential impact of a proposed Change in accordance with paragraph 4 before the Change can be either approved or implemented;
  - 1.2.3 the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in paragraph 5;
  - 1.2.4 the Contractor shall have the right to reject a Change Request solely in the manner set out in paragraph 6;
  - 1.2.5 no proposed Change shall be implemented by the Contractor until such time as a Change Authorisation Note has been signed and issued by the Authority in accordance with paragraph 5; and
  - 1.2.6 if the circumstances or nature of a proposed Change mean that it is a Fast-track Change then it shall be processed in accordance with paragraph 7.
- 1.3 Until such time as a Change Authorisation Note has been signed and issued by the Authority in accordance with paragraph 1.2, then:
  - 1.3.1 unless the Authority expressly agrees otherwise in writing, the Contractor shall continue to supply the Services in accordance with the existing terms of the Contract as if the proposed Change did not apply; and
  - 1.3.2 any discussions, negotiations or other communications which may take place between the Authority and the Contractor in connection with any proposed Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Contract.

**2**      **COSTS**

- 2.1      Subject to paragraph 2.3, the costs of preparing each Change Request and undertaking an Impact Assessment incurred by both Parties, shall be borne by the Party making the request.
- 2.2      All Changes shall be calculated and charged in accordance with the principles and day rates set out in Schedule 3 (Charges). The Contractor will only be entitled to increase the Charges if it can demonstrate in the Impact Assessment that the proposed Change requires additional resources or services and that such additional resources or services are not accounted for within the scope of Charges that are already payable by the Authority. In any event, any change to the Charges resulting from a Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources or services required for the provision of the Services as amended by the Change.
- 2.3      Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Contractor shall be paid for by the Contractor.

**3**      **CHANGE REQUEST**

- 3.1      Either Party may issue a Change Request to the other Party at any time during the Contract Period. The Change Request shall be substantially in the form of Appendix 1 to this schedule and must state whether the Party issuing the Change Request considers the proposed Change to be a Fast-track Change.
- 3.2      If the Contractor issued the Change Request, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable.
- 3.3      If the Authority issued the Change Request, then the Contractor shall provide an Impact Assessment to the Authority as soon as is reasonably practicable.

**4**      **IMPACT ASSESSMENT**

- 4.1      Each Impact Assessment shall include (without limitation):
- 4.1.1      details of the proposed Change including the reason for the Change; and
- 4.1.2      details of the impact of the proposed Change on the Services, the Additional Services and the Contractor's ability to meet its other obligations under the Contract and any variation to the terms of the Contract that will be required as a result of that impact and including without limitation changes to:

- 4.1.2.1 the Services Requirements and the Service Levels;
  - 4.1.2.2 the Milestones and any other timetable previously agreed by the Parties;
  - 4.1.2.3 other services provided by third party contractors to the Authority, including any changes required by the proposed Change to the Authority's IT infrastructure;
  - 4.1.2.4 other proposed Changes which have yet to be agreed with the Authority pursuant to this Change Control Process;
  - 4.1.2.5 details of the cost of implementing the proposed;
  - 4.1.2.6 details of the ongoing costs required by the proposed Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party in accordance with the cost visibility taking into consideration any other proposed Changes and any alteration to the working practices of either Party;
  - 4.1.2.7 a timetable for the implementation, together with any proposals for the testing of the Change and the impact on any other proposed Changes;
  - 4.1.2.8 details of how the proposed Change will ensure compliance with any applicable Change in Law; and
  - 4.1.2.9 such other information as the Authority may reasonably request in (or in response to) the Change Request.
- 4.2 Subject to the provisions of paragraph 4.3, the Authority shall review the Impact Assessment and, within 15 Working Days of receiving the Impact Assessment, it shall respond to the Contractor in accordance with paragraph 5.
- 4.3 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Change so that it may properly evaluate the Change Request and the Impact Assessment, then within five Working Days of receiving the Impact Assessment, it shall notify the Contractor of this fact and detail the further information that it requires. The Contractor shall then re-issue the relevant Impact Assessment to the Authority within a reasonable time of receiving such notification. At the Authority's reasonable discretion, the Parties may repeat the process described in this paragraph until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.

## **5 AUTHORITY'S RIGHT OF APPROVAL**

- 5.1 Within 15 Working Days of receiving the Impact Assessment from the Contractor or within 10 Working Days of receiving the further information that it may request

pursuant to 4.3, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:

- 5.1.1 approve the proposed Change, in which case the Parties shall follow the procedure set out in paragraph 5.2 below;
- 5.1.2 in its absolute discretion reject the Change, in which case it shall notify the Contractor of the rejection. The Authority shall not reject any proposed Change to the extent that the Change is necessary for the Contractor or the Services to comply with any Changes in Law. If the Authority does reject a Change, then it shall explain its reasons in writing to the Contractor as soon as is reasonably practicable following such rejection;
- 5.1.3 request the Contractor to modify the Change Request and/or Impact Assessment in which event the Contractor shall make such modifications within a reasonable period of such request. Subject to paragraph 4.3 above, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Change within 10 Working Days.

5.2 If the Authority approves the proposed Change pursuant to paragraph 5.1 and it has not been rejected by the Contractor in accordance with paragraph 6 below, then it shall inform the Contractor and the Contractor shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Contractor. On the Authority's signature, the Change Authorisation Note shall constitute a binding variation to the Contract provided that the Change Authorisation Note is signed by:

5.2.1 the appropriate person(s) specified in paragraph 9.1 of this schedule; and

5.2.2 the Authority within 10 Working Days of receiving the Contractor's signed copy. If the Authority does not sign the Change Authorisation Note within this time period, then the Contractor shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within five Working Days of the date of such notification, then the Contractor may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

## **6 CONTRACTOR'S RIGHT OF APPROVAL**

6.1 Following an Impact Assessment, if the Contractor reasonably believes that any proposed Change which is requested by the Authority:

6.1.1 would materially and adversely affect the risks to the health and safety of any person; or

6.1.2 would require the Services to be performed in a way that infringes any Law; or

6.1.3 is outside of the Contractor's technical capability where:

6.1.3.1 the Contractor can demonstrate to the Authority's reasonable satisfaction that the proposed Change is impossible to implement; and

6.1.3.2 the proposed Change is outside the technical scope of the Services as set out in the Services Requirements , or

6.1.4 the Contractor has insufficient resources to fulfil the proposed Change.

6.1.5 then the Contractor shall be entitled to reject the proposed Change and shall notify the Authority of its reasons for doing so within five Working Days after the date on which it is obliged to deliver the Impact Assessment in accordance with paragraph 4.3.

## **7 FAST-TRACK CHANGES**

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

7.2 If both Parties agree in relation to a proposed Change that:

7.2.1 the Change does not involve any alteration to, or deviation from the contractual principles set out in the Contract; and

7.2.2 the total number of Changes in relation to which this fast track procedure has been applied does not exceed 24 in any 12 month period (or such higher number as the Parties may from time to time agree in writing); and

7.2.3 the value of the proposed Change does not exceed £500,000 and the proposed Change is not significant (as determined by the Authority acting reasonably),

then the Parties shall confirm to each other in writing that they shall use the process set out in paragraphs 2, 3, 4, 5 and 6 above but with reduced timescales, such that any period of 15 Working Days is reduced to five Working Days, any period of 10 Working Days is reduced to two Working Days and any period of five Working Days is reduced to one Working Day.

7.3 The parameters set out in paragraph 7.2 may be revised from time to time by agreement between the Parties in writing.

## **8 OPERATIONAL CHANGE PROCEDURE**

8.1 Any changes identified by the Contractor to improve operational efficiency of the Services may be implemented by the Contractor without following the Change Control Procedure for proposed Changes provided they do not:

- 8.1.1 have an impact on the Authority;
  - 8.1.2 require a change to the Contract;
  - 8.1.3 have a direct impact on use of the Services; or
  - 8.1.4 involve the Authority in paying any additional Charges or other costs.
- 8.2 The Authority may request an Operational Change by submitting a written request for Operational Change ("RFOC") to the Contractor Representative.
- 8.3 The RFOC shall include the following details:
- 8.3.1 the proposed Operational Change; and
  - 8.3.2 time-scale for completion of the Operational Change.
- 8.4 The Contractor shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.
- 8.5 The Contractor shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Authority when the Operational Change is completed.

## **9 CHANGE AUTHORISATION**

- 9.1 Any proposed Change processed in accordance with this schedule will not be authorised and the Contractor shall not implement any proposed Change until the Change Authorisation Note is signed and executed by the IS & ICT Procurement & Contracts Manager in accordance with the Authority's Change authorisation and sign off procedure(s), as notified to the Contractor in writing from time to time.

## **10 COMMUNICATIONS**

- 10.1 For any Change Communication to be valid under this schedule, it must be sent to either the Authority's Change Manager or the Contractor's Change Manager, as applicable. All Change Communications may be hand delivered or sent by first-class post, email or facsimile. Change Communications shall be deemed to have been received at the following times:
- 10.1.1 if hand delivered, then at the time of delivery or, if delivered after 16.00 hours on the next Working Day;
  - 10.1.2 if posted first class from within the UK, at 10.00 hours on the second Working Day after it was put into the post; or
  - 10.1.3 if sent by facsimile or email, then at the expiration of 4 (four) hours after the time of dispatch, if dispatched before 15.00 hours on any Working Day, and in any other case at 10.00 hours on the next Working Day following the date of dispatch.

**10.2** In proving delivery of a Change Communication, it will be sufficient to prove that delivery was made, or that the envelope containing the Change Communication was properly addressed and posted (by prepaid first class recorded delivery post) or that the facsimile or email was properly addressed and dispatched, as the case may be.

**APPENDIX 1**

**Change Request Form**

CR NO.:	TITLE:	TYPE OF CHANGE:
PROJECT:	REQUIRED BY DATE:	
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED (OPTIONAL FIELD):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
CONTRACTOR REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED VARIATION:		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED VARIATION:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

**APPENDIX 2**

**Impact Assessment Form**

CR NO.:	TITLE:	DATE RAISED:
PROJECT:	REQUIRED BY DATE:	
DETAILED DESCRIPTION OF VARIATION FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND DETAILS OF ANY RELATED VARIATIONS:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE VARIATION:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE OR COST-PLUS BASIS):		
DETAILS OF ANY PROPOSED CONTRACT AMENDMENTS:		
DETAILS OF ANY SERVICE LEVELS AFFECTED:		
DETAILS OF ANY OPERATIONAL SERVICE IMPACT:		
DETAILS OF ANY INTERFACES AFFECTED:		
DETAILED RISK ASSESSMENT:		
RECOMMENDATIONS:		

**APPENDIX 3**

**Change Authorisation Note**

CR NO.:	TITLE:	DATE RAISED:
PROJECT:	TYPE OF CHANGE:	REQUIRED BY DATE:
KEY MILESTONE DATE: <i>if any</i>		
DETAILED DESCRIPTION OF VARIATION FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND DETAILS OF ANY RELATED VARIATIONS:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE VARIATION:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE OR COST-PLUS BASIS):		
SIGNED ON BEHALF OF THE AUTHORITY:	SIGNED ON BEHALF OF THE CONTRACTOR:	
Signature: _____	Signature: _____	
Name: _____	Name: _____	
Position: _____	Position: _____	
Date: _____	Date: _____	

**Schedule 8**  
**Authority Responsibilities and Authority Assets**

**Part A: Authority Responsibilities**

**1 INTRODUCTION**

- 1.1 The responsibilities of the Authority set out in Schedule 1 (Service Requirements) and this Schedule 8 (Authority Responsibilities and Authority Assets) shall constitute the exclusive Authority Responsibilities under this Contract.
- 1.2 The responsibilities specified within this schedule shall be provided to the Contractor free of charge, unless otherwise agreed between the Parties.

**2 GENERAL OBLIGATIONS**

The Authority shall:

- 2.1 use its reasonable endeavours to provide the Contractor with access to appropriate members of the Authority's staff, as such access is reasonably requested by the Contractor in order for the Contractor to discharge its obligations throughout the Contract Period;
- 2.2 provide sufficient and suitably qualified staff to fulfil the Authority's roles and duties under this Contract; and
- 2.3 use its reasonable endeavours to provide such documentation, data and/or other information that the Contractor reasonably requests that is necessary to perform its obligations under the terms of this Contract provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority.

**3 SPECIFIC OBLIGATIONS**

**Software**

- 3.1 The Authority shall ensure that all required software specific to the delivery of their Services to the Authority (and any applicable licence(s)) is provided by the Authority to the Contractor provided that:
  - 3.1.1 the Contractor provides the Authority with reasonable notice of any software required to deliver the Infrastructure hosting Services, including its licensing requirements (such as the number of required license and the use/type of license required); and
  - 3.1.2 the Contractor keeps full and accurate records of the number of licences required and the number of users licensed to use the relevant software.
- 3.2 The Authority will agree and implement network security over its WAN to enable the Contractor to manage all environments from the Authority's Sites.

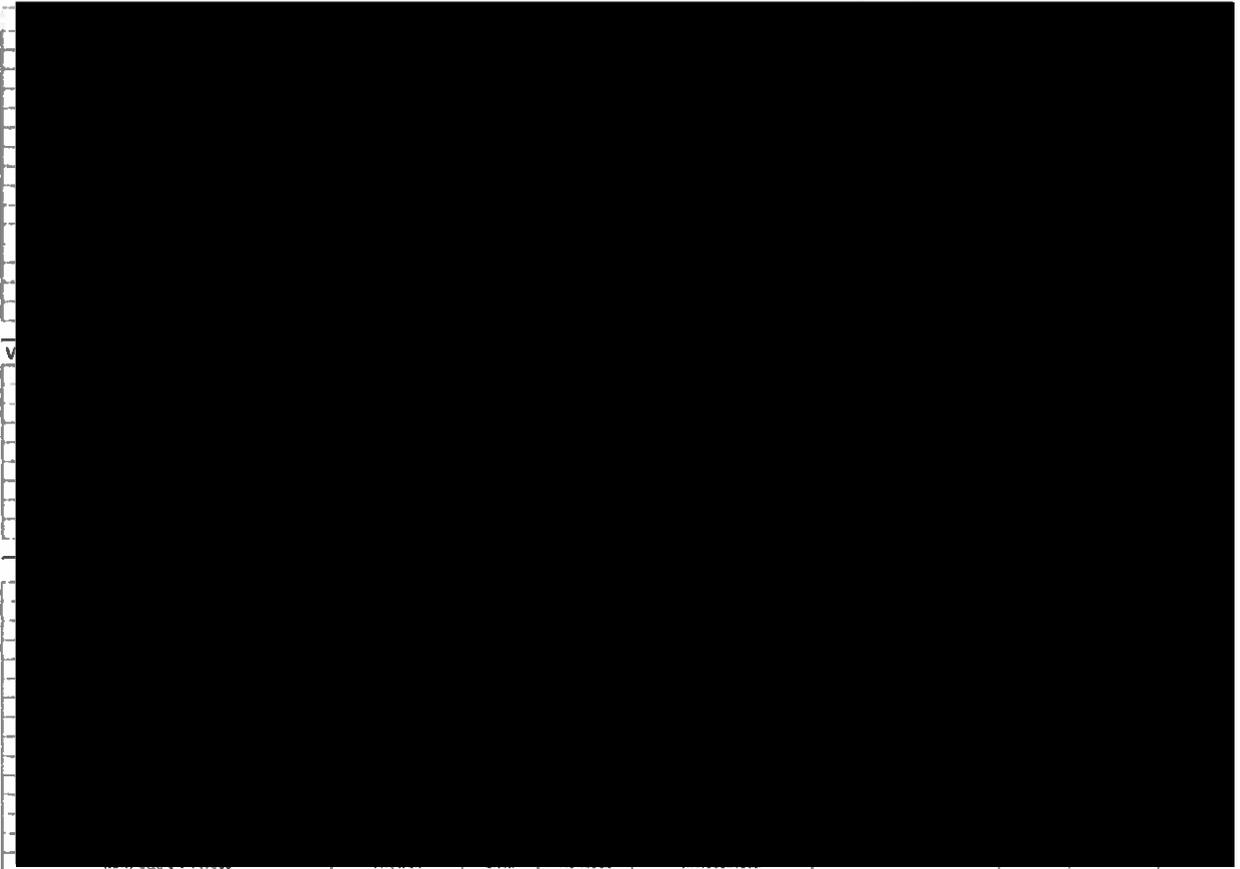
- 3.3 The Authority will ensure that WAN bandwidth is sufficient to enable timely (<15minutes) check-in/check-out during the development cycle
- 3.4 The Authority will procure the necessary maintenance agreements for the infrastructure and these will then be utilised by the Contractor.
- 3.5 The Authority will procure the necessary maintenance agreements for the operating system and application element of the infrastructure and these will then be utilised by the Contractor.
- 3.6 The Authority will procure the necessary maintenance agreements for the anti-viral and backup element of the infrastructure and these will then be utilised by the Contractor.
- 3.7 The Authority shall ensure that, at all times, for the duration of the Contract the Contractor shall be able to utilise a support agreement between the Authority, Oracle and other manufacturers at no charge to the Contractor, for the purpose of obtaining the support and guidance that the Contractor deems reasonably necessary for the fulfilment of their duties as defined by this Contract.
- 3.8 Any Changes shall be conducted via the Change Control Procedure as set out in Schedule 7.
- 3.9 The Authority retains responsibility for the roll-out of software to its Authority Users.
- 3.10 The Contractor shall recommend application, database, operating system; patches or upgrades which the Authority will either approve or reject. If the recommendation is rejected, the Contractor will detail the impact on its ability to deliver the services.
- 3.11 Provision, delivery and installation of hardware in addition to that set out in Schedule 8 shall be dealt with via the Change Control procedure in Schedule 7.

#### 4 RELIEF EVENTS

- 4.1 The Authority acknowledge that certain obligations of the Contractor are dependent on the Authority itself performing its obligations as detailed in this Contract.
- 4.2 Should the Authority fail to perform an obligation (a "Relief Event") then subject to written notification by the Contractor as soon as reasonably practicable after the Contractor becomes aware of the occurrence of the Relief Event:
  - 4.2.1 failure by the Contractor to perform the relevant obligations directly impacted by the Relief Event and any consequent poor performance of the affected Service components shall not constitute a breach of the provisions of this Contract by the Authority; and
  - 4.2.2 the Relief Event shall be taken account of in measuring the performance of the affected Service and performance where relevant shall be calculated as though the relevant services had been performed free from any consequences of such Relief Event.

- 4.3** The provisions of this paragraph 4 shall apply only to the extent that:
- 4.3.1** the Relief Event affects the Contractor's ability to perform the relevant obligations;
  - 4.3.2** the Relief Event is not itself the result of the Contractor's breach; and
  - 4.3.3** the Contractor has used reasonable endeavors to perform the relevant obligations notwithstanding the impact of the Relief Event on the Contractor's ability to perform its obligations under this Call Off Agreement.

**Part B: Authority Assets**



**1 Authority's Assets**

- 1.1 The Contractor undertakes the safe custody of and due return of all Authority Assets made available to or otherwise received by the Contractor and such Authority Assets shall be used in the performance of this Contract and for no other purposes without the prior approval in writing of the Authority.
- 1.2 Neither the Contractor, nor any sub-contractor, nor any other person, shall have a lien on any Authority's Assets for any sum due to the Contractor, sub-contractor or other person and the Contractor shall take all reasonable steps to ensure that the title of the Authority Assets and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with any Authority Assets.

**Schedule 9  
Security**

- 1.1 The Contractor shall comply with the security policy of the Authority as amended from time to time. As at the Commencement Date, the relevant policy is the Authority's Information Security and Governance Policy version 1.2 dated 26 January 2015. A copy is appended to this Contract and is available upon request from the Authority.



Information Security  
and Governance Policy

- 1.2 The Contractor shall procure that all of its staff and contractors which require access to Authority Premises in order to deliver the Services undergo the Authority's security training prior to any attendance on site at any Authority Premises unless such attendance is expressly authorised by the Authority.
- 1.3 The Contractor shall ensure that if it accesses data in the Production Environment then such access shall comply with Caldicott principles. The Caldicott Report set out a number of general principles that health and social care organisations should use when reviewing its use of client information.
- 1.4 The Contractor shall ensure that it maintains and operates the Service in accordance with ISO 27001 standards and shall annually (and on request by the Authority) provide confirmation and evidence of such certification.
- 1.5 The Contractor shall produce a quarterly report of user access to enable the Authority to check that access is valid. It will also allow the Authority to audit any changes to live data or access rights by those with enhanced access rights such as DBAs.
- 1.6 The Contractor shall communicate violations of Infrastructure security to the Authority ICT Service Manager for inclusion in the audit report, to include any unauthorised access attempts to the physical data centre, within 1 Working Day.
- 1.7 The Contractor shall ensure that where system to system interchanges occur, automated mechanisms of authentication shall be in-built, where supported.
- 1.8 The Contractor shall configure, install and maintain appropriate anti-virus software as provided by the Authority to minimise the risk of infection of the managed servers by virus, Trojan horse, other malicious software or persons.
- 1.9 The Contractor shall ensure that only the necessary systems management components have access to the Internet and that access to the hosted Siebel CRM and OBIEE managed services is not possible from the Internet and that all access requests to those services are authenticated by the method specified and approved by the Authority.
- 1.10 The Contractor shall allow network access from any location within the Authority's network via the Authority's secure WAN link.
- 1.11 The Contractor shall ensure that all infrastructure, as described in Annex B - Asset List, other than the provision of power, air conditioning and fire suppression systems, is dedicated for the use of the Authority.

- 1.12 The Contractor shall ensure that all servers and network systems hosted by the Contractor have system clocks synchronised to a reliable and accurate time source such as the master time server in the Authority's network.

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**Schedule 10**  
**Records Provision**

**1 INTRODUCTION**

The objective of this schedule is to set out the requirements for:

- 1.1 the retention of proper records of processes and decisions taken relating to the performance and management of the Contract; and
- 1.2 the detail and nature of the reports that are to be made by the Parties, including the timing and process for making such reports.

**2 REPORTS**

2.1 Any or all of the following reports may be required:

2.1.1 Management Information and other reports required by this Contract, including but not limited to those set out in Appendix 2 attached; and

2.1.2 Force Majeure Event reports.

2.2 The reports referred to in paragraph 2.1 shall be provided to the Authority as and when reasonably requested by the Authority upon written notice.

2.3 The Authority shall be entitled from time to time to reasonably request the Contractor to produce reports other than those referred to in paragraph 2.1 to enable it to meet its obligations and provide reports and returns pursuant to regulations, directions or guidance applicable to the Authority or as required by external agencies. Where the Contractor is reasonably able to produce such reports without significant effort or cost from records which it already maintains, or is required to maintain under this Contract, the Contractor shall produce such reports at the Authority's request, within a reasonable period and without additional charge. Where the production of such reports requires the Contractor to keep additional records or to incur significant effort or cost, the Authority's request shall be dealt with through the Change Control Procedure and the Authority shall not be entitled unreasonably to withhold its consent pursuant to paragraph 5.1.2 of schedule 7 (Change Control Procedure) notwithstanding that the change will result in an increase in the Charges.

**3 RECORDS**

3.1 The Contractor shall retain and maintain all the records (including superseded records) referred to in Appendix 1 to this schedule:

3.1.1 in accordance with the requirements of the Public Records Office (PRO) and Good Industry Practice;

3.1.2 in chronological order;

3.1.3 in a form that is capable of audit; and

3.1.4 at its own expense.

The Contractor shall make these records available for inspection to the Authority on request subject to the Authority giving reasonable notice.

- 3.2 Wherever practical, original records shall be retained and maintained in hard copy form. True copies of the original records may be kept in hard copy or electronic form by the Contractor where it is not practicable to retain original records.
- 3.3 The Contractor shall, during the Contract Period and a period of at least six years following the expiry of termination of this Contract (or for such other period as required by Law), maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all records (whether in electronic format or otherwise) referred to in the Appendices to this schedule.
- 3.4 Financial records referred to in Appendix 1 shall be retained and maintained in safe storage by the Contractor for a period of at least seven years after the expiry or termination of this Contract.
- 3.5 Without prejudice to the foregoing, the Contractor shall provide the Authority:
  - 3.5.1 as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Contractor, but not later than 130 Working Days after the end of any of the Contractor's financial years of which part or all of which falls during the Contract Period, the Contractor's audited accounts and if appropriate, of the consolidated audited accounts of the Contractor and, its associated companies (if any), in respect of that period, prepared in accordance with the Companies Act (2006) and generally accepted accounting principles and bases in the UK, consistently applied together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.

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## APPENDIX 1

### Records to be kept by the Contractor

In accordance with the provisions of paragraph 3 of this Schedule 10 the Contractor shall maintain the following records:

1. The Contract, its schedules and all amendments to such documents.
2. All other documents which this Contract expressly requires to be prepared.
3. Records relating to the appointment and succession of the Contractor Representative and each member of the Key Personnel.
4. Notices, reports and other documentation submitted by an expert.
5. All operation and maintenance manuals prepared by the Contractor for the purpose of maintaining the provision of the Services and the underlying ICT Environment and Contractor Equipment.
6. Documents prepared by the Contractor or received by the Contractor from a third party relating to a Force Majeure Event.
7. All formal notices, reports or submissions made by the Contractor to the Authority Representative in connection with the provision of Services.
8. All certificates, licences, registrations or warranties in each case obtained by the Contractor in relation to the provision of the Services.
9. Documents prepared by the Contractor for the Authority in support of claims for the Charges.
10. Documents submitted by the Contractor pursuant to accordance with the Change Control Procedure.
11. Documents submitted by the Contractor pursuant to invocation by it or the Authority of the Dispute Resolution procedure under Schedule 6.
12. Documents evidencing any change in ownership or interest in the Contractor of five percent (5%) or more of the issued share capital of the Contractor and/or the Guarantor and all holdings of more than five percent (5%) of the issued share capital of the Contractor and/or the Guarantor.
13. Invoices and records related to VAT sought to be recovered by the Contractor.
14. Financial records, including audited accounts of the Contractor.
15. Records required to be retained by the Contractor by Law, including in relation to health and safety matters and health and safety files and all consents.
16. All documents relating to the insurances to be maintained under the Contract and any claims related to this Contract made in respect of them.
17. All other records, notices or certificates required to be produced and/or maintained by the Contractor pursuant to this Contract.
18. All journals and audit trail data referred to in Schedule 9 (Security).

## **Schedule 11 – Definitions**

In this Contract, the following expressions and defined terms have the following interpreted meaning:

<b>'Additional Services'</b>	The services in addition to the Services set out in schedule 1 (Service Requirements) which the Authority may request from time to time.
<b>'Authority'</b>	The Care Quality Commission as further described in the Contract Data.
<b>'Authority's Confidential Information'</b>	<p>means all Authority Data and any information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and Contractors of the Authority, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above</p> <p>Any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential').</p>
<b>'Authority Data'</b>	Data that is owned or managed by the Authority.
<b>'Authority Software'</b>	Software owned by or licensed to the Authority (other than under or pursuant to this Contract), which is or will be used by the Contractor for the purposes of providing the Services.
<b>'Background IPRs'</b>	<p>For each Party:</p> <ul style="list-style-type: none"><li>• IPRs owned by that Party before the date of this Contract, including IPRs contained in any of the Party's know-how, documentation, processes and procedures,</li><li>• IPRs created by the Party independently of this Contract, and/or</li><li>• For the Authority, Crown Copyright which is not available to the Contractor otherwise than under this Contract,</li></ul> <p>but excluding IPRs owned by that Party subsisting in Authority Software or Contractor Software.</p>
<b>'Backup Failure'</b>	Means the failure of a scheduled backup as set out in Schedule 1, Section 1 (Service Requirements) of this Contract and as varied in writing from time to time.
<b>'Charges'</b>	The prices (excluding any applicable VAT), payable to the Contractor by the Authority under the Contract contained in Schedule 3.
<b>'Commencement Date'</b>	For the purposes of the Contract, commencement date shall be as set in the Contract Data.
<b>'Commercially Sensitive Information'</b>	Information, which is set out in the Contract Data as Commercially Sensitive Information and any other information that the Authority has been notified about with full details of why the Information is deemed to be commercially

	sensitive.
<b>'Comparable Supply'</b>	The supply of services to another customer of the Contractor that are the same or similar to any of the Services
<b>'Confidential Information'</b>	<p>The Authority's Confidential Information or the Contractor's Confidential Information, which may include (but is not limited to):</p> <ul style="list-style-type: none"> <li>any information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and third parties, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above</li> </ul> <p>any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential')</p>
<b>'Contract'</b>	The legally binding agreement for the provision of Services made between the Authority and the Contractor.
<b>'Contract Data'</b>	Means the information set out in Part A to this Contract
<b>'Contractor'</b>	Supplier who has been awarded to supply the Services in accordance with the VEAT notice published on the 19 <sup>th</sup> September 2017 as further detailed in the Contract Data.
<b>'Contractor Background IPRs'</b>	Background IPRs of the Contractor.
<b>'Contractor Insolvency Event'</b>	means the Contractor is unable to pay debts in Section 268 of Insolvency Act 1986.
<b>'Contractor Staff'</b>	All persons employed by the Contractor including the Contractor's agents and consultants used in the performance of its obligations under this Contract.
<b>'Contractor Terms'</b>	means the terms and conditions pertaining to the Services and as set out in the Terms and Conditions document supplied as part of the Contractor's Tender.
<b>'Control'</b>	Control as defined in section 1124 and 450 of the Corporation Tax Act 2010. 'Controls' and 'Controlled' will be interpreted accordingly
<b>'Crown'</b>	The government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf

<b>'Data Loss Event'</b>	a breach of any system containing Personal Data that causes unauthorised access to Personal Data, actual or potential loss of Personal Data;
<b>'Data Protection Laws'</b>	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 1998 and, with effect from 25 May 2018, the GDPR (and any replacement or supplementary legislation implemented in the United Kingdom following its exit from the European Union);
<b>'Data Protection Officer'</b>	the designated individual with the responsibility for data protection and privacy to act as the point as contact for the purpose of observing the Data Protection Laws and associated obligations under the Contract
<b>'Data Subject Access'</b>	a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access his or her Personal Data;
<b>'Data Subject'</b>	will have the same meaning as set out in the Data Protection Laws, as amended from time to time.
<b>'Default'</b>	means any breach of the obligations of the Contractor (including any fundamental breach or breach of a fundamental term) any other default, act, omission, negligence or negligent statement of the Contractor, of its Subcontractors or any Contractor Staff in connection or in relation to this Contract
<b>'Deliverable'</b>	Those Services which the Authority contracts the Contractor to provide under the Contract.
<b>'Effective Date'</b>	The date on which the Contract is signed and as set out in the Contract Data.
<b>'Equipment'</b>	The Contractor's hardware, computer and telecoms devices, plant, materials and such other items supplied and used by the Contractor (but not hired, leased or loaned from the Authority) in the performance of its obligations under the Contract.
<b>'FoIA'</b>	The Freedom of Information Act 2000 and any subordinate legislation made under the Act occasionally together with any guidance or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation.
<b>'Force Majeure'</b>	anything affecting either Party's performance of their obligations arising from any of the following: <ul style="list-style-type: none"> <li>• acts, events, omissions, happenings or non-happenings beyond the reasonable control of the affected Party</li> <li>• riots, war or armed conflict, acts of terrorism, nuclear, biological or</li> </ul>

	<p>chemical warfare</p> <ul style="list-style-type: none"> <li>• acts of government, local government or Regulatory Bodies</li> <li>• fire, flood, any disaster and any failure or shortage of power or fuel</li> <li>• an industrial dispute affecting a third party for which a substitute third party is not reasonably available,</li> </ul> <p>But excluding: The following do not constitute a Force Majeure event:</p> <ul style="list-style-type: none"> <li>• any industrial dispute relating to the Contractor, its staff, or any other failure in the Contractor's (or a Subcontractor's) supply chain</li> <li>• any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned</li> </ul>
<b>'Fraud'</b>	Any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.
<b>'GDPR'</b>	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
<b>'Good Industry Practice'</b>	Standards and procedures conforming to the Law and the application of skill, care and foresight which would be expected from a person or body who has previously been engaged in a similar type of undertaking under similar circumstances. The person or body must adhere to the technology code of practice ( <a href="https://www.gov.uk/service-manual/technology/code-of-practice.html">https://www.gov.uk/service-manual/technology/code-of-practice.html</a> ) and the government service design manual ( <a href="https://www.gov.uk/service-manual">https://www.gov.uk/service-manual</a> ).
<b>'Group'</b>	A company plus any subsidiary or Holding Company. 'Holding company' and 'Subsidiary' are defined in section 1159 of the Companies Act 2006.
<b>'Guarantee'</b>	The deed of guarantee described in the Contract Data (Parent Company Guarantee).
<b>'Guidance'</b>	Any current UK Government Guidance on the Public Contracts Regulations. In the event of a conflict between any current UK Government Guidance and the Crown Commercial Service Guidance, current UK Government Guidance shall take precedence.
<b>'Holding Company'</b>	As described in section 1159 and Schedule 6 of the Companies Act 2006.
<b>'Information'</b>	As described under section 84 of the Freedom of Information Act 2000, as amended from time to time.
<b>'Insolvency Event'</b>	Can be: <ul style="list-style-type: none"> <li>• a voluntary arrangement</li> <li>• a winding-up petition</li> <li>• the appointment of a receiver or administrator</li> <li>• an unresolved statutory demand</li> <li>• a Schedule A1 moratorium.</li> </ul>

<p><b>'Intellectual Property Rights' or 'IPR'</b></p>	<p>means:</p> <p>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise), know-how, trade secrets and moral rights and other similar rights or obligations whether registerable or not;</p> <p>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>c) all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off.</p>
<p><b>'Law'</b></p>	<p>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, judgment of a relevant court of Law, or directives or requirements of any Regulatory Body.</p>
<p><b>'Loss'</b></p>	<p>All losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and 'Losses' will be interpreted accordingly.</p>
<p><b>'Material Breach'</b></p>	<p>A significant breach of the Contract that entitles the Authority to terminate the Contract under clause 23.4</p>
<p><b>'Parent Company'</b></p>	<p>Any company which is the ultimate Holding Company of the Contractor.</p>
<p><b>'Party'</b></p>	<p>the Contractor or the Authority and 'Parties' will be interpreted accordingly.</p>
<p><b>'Personal Data'</b></p>	<p>As described in the Data Protection Laws</p>
<p><b>'Prohibited Act'</b></p>	<p>To directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:</p> <ul style="list-style-type: none"> <li>• induce that person to perform improperly a relevant function or activity</li> <li>• reward that person for improper performance of a relevant function or activity</li> <li>• commit any offence: <ul style="list-style-type: none"> <li>○ under the Bribery Act 2010</li> <li>○ under legislation creating offences concerning Fraud</li> <li>○ at common Law concerning Fraud</li> <li>○ committing or attempting or conspiring to commit Fraud</li> </ul> </li> </ul>
<p><b>'Processing'</b></p>	<p>has the meaning given to it in the Data Protection Laws but, for the</p>

	purposes of the Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;
<b>'PSN'</b>	The Public Services Network (PSN) is the Government's high-performance network which helps public sector organisations work together, reduce duplication and share resources.
<b>'PSN Code of Practice'</b>	Those obligations and requirements for PSN Service Providers wanting to participate in the PSN together with all documents annexed to it and referenced within it, as set out in the code template.
<b>'Regulations'</b>	The Public Contracts Regulations 2015 (at <a href="http://www.legislation.gov.uk/ukSI/2015/102/contents/made">http://www.legislation.gov.uk/ukSI/2015/102/contents/made</a> ) and the Public Contracts (Scotland) Regulations 2012 (at <a href="http://www.legislation.gov.uk/ssi/2012/88/made">http://www.legislation.gov.uk/ssi/2012/88/made</a> ).
<b>'Regulatory Bodies'</b>	Government departments and other bodies which, whether under statute, codes of practice or otherwise, are entitled to investigate or influence the matters dealt with in this Contract.
<b>'Reporting Date'</b>	The seventh day of each month following the month to which the relevant MI relates. A different date can be chosen if agreed between the Parties.
<b>'Request Information'</b> for	A request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.
<b>'Services'</b>	Means the Required Services and any/or Additional Services outlined in the Contract Data.
<b>'Service Definition'</b>	The definition of the Contractor's the Services provided in Section 2 (The Services) of this Contract
<b>'Service Description'</b>	The description of the Contractor service offering as provided in the Contract Data
<b>'Service Levels'</b>	the levels of service required to be provided, as prescribed in Schedule 2.
<b>'Specific Change In Law'</b>	A change in the Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply.
<b>'Subcontractor'</b>	Each of the Contractor's Subcontractors or any person engaged by the Contractor in connection with the provision of the services as may be permitted by this Contract.
<b>'Tender'</b>	The response submitted by the Contractor.
<b>'Working Day'</b>	Any day other than a Saturday, Sunday or public holiday in England and Wales, from 9am to 5pm unless otherwise agreed with the Authority and the Contractor in the Contract.



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## **Part C – Terms and conditions**

### **1. Contract start date, length and methodology**

- 1.1 The Contractor will start providing the Services on the date specified in the Contract Data.
- 1.2 This Contract will terminate on the End Date specified in the Contract Data unless terminated earlier in accordance with Clause 23 and will be a maximum of 24 months from the Commencement Date.

### **2. Overriding provisions**

- 2.1 The Contractor agrees to supply the Services and any Additional Services in accordance with this Contract and the Contractor's Terms as identified in the and incorporated into this Contract.
- 2.2 In the event of and only to the extent of any conflict or ambiguity between the Clauses of this Contract, the provisions of the Schedules, any document referred to in the Clauses of this Contract (including Contractor's Terms) the conflict shall be resolved in accordance with the following order of precedence:

- the Clauses of this Contract (excluding Contractor Terms)
- the completed Contract Data
- the Contractor's Terms and Conditions any other document referred to in the Clauses of this Contract.

The Contractor accepts this is the order of prevailing provisions in this Contract.

### **3. Transfer and sub-contracting**

- 3.1 The Contractor will not assign, novate or sub-contract any part of this Contract without the Authority's prior written approval which shall not be unreasonably withheld or delayed.
- 3.2 The Contractor will be responsible for the performance of any Sub-Contractors.
- 3.3 The Authority may assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to:

- any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority, or
- any private sector body which substantially performs the functions of the Authority

provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under this Contract.

### **4. Contractor Staff**

- 4.1 The Contractor Staff will:
  - fulfil all reasonable requests of the Authority
  - apply all due skill, care and diligence to the provisions of the Services
  - be appropriately experienced, qualified and trained to supply the Services
  - respond to any enquiries about the Services as soon as reasonably possible
  - complete any necessary vetting procedures specified by the Authority
  - Comply with the provisions of the Official Secrets Act 1911 to 1989; and
  - Section 182 of the Finance Act 1989.

**5. Due diligence**

5.1 Both Parties agree that when entering into a Contract, they:

5.2.1 having made their own enquiries are satisfied by the accuracy of any information supplied by the other Party

5.2.2 are confident that they can fulfil their obligations according to the terms of this Contract

5.2.3 have entered into this Contract relying on their own due diligence

**6. Warranties, representations and acceptance criteria**

6.1 The Contractor will perform its obligations under this Contract with all reasonable care, skill and diligence, according to Good Industry Practice.

6.2 The Contractor will use reasonable endeavours to prevent the introduction, creation or propagation of any disruptive elements into systems providing services to data, software or Authority Confidential Information held in electronic form.

6.3 The Contractor undertakes to the Authority that the Services will meet the Authority's acceptance criteria, as defined in the Contract Contract Data.

6.4 The Contractor warrants that it has full capacity and authority and all necessary authorisations, consents, licences and permissions and Intellectual Property Rights to perform this Contract.

6.5 The Contractor represents that, in entering into this Contract it has not committed any Fraud.

6.6 The Contractor undertakes to pay all taxes due from it to HMRC and will not indulge in "disguised employment" practices when delivering services under this Contract, and

6.7 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of breach of that provision by the Contractor.

6.8 Not Used

6.9 The Contractor undertakes to continue to pay all taxes due from it to HMRC and will not indulge in "disguised employment" practices when delivering services under this Contract.

6.10 The Contractor warrants and represents that it has full capacity, authority and all necessary authorisations, consents, licences, permissions, to enter into and perform its obligations under the Contract. This includes where a Contractor's procedures require the consent of its Parent Company.

6.11 The Contractor undertakes that it or an authorised representative has signed the Contract.

6.12 The Contractor warrants and represents that it has not committed, or agreed to commit, a Prohibited Act before entering into this Contract.

6.13 The Contractor undertakes not to commit or agree to commit a Prohibited Act and undertakes to perform all obligations under this Contract in compliance with all Laws.

**7. Business continuity and disaster recovery**

7.1 The Contractor will ensure a disaster recovery approach is captured in a clear disaster recovery plan contained within their service descriptions where appropriate and required by the Authority.

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## **8. Payment terms and VAT**

- 8.1 The Authority will pay the Contractor within 30 days of receipt of a valid invoice submitted by the Contractor in accordance with this Contract.
- 8.2 The Contract Charges are deemed to include all Charges for payment processing..
- 8.3 All charges payable by the Authority to the Contractor shall include VAT at the appropriate rate.
- 8.4 The Contractor will add VAT to the charges at the appropriate rate.
- 8.5 Not used.
- 8.6 The Contractor will ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied. The Authority may request the Contractor provides further documentation to substantiate the invoice and the Authority will act reasonably in this regard.
- 8.7 Contractor Sub-Contracts must oblige the Contractor to make payments to its Sub-Contractor within 30 calendar days from the receipt of a valid invoice.
- 8.8 The Contractor shall indemnify the Authority on demand against any liability arising from the Contractor's failure to account for or to pay any VAT on payments made to the Contractor under this Contract. The Contractor shall pay all monies pursuant to this indemnity to the Authority not less than 5 UK working days before the date upon which the tax or other liability is payable by the Authority.
- 8.9 The Contractor shall not suspend the supply of the Services for Authority's failure to pay undisputed sums of money unless the Contractor is entitled to suspend or terminate this Contract. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time).
- 8.10 In the event of a disputed invoice, the Authority shall make payment in respect of any undisputed amount in accordance with the provisions of this Contract and return the invoice to the Contractor within 10 UK working days of receipt with a covering statement proposing amendments to the invoice and/or the reason for any non-payment. The Contractor shall respond within 10 UK working days of receipt of the returned invoice stating whether or not the Contractor accepts the Authority's proposed amendments. If it does then the Contractor shall supply with the response a replacement valid invoice.

## **9. Recovery of sums due and right of set-off**

- 9.1 If a Contractor owes money to the Authority, the Authority may deduct that sum from the Contract Charges due.

## **10. Insurance**

The Contractor will maintain the insurances required by the Authority including those set out in this clause.

### **10.1 Subcontractors**

10.1.1 The Contractor will ensure that, during this Contract, Subcontractors hold third-party public and products liability insurance of the same amounts that the Contractor would be legally liable to pay as damages, including claimant's costs and expenses, for accidental death or bodily injury and loss of or damage to Property, to a minimum of £1,000,000.

### **10.2 Agents and professional consultants**

10.2.1 The Contractor will also ensure that all agents and professional consultants involved in the supply of Services hold professional indemnity insurance to a minimum indemnity of £1,000,000 for each individual claim during the Contract, and for 6 years after the termination or expiry date to this Contract to which the insurance relates.

10.2.2 The Contractor will also ensure that all agents and professional consultants involved in the supply of Services hold employers liability insurance to a minimum indemnity of £5,000,000 for each individual claim during the Contract, and for 6 years after the termination or expiry date to this Contract to which the insurance relates.

### 10.3 Additional or extended insurance

10.3.1 If requested by the Authority, the Contractor will obtain additional insurance policies, or extend existing insurance policies procured under the Contract.

10.3.2 The Contractor will provide The Authority with the following evidence that they have complied with clause 10.3.1 above:

- a broker's verification of insurance; or
- receipts in respect of the insurance premium; or
- other evidence of payment of the latest premiums due.

### 10.4 Contractor liabilities

10.4.1 Insurance will not relieve the Contractor of any liabilities under this Contract.

10.4.2 The Contractor will:

- take all risk control measures relating to the Services as it would be reasonable to expect of a contractor acting in accordance with Good Industry Practice, including the investigation and reports of claims to insurers;
- promptly notify the insurers in writing of any relevant material fact under any insurances of which the Contractor is, or becomes, aware; and
- hold all insurance policies and require any broker arranging the insurance to hold any insurance slips and other evidence of placing cover representing any of the insurance to which it is a Party.

10.4.3 The Contractor will not do or omit to do anything, which would vitiate any of the insurances.

### 10.5 Indemnity to principals

10.5.1 Where specifically outlined in this Contract, the Contractor will ensure that the third-party public and products liability policy will contain an 'indemnity to principals' clause under which the Authority will be compensated for both of the following claims against the Authority:

- death or bodily injury; and
- third-party Property damage arising from connection with the Services and for which the Contractor is legally liable.

### 10.6 Cancelled, suspended, terminated or unrenewed policies

10.6.1 The Contractor will notify the Authority as soon as possible if the Contractor becomes aware that any of the insurance policies have been, or are due to be, cancelled, suspended, terminated or not renewed.

### 10.7 Premium, excess and deductible payments

10.7.1 Where any insurance requires payment of a premium, the Contractor will:

- be liable for the premium; and
- pay such premium promptly.

10.7.2 Where any insurance is subject to an excess or deductible below the Contractor will be liable for it. The Contractor will not be entitled to recover any sum paid for insurance excess or any deductible from the Authority.

## **11. Confidentiality**

11.1 Except where disclosure is clearly permitted by this Contract, neither Party will disclose the other Party's Confidential Information without the relevant Party's prior written consent.

11.2 Disclosure of Confidential Information is permitted where information:

- must be disclosed to comply with legal obligations placed on the Party making the disclosure
- belongs to the Party making the disclosure (who is not under any obligation of confidentiality) before its disclosure by the information owner
- was obtained from a third party who is not under any obligation of confidentiality, before receiving it from the disclosing Party
- is, or becomes, public knowledge, other than by breach of this clause or Contract
- is independently developed without access to the other Party's Confidential Information
- is disclosed to obtain confidential legal professional advice.

11.3 The Authority may disclose the Contractor's Confidential Information:

- to any central government body on the basis that the information may only be further disclosed to central government bodies;
- to the UK Parliament, Scottish Parliament or Welsh or Northern Ireland Assemblies, including their committees;
- if the Authority (acting reasonably) deems disclosure necessary or appropriate while carrying out its public functions;
- on a confidential basis to exercise its rights or comply with its obligations under this Contract; or
- On a confidential basis to a proposed transferee, assignee or novatee of, or successor in title to, the Authority.

11.4 References to disclosure on a confidential basis will mean disclosure subject to a confidentiality agreement or arrangement containing the same terms as those placed on the Authority under this clause.

11.5 The Contractor may only disclose the Authority's Confidential Information to Contractor Staff who are directly involved in the provision of the Services and who need to know the information to provide the Services. The Contractor will ensure that its Contractor Staff will comply with these obligations.

11.6 Either Party may use techniques, ideas or knowledge gained during this Contract unless the use of these things results in them disclosing the other Party's Confidential Information where such disclosure is not permitted by the Contract, or is an infringement of Intellectual Property Rights.

## **12. Conflict of Interest**

12.1 The Contractor will take all appropriate steps to ensure that Contractor Staff are not in a position where there is or may be an actual conflict between the financial or personal interests of the Contractor Staff and the Authority.

12.2 Any breach of this clause will be deemed to be a Material Breach.

12.3 Where the Contractor identifies a risk of a conflict or potential conflict, they will (before starting work under this Contract, unless otherwise agreed with the Authority ) inform the Authority of such conflicts of interest and how they plan to mitigate the risk. Details of such mitigation arrangements are to be sent to the Authority as soon as possible. On receiving this notification, the Authority will, at

its sole discretion, notify the Contractor if the mitigation arrangements are acceptable or whether the risk or conflict remains a Material Breach.

### **13. Intellectual Property Rights**

- 13.1 The Contractor will have no rights to use any of the Authority's names, logos or trademarks without the Authority's prior written approval.
- 13.2 Other than as set out in this Contract the Contractor will not acquire any right, title or interest in the other's Intellectual Property Rights (IPR).
- 13.3 The Contractor warrants that it owns, or has obtained, valid licences for all IPR that are necessary to perform its obligations under this Contract, other than any IPR provided to the Contractor by the Authority. The Contractor will maintain the same in full force and effect during this Contracts.

### **14. Data Protection and Disclosure**

- 14.1 The Contractor shall comply with the requirements under the Data Protection Laws which arise connection with a Contract (including notification requirements).
- 14.2 The Contractor will provide the Authority the contact details of its Data Protection Officer to act as the point of contact for the purpose of observing its obligations in this Clause 14.
- 14.3 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Government Data.
- 14.4 The Contractor shall not allow the Processing by any third party ("subprocessor") of the Authority's Data except:
  - 14.4.1 where necessary for the performance of its obligations under this Contract;
  - 14.4.2 accordance with written instructions of the Authority;
  - 14.4.3 as otherwise agreed in writing by the Parties; or
  - 14.4.4 the extent that is required by any Law or regulatory body (in which case the Contractor shall inform the Authority of that legal requirement before Processing that Authority Data, unless that law prohibits such information being provided on important grounds of public interest).
- 14.5 The Contractor shall notify the Authority in advance of any change to the processing of personal data that is proposed, planned or to be introduced by the Contractor and that is likely to introduce a high risk to the rights and freedoms of natural persons or to escalate an existing level of risk to a high risk where such a change appears likely to require prior impact assessment in accordance with the Data Protection Laws. Where this is the case, the Contractor will undertake a Data Protection Impact Assessment (DPIA) and will provide a copy of that assessment to the Authority prior to implementing the change to processing.
- 14.6 The Contractor shall keep a record of all Processing activities carried out on behalf of the Authority including any transfers outside of the EU or to an international organisation
- 14.7 The Contractor shall preserve the integrity, prevent the unlawful Processing, accidental loss, destruction, or damage to, corruption or loss of Authority Data, by having in place appropriate technical and organisational measures as required by Data Protection Laws (and in particular Articles 32 to 34 GDPR).
- 14.8 The Contractor shall provide a written description of the measures taken to comply with Clause 0 and the Data Protection Laws (including records procedures guidance, training and manuals).

- 14.9 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy and any applicable Security Management Plan each as set out in Schedule 9 (Security).
- 14.10 The Contractor must be able to state to the Authority at all times the physical locations in which Authority Data may be stored, Processed and managed from and the Law that the Authority Data will be subject to.
- 14.11 The Contractor must request the Authority's consent to store Government Data in a location outside of the UK.
- 14.12 Subject to Clause 14.4, the Authority shall not unreasonably withhold or delay consent to a request to store Government Data in:
- 14.13.1 the European Economic Area (EEA);
  - 14.13.2 the USA, if the Contractor and or any relevant Sub-Contractor have signed up to the US-EU Privacy Shield Register; and/or
  - 14.13.3 another country or territory outside the EEA if that country or territory ensures an adequate level of protection by reason of its domestic Law or of the international commitments it has entered into which have been defined as adequate by the EU Commission.
- 14.13 If at any time the Contractor suspects or has reason to believe that the Authority Data provided to the Contractor under a Contract is corrupted, lost or sufficiently degraded, then the Contractor shall notify the Authority and immediately propose remedial action required.
- 14.14 If the Authority Data is corrupted, lost or sufficiently degraded so as to be unusable, the Authority may:
- 14.15.1 require the Contractor to restore or procure the restoration of Authority Data as soon as practicable but not later than five (5) Working Days from the earlier of the date of receipt of the Authority's notice or the Contractor's knowledge of the issue; and/or
  - 14.15.2 itself restore or procure the restoration of Authority Data.
- 14.15 The reasonable costs of complying with Clause 14.14 shall be borne by the Contractor where the the Contractor is at fault.
- 14.16 Where any Personal Data is processed in connection with the exercise of the Parties' rights and obligations under a Contract, the Parties acknowledge that the Authority is the Data Controller and that the Contractor is the Data Processor.
- 14.17 The Contractor shall take reasonable steps to ensure the reliability and integrity of any Contractor Staff who have access to the Government Data and ensure that the Contractor Staff are subject to confidentiality undertakings or professional or statutory obligations of confidentiality and are aware of and, adequately trained on the use, care and handling of Personal Data in accordance with the Data Protection Laws and this Clause 14.17 and Clause 11 (Confidentiality).
- 14.18 The Contractor shall notify the Authority immediately and in any event no later than twelve (12) hours of becoming aware of a Data Loss Event and shall:
- 14.19.1 describe the nature of the event including the categories and approximate number of the data subjects concerned;

- 14.19.2 co-operate fully with the Authority's investigation into the actual or potential cause and effect of the Data Loss Event;
- 14.19.3 take all necessary actions to remedy the causes and effect of the Data Loss Event;
- 14.19.4 not make any statement public without approval of the Authority; and
- 14.19.5 provide necessary assistance to enable the Authority to fulfil its obligations to notify the Information Commissioner within seventy-two (72) hours of becoming aware of the Data Loss Event.

**14.19 The Contractor shall:**

- 14.19.1 provide the Authority with all Authority Data within ten (10) Working Days of a written request, in an agreed format;
- 14.19.2 have documented processes to guarantee prompt availability of Authority Data in the event of the Contractor ceasing to trade;
- 14.19.3 securely destroy all storage media that has held Authority Data at the end of life of that media in line with Good Industry Practice;
- 14.19.4 securely erase any or all Authority Data held by the Contractor when requested to do so by the Authority;
- 14.19.5 comply with and assist the Authority to comply with the Data Protection Laws;

**15. Authority Data**

- 15.1 The Contractor will not remove any proprietary notices relating to the Authority Data.
- 15.2 The Contractor will not store or use Authority Data except where necessary to fulfill its obligations.
- 15.3 If Authority Data is processed by the Contractor, the Contractor will supply the data to the Authority as requested and in the format specified by the Authority.
- 15.4 The Contractor will preserve the integrity of Authority Data processed by the Contractor and prevent its corruption and loss.
- 15.5 The Contractor will ensure that any system which holds any Authority Data complies with the security requirements prescribed by the Authority.
- 15.6 The Contractor will ensure that any system on which the Contractor holds any protectively marked Authority Data will be accredited as specific to the Authority and will comply with:
  - the government security policy framework and information assurance policy;
  - guidance issued by the Centre for Protection of National Infrastructure on Risk Management and Accreditation of Information Systems; and
  - the relevant government information assurance standard(s).

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- 15.7 Where the duration of this Contract exceeds one year, the Contractor will review the accreditation status at least once a year to assess whether material changes have occurred which could alter the original accreditation decision in relation to Authority Data. If any changes have occurred then the Contractor will re-submit such system for accreditation.
- 15.8 If at any time the Contractor suspects that the Authority Data has or may become corrupted, lost, breached or significantly degraded in any way for any reason, then the Contractor will notify the Authority immediately and will (at its own cost where such corruption, loss, breach or degradation of the Authority Data was caused by the action or omission of the Contractor or its representatives) comply with any remedial action proposed by the Authority.
- 15.9 The Contractor will provide at the request of the Authority, any information relating to the Contractor's compliance with its obligations under the Data Protection Laws (to the extent arising under and/or in connection with the Contract). The Contractor will also ensure that it does not knowingly or negligently fail to do something that places the Authority in breach of its obligations of the Data Protection Laws. This is an absolute obligation and is not qualified by any other provision of this Contract.
- 15.10 The Contractor agrees to use the appropriate organisational, operational and technological processes and procedures to keep the Authority Data safe from unauthorised use or access, loss, destruction, theft or disclosure.
- 15.11 The provisions of this Clause 15 shall apply during the term of this Contract and for such time as the Contractor holds the Authority's Data.
- 16. Records and audit access**
- 16.1 The Contractor will allow the Authority (and the Authority's external auditor) to access its information and conduct audits of the Services provided under this Contract on an annual basis unless requested by a Regulator.
- 16.2 The Contractor will reimburse the Authority's reasonable costs incurred in relation to the audit or inspection, if it reveals that the Contractor has committed a material Default
- 16.3 Each Party is responsible for covering all other costs that they may incur from their compliance with the obligations of this Contract.
- 17. Freedom of Information (FOI) requests**
- 17.1 The Contractor will transfer any Request for Information to the Authority within 2 UK working days of receipt.
- 17.2 The Contractor will provide all necessary help reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the Freedom of Information Act or Regulation 5 of the Environmental Information Regulations.
- 17.3 To the extent it is permissible and reasonably practical for it to do so, the Authority will make reasonable efforts to notify the Contractor when it receives a relevant FOIA or EIR request so that the Contractor may make appropriate representations.
- 18. Standards and quality**
- 18.1 The Contractor will comply with any standards in this Contract.
- 19. Security**

- 19.1 The Contractor will use software and the most up-to-date antivirus definitions available from an industry accepted antivirus software vendor to minimise the impact of Malicious Software.
- 19.2 If Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, the Contractor will help the Authority to mitigate any losses and will restore the Services to their desired operating efficiency as soon as possible.
- 19.3 The Contractor will immediately notify the Authority of any breach of security in relation to the Authority's Confidential Information (and the Authority in relation to any breach regarding Authority Confidential Information). The Contractor will recover Authority Confidential Information however it may be recorded.
- 19.4 Any system development by the Contractor must also comply with the government's '10 Steps to Cyber Security' guidance, available at: <https://www.gov.uk/government/publications/cyber-risk-management-a-board-level-responsibility/10-steps-summary>

## **20. Guarantee**

- 20.1 Where the Authority has specified in the Contract Data that this Contract shall be conditional upon receipt of a Guarantee from the guarantor, the Contractor shall deliver to the Authority a completed Guarantee in the form attached, on or prior to the Commencement Date; and deliver to the Authority a certified copy of the passed resolution and/or board minutes of its guarantor approving the execution of the Guarantee.

## **21. Incorporation of terms**

- 21.1 Upon the execution the terms and conditions agreed in the Contract Data will be incorporated into this Contract.

## **22. Managing disputes**

- 22.1 When either Party notifies the other of a dispute, both Parties will attempt in good faith to negotiate a settlement as soon as possible.
- 22.2 Nothing in this procedure will prevents a Party from seeking any interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 22.3 If the dispute cannot be resolved, either Party will be entitled to refer it to mediation in accordance with the procedures below, unless:
- the Authority considers that the dispute is not suitable for resolution by mediation,
  - the Contractor does not agree to mediation.
- 22.4 The procedure for mediation is as follows:
- A neutral adviser or mediator will be chosen by agreement between the Parties. If the Parties cannot agree on a mediator within 10 UK working days after a request by one Party to the other, either Party will as soon as possible, apply to the mediation provider or to the Centre for Effective Dispute Resolution (CEDR) to appoint a mediator. This application to CEDR must take place within 12 UK working days from the date of the proposal to appoint a mediator, or within 3 UK working days of notice from the mediator to either Party that they are unable or unwilling to act.
  - The Parties will meet with the mediator within 10 UK working days of the mediator's appointment to agree a programme for the exchange of all relevant information and the structure for negotiations to be held. The Parties may at any stage seek help from the mediation provider specified in this clause to provide guidance on a suitable procedure.
  - Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it will be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

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- If the Parties reach agreement on the resolution of the dispute, the agreement will be reduced to writing and will be binding on the Parties once it is signed by their duly authorised representatives.
  - Failing agreement, either Party may invite the mediator to provide a non-binding but informative opinion in writing. Such an opinion will be provided without prejudice and will not be used in evidence in any proceedings relating to this Contract without the prior written consent of both Parties.
  - If the Parties fail to reach agreement in the structured negotiations within 60 UK working days of the mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

22.5 Either Party may request by written notice that the dispute is referred to expert determination if the dispute relates to:

- any technical aspect of the delivery of the digital services;
- the underlying technology; or
- otherwise is of a financial or technical nature.

22.6 An expert will be appointed by written agreement between the Parties, but if there is a failure to agree within 10 UK working days, or if the person appointed is unable or unwilling to act, the expert will be appointed on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society).

22.7 The expert will act on the following basis:

- they will act as an expert and not as an arbitrator and will act fairly and impartially;
- the expert's determination will (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- the expert will decide the procedure to be followed in the determination and will be requested to make their determination within 30 UK working days of their appointment or as soon as reasonably practicable and the Parties will help and provide the documentation that the expert needs for the determination;
- any amount payable by one Party to another as a result of the expert's determination will be due and payable within 20 UK working days of the expert's determination being notified to the Parties
- the process will be conducted in private and will be confidential;
- the expert will determine how and by whom the costs of the determination, including their fees and expenses, are to be paid.

22.8 Without prejudice to any other rights of the Authority under this Contract, the obligations of the Parties under this Contract will not be suspended, ceased or delayed by the reference of a dispute submitted to mediation or expert determination and the Contractor and the Contractor Staff will comply fully with the Requirements of this Contract at all times.

## 23. Termination

23.1 The Authority will have the right to terminate this Contract at any time by giving the notice to the Contractor specified in Part A, the Contract Data. The Contractor's obligation to provide the Services will end on the date set out in the Authority's notice.

23.2 The Parties acknowledge and agree that:

- the Authority's right to terminate under this clause is reasonable in view of the subject matter of this Contract and the nature of the Service being provided.
- the Contract Charges paid during the notice period given by the Authority (including any early termination charges) in accordance with this clause are a reasonable form of compensation and are deemed to fully cover any avoidable costs or losses incurred by the Contractor which may arise either directly or indirectly as a result of the Authority exercising the right to terminate under this clause without cause.
- Subject to clause 31 (Liability), if the Authority terminates this Contract without cause, they will indemnify the Contractor against any commitments, liabilities or expenditure which result

in any unavoidable Loss by the Contractor, provided that the Contractor takes all reasonable steps to mitigate such Loss. If the Contractor holds insurance, the Contractor will reduce its unavoidable costs by any insurance sums available. The Contractor will submit a fully itemised and costed list of such Loss, with supporting evidence of unavoidable Losses incurred by the Contractor as a result of termination.

- Either Party will have the right to terminate this Contract where clause 29.2 applies.

23.3 The Authority will have the right to terminate this Contract at any time with immediate effect by written notice to the Contractor if:

- the Contractor commits a Contractor Default and if the Contractor Default cannot be remedied, or
- the Contractor commits any fraud.

23.4 Either Party may terminate this Contract at any time with immediate effect by written notice (of not more than 30 UK working days) if the other Party commits a Material Breach of any term of this Contract (other than failure to pay any amounts due under this Contract) and, if such breach is remediable, fails to remedy that breach within a period of 15 UK working days of being notified in writing to do so.

23.5 If an Insolvency Event of either Party occurs, or the other Party ceases or threatens to cease to carry on the whole or any material part of its business, the other Party is entitled to terminate this Contract with immediate effect.

23.6 If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Authority in writing of such failure to pay and allow the Authority five (5) calendar days to settle the undisputed invoice. If the Authority fails to pay such undisputed sums within the allotted additional 5 calendar days, the Contractor may terminate this Contract subject to giving the length of notice specified in the Contract Data (Termination)

23.6 The Contractor shall notify the Authority immediately in writing where the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 ("Change of Control"). Where the Authority reasonably believes that such change is likely to have an adverse impact on the Services the Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 6 Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Authority becomes aware of the Change of Control,

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

## 24. Consequences of termination and expiry

24.1 Where the Authority has the right to terminate this Contract it may elect to suspend this Contract and its performance.

24.2 If the Authority contracts with another Contractor for the Deliverables under this Contract, the Contractor will comply with clause 28.

24.3 The rights and obligations of the Parties in respect of this Contract will automatically terminate upon the expiry or termination of this Contract, except those rights and obligations set out in clause 24.7.

24.4 At the end of the Contract period (howsoever arising), the Contractor must:

- promptly return to the Authority:

- all Authority Data including all copies of Authority software, code and any other software licensed by the Authority to the Contractor under this Contract;
- any materials created by the Contractor under this Contract where the IPRs are owned by the Authority;
- cease to use the Authority Data and, at the direction of the Authority, provide the Authority and the replacement supplier with a complete and uncorrupted version of the Authority Data in electronic form in the formats and on media agreed with the Authority and the replacement Contractor;
- destroy all copies of the Authority Data when they receive the Authority's written instructions to do so or 12 months after the date of expiry or termination, and provide written confirmation to the Authority that the data has been securely destroyed, except where the retention of Authority Data is required by Law;
- work with the Authority on any work in progress and ensure an orderly transition of the Services to the replacement supplier;
- return any sums prepaid for Services which have not been delivered to the Authority by the date of expiry or termination;
- provide all information requested by the Authority on the provision of the Services so that:
  - the Authority is able to understand how the Services have been provided; and
  - the Authority and the replacement supplier can conduct due diligence.

24.5 Each Party will return all of the other Party's Confidential Information. Each Party will confirm that it does not retain the other Party's Confidential Information except where the information must be retained by the Party as a legal requirement or where this Contract states otherwise.

24.6 All licences, leases and authorisations granted by the Authority to the Contractor in relation to the Services will be terminated at the end of the Contract period (howsoever arising) without the need for the Authority to serve notice except where this Contract states otherwise.

24.7 Termination or expiry of this Contract will not affect:

- any rights, remedies or obligations accrued under this Contract prior to termination or expiration;
- the right of either Party to recover any amount outstanding at the time of such termination or expiry;
- the continuing rights, remedies or obligations of the Authority or the Contractor under clauses:
  - 8 - Payment Terms and VAT
  - 9 - Recovery of Sums Due and Right of Set-Off
  - 10 - Insurance
  - 11 - Confidentiality
  - 12 - Conflict of Interest
  - 13 - Intellectual Property Rights
  - 15 - Authority Data
  - 24 - Consequences of Expiry or Termination
  - 31 - Liability
  - 32 - Waiver and cumulative remedies
- any other provision of the this Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry will survive the termination or expiry of this Contract.

## 25. Contractor's status

25.1 The Contractor is an independent Contractor and no contract of employment or partnership is created between the Contractor and the Authority. Neither Party is authorised to act in the name of, or on behalf of, the other Party.

**26. Notices**

26.1 Any notices sent must be in writing. For the purpose of this clause, an email is accepted as being in writing.

26.2 The following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of Service:

Delivery type	Deemed delivery time	Proof of Service
Email	9am on the first Working Day after sending	Dispatched in a pdf form to the correct email address without any error message

26.3 The address and email address of each Party will be the address and email address in the Contract Data.

**27. Exit plan**

27.1 The Contractor has provided details of their exit plan within the service description specified in the Contract Data and the Authority and Contractor will follow these arrangements as per Contractor Terms.

**28. Handover to replacement Supplier**

28.1 Within 10 UK Working Days of the expiry or termination of this Contract , the Contractor will make available to the Authority:

- any data (including Authority Data), Authority Personal Data and Authority Confidential Information in the Contractor's possession, power or control.
- any sums prepaid to the Contractor in respect of Deliverables not provided by the date of expiry or termination of this Contract.

28.2 When requested, the Contractor will (at its own expense where the Contract has been terminated before end of term due to Contractor cause) help the Authority to migrate the Services to a replacement supplier in line with the exit plan (clause 27) to ensure continuity of the Services.

**29. Force Majeure**

29.1 Neither Party will be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Contract (other than a payment of money) to the extent that such delay or failure is a result of a Force Majeure event. Each Party will use all reasonable endeavours to continue to perform its obligations under this Contract for the length of a Force Majeure event.

29.2 If a Force Majeure event prevents a Party from performing its obligations under this Contract for more than 15 consecutive calendar days, the other Party may terminate this Contract with immediate effect by notice in writing.

**30. Entire agreement**

30.1 This Contract constitutes the entire agreement between the Parties relating to the matters dealt within it. It supersedes any previous agreement between the Parties relating to such matters.

30.2 Each Party agrees that in entering into this Contract it does not rely on, and will have no remedy relating to, any agreement or representation (whether negligently or innocently made) other than as expressly described in this Contract.

30.3 Nothing in this clause will exclude any liability for (or remedy relating to) fraudulent misrepresentation or fraud.

30.4 Each of the Parties agrees that in entering into this Contract it does not rely on, and will have no remedy relating to, any agreement, statement, representation, warranty, understanding or undertaking (whether negligently or innocently made) other than as described in this Contract.

## 31. Liability

31.1 Neither Party excludes or limits its liability for:

- death or personal injury;
- bribery or fraud by it or its employees;
- breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or sections 2 or 11B of the Supply of Goods and Services Act 1982; or
- any liability to the extent it cannot be excluded or limited by Law.

31.2 Subject to Clauses 31.1 and 31.10 and any lower limits specified in the Contract Data, and notwithstanding Clause 31.4, each Party's total aggregate liability relating to all Losses due to a Default in connection with this Contract::

- resulting in direct loss or damage to physical Property (including any technical infrastructure, assets or Equipment) of the other Party, will be limited to the sum of £1,000,000 in each Contract year in which the Default occurs
- subject to the first bullet point in this clause 31.2 which occur in the first 6 months, will be limited to the greater of the sum of £500,000 or a sum equal to 200% of the estimated Contract Charges for the first six months
- subject to the first bullet point in this clause 31.2 which occur during the remainder of the Contract period will be limited to the greater of the sum of £500,000 or an amount equal to 125% of the Contract Charges paid, due or which would have been payable under this Contract in the 6 months immediately preceding the event giving rise to the liability
- subject to the first bullet point in this clause 31.2 which occur after the end of the Contract period, will be limited to the greater of the sum of £500,000 or an amount equal to 125% of the Contract Charges paid, due or which would have been payable under this Contract in the 6 months immediately before the end of the Contract period.

31.3 Subject to clause 31.1, 31.4, in no event will either Party be liable to the other for any:

- loss of profits;
- loss of business;
- loss of revenue;
- loss of or damage to goodwill;
- loss of savings (whether anticipated or otherwise); or
- any indirect, special or consequential loss or damage.

31.4 Subject to Clause 31.2 the Contractor will be liable for the following types of loss which will be regarded as direct and will be recoverable by the Authority:

- the additional operational or administrative costs and expenses arising from any Contractor Default; and
- any wasted expenditure or charges rendered unnecessary and/or incurred by the Authority arising from the Contractor's Default; and
- any losses, costs, damages, expenses or other liabilities suffered or incurred by the Authority which arise out of or in connection with the loss of, corruption or damage to or failure to deliver Authority Data by the Contractor; and
- any regulatory losses, fines, expenses or other losses arising from a breach by the Contractor of any Law.

31.5 The annual aggregate liability for all defaults resulting in direct loss, destruction, corruption, degradation or damage to the Authority Data or the Authority Personal Data or any copy of such Authority Data, caused by the Contractor's default under or in connection with a Contract shall be subject to the financial limits set out in the Contract Data.

31.6 No enquiry, inspection, approval, sanction, comment, consent, or decision at any time made or given by, or on behalf of, the Authority to any document or information provided by the Contractor in its

provision of the Services, and no failure of the Authority to discern any defect in, or omission from, any such document or information will exclude or limit the obligation of the Contractor to carry out all the obligations of a professional Contractor employed in a client and Authority relationship.

31.7 Unless otherwise expressly provided, the obligations of the Authority under this Contract are obligations of the Authority in its capacity as a Contracting counterparty and nothing in this Contract will be an obligation on, or in any other way constrain the Authority in any other capacity, nor will the exercise by the Authority of its duties and powers in any other capacity lead to any liability under this Contract on the part of the Authority to the Contractor.

31.8 Any liabilities which are unlimited will not be taken into account for the purposes of establishing whether any limits relating to direct loss or damage to physical Property within this clause have been reached.

31.9 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its Contract obligations.

## **32. Waiver and cumulative remedies**

32.1 The rights and remedies provided by this agreement may be waived only in writing by the Authority or the Contractor representatives in a way that expressly states that a waiver is intended, and such waiver will only be operative regarding the specific circumstances referred to.

32.2 Unless a right or remedy of the Authority is expressed to be exclusive, the exercise of it by the Authority is without prejudice to the Authority's other rights and remedies. Any failure to exercise, or any delay in exercising, a right or remedy by either Party will not constitute a waiver of that right or remedy, or of any other rights or remedies.

## **33. Fraud**

33.1 The Contractor will notify the Authority if it suspects that any fraud has occurred, or is likely to occur. The exception to this is if while complying with this, it would cause the Contractor or its employees to commit an offence.

33.2 If the Contractor commits any fraud relating, this Contract or any other Contract with the government:

- the Authority may terminate the Contract
- the Authority may recover in full from the Contractor whether under Clause 33.3 below or by any other remedy available in law.

33.3 The Contractor will, on demand, compensate the Authority, in full, for any loss sustained by the Authority at any time (whether such loss is incurred before or after the making of a demand following the indemnity hereunder) in consequence of any breach of this clause.

## **34. Prevention of bribery and corruption**

34.1 The Contractor will ensure that neither it, nor any person acting on the Contractor's behalf will commit any Prohibited Act in connection with this Contract.

34.2 The Authority will be entitled to recover in full from the Contractor and the Contractor will, on demand, compensate the Authority in full from and against:

- the amount of value of any such gift, consideration or commission; and
- any other loss sustained by the Authority in consequence of any breach of this clause.

34.3 If the Contractor breaches this clause, the Authority may terminate this Contract.

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**35. Legislative change**

- 35.1 The Contractor will neither be relieved of its obligations under this Contract nor be entitled to increase the Contract prices as the result of a general change in Law or a Specific Change in Law without prior written approval from the Authority.
- 35.2 If a Specific Change in Law occurs during the term which has a material impact on the delivery of the Services or the Charges, the Contractor will notify the Authority of the likely effects of that change. This will include whether any change is required to the Services or the Contract.

**36. Publicity, branding, media and official enquiries**

- 36.1 The Contractor will take all reasonable steps to not do anything which may damage the public reputation of the Authority. The Authority may terminate this Contract for Material Breach where the Contractor, by any act or omission, causes material adverse publicity relating to or affecting the Authority or the Contract. This is true whether or not the act or omission in question was done in connection with the performance by the Contractor of its obligations hereunder.
- 36.2 The Authority will be entitled to publicise this Contract in accordance with any legal obligation on the Authority, including any examination of this Contract by the National Audit Office following the National Audit Act 1983.

**37. Non Discrimination**

- 37.1 The Contractor will notify the Authority immediately of any legal proceedings issued against it by any Contractor Staff on the grounds of discrimination.
- 37.2 The Contractor will not unlawfully discriminate within the meaning and scope of any Law relating to discrimination.
- 37.3 The Contractor will make sure that all Contractor Staff engaged or employed in the performance of this Contract observe this clause.

**38. Premises**

- 38.1 Where either Party uses the other Party's premises, such Party is liable for all Loss or damage it causes to the premises. Such Party is responsible for repairing any damage to the premises or any objects on the premises, other than fair wear and tear.
- 38.2 The Contractor will use the Authority's premises solely for the performance of its obligations under this Contract.
- 38.3 The Contractor will vacate the Authority's premises upon termination or expiry of the Contract.
- 38.4 This clause does not create an tenancy or exclusive right of occupation.
- 38.5 While on the Authority's premises, the Contractor will:
- ensure the security of the premises;
  - comply with Authority requirements for the conduct of personnel;
  - comply with any health and safety measures implemented by the Authority;
  - comply with any instructions from the Authority on any necessary associated safety measures ; and
  - notify the Authority immediately in the event of any incident occurring on the premises where that incident causes any personal injury or damage to Property which could give rise to personal injury.

### **39. Equipment**

39.1 Any Equipment brought onto the premises will be at the Contractor's own risk and the Authority will have no liability for any loss of, or damage to, any Equipment unless such loss or damage was due to the Authority negligence.

39.2 Upon termination or expiry of the Contract, the Contractor will remove the Equipment, and any other materials, leaving the premises in a safe and clean condition.

### **40. The Contracts (Rights of Third Parties) Act 1999**

40.1 A person who is not party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

### **41. Law and jurisdiction**

41.1 This Contract will be governed by the Laws of England and Wales. Each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales and for all disputes to be conducted within England and Wales.

### **42. Environmental requirements**

42.1 The Authority will provide a copy of its environmental policy to the Contractor on request, which the Contractor will comply with and the impact of complying with such policy shall be assessed in accordance with the Change Control Procedure.

42.2 The Contractor must support the Authority in their efforts to work in an environmentally-friendly way, eg by helping them engage in practices like recycling or lowering their carbon footprint.

### **43. Not Used**

### **44. Interpretation**

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

- words importing the singular meaning include where the context so admits the plural meaning and vice versa
- words importing the masculine include the feminine and the neuter and vice versa
- the words 'include', 'includes' 'including' 'for example' and 'in particular' and words of similar effect will not limit the general effect of the words which precede them
- references to any person will include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind
- references to any statute, regulation or other similar instrument will be construed as a reference to the statute, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted
- headings are included in this Contract for ease of reference only and will not affect the interpretation or construction of this Contract
- references in this Contract to any clause or framework schedule without further designation will be construed as a reference to the clause or sub-clause or schedule to this Contract so numbered
- references in this Contract to any paragraph or sub-paragraph without further designation will be construed as a reference to the paragraph or sub-paragraph of the relevant framework schedule to this Contract so numbered

- reference to a clause is a reference to the whole of that clause unless stated otherwise.

**45. NOT USED**

**46. Transparency and Access to Records  
Transparency**

46.1 In accordance with the government's policy on transparency, the Authority reserves the right to make all or part of the information (including this Contract) publicly available (subject to any redactions made at the discretion of Authority by considering and applying relevant exemptions under the FoIA).

46.2 The terms of this Contract permit all of the following:

- the Authority to publish the full text of such Contract concluded with the Contractor
- the Authority to publish the Contract after considering (at the Authority's Authority's sole discretion) any representations made by the Contractor regarding the application of any relevant FoIA or EIR exemptions

**47. Relationship of the Parties**

Neither Party can act as agent of the other or make representations on their behalf.

**48. NOT USED**

**49. Freedom of Information Act**

49.1 The Contractor acknowledges that the Authority is subject to the requirements of the Freedom of Information Act (FoIA) and the Environmental Information Regulation (EIR).

49.2 The Contractor will help and co-operate with the the Authority to enable them to comply with their Information disclosure obligations regarding this Contract

49.3 The Contractor will in no event respond directly to a Request for Information under the FoIA.

49.4 The Contractor will note that the Information disclosed in response to a FoIA or EIR request may include its response. This may include attachments, embedded documents, any score or details of the evaluation of a response.

49.5 If the Contractor considers any part of its response to be confidential or commercially sensitive, the Contractor will:

- identify this Information
- explain the potential implications of its disclosure, specifically addressing the public interest test as in the FoIA
- estimate how long it believes such Information will remain confidential or commercially sensitive

49.6 The Authority will then consider whether or not to withhold such Information from publication. Even where Information is identified as confidential or commercially sensitive, the Authority may be required to disclose such Information in accordance with the FoIA or the EIR.

49.7 The Authority must form an independent judgement of whether the Contractor's Information is exempt from disclosure under the FoIA or the EIR and whether the public interest favours disclosure or not. Contractors must refer any request for Information, including requests relating to the procurement, to the Authority.

**50. Promoting tax compliance**

50.1 If tax non-compliance occurs during the Contract the Contractor will:

- notify the Authority in writing within 5 UK working days of its occurrence
- promptly provide the Authority with:
  - details of the steps that the Contractor is taking to address the non-compliance
  - other information in relation to the non-compliance as the Authority may reasonably require

50.2 If the Contractor fails to comply with this clause or does not provide details of its proposed mitigating factors, which in the reasonable opinion of the Authority are acceptable, then the Authority reserves the right to terminate this Contract for material Default.

**51. Official Secrets Act**

The Contractor will comply with and ensure that the Contractor Staff comply with the provisions of the Official Secrets Act 1911 to 1989 and Section 182 of the Finance Act 1989.

**52. NOT USED**

**53. Not used**

**54. Severability**

54.1 If any part of the Contract becomes invalid, illegal or unenforceable, it will be severed from the Contract and the remaining parts of the Contract will be unaffected.