



Dated

2014

- (1) OFFICE OF THE POLICE AND CRIME COMMISSIONER NORTH WALES
- (2) CGI IT UK LIMITED (REGISTRATION NUMBER 00947968)

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## IT Managed Services Contract

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relating to IT Managed Services

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**BETWEEN:**

- (1) **OFFICE OF THE POLICE AND CRIME COMMISSIONER NORTH WALES** of Police Headquarters, Glan y Don, Colwyn Bay, Colwyn, LL29 8AW ("**Customer**"); and
- (2) **CGI UK LIMITED** a company registered in England and Wales under company number 00947968 whose registered office is at 250 Brook Drive, Green Park, Reading, RG2 6UA ("**Supplier**").

**INTRODUCTION**

- (A) The Customer has a requirement for an ICT consolidated managed service contract in which it will procure a supplier to support and develop its ICT requirements for a five year period.
- (B) The Customer selected the Supplier through a Competitive Dialogue Procedure procurement process pursuant to the Public Contracts Regulations 2006. The procurement commenced with the Customer issuing an OJEU Notice in the Official Journal of the European Union on 14<sup>th</sup> November 2013 for the proposed procurement.
- (C) The key requirements and objectives of the procurement are to include:
  - (a) Infrastructure Services, including Server and Web Hosting, Telephony, WAN, LAN Support and Design & Build;
  - (b) Application Managed Services, including Business Systems Development, Upgrades and Design & Build;
  - (c) Managed Desktop Services, including Desktop Support and Design & Build;
  - (d) Service Management, including Service Desk, Business Systems Support & Maintenance and Project Management
  - (e) Provision of a service integration capability to manage the Customer's ICT suppliers including provision of a Service Management wrapper for national framework contracts. The Customer anticipates that the consolidation of these contracts into a single contract brings a number of potential benefits to NWP including:
    - (i) improved delivery of service through improved service integration and an outcome-based contract;

- (ii) improved ICT support which is better aligned to a modern Police force where 24/7 user support is provided and first-contact problem resolution is the norm;
  - (iii) a reduction in the running costs for ICT both at contractual level and through the implementation of automation in such areas as the service desk and password resets;
  - (iv) increased opportunity for the Customer's IT staff to engage with the business through a reduction in existing ICT contract management;
  - (v) access to a partner who can sponsor and deliver real service improvements through innovative ICT such as unified security to replace current disparate arrangements, and providing support through a wider range of channels other than traditional telephone-based support; and
  - (vi) increased opportunity for a more flexible, scalable and resilient ICT services.
- (f) One of the key objectives of this procurement is to not just appoint a supplier capable of managing and delivering the currently outsourced service scope. NWP also requires a provider capable of working with it to deliver significant improvements and cost reductions from those elements of ICT outside the scope of the services included explicitly in this procurement. This may, for example, relate to software licences, hardware provision, system architecture and generally "smarter" ICT service delivery and using ICT to help transform NWP in relation to its core operational Police service delivery.

**IT IS AGREED** as follows:

## **SECTION A - PRELIMINARIES**

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Contract the definitions set out in schedule 1 (Definitions) shall apply.
- 1.2 In this Contract, unless the context otherwise requires:
- 1.2.1 the singular includes the plural and vice versa;
  - 1.2.2 reference to a gender includes the other gender and the neuter;
  - 1.2.3 references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory

provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it. The impact of any such amendment, extension or re-enactment on this Contract shall be dealt with in accordance with clause 49 (Change in Law); and

1.2.4 any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words.

1.3 The headings in this Contract are for ease of reference only and shall not affect its interpretation.

1.4 References to clauses, paragraphs, schedules and appendices are, unless otherwise provided, references to the clauses, paragraphs, schedules and appendices to this Contract.

1.5 Without prejudice to clauses 9.7 and 14.2, if there is any conflict between the clauses and the schedules and/or any appendices to the schedules and/or any conflict between the schedules and/or between appendices to the schedules and/or any other documents referred to in this Contract, the conflict shall be resolved in accordance with the following order of precedence:

1.5.1 the clauses and schedule 1 (Definitions) excluding clause 10 (Key Commitments);

1.5.2 schedules 2.1 (Services Requirements) and 2.2 (Service Levels);

1.5.3 any other schedules and their appendices (except for schedule 4.1 (Supplier's Solution));

1.5.4 subject to clause 14.2 any policies and standards specifically referred to in this Contract;

1.5.5 schedule 4.1 (Supplier's Solution); and

1.5.6 any other document referred to in this Contract or any other document attached to this Contract

provided that and subject to **clause 49** (Change in Law), the Customer reserves the right to amend, remove or add to any of the Customer Specific Policies from time to time and shall notify the Supplier of any such changes. The Supplier shall comply with any such updated or amended policies.

1.6 If there is any inconsistency between the provisions of clause 42 and 43 and the Data Processing Agreement, the provisions of clauses 42 and 43 shall apply.



- 1.7 Save in respect of the Charges (which shall be adjusted in accordance with schedule 7.1 (Charges and Invoicing)), if an amount or sum is expressed to be "subject to indexation" at a point in time, it shall be adjusted by reference to the percentage change in the Retail Prices Index (all items excluding mortgages) ("RPIx") over the most recent 12 months for which published data is available at that point in time.
- 1.8 Subject to the provisions of clauses 5-8 (inclusive), neither Party to this Contract shall be liable for any Default of its obligations under this Contract to the extent that such Default is caused by a failure or delay by the other Party in performing its obligations under this Contract, provided and to the extent that the affected Party notifies the other Party of such failure or delay within 30 days of the affected Party becoming aware of its occurrence and of its likely impact.
- 1.9 If the description of a component of the Services in general terms is followed by a more specific description of certain elements of that component of the Services, only those elements where specific description is provided and not the general description of that component of the Services will be construed by reference to the elements more specifically described.
- 1.10 Any obligation within this Contract to perform an action within a number of Working Days shall be construed as an obligation to perform that action by 17:00 hours United Kingdom time on the final Working Day of the relevant period.

## 2. **DUE DILIGENCE**

- 2.1 The Supplier acknowledges that it:
- 2.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;
  - 2.1.2 has raised all relevant due diligence questions with the Customer before the Effective Date; and
  - 2.1.3 has entered into this Contract in reliance on its own due diligence alone.
- 2.2 The Supplier acknowledges that it has inspected the Operating Environment and has advised the Customer of any aspect of the Operating Environment that is not suitable for the provision of the Services in accordance with the terms of this Contract and that the specified actions to remedy such aspects of the Operating Environment, together with a timetable for and the costs of those actions, have been specified in the relevant parts of the Contract for the Pre-Operational Phase.

- 2.3 If the Supplier has either failed to inspect the Operating Environment or failed to notify the Customer of any required remedial actions in accordance with clause 2.2 then the Supplier shall not be entitled to recover any additional costs or charges from the Customer relating to any unsuitable aspects of the Operating Environment nor shall the Supplier be entitled to seek relief in respect of any Default arising from such failure except in relation to any latent structural defect in the Customer's Premises. The onus shall be on the Supplier to prove to the Customer that any work to the Customer Premises is required in respect of a latent structural defect and the additional costs or charges are reasonable and necessary. The Supplier shall not incur such additional costs or charges without obtaining the Customer's prior written consent.
- 2.4 Any disputes relating to due diligence shall be resolved through the Dispute Resolution Procedure.
- 2.5 The Customer does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Data. Neither the Customer nor any of its agents or employees shall be liable to the Supplier in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:
- 2.5.1 any inaccuracy, omission, unfitness for purpose or inadequacy of any kind whatsoever in the Disclosed Data; or
- 2.5.2 any failure to make available to the Supplier any materials, documents, drawings, plans or other information relating to this Contract.

## **SECTION B - SERVICE IMPLEMENTATION**

### **3. IMPLEMENTATION PLAN**

- 3.1 The Supplier shall provide the Services and otherwise perform its obligations under this Contract in accordance with the Implementation Plan.
- 3.2 The Supplier shall deliver a draft Detailed Implementation Plan to the Customer within 20 Working Days following the Effective Date. The Detailed Implementation Plan should be consistent with the Outline Implementation Plan and the other matters set out in schedule 6.1 (Implementation Plan) and sufficiently detailed to demonstrate how the Supplier shall take over and deliver the Existing Services on the Commencement Date and deliver the Services as set out in Schedule 2.1 (Services Requirements) and Schedule 4.1 (Supplier's Solution). Once agreed with the Customer (such agreement not to be unreasonably delayed or withheld), the Supplier shall monitor the performance against the Detailed Implementation Plan.

- 3.3 All changes to the Outline Implementation Plan shall be subject to the Change Control Procedure. The Detailed Implementation Plan shall only be varied in accordance with the process set out in paragraph 4.8 of schedule 6.1 (Implementation Plan).

#### 4. **TESTING**

- 4.1 When the Supplier has completed the Services in respect of a Milestone it shall submit any Deliverables relating to that Milestone for Testing and the Parties shall follow the applicable provisions of the Testing Procedures.

- 4.2 Each Party shall bear its own costs in respect of the Testing Procedures. However, if a Milestone does not Achieve the Test Success Criteria the Customer shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or further Testing of a Milestone to Achieve the Test Success Criteria.

- 4.3 If the Supplier successfully Achieves the requisite Test, the Customer shall issue a Milestone Achievement Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Milestone Achievement Certificate, the Supplier shall remain solely responsible for ensuring that:

4.3.1 the solution set out in the Supplier's Solution as designed and developed is suitable for the delivery of the Services;

4.3.2 the Services are implemented and provided in accordance with this Contract; and

4.3.3 that the Service Levels are achieved in accordance with clause 11 (Service Levels).

No rights of estoppel or waiver shall arise as a result of the issue of a Milestone Achievement Certificate (or conditional Milestone Achievement Certificate pursuant to clause 6.3.1 (Delays Due to Supplier Default)).

- 4.4 If the Supplier does not successfully complete or Achieve any Test, the provisions of clauses 5 (Implementation Delays - General Provisions), 6 (Delays Due to Supplier Default), 7 (Delays to Milestones due to Customer Cause) and 8 (Delays Not Due to One Party) shall apply as appropriate.

#### 5. **IMPLEMENTATION DELAYS - GENERAL PROVISIONS**

- 5.1 If, at any time, the Supplier becomes aware that it will not (or is unlikely to) Achieve any Milestone by the Milestone Date or commence the provision of the Services by the date which is set out in the Detailed Implementation Plan, it shall

as soon as reasonably practicable notify the Customer of the fact of the Delay (or likely Delay) and summarise the reasons for it.

- 5.2 The Supplier shall, as soon as reasonably practicable and in any event not later than 10 Working Days after the initial notification under clause 5.1, give the Customer full details in writing of:
- 5.2.1 the reasons for the Delay;
  - 5.2.2 the consequences of the Delay; and
  - 5.2.3 if the Supplier claims that the Delay is due to a Customer Cause, the reason for making that claim.
- 5.3 Whether the Delay is due to a Customer Cause or not, the Supplier shall make all reasonable endeavours to eliminate or mitigate the consequences of the Delay.
- 5.4 Where the Supplier considers that a Delay is being caused or contributed to by a Customer Cause the Customer shall not be liable to compensate the Supplier for Delays to which clauses 7 or 8 apply unless the Supplier has fulfilled its obligations set out in, and in accordance with, clauses 5.1, 5.2 and 5.3.
- 5.5 Any Disputes about or arising out of Delays shall be resolved through the Dispute Resolution Procedure. Pending the resolution of the Dispute both Parties shall continue to work to resolve the causes of, and mitigate the effects of, the Delay.

### **Correction Plan**

- 5.6 The Supplier shall submit a draft Correction Plan to the Customer where:
- 5.6.1 it becomes aware that it will not Achieve a Milestone by the Milestone Date or there is or is likely to be a Delay; or
  - 5.6.2 it has failed to Achieve a Milestone by its Milestone Date, whether that failure arises because of:
    - 5.6.2.1 a failure to submit any or all Deliverables in respect of that Milestone;
    - 5.6.2.2 the failure of the Milestone successfully to complete or Achieve any Test;
    - 5.6.2.3 where there are no Tests in respect of the relevant Milestone, any non-conformance in respect of that Milestone; or

5.6.2.4 a Repeat Failure has occurred which falls within limb (c) of the definition of Critical Service Failure.

- 5.7 The draft Correction Plan shall identify the issues arising out of the Delay or default and the steps that the Supplier proposes to take to Achieve the Milestone or rectify the Delay or default in accordance with this Contract.
- 5.8 The draft Correction Plan shall be submitted to the Customer for its approval as soon as possible and in any event not later than 10 Working Days (or such other period as the Customer may permit and notify to the Supplier in writing) after the initial notification under clause 5.1 or the issue of a Non-conformance Report.
- 5.9 The Customer shall not withhold its approval of a draft Correction Plan unreasonably. If the Customer does not approve the draft Correction Plan it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Correction Plan, which shall be resubmitted to the Customer within five Working Days of the rejection of the first draft.
- 5.10 The Supplier shall comply with its Correction Plan following its approval by the Customer.

## **6. DELAYS DUE TO A SUPPLIER DEFAULT**

- 6.1 If there is a Delay or a Deliverable does not satisfy the Test Success Criteria and/or a Milestone is not Achieved due to the Supplier's Default, the Customer shall promptly issue a Non-conformance Report to the Supplier:
- 6.1.1 in the case of a Delay, notifying the Supplier of such Delay and any relevant information relating to such Delay;
- 6.1.2 in the case of a Deliverable not satisfying the Test Success Criteria and/or a Milestone not being achieved due to a Supplier Default, categorising the Test Issues as described in the Testing Procedures or setting out in detail the non-conformities of the Deliverable where no testing has taken place, including any other reasons for the relevant Milestone not being Achieved and the consequential impact on any other Milestones.
- 6.2 The Customer will then, without prejudice to any other right or remedy it may have, have the options set out in clause 6.3.
- 6.3 The Customer may at its discretion (without waiving any rights in relation to the other options) choose to:

- 6.3.1 issue a Milestone Achievement Certificate conditional on the remediation of the Test Issues, or the non-conformities of the Deliverable where no testing has taken place;
  - 6.3.2 require the remediation of the Delay in accordance with an agreed Correction Plan;
  - 6.3.3 if the Test Issue is a Material Test Issue, refuse to issue a conditional Milestone Achievement Certificate as specified in clause 6.3.1, and escalate the matter in accordance with the Dispute Resolution Procedure and, if the matter cannot be resolved in accordance with the Dispute Resolution Procedure, exercise any right it may have under clause 59.1 (Termination for Cause by the Customer); and/or
  - 6.3.4 require the payment of Delay Payments, which shall be payable by the Supplier on demand, where schedule 7.1 (Charges and Invoicing) identifies that Delay Payments are payable in respect of the relevant Milestone. The Delay Payments will accrue on a daily basis from the relevant Milestone Date and will continue to accrue until the date when the Milestone is Achieved in accordance with the Correction Plan.
- 6.4 Where schedule 7.1 (Charges and Invoicing) does not identify the payment of Delay Payments in respect of a Milestone the Customer reserves its rights and remedies at law and under this Contract. Otherwise Delay Payments are provided as the primary remedy for the Supplier's failure to Achieve the relevant Milestone Date and it shall be the Customer's exclusive financial remedy in respect of failure to Achieve the relevant Milestone Date except where:
- 6.4.1 the Customer is otherwise entitled to or does terminate this Contract for the Supplier's Default; or
  - 6.4.2 the failure to Achieve the Milestone exceeds a period of six months after the relevant Milestone Date.
- 6.5 For the avoidance of doubt, nothing in clause 6.4 shall affect the rights and obligations of the Parties under clause 53 (Force Majeure).
- 6.6 Where the Customer issues a conditional Milestone Achievement Certificate as specified in clause 6.3.1, it can choose (but is not obliged to) to revise the failed Milestone Date and any subsequent Milestone Date.
- 6.7 Any Correction Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Customer is willing to agree otherwise. In the latter case the Supplier shall submit a Correction Plan for approval by the Customer within 10 Working Days of receipt of the Non-conformance Report.

**7. DELAYS TO MILESTONES DUE TO CUSTOMER CAUSE**

7.1 Without prejudice to clause 5.3 and subject to clause 5.4, to the extent that the Supplier would have been able to Achieve the Milestone by its Milestone Date but has failed to do so as a direct result of a Customer Cause the Supplier will have the rights and relief set out in this clause 7.

7.2 The Supplier shall:

7.2.1 subject to clause 7.3, be allowed a reasonable extension of time to deal with that part of the Delay which was caused by the Customer Cause;

7.2.2 not be in breach of this Contract as a result of the Delay or failure to Achieve the relevant Milestone by its Milestone Date;

7.2.3 have no liability for Delay Payments in respect of the relevant Milestone to the extent that the Delay results directly from the Customer Cause; and

7.2.4 be entitled to compensation as set out in clause 7.4.

7.3 The Customer Representative, acting reasonably, shall:

7.3.1 consider the duration of the Delay, the nature of the Customer Cause and the effect of the Delay and the Customer Cause on the Supplier's ability to comply with the Implementation Plan;

7.3.2 consult with the Supplier Representative in determining the effect of the Delay;

7.3.3 fix a Revised Milestone Date; and

7.3.4 if appropriate, make any consequential revision to subsequent Milestones in the Implementation Plan.

7.4 To the extent that the Supplier has incurred any direct loss and/or expense as a direct result of a Delay due to a Customer Cause, the Supplier shall be entitled to compensation to the extent that it cannot mitigate that loss or expense. The Supplier shall provide the Customer with any information the Customer may require in order to assess the validity of the Supplier's claim to compensation.

7.5 Any Change that is required to the Implementation Plan pursuant to clause 7.3 or the Charges pursuant to clause 7.4 shall be implemented in accordance with the Change Control Procedure. If the Supplier's analysis of the effect of the Delay in accordance with clause 5.2 permits a number of options, then the Customer shall have the right to select which option shall apply. If the matter

cannot be resolved by agreement through the Change Control Procedure then either Party may refer the matter to an expert for determination in accordance with paragraph 4 of schedule 8.3 (Dispute Resolution Procedure).

- 7.6 The Customer shall not delay unreasonably when considering and determining the effect of a Delay under this clause 7 or in agreeing a resulting Change pursuant to the Change Control Procedure.
- 7.7 The Supplier shall and shall procure that each Sub-contractor shall take and continue to take all reasonable steps to eliminate or mitigate any losses and/or expenses that it incurs as a result of a Customer Cause.

## **8. DELAYS NOT DUE TO ONE PARTY**

- 8.1 Without prejudice to clause 5.3 and subject to clause 5.4, where a Delay is attributable in part to the Supplier's Default and in part to a Customer Cause the Parties shall negotiate in good faith with a view to agreeing a fair and reasonable apportionment of responsibility for the Delay. The Parties agree that Delay Payments and compensation payable pursuant to clause 7.4 (Delays to Milestones Due to Customer Cause) shall be recoverable subject to reductions to reflect the extent to which the Customer or the Supplier respectively has contributed to the Delay. Any extension of time agreed in respect of a Delay which is attributable in part to both Parties shall not exceed that part of the Delay which was caused by a Customer Cause. If necessary, the Parties may escalate the matter in accordance with the Dispute Resolution Procedure and if the matter cannot be resolved by agreement then either Party may refer the matter to an expert for determination in accordance with paragraph 4 of schedule 8.3 (Dispute Resolution Procedure).

## **SECTION C - SERVICE SUPPLY AND SOFTWARE PROVISIONS**

### **9. SERVICES**

- 9.1 The Supplier shall provide the Services from the Commencement Date and shall ensure that the Services:
    - 9.1.1 comply in all respects with applicable parts of the Services Requirements as set out in schedule 2.1 (Services Requirements); and
    - 9.1.2 are supplied in accordance with the Supplier's Solution; and
    - 9.1.3 are provided in accordance with the terms of this Contract
- subject always, in the event of any conflict between the Customer's Requirements and the Supplier's Solution, to the primacy of clause 9.1.1,.



9.2 The Parties agree that as at the date of this Contract, the Supplier shall not be providing any new Software. The Parties acknowledge that the Supplier may be required to provide new Software following the date of this Contract which shall be implemented by way of a New Project or a Change. If the Supplier is required to provide Software during the term of this Contract:

9.2.1 the provisions of **clauses 36** (Intellectual Property Rights) to **41** (Open Source Software) (inclusive) shall apply to the Software to be provided by the Supplier; and

9.2.2 all references to the "Services" and the Operational Services in this Contract shall be deemed to include the "Software".

### 9.3

9.3.1 Where any statements are included within either clause 10 or Schedule 4.1 setting out the methodology by which the Services shall be performed by the Supplier (the "Method Statements"), such Method Statements may be amended by the Supplier in accordance with clause 9.3.2 provided that the outcomes and outputs in this Contract remain unchanged and any amendment to the methodology shall not be construed as either a Change or a New Project.

9.3.2 Subject to clause 9.3.1, if the Supplier wishes to amend any of its Method Statements and such amendment to the Method Statements is a material amendment which may have an impact on the Customer and/or the Services, the Supplier shall notify the Customer of the proposed change to the relevant Method Statement (including any impact that the change in the Method Statement shall have on the Customer and/or the Services).

9.3.3 No amendment to the Method Statements referred to in clause 9.3.2 shall be implemented if such change would have any adverse effect on the Customer (including changing the resilience of the Services, changing the risk profile of the Project, causing additional cost and/or resource implications for the Customer or having an impact upon the operational policing functions of the Customer) and the change to the Method Statements must be approved by the Customer in writing (which the Customer shall be entitled to reject in its absolute discretion).

9.3.4 Clause 10 sets out a summary of the solution to be provided by the Supplier in relation to the Services further details of which are set out in Schedule 4.1 (Supplier's Solution). Clause 10 (Key Commitments in relation to the Services) should be read in conjunction with Schedule 2.1 (Services Requirements) and Schedule 4.1 (Supplier's Solution)

and the Supplier shall deliver all of the outputs specified in both clause 10 (Key Commitments in relation to the Services), Schedule 2.1 (Services Requirements) and Schedule 4.1 (Supplier's Solution).

- 9.4 Without prejudice to clause 9.1, the Supplier shall supply the Operational Services:
- 9.4.1 from receipt of a Milestone Achievement Certificate in respect of Authority to Proceed; and
  - 9.4.2 in accordance with clause 11.
- 9.5 The Supplier shall perform its obligations under this Contract including those in relation to the Services in accordance with:
- 9.5.1 Good Industry Practice;
  - 9.5.2 the Supplier's own established procedures and practices;
  - 9.5.3 the Standards;
  - 9.5.4 the Security Management Plan;
  - 9.5.5 the Security Policy;
  - 9.5.6 the Quality Plans;
  - 9.5.7 the HR Policies; and
  - 9.5.8 the Customer's ICT strategy.
- 9.6 In performing its obligations, the Supplier shall at all times be mindful of the fact that the Customer is a police force and has operational activities and responsibilities which it is required to perform and the Supplier shall carry out the Services in a manner which does not impact on the operational responsibilities and duties of the Customer, as the Supplier should be aware of or as notified by the Customer to the Supplier from time to time.
- 9.7 The Supplier shall draw any conflict between any of the requirements of clause 9.1 and the requirements of clauses 9.5 and 9.6 to the attention of the Customer and shall comply with the Customer's decision on the resolution of that conflict.
- 9.8 The Supplier shall ensure that the Services and the Supplier System integrate with the Customer System as set out in schedule 2.1 (Services Requirements).
- 9.9 In the event of the Supplier's failure to provide the Services or to comply with its obligations in accordance with this Contract, the Customer may, without

prejudice to its other rights, require the Supplier to re-perform the Services or to comply with its obligations or otherwise to remedy such non-compliance to the Customer's reasonable satisfaction. If the failure is due to:

- 9.9.1 the Supplier's Default, the Supplier will comply with this clause at its own cost;
  - 9.9.2 a Customer Cause, clause 7 (Delays to Milestones Due to Customer Cause) or clause 13 (Effect of Customer Cause in the Operational Phase) will apply (as appropriate);
  - 9.9.3 a cause not due to one party, clause 8 (Delays Not Due to One Party) will apply; or
  - 9.9.4 a Force Majeure Event, the Supplier will comply with its obligations under clause 53 (Force Majeure).
- 9.10 The Supplier shall comply with the principle of Open Book Accounting and transparency in pricing and performing its obligations in accordance with this Contract and shall procure that its Key Sub-contractors comply with such Open Book Accounting principle.
- 9.11 The Supplier shall not act in a manner which is detrimental to the Customer's interests or reputation.

### **Additional Services**

- 9.12 The Customer may require the Supplier to provide any or all of the Additional Services by giving notice in writing. The Supplier acknowledges that the Customer is not obliged to take any Additional Services from the Supplier and that nothing prevents the Customer from receiving services that are the same as or similar to the Additional Services from any third party.
- 9.13 If there has been an agreed Change to the Supplier Solution prior to the Customer's request for the Additional Services, then the Supplier shall notify the Customer within ten (10) Working Days of the request (or such other period as the parties may agree) of the impact that the agreed Change will have on the relevant Additional Services.
- 9.14 If, following receipt of the Supplier's impact analyses pursuant to clause 9.13, the Customer confirms in writing that it wishes to proceed with its requirement for the Additional Services the Supplier shall:
- 9.14.1 implement the relevant Additional Services in accordance with the Additional Services Implementation Plan; and
  - 9.14.2 subject the relevant Additional Services to Testing.

- 9.15 Following the successful implementation of the Additional Services:
- 9.15.1 any additional charges for the Additional Services shall be incorporated in the Charges (at the discretion of the Customer) either as specified in paragraph 8.2 of Schedule 7.1 schedule 7.1 (Charges and Invoicing) or by reference to the day rates set out in Appendix 1 of Schedule 7.1;
  - 9.15.2 any services levels in respect of the Additional Services shall be incorporated in the Service Levels schedule; and
  - 9.15.3 the relevant Additional Services implemented in accordance with these clauses 9.12 to 9.15 (inclusive) shall become part of the Services for the purpose of all other sections, clauses, obligations and rights contained within this Contract.
- 9.16 The parties shall implement any Additional Services requested by the Customer in accordance with the Change Control Procedure modified to reflect the fact that the terms on which the Additional Services will be supplied have already been agreed.
- 9.17 **Risk Log**
- 9.17.1 The Customer has provided the risk log to the Supplier which is set out in Schedule 12 and which has been commented on by the Supplier as set out in Schedule 12.
  - 9.17.2 Throughout the Term, the Supplier shall manage its own risk log (which shall be shared with the Customer and which the Customer shall be entitled to comment on) and shall update it every month as part of the monthly service report referred to in paragraph 4.2 of Part B of Schedule 2.2 to reflect:
    - 9.17.2.1 any risks or new risks that the Supplier has identified;
    - 9.17.2.2 any risks that are becoming an issue and need to be resolved;
    - 9.17.2.3 any risks that can be removed; and/or
    - 9.17.2.4 any other amendments that the Supplier reasonably believes should be made to the risk log.
  - 9.17.3 The Parties acknowledge that the risk log may be developed from the form of the risk log that is included in schedule 12 but no amendment to the risk log shall be capable of leading to a Change.

## 10. KEY COMMITMENTS IN RELATION TO THE SERVICES

10.1 The following is provided as a summary of key commitments and does not expand the scope of the Parties' obligations under this Contract (and in particular Schedule 2.1 or 4.1) nor alter the meaning of the remaining terms and conditions of this Contract. The Supplier shall:

10.1.1 act as a 'Strategic SI partner' to work closely with the Customer to deliver the Services whilst recommending enhancement and consolidation of ICT investments to support wider Customer operational transformation;

### *Service Leadership and Overarching Governance*

10.1.2 supply an overarching team of senior technical resources that will focus on the management, setup and delivery of the core Services. The Supplier will undertake an ICT portfolio assessment and produce a high level design for the purposes of supporting, rationalising and standardising the Customer's existing estates. Tactical technical innovation and continuous improvement forums will be established;

### *End to End Service Management*

10.1.3 proactively manage the Customer's service and incumbent suppliers, covering the performance and capacity of the ICT estate, together with any change or release that is required by the ICT production environment;

10.1.4 provide service reporting to ensure that the Customer has complete and accurate information on how the Services are performing.

### *Service Desk and Management*

10.1.5 provide a Service Desk which will be the single point of contact for all Customer users from the Operational Service Commencement Date onwards and will endeavour to resolve issues at first contact, or liaise promptly with suppliers and manage issues on behalf of users

### *End User Services and Managed Desktop*

10.1.6 provide a fully managed desktop service, providing full desk side hardware support and maintenance against the current and evolving ICT estate;

10.1.7 provide a procurement service which will be provided for the purchase from a pre-approved hardware catalogue;

### *Hosting, Infrastructure Support and Networks*

- 10.1.8 support Customer's infrastructure services to ensure servers are monitored, supported and managed and also supply on-site resources for break fix or replacement tasks;
- 10.1.9 replace the current network provider and its associated services with the implementation of a PSN compliant network, maintaining appropriate aspects of the current network where possible;
- 10.1.10 ensure that th; High Level Design for the network will address the support, rationalisation and standardisation of the existing network estates.

### *Application Support and Management*

- 10.1.11 utilise its Applications Portfolio Management Framework (APMF) to support the Customer's Application portfolio planning, as part of the comprehensive ICT assessment to provide an agreed baseline for the Application portfolio improvement. All existing applications will be supported under this framework;

### *Security Management*

- 10.1.12 provide a Security Management Service which will be based on the development, management and maintenance of an ISO27001 and HMG IS1-2 compliant Information Security Management System (ISMS).

### *Community*

- 10.1.13 appoint a Community Ambassador for North Wales to act as the focal point and driver for all the social and environment initiatives that the Supplier and Customer undertake together. These may include, for example, work with the Prince's Trust addressing adult employment, Code Clubs for primary schools, online safety and security seminars for older children and secondary school events to help those considering a career in IT.

## **11. SERVICE LEVELS**

- 11.1 The Supplier shall provide the Operational Services to meet or exceed the Service Levels from the ATP Milestone Date. The remaining provisions of this clause 11 are subject to the provisions of clause 13 (Effect of Customer Cause in the Operational Phase).

- 11.2 If there is a Service Failure or if the Supplier believes that there will be a Service Failure, the Supplier shall notify the Customer immediately of the Service Failure or likely Service Failure.
- 11.3 If there is a Service Failure or if the Supplier believes that there will be a Service Failure, which takes the Service Levels below the Service Notification Threshold the Supplier shall:
- 11.3.1 provide a draft Correction Plan for the Customer's approval, setting out the action that the Supplier will take to rectify the Service Failure or to prevent the Service Failure from taking place or recurring, within 10 Working Days from the day the Supplier notifies the Customer under clause 11.2;
  - 11.3.2 to the extent that the Customer considers that the Correction Plan submitted by the Supplier in accordance with clause 11.3.1 is inadequate, promptly (and in any event within two (2) Working Days of a request by the Customer) amend the draft Correction Plan to reflect such additional action as the Customer considers necessary in order to rectify the Service Failure or to prevent the Service Failure from taking place or recurring and re-submit the draft Correction Plan for the Customer's approval;
  - 11.3.3 carry out the Correction Plan approved by the Customer under either clause 11.3.1 or 11.3.2 in accordance with its terms; and
  - 11.3.4 take all such further remedial action that is reasonable to rectify or prevent the Service Failure from taking place or recurring.
- 11.4 Subject to the Service Credit limit in clause 55.2.5, where a Service Failure occurs the Payment Retention shall be reduced by an amount equal to such Service Credits in accordance with schedule 7.1 (Charges and Invoicing). Service Credits shall be shown as a deduction from the Payment Retention due from the Customer to the Supplier in the next invoice then due to be issued under this Contract.
- 11.5 Where Service Credits are provided as a remedy for Service Failure in respect of the relevant Services it shall be the Customer's exclusive financial remedy in respect of such Service Failure except where:
- 11.5.1 the aggregate number of Service Points equals or exceeds [redacted] Service Points over a period of [redacted] consecutive months;
  - 11.5.2 any Service Failure falls below the Service Threshold;
  - 11.5.3 a Critical Service Failure occurs;

- 11.5.4 the Service Failure has arisen due to theft, gross negligence, fraud, or wilful default;
  - 11.5.5 the Service Failure results in corruption or loss of data; or
  - 11.5.6 the Customer is otherwise entitled to or does terminate this Contract for the Supplier's Default pursuant to clauses 59.1 and 59.3.
- 11.6 Where Service Credits are not provided as a remedy for a Service Failure or where Service Credits are not provided as the exclusive financial remedy for a Service Failure pursuant to clause 11.5 and (in either case) the Supplier has failed to address such a Service Failure to the reasonable satisfaction of the Customer, then the Customer shall have a right to claim any actual loss or damage suffered in respect of the Service Failure and may, on written notice to the Supplier, withhold an amount from the Service Charges equivalent to such loss or damage.
- 11.7 The Customer and the Supplier shall review the Service Levels every six months throughout the Term and make any changes in accordance with the Change Control Procedure to reflect changes in the Customer's requirements.
- 11.8 Not more than annually the Customer may, on at least three months written notice, change the Service Credits applicable to one or more Service Levels provided that:
- 11.8.1 the principal purpose of this change is to reflect changes in the Customer's business requirements and priorities, or to reflect changing industry standards or to ensure appropriate management in performance of the Services;
  - 11.8.2 the change is not specifically intended to penalise the Supplier for poor performance in relation to any particular Service Levels; and
  - 11.8.3 there is no increase in the total value of Service Credits potentially payable.
- 11.9 If the Supplier reasonably believes that any proposed change, which is requested by the Customer under clause 11.8, would materially and adversely increase Costs, the Supplier shall be entitled to submit a price variation request (supported by appropriate evidence, which should include but not be limited to an updated Financial Model) within 10 Working Days of the date of receiving the Customer's written notice.
- 11.10 The Customer shall then review the Supplier's price variation request submitted under clause 11.9 and, within 15 Working Days shall respond to the Supplier and do one of the following:



- 11.10.1 accept the Supplier's price variation request and make any required changes to the Charges in accordance with the Change Control Procedure; or
- 11.10.2 where the Customer considers the Supplier's price variation to be unreasonable, the Customer may reject the Supplier's charges variation request and proceed to implement its proposed change to the Service Credits in accordance with the provision of clause 11.8; or
- 11.10.3 decide not to proceed with the proposed change to the Service Credits which it requested under clause 11.8.

## 12. **EARLY WARNING**

- 12.1 The Supplier shall give an early warning by notifying the Customer as soon as possible after it becomes aware of any matter which could:
  - 12.1.1 increase or reduce the Charges;
  - 12.1.2 adversely affect the performance of the Services;
  - 12.1.3 impair the Customer's ability to use the ICT Environment or otherwise adversely affect the Customer's operations; or
  - 12.1.4 lead to a Service Failure or likely Service Failure.
- 12.2 If the Customer considers that a matter notified is sufficiently important to require an early warning meeting, an early warning meeting shall be convened and attended by the Supplier Representative, the Customer Representative and such other people as the parties agree.
- 12.3 At an early warning meeting those who attend will co operate in:
  - 12.3.1 making and considering proposals for how the effect of each matter which has been notified as an early warning can be avoided or reduced;
  - 12.3.2 seeking solutions that will bring advantage to all those who will be affected; and
  - 12.3.3 deciding upon actions which they will take and who, in accordance with this Contract, will take them.
- 12.4 The Supplier Representative will record the proposals considered and decisions taken at an early warning meeting and will give a copy of his record to the Customer Representative.

**13. EFFECT OF CUSTOMER CAUSE IN THE OPERATIONAL PHASE**

- 13.1 If the Supplier would have provided the Operational Services in accordance with the Service Levels and/or this Contract but has failed to do so as a result of a Customer Cause the Supplier will, subject to clause 13.2, have the rights and relief set out in clause 13.3.
- 13.2 If the Supplier claims that clause 13.1 applies, and in order to claim the rights and relief in clause 13.3, it shall:
- 13.2.1 notify the Customer as soon as possible of the occurrence of a Customer Cause (and in any event within ten (10) days of the date upon which it became aware or ought reasonably to have been aware of the occurrence of such Customer Cause);
  - 13.2.2 give details of the Customer Cause, which part of the Services have been affected, together with a reasonable estimate of the period during which the Customer Cause will continue to affect the Supplier's ability to provide the Services;
  - 13.2.3 carry out its duties to the best level reasonably achievable in the circumstances of the Customer Cause; and
  - 13.2.4 take all reasonable steps to overcome and mitigate the effects of the Customer Cause as soon as reasonably practicable.
- 13.3 The Supplier shall:
- 13.3.1 (in measuring the performance of any affected Service) be treated as though the relevant part of the Service had met the relevant Service Level to the extent that the Service Failure is due to any Customer Cause; and
  - 13.3.2 not be treated as being in breach of this Contract to the extent that non-performance or breach is due to any Customer Cause; and
  - 13.3.3 be entitled to the Charges for the relevant part of the Services affected by the Customer Cause as if it had not occurred.
- 13.4 Any Disputes about or arising out of whether a Customer Cause applies to the Supplier's failure to provide the Services in accordance with the Service Levels and/or this Contract shall be resolved through the Dispute Resolution Procedure. Pending the resolution of the Dispute both Parties shall continue to resolve the causes of, and mitigate the effects of such failure.

## 14. **STANDARDS**

- 14.1 The Supplier shall comply with the Standards in performing its obligations under this Contract.
- 14.2 The Supplier shall discuss with the Customer any conflict that the Supplier reasonably believes that there is or will be between any of the Standards or between any of the Standards and any other obligation under this Contract, and shall comply with the Customer's decision on the resolution of that conflict.

## 15. **QUALITY ASSURANCE AND PERFORMANCE MONITORING**

### **Quality Plans**

- 15.1 The Supplier shall develop, within 20 Working Days of the Effective Date, Quality Plans that:
  - 15.1.1 ensure that all aspects of the Services are the subject of quality management systems that accord with Good Industry Practice; and
  - 15.1.2 are consistent with ISO 9001:2008 or any equivalent standard which is generally recognised as having replaced it; and
  - 15.1.3 are consistent with the Standards or any equivalent Standards which are generally recognised as having replaced the Standards.
- 15.2 The Supplier shall obtain the Customer Representative's written approval of the Quality Plans developed pursuant to clause 15.1 before beginning to implement them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the Customer's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Contract.
- 15.3 The Supplier shall procure that the Services are carried out in compliance with the Quality Plans.
- 15.4 Any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.
- 15.5 The Supplier will keep an up to date copy of the Quality Plans and shall make it available for inspection by the Customer and its representatives (including the Customer Representative) on request.

### **Quality Monitoring**

- 15.6 The Customer and its representatives (which shall include any third party representatives) may carry out audits of the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures) at regular intervals in accordance with the arrangements set out in clauses 26.5 to 26.10 (inclusive). The Parties anticipate that these audits will be carried out periodically and there may be spot checks at any other time, subject to providing reasonable notice to the Supplier. In each case, the Supplier shall co-operate, and shall procure that its Sub-contractors co-operate, with the Customer, including by providing the Customer with all information and documentation, and access to any relevant Supplier Personnel and/or to any relevant Site, which it reasonably requires in connection with his rights under this clause 15.6 at no additional charge to the Customer.

### **Performance Monitoring**

- 15.7 The Customer may monitor the performance of the Services by the Supplier.
- 15.8 The Supplier shall co-operate, and shall procure that its Sub-contractors co-operate, with the Customer in carrying out the monitoring referred to in clause 15.7 at no additional charge to the Customer.
- 15.9 If the Supplier believes that the Customer's monitoring of the Services is unreasonable the Supplier may escalate the issue with the Customer using the Escalation Process.

### **Warning Notices and Increased Monitoring**

- 15.10 Without prejudice to the other rights or remedies of the Customer, if at any time the Supplier has:
- 15.10.1 committed any material breach of its obligations under this Contract;  
or
  - 15.10.2 in respect of its performance of the Services, fallen to or below the Service Notification Threshold;
  - 15.10.3 accrued [redacted] or more Service Failures in any [redacted] month period;
  - 15.10.4 failed to achieve any Milestone by its associated Milestone Date,
- then the Customer may, but is not obliged to, give a written notice (a "**Warning Notice**") to the Supplier setting out the matter or matters giving rise to such notice and containing a reminder to the Supplier of the implications of such notice. Any such notice shall state on its face that it is a Warning Notice.

15.11 Without prejudice to the other rights or remedies of the Customer, if the Supplier receives two (2) or more Warning Notices in any period of three (3) calendar months in respect of any Services (or any part thereof), the Customer may, by written notice to the Supplier, reasonably increase the level of its monitoring of the Supplier, or (at the Customer's option) require the Supplier to increase the level of its monitoring of its own performance of its obligations under this Contract, in respect of the Services (or relevant part thereof) to which the Warning Notices relate until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that it shall perform (and is capable of performing) its obligations under this Contract, in which case, the following provisions shall apply:

15.11.1 any such notice to the Supplier shall specify in reasonable detail the additional measures to be taken by the Customer or by the Supplier (as the case may be) in monitoring the performance of the Supplier;

15.11.2 if the Supplier (acting reasonably) objects to any of the specified measures on the grounds that they are excessive it shall notify the Customer in writing within two (2) Working Days of the receipt of the notice referred to in clause 15.11.1 of the measures objected to (and of any changes necessary in order to prevent prejudice to the Supplier's performance of its obligations under this Contract);

15.11.3 the measures to be taken by the Customer and/or the Supplier (as the case may be) shall be agreed by the Parties or, in the absence of agreement within three (3) Working Days of the Customer's receipt of the Supplier's objection, determined pursuant to the Dispute Resolution Procedure; and

15.11.4 the Supplier shall bear its own costs and shall reimburse the Customer in respect of any additional costs that are directly incurred by the Customer in respect of any such additional measures.

15.12 If at any time the Supplier is in Default such that any element of the Services has become materially unfit for purpose such that the Supplier cannot deliver a material part of that Service the Customer shall notify the Supplier that it requires a Remedial Plan which should be prepared in accordance with the Remedial Plan Process detailed in clause 60 (Remedial Plan Process).

## 16. **SERVICES IMPROVEMENT**

16.1 The Parties agree that as at the Service Commencement Date, the Supplier shall be taking over the provision of the Services as provided by the Customer prior to the date of this Contract and as further set out in Schedule 4.1 (Supplier's Solution). The Supplier agrees that in order to make further efficiencies and improvements to the Services throughout the Term, it shall make

transformational changes to the Services and propose and implement New Project as set out in this clause 16 and Schedule 11 (New Projects).

### **Improvements identified by the Supplier**

- 16.2 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this clause 16 and schedule 2.4 (Continuous Improvement) and Schedule 11 (New Projects Schedule). As part of this obligation the Supplier shall identify and report to the Technology and Strategy Board when it meets in accordance with Schedule 8.1 (Governance) on:
- 16.2.1 the emergence of new and evolving relevant technologies which could improve the ICT Environment and/or the Services, and those technological advances potentially available to the Supplier and the Customer which the Parties may wish to adopt;
  - 16.2.2 new or potential improvements to the Services including the quality, responsiveness, procedures, likely performance mechanisms and customer support services in relation to the Services;
  - 16.2.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Customer which might result in efficiency or productivity gains or in reduction of operational risk;
  - 16.2.4 changes in business processes and ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Customer;
  - 16.2.5 changes to the ICT environment, business processes and ways of working that would enable reductions in the total energy consumed annually in the delivery of Services;
  - 16.2.6 the Supplier's relevant strategies, relevant objectives, and other relevant targets, proposed relevant activities and the effect of the proposed activities on the Customer for the following 3 years (provided that the Supplier shall not be required to provide any such information which is confidential to the Supplier and which it is not entitled to share with the Customer); and
  - 16.2.7 the Supplier's detailed list of ideas for OBCs and/or FBCs for the forthcoming year.
- 16.3 The Supplier shall ensure that the information that it provides to the Customer shall be sufficient for the Customer to decide whether any improvement or New

Project should be implemented. The Supplier shall provide any further information that the Customer requests.

- 16.4 Subject to its non-disclosure undertakings or other specific restrictions in third party contracts agreed in good faith, if the Supplier develops technological advances in or changes to the information systems and technologies used to provide services to its other customers which are substantially similar to the Services or the Supplier develops new or enhanced processes, services, software, tools, products or methodologies to be offered to such customers (collectively, "**New Advances**"), the Supplier shall offer the Customer the opportunity to serve as a customer in connection with the implementation of such New Advances and such New Advances shall be implemented in accordance with the Change Control Procedure or the Schedule 11 (New Projects Schedule) (depending upon the nature of the Change). If the Customer declines such opportunity, no further amendment shall be made to the provisions of this Contract in relation to the New Advances.

#### 16.5 **New Project Initiation**

- 16.5.1 The Supplier and the Customer acknowledge that the development and implementation of New Projects is a key part of the relationship between the Parties. The Supplier shall bring its vision, skills, experience, knowledge and ideas (from both the public sector and industry) to the Project and identify project opportunities which help further the objectives of the Project and promote continuous improvement within the Customer. The Supplier and the Customer through the Technology and Strategy Board and the Customer's decision making structures will contribute and participate in identifying and developing ideas for New Projects particularly those which may result in bringing community benefits and savings to the Customer.
- 16.5.2 The Customer shall be entitled to require the Supplier to produce an Outline Business Case in relation to any particular idea for a New Project.

#### 16.6 **Business Case Preparation**

- 16.6.1 The Supplier shall produce Outline Business Cases in accordance with Schedule 11 (New Projects Schedule) and the provisions of Schedule 11 shall apply to the development and implementation of all New Projects.
- 16.6.2 Where the Outline Business Case is approved by the Customer, the Customer may commission the Supplier to produce a more detailed, Full Business Case in relation to the New Project, taking into account all matters set out in Schedule 11 (New Projects Schedule).

- 16.6.3 Upon acceptance of the Full Business Case by the Customer, the Supplier undertakes to implement the New Project and perform, or continue to perform, the Services in accordance with this Contract ensuring no deterioration in Service Levels or other diminution in service delivery (unless otherwise specifically agreed by the Customer in writing).
- 16.6.4 The Supplier shall make available sufficient resources and Supplier Personnel to develop ideas for New Projects, develop Outline Business Cases and develop Full Business Cases.
- 16.6.5 The Customer reserves the right to decide at its sole discretion whether or not to implement a New Project proposed by a Supplier.

## **16.7 Development and Implementation of New Projects**

- 16.7.1 The Customer reserves the right to propose, develop and/or implement a New Project itself, or appoint a Third Party Provider to do so. The Supplier shall provide assistance to the Customer as is required in the development and/or implementation of a New Project.
- 16.7.2 In developing and implementing New Projects or providing assistance to the Customer in the development and implementation the Supplier shall not do anything or omit to do anything that the Supplier should reasonably be aware (having made reasonable enquiries) would place the Customer in breach of EU procurement rules and regulations and shall not propose New Projects which, if implemented, would place the Customer in a position where it fails to so comply.
- 16.7.3 The Customer and the Supplier shall agree pricing structures for New Projects which shall align with the principles set out in the Financial Model and the basis for pricing set out in the Financial Model (including the profit margin that is set out in the Financial Model). The Supplier shall ensure that each proposed New Project is priced reasonably and that wherever possible savings from the New Project exceed the costs associated with the New Project.

## **Improvements identified by the Customer and ICT Strategy**

- 16.8 The Customer shall:
  - 16.8.1 at all times be responsible for determining its own ICT strategy but the Customer may notify the Supplier of any changes to the Customer's ICT strategy and request the Supplier to consider, review and respond to that strategy; and



- 16.8.2 be entitled to require specific improvements to the Services to be made by the Supplier.
- 16.9 If, in the Supplier's opinion, any notified change to the Customer ICT strategy pursuant to clause 16.8.1 or a specific improvement required pursuant to clause 16.8.2 would impact upon the provision of the Services, the Supplier shall refer the matter to the Executive Board. Any Changes considered necessary as a result of such referral shall be dealt with in accordance with the Change Control Procedure and the provisions of clause 28 (Change Control) shall apply.
- 16.10 If the Customer wishes to incorporate any improvement identified by the Supplier the Customer shall send the Supplier a Change Request and the Parties shall in accordance with the Change Control Procedure:
- 16.10.1 develop a plan for the implementation of the improvement within 20 Working Days of the Customer's Change Request for the approval of the Customer;
- 16.10.2 implement the improvement in accordance with the provisions of an implementation plan approved by the Customer; and
- 16.10.3 submit the improvements to testing in accordance with the provisions of clause 4 (Testing).

## **17. EQUIPMENT AND ASSETS**

### **Supplier Equipment**

- 17.1 Unless otherwise agreed in writing by the Customer, all Supplier Equipment will be used by the Supplier solely for the purposes of providing the Services to the Customer and will not be used for the Supplier's own purpose or in providing any other services to third parties.
- 17.2 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Customer Premises, including its off-loading, removal of all packaging and all other costs associated with delivery and/or carriage of the Supplier Equipment to the Sites and Customer Premises. Likewise on termination or expiry the Supplier shall be responsible for the removal of all relevant Supplier Equipment not purchased by the Customer under schedule 8.5 (Exit Management) from the Customer Premises, including the cost of packing, carriage and making good the Customer Premises following removal.
- 17.3 All the Supplier's property located on the Sites, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Customer shall be liable for loss of or damage to any of the Supplier's property

located on Customer Premises which is due to the negligent act or omission of the Customer.

- 17.4 Subject to any express provision of the BCDR Plan to the contrary, the loss or destruction for any reason of the Supplier Equipment held on any Site shall not relieve the Supplier of its obligation to supply the Services in accordance with the Service Levels.

#### **Transfer of Assets and Software**

- 17.5 The Parties agree that unless otherwise agreed through a Change or a New Project, the Customer shall not, as at the date of this Contract:

17.5.1 transfer any Customer Assets to the Supplier; or

17.5.2 transfer ownership in any Customer Software or grant any licence in any Customer Software that the Customer uses as at the date of this Contract to the Supplier.

If the Customer does transfer any Customer Assets on a date following the date of this Contract by way of a Change or a New Project the provisions of **clause 17.18** shall apply.

#### **Agency Agreements and Direct Award Contracts**

- 17.6 The Parties agree that there are no agreements which are in the name of the Customer as at the date of this Agreement which shall be novated to the Supplier.

- 17.7 The Parties agree that the Third Party Agreements listed in Paragraph 5 of Schedule 2.9 (Transferred Assets) (the "Agency Agreements") shall not be novated to the Supplier and in respect of such Agency Agreements, the Customer will hold the benefit of the Agency Agreements as trustee for the Supplier and the Supplier will, as the Customer's agent, perform all of the management obligations of the Customer under the Agency Agreements insofar as this Contract remains in full force and effect. For the avoidance of doubt, the Customer shall remain responsible for making payments under the Agency Agreements.

- 17.8 The Supplier shall at all times comply with the terms and conditions of the Agency Agreements.

- 17.9 The Parties agree that in relation to the contracts for the network connection and the mobile phone contract (the "Direct Award Contracts"), the Supplier shall negotiate the terms of the Direct Award Contract with the relevant supplier as soon as reasonably practicable following the date of this Contract and shall ensure that such Direct Award Contracts are on reasonable commercial terms,

contain a reasonable price and do not contains any onerous or unusual terms on the part of the Customer.

- 17.10 Following agreement of the Direct Award Contracts, the Supplier shall send a copy of such Direct Award Contracts to the Customer (including with details of the price) who shall be entitled to approve, reject or suggest amendments to the terms (including the price) of the Direct Award Contracts. If the Customer rejects or suggests amendments to the terms of the Direct Award Contracts, the Parties shall either agree to an alternative supplier or shall seek to amend the terms of the Direct Award Contracts.
- 17.11 Following agreement of the Direct Award Contract, the Customer shall enter into the terms of the Direct Award Contract and the Supplier will, as the Customer's agent, perform all of the management obligations of the Customer under the Direct Awards Contracts insofar as this Contract remains in full force and effect. For the avoidance of doubt, the Customer shall remain responsible for making payments under the Direct Award Contract.
- 17.12 The Supplier shall at all times comply with the terms and conditions of the Direct Award Contracts.

#### **Title and Risk**

- 17.13 Subject to **clause 17.22**, title and risk in the Customer Assets shall remain with the Customer at all times and the Customer shall be responsible for insuring the Customer Assets.
- 17.14 The Supplier agrees that the fact that ownership of the Customer Assets is not transferring to the Supplier shall not in any way derogate in any way from any obligations of the Supplier or the Supplier's obligation to provide the Services.
- 17.15 If, at any time during the term of this Contract, the Customer requires any new assets to replace the Customer Assets, it shall be entitled to request the Supplier to replace such Customer Assets or any part of them by way of a Change and the Customer shall retain the title and risk in relation to any new Customer Assets unless otherwise agreed by way of a Change.

#### **Asset Register**

- 17.16 The Supplier shall compile and maintain a complete and up to date Asset Register which shall:
- 17.16.1 list all of the Assets, the Customer Assets and Software;
- 17.16.2 specify the owner of each Asset, each Customer Asset and each piece of Software;

- 17.16.3 identify which of those Assets, Customer Assets and Software may only be replaced with the prior approval of the Customer;
- 17.16.4 identify the Net Book Value of each Asset and each Customer Asset unless otherwise agreed between the Parties; and
- 17.16.5 identify which of those Assets and Software (but excluding the Customer Software) are to be used by the Supplier exclusively in the provision of the Services to the Customer

provided that this clause 17.16 shall not apply to any cloud assets.

- 17.17 The Supplier shall provide the Customer with an updated copy of the Asset Register annually on such date as the Customer may direct from time to time and in any event the Supplier shall provide the Customer with an updated copy upon service of any notice to terminate this Contract or twelve (12) months prior to expiry of this Contract (whichever is sooner).

#### **Customer Assets**

- 17.18 Where the Customer allows the Supplier to use any Customer Assets during the Term, (comprising, in the case of any items of software within the Customer Assets, the media upon which such software are stored) ("**Customer Furnished Assets**"), the Parties shall agree how such Customer Assets shall be made available to the Supplier and those Customer Furnished Assets shall remain the property and within the legal and beneficial ownership of the Customer at all times and shall be used by the Supplier only for the purposes of this Contract.
- 17.19 The Customer shall continue to have the right to use the Customer Furnished Assets. The right of the Supplier to use such Customer Furnished Assets shall terminate on the expiry or earlier termination of this Contract.
- 17.20 The Supplier shall notify the Customer within thirty (30) days of receipt (or as otherwise agreed between the Parties) where any Customer Furnished Asset is not in good condition when received by or on behalf of the Supplier.
- 17.21 The Supplier shall:
  - 17.21.1 keep the Customer Furnished Assets in such a way that they remain readily identifiable as the Customer's property;
  - 17.21.2 not destroy, deface or obscure any identifying mark on or relating to the Customer Furnished Assets;
  - 17.21.3 not damage or destroy the Customer Furnished Assets and shall keep them in the condition they were in at the Effective Date, fair wear and tear excepted;

- 17.21.4 hold to the Customer's order and not dispose of or alienate the Customer Furnished Assets without the Customer's prior written consent; and
- 17.21.5 make its own enquiries as to the condition, fitness for purpose state and adequacy of any Customer Furnished Assets and confirms that it has satisfied itself as to the condition, fitness and state of all the Customer Furnished Assets upon which it places reliance. The Customer gives no warranty as to the condition, fitness for purpose or state of the Customer Furnished Assets including the manner of their installation or operation or suitability or otherwise of their environment.
- 17.22 The Supplier undertakes the safe custody of and due return of all Customer Furnished Assets and shall be responsible for all loss or damage to the Customer Furnished Assets whilst in the Supplier's possession or control (except to the extent such loss or damage is caused by the Customer's Default) and shall indemnify the Customer against such loss and damage. The Supplier shall be responsible for any deterioration in the Customer Furnished Assets save for any deterioration resulting from its normal and proper use for the purposes of this Contract, provided that such deterioration resulting from normal and proper use is not contributed to by any want of due maintenance and repair, where the Supplier is responsible for the maintenance of such property.
- 17.23 Neither the Supplier, nor any Affiliate of the Supplier, any Sub-contractor nor any other person, shall have a lien on any Customer Furnished Assets for any sum due to the Supplier, any Affiliate of the Supplier, any Sub-contractor or other person and the Supplier shall take all reasonable steps to ensure that the title of the Customer and the exclusion of any such lien are brought to the notice of all Affiliates of the Supplier and all other persons dealing with any Customer Furnished Assets.
- 17.24 The Supplier shall at all times during the Term, keep a record of all Customer Furnished Assets in its possession or control (or that of any Affiliate) from time to time and shall make that record available to the Customer upon request by the Customer, provided that to the extent that the registers of assets and software otherwise maintained by the Supplier pursuant to **clause 17.16** adequately indicate whether or not the items recorded in such registers are Customer Furnished Assets there shall be no obligation on the Supplier to keep a separate record.
- 17.25 From the Effective Date until the expiry of the Term the Customer shall grant to the Supplier a non-exclusive right of access to and egress from those parts of the Customer Premises that the Supplier reasonably requires in order to provide the Services provided that such rights:

- 17.25.1 are granted insofar as the Customer is capable of granting them and subject to any restrictions in the relevant title documentation; and
- 17.25.2 shall not in any circumstances entitle the Supplier or any Sub-contractor to exclusive occupancy or exclusive possession of any part of the Customer Premises.

#### **17.26 Provision of Hardware**

- 17.26.1 The Parties acknowledge that the Supplier shall not, as part of the Supplier's Solution, deliver any new Hardware to the Customer prior to the Planned ATP Milestone Date. If the Parties agree that the Supplier shall provide Hardware by way of a New Project or a Change, the following provisions of this clause 17.26 shall apply, subject to any specific amendments which are agreed by the Parties as part of the New Project or the Change.
- 17.26.2 The Supplier shall supply the Hardware in accordance with the specification which is agreed by the Parties by way of the New Project or the Change by the date agreed as part of the relevant New Project or Change.
- 17.26.3 The Hardware will:
  - 17.26.3.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
  - 17.26.3.2 be fit for purpose;
  - 17.26.3.3 conform to all requirements of NWP which are agreed between the Parties (acting reasonably) including any specification which is agreed between the Parties;
  - 17.26.3.4 be free from defects in design, materials or workmanship; and
  - 17.26.3.5 be delivered by the Supplier to the Customer to the place and at the time and on the date agreed pursuant to the New Project or the Change.
- 17.26.4 The Supplier will carry out the Tests on the Hardware before delivering the Hardware to the relevant Site.
- 17.26.5 The Supplier shall be responsible for installing the Hardware.
- 17.26.6 Title to the Hardware will pass to the Customer on the earlier of delivery of the Hardware at the relevant Site and payment by the

Customer for the Hardware and such Hardware shall become a Customer Asset for the purposes of this Contract. The Parties acknowledge that it is anticipated that the Customer shall pay for the Hardware by way of a lump sum, but this should be agreed as part of the relevant Change or New Project.

- 17.26.7 Risk of damage to or loss of the Hardware will pass to the Customer on the date and at the time that the Hardware is delivered and installed in the relevant part of the Site and is signed for by an authorised member of the Customer. If any part of the Hardware is lost, destroyed or damaged the Supplier will promptly replace it upon being requested to do so by the Customer, subject to the Customer paying the cost of such replacement.

## **SECTION D - PAYMENT AND VALUE FOR MONEY PROVISIONS**

### **18. CHARGING AND INVOICING**

- 18.1 In consideration of the Supplier carrying out its obligations, including the provision of the Services under this Contract, the Customer shall pay the Charges to the Supplier in accordance with the payment profile and the invoicing procedure specified in schedule 7.1 (Charges and Invoicing). For the avoidance of doubt, unless expressly stated otherwise in this Contract, the Charges set out in schedule 7.1 (Charges and Invoicing) represent the Customer's complete consideration for provision of the Services under this Contract and shall be inclusive of all costs, disbursements and expenses incurred by the Supplier in the performance of the obligations under this Contract.
- 18.2 In addition to the requirements of schedule 7.1 (Charges and Invoicing), the Supplier shall provide to the Customer such detailed breakdowns and supporting evidence in respect of each invoice as the Customer may reasonably require.
- 18.3 Payment of the Charges by the Customer shall be without prejudice to any rights the Customer may have by reason of the Services, or any part thereof, failing to comply with any provision of this Contract and any breach by the Supplier of this Contract shall not be deemed to be accepted or waived by the Customer by reason of such payment.
- 18.4 If the Customer disputes any of the Supplier's invoices or any part thereof the Supplier shall:
- 18.4.1 issue a credit note for the full amount of the invoice in which the disputed amount appears;

18.4.2 issue a separate invoice for the disputed amount together with any further information that the Customer requests about the disputed amount; and

18.4.3 issue a separate invoice for the undisputed amounts of such invoice and the Customer shall pay to the Supplier the undisputed amount within thirty (30) days of receipt of that invoice,

and the quantum of the disputed amount shall either be agreed between the parties or dealt with at the written request of either party through the Dispute Resolution Procedure.

18.5 The Customer shall not be required to pay the disputed element of any invoice under dispute until such amount has been agreed or determined pursuant to the Dispute Resolution Procedure. The Customer shall pay to the Supplier the amount agreed or determined to be payable (if any) (together with interest accruing in accordance with clause 18.7, from the date of the original invoice) within thirty (30) days of the date that the disputed amount is agreed or determined in accordance with the Dispute Resolution Procedure.

18.6 The Supplier shall ensure that a term is included in any Sub-contract permitted under this Contract which requires the Supplier to pay any undisputed sums due to the relevant Sub-contractor within a specified period that does not exceed 30 days from the date the Supplier receives the Sub-contractor's invoice.

18.7 The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate this Contract under clause 59.6.1 for failure to pay undisputed Charges. Interest shall be payable on the late payment of any undisputed Charges properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. If any sum properly due and payable under this Contract is not paid when due then the party entitled to receive such sum shall be entitled to charge interest on that sum from the due date until payment is made both before and after any judgement at two and a half per cent (2.5%) per annum over the base lending rate from time to time of the Bank of England, such interest to accrue on a daily basis. The parties agree that this clause 18.7 is a substantial remedy for late payment of any sum payable under this Contract for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.

18.8 Except as otherwise provided, the Parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this Contract, including for the avoidance of doubt clauses 4.2 (Testing), 15 (Quality Assurance and Performance Monitoring), 26 (Audits), 43 (Protection of Personal Data), and 44 (Freedom of Information) and, to the extent specified therein, clause 64 (Step-In Rights).



19. **TAX**

19.1 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a valid VAT invoice.

19.2 The Supplier shall indemnify and keep indemnified the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due under this clause 19.2 shall be paid in cleared funds by the Supplier to the Customer not less than five Working Days before the date upon which the tax or other liability is payable by the Customer (or, if later, ten (10) Working Days following the date on which the Customer has provided written notice to the Supplier of the liability).

20. **RECOVERY OF SUMS DUE**

The Customer may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Customer.

21. **VALUE FOR MONEY**

The Parties shall comply with their obligations set out in schedule 7.3 (Value for Money Provisions).

22. **FINANCIAL MODEL**

The provisions of schedule 7.5 (Financial Model) shall apply in relation to the Financial Model and the Parties shall comply with their respective obligation in schedule 7.5 (Financial Model).

**SECTION E - CONTRACT GOVERNANCE**

23. **REPRESENTATIVES**

23.1 The Customer appoints the Head of IT and Procurement as its representative (the "**Customer Representative**").

23.2 The Supplier appoints its Customer Engagement Director as its representative (the "**Supplier Representative**").

23.3 The Representatives shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Contract. Either Party

may, by further written notice to the other Party, revoke or amend the authority of its Representative or appoint a new Representative.

- 23.4 The respective Representatives shall be sufficiently senior within the organisation of the appointing Party, and granted sufficient authority by that Party, to ensure full cooperation in relation to the operation and the management of this Contract.
- 23.5 The Customer may require the Supplier to replace the Supplier Representative in accordance with clause 30.14 (Key Personnel).
- 23.6 The Customer Representative may delegate any of his actions and may cancel his delegation and will notify the Supplier in writing of such delegation or cancellation.
- 23.7 The Supplier will not act on instructions given by an employee or officer of the Customer (including any instructions to implement a change to the Services) unless the employee or officer is a Representative or has been notified to the Supplier pursuant to clause 23.6 above.

## 24. **GOVERNANCE**

The Parties agree to manage this Contract through the governance structure detailed in schedule 8.1 (Governance).

## 25. **SUPPLY CHAIN RIGHTS**

### **Sub-contracting**

- 25.1 With the exception of those Sub-contracts listed in schedule 4.3 (Notified Sub-contractors), the Supplier shall not sub-contract any of its obligations under this Contract without the prior written consent of the Customer, which, subject to clause 25.2, shall not be unreasonably withheld or delayed. Any sub-contracting shall not relieve the Supplier from its obligations under this Contract.
- 25.2 Without prejudice to the generality of the Customer's rights in clause 25.1, the Customer may withhold or delay its consent where it considers that:
  - 25.2.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Customer; and/or
  - 25.2.2 the proposed Sub-contractor is considered to be unreliable and/or has not provided reasonable services to its other customers; and/or
  - 25.2.3 the proposed Sub-contractor employs unfit persons.

- 25.3 Subject to clause 25.4, in making a request for the Customer's consent pursuant to clause 25.1 the Supplier shall provide the Customer with the following information about the proposed Sub-contractor (and where that Sub-contractor is a Key Sub-contractor each Sub-contractor of that Key Sub-contractor):
- 25.3.1 its name, registered office and company registration number;
  - 25.3.2 a copy of the proposed Sub-contract prior to signature of that Sub-contract with the relevant Sub-contractor;
  - 25.3.3 the purposes for which the proposed Sub-contractor will be employed, including the scope and value of any services to be provided by the proposed Sub-contractor;
  - 25.3.4 if relevant, confirmation that the Sub-contract requires the proposed Sub-contractor to comply with any relevant Service Levels;
  - 25.3.5 where the proposed Sub-contractor is also an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Customer that the proposed Sub-contract has been agreed on "arms-length" terms; and
  - 25.3.6 any further information reasonably requested by the Customer,
- in each case in sufficient time, having regard to the nature and value of the services to be provided by the proposed Sub-contractor, to enable the Customer to undertake an assessment of the proposed Sub-contractor prior to the appointment of the proposed Sub-contractor.
- 25.4 If the supply of information required pursuant to clause 25.3 would amount to a breach of any rules and regulations of any exchange on which the shares of the Supplier are admitted for listing and/or trading, or any other rules or regulations with which the Supplier is obliged to comply as a result of that listing, the Supplier's obligation pursuant to clause 25.3 shall be to provide the Customer with the relevant information to the fullest extent permitted by those rules and regulations.
- 25.5 If the supply of a copy of a proposed Sub-contract pursuant to clause 25.3.2 would cause a breach of confidence, the Supplier shall consult in good faith with the Customer as to whether the disclosure of a redacted version of the proposed Sub-contract could be provided in a format containing sufficient information to enable the Customer to review the proposed arrangements pursuant to clause 25.1 and the Supplier shall, if agreed by the Customer, provide a redacted version of the Sub-contract to the Customer which excludes those elements which the Customer has agreed can be redacted.

- 25.6 The Customer has consented to the engagement of the Sub-contractors listed in schedule 4.3 (Notified Sub-contractors).
- 25.7 Except where the Customer agrees otherwise in accordance with clause 25.8, the Supplier shall ensure that each Key Sub-contract shall include:
- 25.7.1 a right under the Contracts (Rights of Third Parties) Act 1999 for the Customer to enforce the terms of that Key Sub-contract as if it were the Supplier;
  - 25.7.2 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Customer and/or any Replacement Supplier in accordance with paragraph 3.3 of schedule 8.5 (Exit Management);
  - 25.7.3 a provision requiring the Key Sub-contractor to enter into a direct confidentiality agreement with the Customer on the same terms as set out in clause 45 (Confidentiality);
  - 25.7.4 a provision requiring the Key Sub-contractor to comply with protection of data requirements consistent with clauses 42 (Customer Data) and 43 (Protection of Personal Data);
  - 25.7.5 a provision requiring the Key Sub-contractor to notify the Customer promptly in writing of any material non-payment or late payment of any sums due to the Key Sub-contractor from the Supplier under the Key Sub-contract (and in any event, provide such notification within ten (10) Working Days of the due date for payment);
  - 25.7.6 a provision requiring the Key Sub-contractor to comply with the requirements of clause 68 (Prevention of Bribery);
  - 25.7.7 a provision restricting the ability of the Key Sub-contractor to further sub-contract elements of the service provided to the Supplier without first seeking the consent of the Customer;
  - 25.7.8 a provision enabling the Supplier, the Customer or any other person on behalf of the Customer to step-in on substantially the same terms as are set out in clause 64 (Step-in Rights);
  - 25.7.9 a provision requiring the Key Sub-contractor to:
    - 25.7.9.1 promptly notify the Supplier and the Customer in writing of a Sub-contractor Financial Distress Event or any fact, circumstance or matter which could cause a Sub-contractor Financial Distress Event (and in any event, provide such notification within ten (10) Working Days of

the date on which the Key Sub-contractor first became aware of the Sub-contractor Financial Distress Event or the fact, circumstance or matter which could cause the Sub-contractor Financial Distress Event); and

25.7.9.2 co-operate with the Supplier and the Customer in order to give full effect to the provisions of schedule 7.4 (Financial Distress), including meeting with the Supplier and the Customer to discuss and review the effect of the Sub-contractor Financial Distress Event on the continued performance and delivery of the Services and contributing to and complying with the Financial Distress Service Continuity Plan.

25.7.10 a provision requiring the Key Sub-contractor to comply with the security requirements pursuant to clause 51 (Security Requirements); and

25.7.11 a provision requiring the Key Sub-contractor to comply with the personnel requirements pursuant to clause 30 (Supplier Personnel);

25.8 If the Supplier cannot include each of the provisions set out in clause 25.7 in any Key Sub-contract it shall consult with the Customer on whether the rights that can be obtained are nonetheless acceptable to the Customer. If such alternative terms are not acceptable to the Customer then the Customer shall be entitled to withhold its consent to the relevant Key Sub-contract pursuant to clause 25.1.

25.9 As a condition of its consent under clause 25.1, the Customer may require that the relevant Key Sub-contractor enters into a direct agreement with the Customer, in which case the Supplier shall procure that such Key Sub-contractor enters into a direct agreement with the Customer as soon as reasonably practicable and on such terms as may be reasonably requested by the Customer. If the Supplier cannot procure that the relevant Key Sub-contractor enters into a direct agreement with the Customer pursuant to this clause 25.9, the Supplier shall consult with the Customer on whether the alternative rights can be obtained which are nonetheless acceptable to the Customer. If such alternative terms are not acceptable to the Customer then the Customer shall be entitled to withhold its consent to the relevant Key Sub-contract.

### **Termination of Sub-contracts**

25.10 The Supplier shall not terminate or materially amend the terms of any Key Sub-contract without the prior written consent of the Customer, which shall not be unreasonably withheld or delayed.

- 25.11 The Customer may require the Supplier to terminate a Key Sub-contract where the acts or omissions of the relevant Key Sub-contractor have given rise to the Customer's right of termination pursuant to clause 59.1 (Termination for Cause by the Customer) and where the Customer reasonably believes that there is a Liquid Key Sub-contractor Market.
- 25.12 Without prejudice to the Customer's rights under clause 59.4 (Termination for Change of Control), the Customer may upon written notice require the Supplier to terminate the relevant Sub-contract if there is a Change of Control of a Key Sub-contractor on the same terms as those set out in clause 59.4 (Termination for Change of Control). If the Supplier does not notify the Customer within one month of becoming aware of a Change of Control of a Key Sub-contractor, or does not terminate the relevant Sub-contract following a direction from the Customer pursuant to this clause 25.12 to terminate that Sub-contract, the Customer may terminate this Contract.

### **Competitive Terms**

- 25.13 If the Supplier sources any goods, software or services in the supply of the Services from a third party ("**Third Party Item**"), the Supplier shall use all reasonable endeavours to abide by the following principles when recharging the costs of such Third Party Item as part of the Charges:
- 25.13.1 the costs shall be based on the lower of:
- 25.13.1.1 the lowest price readily available in the open market to the Supplier or its Associates; and
  - 25.13.1.2 the lowest price readily available to the Supplier or its Associates through corporate purchasing arrangements, net of any discounts, rebates and similar incentives available under such arrangements; and
- 25.13.2 the Supplier shall pass on to the Customer the full value of all rebates, discounts and other incentives made available to the Supplier or its Associates through corporate purchasing agreements.
- 25.14 If the Customer is able to obtain from any Sub-contractor or any other third party more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services (including any Third Party Items), then the Customer may:
- 25.14.1 require the Supplier to replace its existing commercial terms with the more favourable commercial terms obtained by the Customer in respect of the relevant item; or

- 25.14.2 subject to clause 25.16, enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.
- 25.15 If the Customer exercises either of its options pursuant to clause 25.14, then:
- 25.15.1 the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure; and
- 25.15.2 any reduction in the Charges shall take into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.
- 25.16 The Customer's right to enter into a direct agreement for the supply of the relevant items is subject to the Customer making the relevant item available to the Supplier as reasonably required to enable the Supplier to provide the Services.

### **Retention of Legal Obligations**

- 25.17 Despite the Supplier's right to sub-contract pursuant to this clause 25, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that its employees, staff, agents and Sub-contractors' employees, staff and agents also do, or refrain from doing, such act or thing.

### **Supply Chain Assurance**

- 25.18 The Supplier shall, on an ongoing basis, monitor in respect of each Key Sub-contractor the then current Credit Ratings and shall promptly notify, or shall procure that its auditors promptly notify the Customer in writing following the occurrence of any deterioration in the Credit Rating provided pursuant to Schedule 7.4 (Financial Distress).

## **26. AUDITS**

- 26.1 Subject to clause 26.2, the Customer may conduct the following types of audit:
- 26.1.1 planned audits once in any Contract Year and for a period of twelve (12) months following the termination or expiry of this Contract;
- 26.1.2 audits to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983;
- 26.1.3 audits to comply with the requirements of a Regulatory Body;

- 26.1.4 audits pursuant to a Default by the Supplier;
  - 26.1.5 ad hoc audits which are required at the discretion of the Customer or which are required as the Customer reasonably believes that the Supplier is in Default or that there is an issue in relation to the Services or a previous audit has showed issues in relation to the provision of the Services.
- 26.2 The Customer may conduct audits pursuant to clause 26.1 for the following purposes:
- 26.2.1 to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Contract), any cost reduction and income generation initiatives carried out pursuant to clause 16 (Services Improvement), and/or the costs of all suppliers (including Sub-contractors) of the Services at the level of detail agreed in schedule 7.1 (Charges and Invoicing) and schedule 7.5 (Financial Model);
  - 26.2.2 to review the integrity, confidentiality and security of the Customer Data and to review the Supplier's compliance with its obligations set out in clause 4.2 (Customer Data);
  - 26.2.3 to review the Supplier's compliance with the Data Protection Act 1998, the Freedom of Information Act 2000 in accordance with clauses 43.2.10 (Protection of Personal Data) and 44 (Freedom of Information) and any other legislation applicable to the Services;
  - 26.2.4 to review the Supplier's compliance with its obligations under clauses 9.1 and 9.4.2 (Services) and 15 (Quality Assurance and Performance Monitoring);
  - 26.2.5 to review the Supplier's compliance with its obligations set out in schedule 7.3 (Value for Money Provisions);
  - 26.2.6 to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
  - 26.2.7 to review any books of account kept by the Supplier in connection with the provision of the Services;
  - 26.2.8 to carry out the audit and certification of the Customer's accounts;
  - 26.2.9 to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;



- 26.2.10 to verify the accuracy and completeness of any Management Information delivered or required by this Contract;
  - 26.2.11 to inspect the ICT Environment (or any part of it);
  - 26.2.12 to inspect the Customer's Assets, including the Customer's IPRs, equipment, facilities and maintenance, for the purposes of ensuring that the Customer's assets are secure and that any register of assets is up to date;
  - 26.2.13 to ensure that the Supplier is complying with the Standards;
  - 26.2.14 to review the accuracy and completeness of the Registers;
  - 26.2.15 to ensure that the Supplier is complying with any other obligation under this Contract; and/or
  - 26.2.16 to assess compliance with the requirements of a Regulatory Body.
- 26.3 The Customer shall endeavour to (but is not obliged to) provide notice of its intention to conduct an audit as follows:
- 26.3.1 for audits carried out pursuant to clause 26.1.1 and clause 26.1.5 ten (10) Working Days notice; and
  - 26.3.2 for audits carried out pursuant to clauses 26.1.2, 26.1.3 and 26.1.4 five (5) Working Days notice.
- 26.4 The Supplier will provide the access and assistance during the hours of 7am and 7pm (or at other times if necessary due to any aspects of the Services to be audited) on any Working Day.
- 26.5 The Customer shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 26.6 Subject to the Supplier's obligations of confidentiality, the Supplier shall (and shall procure that its Sub-contractors shall) on demand provide the Customer (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- 26.6.1 the right to inspect at the Sites, and take copies of all information reasonably requested by the Customer within the scope of the audit (including to comply with requests for data or information from a Regulatory Body);

- 26.6.2 reasonable access to any Sites controlled by the Supplier (and any Sub-contractor) including the ability to inspect and have demonstrated to them any equipment used in the performance of the Services;
- 26.6.3 including the ability to inspect and have demonstrated to them the Supplier System;
- 26.6.4 access to the Customer Data;
- 26.6.5 access to Supplier Personnel; and
- 26.6.6 reasonable evidence proving to the Customer's reasonable satisfaction the correctness of any representation made:
  - 26.6.6.1 in any pre-contractual discussions connected with this Contract;
  - 26.6.6.2 in this Contract; or
  - 26.6.6.3 throughout the Term relating to this Contract.
- 26.7 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Service Levels at a level of detail sufficient to enable the Customer or any auditor appointed pursuant to this clause 26 to verify the Supplier's compliance with the Service Levels.
- 26.8 The Customer shall endeavour to (but is not obliged to) provide at least 5 Working Days notice of its intention to conduct an audit.
- 26.9 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 26, unless the audit is carried out pursuant to, or identifies a material Default by the Supplier in which case the Supplier shall reimburse the Customer for all the Customer's reasonable costs incurred in the course of the audit.
- 26.10 Without prejudice to any other rights or remedies available under this Contract, if an audit identifies that:
  - 26.10.1 the Supplier has failed to perform its obligations under this Contract in any material manner, the Parties shall agree and implement a Correction Plan. If the Supplier's failure relates to a failure to provide any information to the Customer about the Charges, proposed Charges or the Supplier's costs, then the Correction Plan shall include a requirement for the timely provision of all such information;

26.10.2 the Customer has overpaid any Charges, the Supplier shall pay to the Customer the amount overpaid within 20 Working Days. The Customer may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and

26.10.3 the Customer has underpaid any Charges, the Customer shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the Customer if this was due to a Default by the Supplier within the next invoice payment to the Supplier.

## **27. RECORDS AND REPORTS**

The Parties shall comply with the provisions of schedule 8.4 (Records Provisions) in relation to the keeping of records and the making of reports.

## **28. CHANGE CONTROL**

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

28.2 There shall be no increase in the Charges if and to the extent that the requirement for a specific improvement to the Services has arisen due to an act, omission, default, negligence or due to poor performance on the part of the Supplier.

## **29. DISPUTES**

29.1 The Parties shall resolve Disputes arising out of or in connection with this Contract in accordance with the Dispute Resolution Procedure.

29.2 The Supplier shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

## **SECTION F - PERSONNEL**

### **30. SUPPLIER PERSONNEL**

30.1 The Customer may refuse admission to the Customer Premises and/or direct the Supplier to end the involvement in the provision of the Services of any of the Supplier Personnel whom the Customer believes represents a security risk or does not have the required levels of training and expertise or where the Customer has other grounds for doing so. The decision of the Customer shall be final and it shall not be obliged to provide any reasons.

30.2 The Supplier shall use all reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.

- 30.3 The Supplier shall provide to the Customer a list of names of all Supplier Personnel and prospective Supplier Personnel it intends to engage in the provision of the Services or performance of the Supplier's obligations under this Contract, and shall promptly update the list as necessary.

#### **Staff Vetting**

- 30.4 The Supplier shall comply with the Staff Vetting Procedures in respect of all Supplier Personnel employed or engaged in the provision of the Services and shall ensure that Clearance is obtained in relation to all such persons. The Supplier confirms that all Supplier Personnel employed or engaged by the Supplier at the Effective Date who are to be employed or engaged in the provision of the Services, were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures. In respect of any Supplier Personnel who are employed by the Supplier as a result of a Relevant Transfer which occurs during the Term, the Suppliers' obligations to comply with the Staff Vetting Procedures and provide the confirmation set out above shall apply with effect from three (3) months following the date of that Relevant Transfer.
- 30.5 The Supplier shall ensure that no person who discloses that he has a Relevant Conviction, or who is found by the Supplier to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service procedures or otherwise), is employed or engaged in the provision of any part of the Services without the Customer's prior and express written consent.
- 30.6 The Supplier shall provide training on a continuing basis for all Supplier Personnel employed or engaged in the provision of the Services in compliance with the Security Policy and Security Management Plan.
- 30.7 In the event that it will take longer to secure Clearance than for the Supplier to carry out the necessary work, the Customer's existing practices for escorting and supervising un cleared Sub-contractors will be followed until such time as the Sub-contractor's Clearance is confirmed, provided that if the role of the Sub-contractor requires immediate and routine unsupervised access to:
- 30.7.1 sites or persons at risk of terrorist attack, in which case a counter terrorism check can be required; or
  - 30.7.2 assets protectively marked as at least SECRET,
- Clearance will be required in relation to such persons before they are given the relevant access.
- 30.8 Where the persons engaged by a Sub-contractor have previously held Clearance, the Supplier may consider such person's Clearance as current if that person has

not worked continuously on jobs where Clearance is required, only where the following conditions are met:

- 30.8.1 that person's existing Clearance is not more than three years old in relation to non List X or five years old in relation to List X;
  - 30.8.2 the Sub-contractor has worked on a job where the Clearance was required in the past 12 months; or
  - 30.8.3 the Sub-contractor has not resided overseas for more than six months since its last cleared post.
- 30.9 If the Staff Vetting Procedures are changed, the Customer shall be entitled to require the Supplier from time to time, at the Customer's expense, to vet in accordance with the changed Staff Vetting Procedures all the Supplier Personnel (or any part of the Supplier Personnel specified by the Customer) who are employed or engaged in the performance of this Contract and who were recruited prior to the implementation of the changed Staff Vetting Procedures.

#### **Key Personnel**

- 30.10 The Parties have agreed to the appointment of the Key Personnel as at the Effective Date. The Supplier shall and shall procure that any Sub-contractor shall obtain the prior written consent of the Customer before removing or replacing any member of the Key Personnel from their corresponding role during the Term (including when carrying out Exit Management), and, where possible, at least three months written notice must be provided by the Supplier of its intention to replace any member of Key Personnel from their corresponding role.
- 30.11 The Customer shall not unreasonably delay or withhold its consent to the appointment of a replacement to any relevant member of Key Personnel by the Supplier or Sub-contractor. The Customer may interview the candidates for Key Personnel roles before such candidate is appointed to such role.
- 30.12 The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Services to the Customer. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than 10 Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent of such role and is fully competent to carry out the tasks assigned to the role of the member of Key Personnel whom he or she has replaced.
- 30.13 The Supplier shall ensure that each of the Key Personnel shall work for such a period of time in the performance of the Services that is commensurate with and sufficient to perform the obligation of that person's role unless the Customer otherwise gives its prior written consent. To the extent that it can do so without

disregarding its statutory obligations, the Supplier shall take all reasonable steps to ensure that it retains the services of all the Key Personnel.

- 30.14 The Customer may nominate additional roles performed by Supplier Personnel in respect of which individuals should be identified as additional Key Personnel. The Supplier shall not unreasonably withhold or delay approval of any such additional Key Personnel nominated by the Customer who will, following approval, be included on the list of Key Personnel by the Supplier. The Customer may also require the Supplier to remove any member of the Key Personnel that the Customer (acting reasonably) considers in any respect unsatisfactory.
- 30.15 The Customer shall not be liable for the cost of replacing any member appointed to a Key Personnel role and the Supplier shall indemnify the Customer against all Employee Liabilities that may arise in this respect.

31. **EMPLOYMENT INDEMNITY**

The Supplier shall indemnify the Customer against all Employee Liabilities that may arise as a result of any claims brought against the Customer by any of the Customer's employees or former employees and/or any of the Supplier Personnel where such claim arises from any act or omission of the Supplier or any Supplier Personnel who are or have been employed or engaged in the provision of the Services save that such indemnity shall not apply to claims that are the subject matter of indemnification under paragraph 5 of Schedule 9.1 (Staff Transfer).

32. **STAFF TRANSFER**

The Parties acknowledge that the commencement, expiry or termination of this Contract may constitute a relevant transfer for the purposes of the Employment Regulations. The provisions of schedule 9.1 (Staff Transfer) will apply on such entry into and/or expiry or termination.

33. **HEALTH AND SAFETY**

- 33.1 The Supplier acknowledges that it has been supplied with a copy of the Customer's rules regarding health and safety. Subject to clause 49, the Supplier agrees to comply with these rules, and any additional rules made known to the Supplier from time to time by the Customer together with all applicable statutory rules and regulations regarding these matters. The Customer will be responsible for procuring that its employees and agents also comply with these rules and regulations.
- 33.2 Either Party shall notify the other as soon as practicable of any health and safety hazards at the Customer Premises of which it becomes aware. The Supplier will draw these hazards to the attention of the Supplier Personnel who are employed

or engaged in the provision of the Services and will instruct those persons in connection with any necessary associated safety measures.

#### 34. **EQUALITY AND DIVERSITY**

- 34.1 The Supplier shall, and shall procure that the Supplier Personnel who are employed or engaged in the provision of the Services, comply with any applicable anti-discrimination legislation in undertaking its obligations under this Contract.
- 34.2 The Supplier acknowledges that the Customer has a duty to promote equality of opportunity for and good relations between all persons irrespective of race, gender, gender reassignment, disability, age, sexual orientation or religious belief and undertakes to comply with the provisions relating to diversity and equality in schedule 9.4 (Diversity and Equality) to assist the Customer in meeting those objectives.

#### 35. **NON-SOLICITATION**

- 35.1 Except in respect of any Staff Transfer or in the circumstances set out in paragraph 9.1 of schedule 9.1 (Staff Transfer), the Customer and the Supplier shall not, and the Supplier shall procure that any Sub-contractor shall not, during the Term and for 12 months following the termination of this Contract either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away) from the employment of the other Party any person employed by such other Party in the provision of the Services or (in the case of the Customer) in the receipt and/or administration of the Services. Nothing in this clause 35 shall restrict either party from employing an individual who seeks employment with that party in response to a general recruitment advertisement. For the purposes of this clause 35, "solicit or entice away" means to approach an individual (whether directly or through a third party) with a view to employing, engaging, or procuring the employment or engagement of that individual as an employee, director, officer, independent contractor or consultant other than by way of bona fide general advertising.
- 35.2 If either Party is in breach of **clause 35.1**, the defaulting Party shall pay to the other Party by way of liquidated and ascertained damages an amount equal to six months salary of the relevant individual who has been solicited or enticed away.

### **SECTION G - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY**

#### 36. **INTELLECTUAL PROPERTY RIGHTS**

- 36.1 Except as expressly set out in this Contract:

- 36.1.1 the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:
  - 36.1.1.1 the Supplier Software;
  - 36.1.1.2 the Third Party Software;
  - 36.1.1.3 the Project Specific IPRs;
  - 36.1.1.4 the Specially Written Software; or
  - 36.1.1.5 the Supplier's Background IPRs,
- 36.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including:
  - 36.1.2.1 the Customer Software;
  - 36.1.2.2 the Customer Data;
  - 36.1.2.3 the database that is used by the Customer as at the date of this Contract and the Database;
  - 36.1.2.4 the Customer's documentation, processes and procedures; or
  - 36.1.2.5 the Customer's Know-How.
- 36.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in clause 36.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made) with full title guarantee.
- 37. **LICENCES GRANTED BY THE SUPPLIER**
  - 37.1 The Parties agree that as at the date of this Contract, the Customer shall continue to use the Customer Software during the Operational Phase and that the Supplier has not agreed to provide any new Supplier Software or Specially Written Software or Project Specific IPRs for use by the Customer during the Operational Phase. As such the provisions of clauses 37.3 to 37.7 shall not be applicable as at the date of this Contract.
  - 37.2 If the Supplier and the Customer agree to the Supplier providing any new Supplier Software or Specially Written Software or Project Specific IPRs by way of a Change or a New Project, the Parties agree that the provisions of clauses 37.3 to 37.7 (as applicable) shall apply to such a Change or New Project within any appropriate amendments agreed between the Parties at the time.



- 37.3 If Specially Written Software is provided by way of a New Project or a Change, the Supplier shall grant, or shall procure the direct grant, to the Customer of a licence of the Specially Written Software (including any Supplier's Background IPRs or IPRs owned by a third party that are embedded in or which are an integral part of the Specially Written Software) (but excluding any Third Party Software) on the Enhanced Licence Terms.
- 37.4 If Project Specific IPRs are provided by way of a New Project or a Change, the Supplier hereby grants, or shall procure the direct grant, to the Customer of a licence to Use the Project Specific IPRs (including any Supplier's Background IPRs or IPR owned by a third party that are embedded in or which are an integral part of the Project Specific IPRs (but excluding any Third Party Software)) for any purpose relating to the Services or to the exercise of the Customer's business or function on the Enhanced Licence Terms, including the right to sub-licence the Project Specific IPRs (including any Supplier's Background IPRs or IPR owned by a third party that are embedded in or which are an integral part of the Project Specific IPRs (but excluding any Third Party Software)) to other Contracting Authorities, to the Replacement Supplier or to any other third party providing services to the Customer, provided in each case that such rights shall not extend to the commercial exploitation of the Project Specific IPRs.
- 37.5 If the provisions of clause 37.2 apply, the Supplier shall grant to the Customer a licence of:
- 37.5.1 the Supplier Software (including any Supplier's Background IPRs or IPR owned by a third party that are embedded in or which are an integral part of the Project Specific IPRs (but excluding any Third Party Software)); and
  - 37.5.2 to the extent not otherwise licensed to the Customer pursuant to any other provision of this Contract, any Supplier's Background IPRs reasonably required to enable the Customer to receive the Services, effectively use and operate the Supplier Software and/or otherwise enjoy the full benefit of the rights granted to it under this Contract, on the Standard Licence Terms.
- 37.6 If the provisions of clause 37.2 apply, the Supplier shall either:
- 37.6.1 procure that the owners or the authorised licensors of any Third Party Software hereby grant a direct licence to the Customer on the Standard Licence Terms; or
  - 37.6.2 if the Supplier cannot obtain for the Customer a licence of the Third Party Software on the Standard Licence Terms, consult with the Customer on whether the rights that can be obtained are nevertheless acceptable to the Customer and:

37.6.2.1 if the rights that can be obtained are acceptable to the Customer, procure that the owners or the authorised licensors of the relevant Third Party Software grant a direct licence to the Customer on the accepted terms as soon as reasonably practicable and in any event prior to the date on which the Customer's full enjoyment of the benefit of this Contract would otherwise cause the Customer to infringe the relevant Third Party Provider's IPR; or

37.6.2.2 if, in respect of any Third Party Software, the rights that can be obtained are not acceptable to the Customer (acting reasonably) propose alternative software and/or licence terms for approval by the Customer (such approval not to be unreasonably withheld or delayed), provided that it shall not be unreasonable for the Customer to refuse to accept licence terms that are not materially in accordance with the Standard Licence Terms. Any software approved by the Customer in accordance with this clause 37.6.2.2 shall become Third Party Software for the purposes of this Contract, to which the provisions of this clause 37.6 shall apply.

37.7 The Supplier shall, if requested by the Customer in accordance with schedule 8.5 (Exit Management), grant or procure the grant to the Replacement Supplier of a licence to Use any Supplier Software, Supplier's Background IPRs (to the extent licensed to the Supplier pursuant to this Contract) or Third Party Software on the Standard Licence Terms subject to the Replacement Contractor entering into reasonable confidentiality undertakings with the Supplier.

37.8 The Supplier hereby grants to the Customer a non-exclusive perpetual and irrevocable licence to use and/or copy the Documentation for any purpose connected with the receipt of the Services and/or effective use and operation of the Software or that is incidental to the exercise of the rights granted to the Customer under this Contract. For the avoidance of doubt, this clause 37.8 shall apply as at the date of this Contract.

## 38. LICENCES GRANTED BY THE CUSTOMER

38.1 The Customer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use:

38.1.1 the Database;

38.1.2 the Customer's documentation, processes and procedures;

- 38.1.3 the Customer's Know-How; and
- 38.1.4 the Customer Data.
- 38.2 The licence granted in clause 38.1:
  - 38.2.1 includes the right to grant sub-licences to Sub-contractors provided that any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in clause 45 (Confidentiality); and
  - 38.2.2 is granted solely to the extent necessary for performing the Services in accordance with this Contract. The Supplier shall not, and shall procure that the Sub-contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Customer.
- 38.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 38.4 In the event of the termination or expiry of this Contract, the licence referred to in clause 38.1, any sub-licence granted in accordance with clause 38.2.1 and any licence granted in accordance with clause 38.3 shall terminate automatically and the Supplier shall deliver to the Customer all material licenses to the Supplier pursuant to clause 38.1 or clause 38.3 in the Supplier's possession or control.
- 38.5 The Parties agree that the Customer shall not grant any licence to the Supplier to use the Customer Software.
- 38.6 **Project specific IPR and Specially written Software**
  - 38.6.1 If the Supplier provides any Specially Written Software by way of a New Project or a Change, the Supplier will deliver to the Customer the Specially Written Software in both Source Code and binary code forms within seven days of the date on which the Supplier delivers the Specially Written Software to the Customer and shall provide updates of the Source Code on each new release of the Specially Written Software as soon as reasonably practicable following the release of that Specially Written Software on media that is reasonably acceptable to the Customer.
- 39. **ASSIGNMENT OF IPR IN DATABASES**
  - 39.1 The Parties agree that the Supplier is not providing a Database as at the date of this Contract. If the Supplier provides a Database by way of a New Project or a Change, the Supplier shall assign the Database to the Customer, with full title

guarantee, and shall procure that the first owner of the Database assigns it to the Customer on the same basis.

- 39.2 The assignment under clause 39.1 shall take effect immediately on the coming into existence of the Database.
- 39.3 The Supplier shall waive or procure a waiver of any moral rights in the Database assigned to the Customer under this Contract.
- 39.4 To the extent that it is necessary for the Customer to obtain the full benefits of ownership of the Database, the Supplier hereby grants to the Customer and shall procure that any relevant third party licensor shall grant to the Customer a perpetual, irrevocable, non-exclusive, assignable, royalty-free and global licence to Use, sub-license and/or commercially exploit any Supplier's Background IPRs or IPRs owned by a third party that are embedded in or which are an integral part of the Database.

#### 40. **ESCROW**

- 40.1 If the Parties agree that any Software provided by the Supplier by way of a New Project or a Change is Deposited Software, the Supplier shall, and shall procure that each owner of the Deposited Software shall, on the date agreed between the Parties pursuant to the applicable New Project or Change, deposit the Source Code of such part of the Software that consists of Deposited Software in escrow with the National Computing Centre ("**NCC**") on the basis of the NCC's standard single licensee escrow agreement, in substantially the form set out in schedule 5.3 (Escrow Terms). The Supplier shall ensure that (and shall procure that each owner of the Deposited Software shall ensure that) the deposited version of the Source Code is the current version of the Deposited Software and that the deposited version is kept up-to-date as the Deposited Software is modified or upgraded. The Supplier shall pay, or shall procure that each owner of Deposited Software pays, the initial storage fees, the annual fees and the update fees under the Escrow Contract and the Customer shall pay the release fees.
- 40.2 Where the Supplier is unable to procure compliance with the provisions of clause 40.1 in respect of any Third Party Software that is Deposited Software, it shall provide the Customer with written evidence of its inability to comply with these provisions and shall agree with the Customer a suitable alternative to escrow that affords the Customer the nearest equivalent protection. The Supplier shall be excused from its obligations under clause 40.1 only to the extent that the Parties have agreed on a suitable alternative.
- 40.3 In circumstances where the Customer obtains the release of the Source Code from escrow, the Supplier hereby grants (and shall procure that any owner of the Deposited Software grants) to the Customer a perpetual, assignable, royalty-free and non-exclusive licence to Use and support the Source Code version of

the Deposited Software to the extent necessary for the receipt of the Services or any Replacement Services or the Customer's normal business undertakings.

#### **41. OPEN SOURCE SOFTWARE**

The Parties agree that if the Supplier agrees to provide any Software, it shall not include in or aggregate with the Software any Open Source Software, or make any changes to the Software which require it to be operated in conjunction with any Open Source Software.

#### **42. CUSTOMER DATA**

- 42.1 For the avoidance of doubt, the Supplier shall not acquire any right in, or title to, any part of the Customer Data, whether existing prior to the Effective Date or created after such date.
- 42.2 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 42.3 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Customer.
- 42.4 To the extent that Customer Data is held and/or processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer in the format specified in schedule 2.1 (Services Requirements) and/or in schedule 8.5 (Exit Management).
- 42.5 The Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 42.6 The Supplier shall perform secure back-ups of all Customer Data held and/or processed by the Supplier and shall ensure that up-to-date back-ups are stored in accordance with the ITSC Plan. The Supplier shall ensure that such back-ups are available to the Customer at all times upon request.
- 42.7 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy.
- 42.8 The Supplier shall ensure that, when disposing of any hardware during the course of performing the Services, it shall erase from any computers, storage devices and storage media any software containing Specially Written Software and/or all Customer Data.
- 42.9 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Customer may:

- 42.9.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of such Customer Data to the extent and in accordance with the requirements specified in the ITSC Plan and schedule 2.1 (Services Requirements) and the Supplier shall do so as soon as practicable; and/or
- 42.9.2 itself restore or procure the restoration of such Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the ITSC Plan and schedule 2.1 (Services Requirements).
- 42.10 If at any time the Supplier suspects or has reason to believe that the Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.

#### 43. **PROTECTION OF PERSONAL DATA**

- 43.1 With respect to the Parties' rights and obligations under this Contract, the Parties agree that the Customer is the Data Controller and that the Supplier is the Data Processor.
- 43.2 The Supplier shall:
  - 43.2.1 Process the Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Customer to the Supplier during the Term);
  - 43.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
  - 43.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm and/or reputational damage which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
  - 43.2.4 take reasonable steps to ensure the reliability of any Supplier Personnel who have access to the Personal Data;

- 43.2.5 obtain prior written consent from the Customer in order to transfer the Personal Data to any Sub-contractors or Affiliates, which, if consent is obtained, shall be used solely for the provision of the Services;
- 43.2.6 ensure that all Supplier Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 43;
- 43.2.7 ensure that none of the Supplier Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer;
- 43.2.8 notify the Customer as soon as practicable and in any event (within five Working Days) if it receives:
  - 43.2.8.1 a request from a Data Subject to have access to that person's Personal Data; or
  - 43.2.8.2 a complaint or request relating to the Customer's obligations under the Data Protection Legislation;
- 43.2.9 provide the Customer with full cooperation and assistance in relation to any complaint or request made, including by:
  - 43.2.9.1 providing the Customer with full details of the complaint or request;
  - 43.2.9.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;
  - 43.2.9.3 providing the Customer with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and
  - 43.2.9.4 providing the Customer with any information requested by the Customer;
- 43.2.10 permit the Customer or the Customer Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause 26 (Audits), the Supplier's data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Supplier is in full compliance with its obligations under this Contract;

- 43.2.11 provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within the timescales required by the Customer); and
- 43.2.12 not Process or otherwise transfer any Personal Data outside the United Kingdom. If, after the Effective Date, the Supplier (or any Sub-contractor) wishes to Process and/or transfer any Personal Data outside the United Kingdom the following provisions shall apply:
- 43.2.12.1 the Supplier shall submit a Change Request to the Customer which shall be dealt with in accordance with the Change Control Procedure and clauses 43.2.12.2 to 43.2.12.4 below;
- 43.2.12.2 the Supplier shall set out in its Change Request and/or Impact Assessment details of the following:
- (a) the Personal Data which will be Processed and/or transferred outside the United Kingdom;
  - (b) the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the United Kingdom;
  - (c) any Sub-contractors or other third parties who will be Processing and/or transferring Personal Data outside the United Kingdom; and
  - (d) how the Contactor will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the Customer's compliance with the Data Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the United Kingdom;
- 43.2.12.3 in providing and evaluating the Change Request and Impact Assessment, the parties shall ensure that they have regard to and comply with then-current Customer, Government and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the United Kingdom and/or the European Economic Area and/or overseas generally; and



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

(a) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) in this Contract or a separate data processing agreement between the parties; and

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

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

43.4 The Supplier shall comply with the terms of the Data Processing Agreement.

#### 44. **FREEDOM OF INFORMATION**

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

44.2 The Supplier shall and shall procure that its Sub-contractors shall:

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

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

- 44.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in the FOIA or the Environmental Information Regulations (as applicable).
- 44.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of FOIA or the Environmental Information Regulations.
- 44.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Customer.
- 44.5 The Supplier acknowledges that (notwithstanding the provisions of clause 45) the Customer may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:
- 44.5.1 in certain circumstances without consulting the Supplier; or
- 44.5.2 following consultation with the Supplier and having taken their views into account;
- provided always that where 44.5.1 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 44.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with schedule 8.4 (Records Provisions) and shall permit the Customer to inspect such records as requested from time to time.
- 44.7 The Supplier acknowledges that the Commercially Sensitive Information listed in schedule 4.2 (Commercially Sensitive Information) is of indicative value only and that the Customer may be obliged to disclose it in accordance with clause 44.5.
- 44.8 The Supplier shall provide a proposed redacted version of the Contract to the Customer within 40 Working Days of the date of this Contract.
45. **CONFIDENTIALITY**
- 45.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

- 45.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
  - 45.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 45.2 Clause 45.1 shall not apply to the extent that:
  - 45.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 44 (Freedom of Information);
  - 45.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 45.2.3 such information was obtained from a third party without obligation of confidentiality;
  - 45.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
  - 45.2.5 it is independently developed without access to the other Party's Confidential Information.
- 45.3 The Supplier may only disclose the Customer's Confidential Information to the Supplier Personnel who are directly involved in the provision of the Services and need to know the information, and shall ensure that such Supplier Personnel are aware of, acknowledge the importance of and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Supplier Personnel causes or contributes (or could cause or contribute) to the Supplier breaching its obligations as to confidentiality under or in connection with this Contract, the Supplier shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Supplier Personnel, the Supplier shall provide such evidence to the Customer as the Customer may reasonably require (though not so as to risk compromising or prejudicing any disciplinary proceedings being taken against a relevant individual or to waive any legal professional privilege in respect of such proceedings) to demonstrate that the Supplier is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Supplier Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Supplier Personnel in connection with obligations as to confidentiality.

- 45.4 At the written request of the Customer, the Supplier shall and shall procure that those members of the Supplier Personnel identified in the Customer's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 45.5 The Supplier shall not, and shall procure that the Supplier Personnel do not, use any of the Customer Confidential Information received otherwise than for the purposes of this Contract.
- 45.6 Subject to clause 45.7, nothing in this Contract shall prevent the Customer from disclosing the Supplier's Confidential Information:
- 45.6.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
  - 45.6.2 to any consultant, contractor or other person engaged by the Customer or any person conducting an Office of Government Commerce gateway review;
  - 45.6.3 for the purpose of the examination and certification of the Customer's accounts; or
  - 45.6.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 45.7 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Supplier's Confidential Information is disclosed pursuant to clause 45.6 is made aware of the Customer's obligations of confidentiality.
- 45.8 Nothing in this clause 45 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.

## **SECTION H - SUPPLIER AND CUSTOMER PROTECTIONS**

### **46. GENERAL OBLIGATIONS OF THE PARTIES**

#### **Supplier's Obligations**

46.1 The Supplier shall:

- 46.1.1 at all times allocate sufficient and appropriately skilled resources to provide the Services in accordance with the terms of this Contract;
- 46.1.2 subject to clause 49 (Change in Law) obtain, and maintain throughout the duration of this Contract, all the consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable the provision of the Services;
- 46.1.3 provide to the Customer's other suppliers as are notified to the Supplier periodically, such reasonable co-operation, information (including any Documentation), advice and assistance in connection with the Services and the services supplied by such persons to enable such persons to create and maintain technical or organisational interfaces with the Services and, to enable the timely transition of the Services (or any of them) to any Replacement Supplier on the termination or expiry of this Contract for any reason and to enable suppliers to conduct due diligence as a potential Replacement Supplier on the ending of this Contract for any reason; and
- 46.1.4 provide the Customer with such assistance as the Customer may reasonably require during the Term in respect of the supply of the Services.

46.2 In respect of network, communications, computer or other equipment provided by a third party contractor that do or are required to interface with the Supplier System, the Supplier shall have primary management responsibility in accordance with arrangements set out in schedule 2.1 (Services Requirements) for incident or problem resolution, including:

- 46.2.1 for ensuring that such requirement does not interfere with the provision of the Services in accordance with this Contract; and
- 46.2.2 for taking all necessary steps within its power to ensure that the interface is successfully achieved,

provided that if it is subsequently agreed by the Parties, or determined in accordance with the Dispute Resolution Procedure, that the third party supplier should have been responsible, or partly responsible, for resolving the relevant incident, the Supplier may recover its reasonable additional expenses for resolving the issue to the extent that the third party supplier is agreed or is determined to have been responsible and to the extent the Customer is able to recover an equivalent amount from the relevant third party contractor.

- 46.3 If the Supplier provides any Software by way of a New Project or a Change, the Supplier shall ensure that the release of any new Software or upgrade to Software complies with the interface requirements in the Services Requirements, shall notify the Customer as soon as reasonably practicable before the release of any new Software or upgrade to Software, and will co-ordinate its activity with the Customer to ensure it minimises any disruption to the Services, the ICT Environment or the Customer's operations. The Customer may refuse any new Software or upgrade at its sole discretion and shall not incur any liability to the Supplier by reason of such refusal.
- 46.4 Any change in the way in which the Supplier provides the Services which would materially increase the Customer's risk or reduce the effect of the governance provisions of the Contract shall require the Customer's prior written approval and must be agreed in accordance with the Change Control Procedure.

### **Customer's Responsibilities**

- 46.5 The Customer shall comply with the Customer's Responsibilities set out in schedule 3 (Customer Responsibilities). For the avoidance of doubt, the responsibilities of the Customer set out in schedule 3 (Customer Responsibilities) shall constitute the exclusive Customer Responsibilities under this Contract.

### **Supplier and Customer Responsibilities**

- 46.6 The Supplier and the Customer agree to comply with their respective obligations and may exercise their respective rights pursuant to schedule 7.4 (Financial Distress).
- 46.7 To the extent that the Customer fails to comply with its obligations at clause 46.6 above, the Supplier's remedy shall be as provided for at clause 7 (Delays to Milestones Due to Customer Cause) or clause 13 (Effect of Customer Cause in the Operational Phase) of this Contract (as applicable).

## **47. WARRANTIES**

- 47.1 Each Party warrants, represents and undertakes that:

- 47.1.1 it has full capacity and authority to enter into and to perform this Contract;
- 47.1.2 this Contract is executed by a duly authorised representative of that Party;
- 47.1.3 there are no actions, suits or proceedings or regulatory investigations pending or, to that Party's knowledge, threatened against or affecting that Party before any court or administrative body or arbitration

tribunal that might affect the ability of that Party to meet and carry out its obligations under this Contract; and

47.1.4 once duly executed this Contract will constitute its legal, valid and binding obligations.

47.2 The Supplier warrants, represents and undertakes for the duration of the Term that:

47.2.1 all personnel used to provide the Services will be vetted in accordance with clause 30.4, Good Industry Practice, the Security Policy, the Staff Vetting Procedure and the Services Requirements;

47.2.2 it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Supplier's obligations under this Contract;

47.2.3 it has and will continue to have all necessary rights in and to the Supplier Software or the Third Party Software and/or the Supplier's Background IPRs, or any other materials made available by the Supplier and/or the Sub-contractors to the Customer necessary to perform the Supplier's obligations under this Contract;

47.2.4 it will not introduce into the Customer's System anything, including any computer program code, virus, authorisation key, licence control utility or software lock, which is intended by any person to, is likely to, or may:

47.2.4.1 impair the operation of the Customer's System or impair the receipt of the benefit of the Services; or

47.2.4.2 cause loss of, or corruption or damage to, any program or data held on the Customer's System;

and this clause 47.2.4 will apply notwithstanding that any such things are purported to be used for the purposes of protecting the Supplier's or any third party's Intellectual Property Rights or other rights;

47.2.5 unless otherwise agreed between the Parties, in performing its obligations under this Contract, all Supplier Software and all Software provided by the Supplier by way of a New Project or a Change will:

47.2.5.1 be currently supported versions of that Software;

47.2.5.2 perform in all material respects in accordance with its specification; and

- 47.2.5.3 in all respects in accordance with the applicable Service Levels;
- 47.2.5.4 provide the functionality set out in schedule 2.1 (Requirements) and the Supplier's Solution; and
- 47.2.5.5 work on, and interface with, the Customer System as set out in the Services Requirements and the Supplier Solution;
- 47.2.6 as at the Effective Date all statements and representations in the Supplier's Final Tender are to the best of its knowledge, information and belief, true and accurate and that it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading;
- 47.2.7 it is aware of the reliance that the Customer or the Replacement Supplier will have on the Documentation set out in schedule 8.5 (Exit Management) to support a smooth transition of the Services on termination or expiry of this Contract and will ensure that such Documentation will contain sufficient information and explanation required for the purpose of executing the Exit Plan and for suitably qualified employees of the Customer or of the Replacement Supplier to be able to use the Software and receive the Services and to perform services which are substantially similar to the Replacement Services on termination or expiry and to execute the Exit Plan;
- 47.2.8 insofar as any product supplied by the Supplier under this Contract either as at the date of this Contract or by way of a New Project or a Change is to be utilised in the Customer's Operating Environment or to interoperate with the Customer System, that product shall operate correctly with the Operating Environment and interoperate correctly with the Customer System;
- 47.2.9 the Supplier System and Assets used in the performance of the Services:
  - 47.2.9.1 will be free of all encumbrances;
  - 47.2.9.2 will be Date Compliant;
  - 47.2.9.3 will be Euro Compliant; and
  - 47.2.9.4 will comply with the Restriction of Use of Certain Hazardous Substances in the Electrical and Electronic



Equipment Regulations 2008 in respect of all Assets made available to the Customer by the Supplier.

47.2.10 it shall at all times comply with Law in carrying out its obligations under this Contract.

47.3 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

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

#### 48. **GUARANTEE**

48.1 Within 20 Working Days following the Effective Date, the Supplier shall procure that the Guarantor shall:

48.1.1 execute and deliver to the Customer the Guarantee; and

48.1.2 deliver to the Customer evidence of the Guarantor approving the execution of the Guarantee (which shall be in the form of approval from the Group Legal Director and Group's Financial Director.)

48.2 The Parties agree that if the Guarantor does not execute and deliver the Guarantee by the date falling 40 Working Days following the date of this Agreement, this shall constitute a material Default for the purposes of **clause 59.1.5** (Termination for Cause by the Customer.)

#### 49. **CHANGE IN LAW**

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

49.1.1 a General Change in Standards;

49.1.2 a Customer Specific Change in Standards where the effect of that Customer Specific Change in Standards on the Services is known at the Effective Date;

49.1.3 a General Change in Law; or

49.1.4 a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Effective Date.

- 49.2 If a Specific Change in Law occurs or will occur during the Term (other than those where the effect on the Services is known at the Effective Date), or a Customer Specific Change in Standards occurs or will occur during the Term (other than where the effect on the Services is known at the Effective Date), the Supplier shall notify the Customer of the likely effects of that change, including:
- 49.2.1 whether any Change is required to the Services, the Charges or this Contract; and
  - 49.2.2 whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Levels at any time.
- 49.3 As soon as practicable after any notification in accordance with clause 49.2, the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Supplier can mitigate the effect of the Specific Change in Law or change to a Customer Specific Change in Standards (as applicable), including:
- 49.3.1 providing evidence that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
  - 49.3.2 demonstrating that a foreseeable Specific Change in Law or a foreseeable change to a Customer Specific Policy (as applicable), had been taken into account by the Supplier before it occurred;
  - 49.3.3 giving evidence as to how the Specific Change in Law or foreseeable change to a Customer Specific Policy (as applicable) has affected the cost of providing the Services; and
  - 49.3.4 demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of clause 16 (Services Improvement), has been taken into account in amending the Charges.
- 49.4 Any increase in the Charges or relief from the Supplier's obligations agreed by the Parties pursuant to clause 49.3 shall be implemented in accordance with the Change Control Procedure.

## 50. **MACHINERY OF GOVERNMENT CHANGES**

- 50.1 Without prejudice to **clause 65**, if there is a restructuring of the Customer and/or its provision of services or fulfilment of functions, such that either:
- 50.1.1 the delivery of services or fulfilment of functions provided or fulfilled by the Customer becomes the responsibility of another Government department, agency or other public body; or

- 50.1.2 the delivery of services or fulfilment of functions provided or fulfilled by another Government department, agency or other public body becomes the responsibility of the Customer; or
- 50.1.3 the Customer is required to take on new services or fulfil new functions; or
- 50.1.4 any of the services or functions provided or fulfilled by the Customer cease to be provided or fulfilled by the Customer without being provided or fulfilled by any Government department, agency or other public body in place of the Customer,

then the Parties shall (subject to clause 50.3) negotiate in good faith in accordance with the Change Control Procedure to agree Changes to this Contract that appropriately reflects the amended obligations of the Parties in the light of the restructuring.

- 50.2 Where there is a restructuring pursuant to clause 50.1.1, the Supplier shall offer to deliver an IT managed service to the other Government department, agency or public body which takes on responsibility for the services or functions previously the responsibility of the Customer, on terms broadly equivalent to those terms set out in this Contract.

- 50.3 When considering the impact of a restructuring pursuant to clauses 50.1.1, 50.1.2, 50.1.3 or 50.1.4 in accordance with clause 50.1 and the Change Control Procedure, the following principles shall apply when agreeing the Change and (as applicable) calculating any increase or decrease to the total amount of charges payable by the Customer to the Supplier:

- 50.3.1 the Supplier must use all reasonable endeavours to minimise any increase in costs it may suffer and maximise the reduction in costs that it can achieve as a result of the restructuring;

- 50.3.2 the Supplier must limit or avoid to the fullest extent possible, any capital or other expenditure which it planned to incur (for example to replace or maintain assets) which will no longer be necessary or appropriate as a result of the restructuring;

- 50.3.3 (in the case of any restructuring pursuant to clause 50.1.2 or 50.1.3) the Supplier will only be entitled to proceed with the Change to the extent that it can demonstrate to the Customer that the Change complies with the requirements set out in paragraph 3.2 of Schedule 8.2 (Change Control Procedure); and

- 50.3.4 (in the case of any restructuring pursuant to clause 50.1.1) the Supplier must demonstrate that it has complied with its obligations

pursuant to clause 50.2 and where the Supplier enters into a contract for provision of a continuing IT Managed service with another Government department, agency or public body under that clause: (i) the Supplier shall demonstrate that it has used reasonable endeavours to structure those arrangements so as to mitigate any costs associated with the restructuring of Services under this Contract (for example, by redeploying assets) and (ii) the Supplier shall not be entitled to recover as a cost or charge under this Contract, amounts for which it is separately recovering a charge under those alternate arrangements for any equivalent replacement service.

- 50.4 If the Customer is, at any time following the date of this Contract, required to respond to any future financial constraints, the Supplier shall work with the Customer in relation to this and shall propose any ideas as to how this can be managed and/or achieved by reviewing any appropriate budgets with the Customer against the Services Requirements (Schedule 2.1) so as to provide reasonable support to the Customer with the objective of allowing the Customer to balance its overall budget. Any amendments needed to this Contract as a result of future financial constraints shall be dealt with by way of a Change. The Supplier, agrees, as at the date of this Contract that it can provide the scalability prices which are set out in "13. Scalability" worksheet of the Financial Model.

## **SECTION I - RISK PROTECTION**

### **51. SECURITY REQUIREMENTS**

- 51.1 The Supplier shall not undertake any act or omission which has or could reasonably be expected to have an adverse impact upon the security of any of the Services or any systems or services of the Customer.
- 51.2 The Supplier shall comply, and shall procure the compliance of the Supplier Personnel, with the Security Policy and the Security Management Plan and the Supplier shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 51.3 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy. If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Service it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps it has taken to mitigate those costs. Any change to the Charges shall then be agreed pursuant to the Change Control Procedure.

Unless and/or until a change to the Charges is agreed by the Customer pursuant to clause 51.3, the Supplier shall continue to perform the Services in accordance with its existing obligations.

## **Malicious Software**

- 51.4 The Supplier shall, in connection with the provision of the Services and as an enduring obligation throughout the Term, deploy latest versions of anti-virus software (including the latest versions of available anti-virus definitions from an industry accepted anti-virus software vendor) to check for, contain the spread and minimise the impact of, and delete Malicious Software to prevent Malicious Software from adversely impacting provision of the Services or operation of the Customer System (except to the extent otherwise agreed by the Parties).
- 51.5 Notwithstanding clause 51.4 if, in connection with or as a result of the provision of the Services, Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes an adverse impact on the operational efficiency of the Services or the Customer's business or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 51.6 Any cost arising out of the actions taken in compliance with the provisions of clause 51.5 shall be borne by:
- 51.6.1 the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (except where the Customer has waived the obligation set out in clause 51.4) or the Customer Data (whilst the Customer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Supplier; and
  - 51.6.2 the Customer if the Malicious Software originates from the Customer Software (in respect of which the Customer has waived its obligation set out in clause 51.4) or the Customer Data (whilst the Customer Data was under the control of the Customer).

## **Official Secrets Act**

- 51.7 The Supplier's attention is drawn to the provisions of the Official Secrets Acts 1911 to 1989. The Supplier undertakes to comply with the provisions of the Official Secrets Acts 1911 to 1989. The Supplier shall take all reasonable steps by display of notices or by other appropriate means to ensure that all members of the Supplier Personnel have notice that these statutory provisions apply to them and will continue so to apply after expiry or termination of this Contract.
- 51.8 The provisions of clause 45 shall operate without prejudice to and shall apply subject to the application of the Official Secrets Acts 1911 to 1989.

52. **BUSINESS CONTINUITY AND DISASTER RECOVER**

- 52.1 The parties shall comply with the provisions of the BCDR Plan and the provisions of schedule 8.6 (Business Continuity and Disaster Recovery Plan).
- 52.2 The Supplier shall ensure that it is able to implement the BCDR Plan at any time in accordance with its terms.
- 52.3 The Supplier shall test the BCDR Plan on a regular basis in accordance with the requirements of schedule 8.6 (Business Continuity and Disaster Recovery Plan). The Supplier shall procure that each material Sub-contractor will conduct similar tests of its own service continuity plan on a regular basis.
- 52.4 The Supplier shall undertake regular risk assessments in relation to the provision of the Services not less than once every six months and shall provide the results of, and any recommendations in relation to, those risk assessments to the Customer promptly in writing following each review.
- 52.5 The Supplier shall establish, maintain, and review its own internal processes and procedures with respect to the identification of any threats or risks to the provision of the Services, how such threats and risks may be mitigated and how the provision of the Services may be maintained in the event of any such identified threats or risks materialising.

53. **FORCE MAJEURE**

- 53.1 Subject to the party seeking to claim relief in respect of a Force Majeure Event ("**Affected Party**") complying with the remaining provisions of this clause 53, either Party to this Contract may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event. In particular, the Supplier shall be relieved from its Delay Payment obligation to the extent that the Achievement of any Milestone is affected by the Force Majeure Event, its Service Credits obligation to the extent that the Services are affected by the Force Majeure Event and the Charges shall be reduced to the extent that the Customer does not receive the Services as a result of the Force Majeure Event.
- 53.2 A Party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 53.3 The Supplier cannot claim relief from a Force Majeure Event to the extent that it is required to comply with the BCDR Plan but has failed to do so (unless this failure is also due to a Force Majeure Event affecting the operation of the BCDR Plan).

- 53.4 No Force Majeure Event shall excuse the Affected Party from the performance of its obligations under this Contract unless that Force Majeure Event directly affects the Affected Party's ability to perform the relevant obligation.
- 53.5 An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under a contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).
- 53.6 The Affected Party shall (as soon as possible upon becoming aware of the Force Majeure Event) give the other Party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
- 53.7 As soon as practicable following the Affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 53.8 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.

## **SECTION J - INDEMNITIES, LIABILITY AND INSURANCE**

### **54. INDEMNITIES**

#### **IPR Indemnity**

- 54.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Customer and keep the Customer indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer arising from an IPR Claim.
- 54.2 The Customer agrees that:
- 54.2.1 it will notify the Supplier in writing of any IPR Claim;
  - 54.2.2 it will allow the Supplier to conduct all negotiations and proceedings and will provide the Supplier with such reasonable assistance required

by the Supplier, each at the Supplier's cost, regarding the IPR Claim;  
and

54.2.3 it will not, without first consulting with the Supplier, agree to make any payment or make an admission relating to the IPR Claim.

54.3 The Supplier shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute.

54.4 The Supplier shall not settle or compromise any IPR Claim without the Customer's prior written consent (not to be unreasonably withheld or delayed).

54.5 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:

54.5.1 procure for the Customer the right to continue using the relevant item which is subject to the IPR Claim; or

54.5.2 replace or modify the relevant item with non-infringing substitutes provided that:

54.5.2.1 the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

54.5.2.2 the replaced or modified item does not have an adverse effect on any other Services or the ICT Environment;

54.5.2.3 there is no additional cost to the Customer; and

54.5.2.4 the terms of the Contract shall apply to the replaced or modified items.

54.6 If the Supplier elects to modify or replace an item pursuant to clause 54.5.2 or to procure a licence in accordance with clause 54.5.1, but this has not avoided or resolved the IPR Claim, then the Customer may terminate this Contract by written notice with immediate effect and, without prejudice to the indemnity set out in clause 54.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

54.7 The provisions of clauses 54.1 to 54.6 (inclusive) shall not apply in respect of any IPR Claim caused by:

54.7.1 any use by or on behalf of the Customer of the Software, in combination with any item not supplied pursuant to this Contract; or



- 54.7.2 the use by or on behalf of the Customer of the Software in a manner not reasonably to be inferred from the Services Requirements, the Supplier's Solution or the provisions of this Contract; or
- 54.7.3 the use by or on behalf of the Supplier of any Customer Furnished Assets in accordance with the terms of this Contract.

## **55. LIMITATIONS ON LIABILITY**

### **55.1 Neither Party limits its liability for:**

- 55.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable); or
- 55.1.2 fraud or fraudulent misrepresentation by it or its employees; or
- 55.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 55.1.4 any other liability to the extent that it cannot be limited or excluded by law.

### **Financial Limits**

#### **55.2 Subject to clause 55.1, the Supplier's total aggregate liability:**

- 55.2.1 in respect of the indemnity in clauses 19.2 (Tax), 31 (Employment Indemnity), and 54 (IPR Indemnity), shall be [redacted];
- 55.2.2 in respect of any Default under clauses 43 (Protection of Personal Data) and 45 (Confidentiality), shall be [redacted];
- 55.2.3 for all loss of or damage to the Customer Premises, property or assets (including technical infrastructure, assets or equipment but excluding any loss or damage to the Customer's Data or any other data) of the Customer caused by the Supplier's Default shall in no event exceed [redacted]
- 55.2.4 for all loss, destruction, corruption, degradation, inaccuracy or damage to the Customer Data caused by the Supplier's Default shall be [redacted]
- 55.2.5 in respect of Services Credits shall be limited in each Contract Year to [redacted];
- 55.2.6 in respect of Delay Payments shall be limited to [redacted];

55.2.7 Subject to clause 55.2.1, in respect of all other Defaults occurring in a Liability Year under this Contract (whether arising in contract, tort (including negligence) breach of statutory duty or howsoever arising) shall in no event exceed [redacted]

provided that where any losses referred to in clause 55.2.7 have been incurred by the Customer as a result of the Supplier's abandonment of this Contract or the Supplier's wilful default, wilful breach of a fundamental term of this Contract or wilful repudiatory breach of this Contract, the references in such clause to [redacted] shall be deemed to be references to [redacted].

55.3 Subject to clause 55.1, the Customer's total aggregate liability, in addition to its obligation to pay the Charges as and when they fall due for payment:

55.3.1 for all Defaults by the Customer resulting in loss of or damage to the property or assets (including technical infrastructure, assets or equipment) of the Supplier shall in no event exceed [redacted];

55.3.2 for the Termination Payment shall not exceed [redacted] and for the Compensation Payment shall not exceed [redacted]; and

55.3.3 in respect of all other Defaults by the Customer occurring in a Liability Year and all other claims, losses or damages, whether arising from tort (including negligence), breach of contract (including under indemnity) or otherwise under or in connection with this Contract in a Liability Year shall in no event exceed an amount equivalent to [redacted].

55.4 For the avoidance of doubt:

55.4.1 any liability of a party which falls within clause 55.1 or of the Supplier which falls within clause 55.2.1 or 55.2.2 will not be taken into account in assessing whether the financial limits in clauses 55.2.2, 55.2.3, 55.2.4, 55.2.5 and/or 55.2.6, 55.2.7 and/or 55.3 (as applicable) have been reached;

55.4.2 the financial limits in clauses 55.2.3, 55.2.4, 55.2.5, 55.2.6 and 55.2.7 are separate not cumulative and any liability of the Supplier which falls within one of those clauses shall not be taken into account in assessing whether the financial limits in the other such clauses have been reached; and

55.4.3 the financial limits in clause 55.3 are separate not cumulative and any liability of the Customer which falls within one sub-clause in clause 55.3 shall not be taken into account in assessing whether the financial limits in any of the other sub-clauses in clause 55.3 have been reached.

- 55.5 Subject to clauses 55.1 and 55.6, neither Party will be liable to the other Party for:
- 55.5.1 any indirect, special or consequential loss or damage; or
  - 55.5.2 any loss of profits except to the extent that payment of profit is specifically provided for in the calculation of any Compensation Payment and/or Termination Payment;
  - 55.5.3 any loss of turnover, business opportunities or damage to goodwill (whether direct or indirect).
- 55.6 Subject to clause 55.2, the Customer may, amongst other things, recover as a direct loss:
- 55.6.1 any additional operational and/or administrative costs and expenses arising from the Supplier's Default including, those costs and expenses immediately or subsequently arising from its employees and contractors being unable to perform their normal work for the Customer;
  - 55.6.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Supplier's Default;
  - 55.6.3 the additional cost of procuring Replacement Services for the remainder of the Term;
  - 55.6.4 any costs, expenses or charges of the Customer's staff providing any of the Services or fulfilling any obligations of the Customer which should have been provided by the Supplier;
  - 55.6.5 any costs, expenses and/or charges incurred by the Customer which result from the loss or corruption of Customer Data; and
  - 55.6.6 any costs of taking emergency measures including changing to other computer systems or engaging third parties to do so where the Supplier is in Default.
- 55.7 The Parties expressly agree that if any limitation or provision contained or expressly referred to in this clause 55 is held to be invalid under any Law, it will be deemed omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this clause 55.
- 55.8 Nothing in this clause 55 shall act to reduce or affect a Party's general duty to mitigate its loss.

56. **INSURANCE**

- 56.1 Subject to clause 56.2, the Supplier shall take out and maintain or procure the maintenance of the Insurances in accordance with the provisions of schedule 2.6 (Insurance Requirements).
- 56.2 If at any time the Supplier is unable to maintain any of the Insurances, the Supplier shall promptly procure that the Guarantor provides the Customer with equivalent cover by alternate means acceptable to the Customer, which may comprise by way of example a letter of credit or performance bond.

57. **NOT USED**

**SECTION K - TERM, TERMINATION AND EXIT MANAGEMENT**

58. **TERM**

- 58.1 This Contract will begin on the Effective Date and, unless extended or terminated at an earlier date by operation of Law or in accordance with clause 59, will terminate on the Expiry Date.
- 58.2 The Customer may at any time at least six (6) months prior to the Expiry Date give notice to the Supplier that it wishes to extend the Contract for a period of up to a further 24 months, any such extension periods shall be for durations of not less than twelve (12) months. The Charges for this period shall be those set out in Schedule 7.5.

59. **TERMINATION RIGHTS**

59.1 **Termination for Cause by the Customer**

- 59.1.1 The Customer may terminate this Contract by giving written notice of termination to the Supplier if one or more of the circumstances set out in clause 59.1.5 exist.
- 59.1.2 Where the Customer is terminating this Contract for a material Default of this Contract or one of the specific provisions in clause 59.1.5.5 it may rely on a single material Default or on a number of Defaults or repeated Defaults that taken together constitute a material Default.
- 59.1.3 Subject to clause 59.1.4, where a material Default is capable of remedy the Parties shall follow the Remedial Plan Process provided that if the Remedial Plan Process fails then termination shall occur on the last day of the period specified by the Customer in its Termination Notice served in accordance with the Remedial Plan Process.

- 59.1.4 The Parties shall not follow the Remedial Plan Process where the Supplier has already failed to resolve the relevant Default in accordance with a Correction Plan pursuant to clause 5 (Implementation Delays - General Provisions) or 11 (Service Levels) or in the circumstances set out in clause 60.2.7 (Remedial Plan Process).
- 59.1.5 The circumstances giving rise to the Customer's right to terminate are:
- 59.1.5.1 the Supplier is in material Default which it has failed to remedy in accordance with the Remedial Plan Process;
- 59.1.5.2 the Supplier commits a material breach of this Contract which is irremediable;
- 59.1.5.3 the Supplier's failure to:
- (a) achieve a Milestone by its associated Milestone Date; and
  - (b) comply with its obligations pursuant to clause 5 to submit and implement a Correction Plan for either that Milestone or material Service Failure because:
  - (vii) the Supplier does not submit or resubmit a Correction Plan for approval within the timescales required or at all; or
  - (viii) the Customer acting reasonably does not approve the proposed Correction Plan on the second occasion of seeking approval; or
  - (ix) the Supplier does not implement the Correction Plan following its approval by the Customer.
- 59.1.5.4 pursuant to:
- (a) clause 54.6 (where a modification or replacement of an item pursuant to clause 54.5.2 or where procuring a licence in accordance with clause 54.5.1 has not avoided or resolved an IPR Claim); or
  - (b) clause 68 (Prevention of Bribery);
- 59.1.5.5 the Supplier is in material Default of:
- (a) clause 43 (Protection of Personal Data);
  - (b) clause 44 (Freedom of Information);
  - (c) clause 45 (Confidentiality);

(d) the requirements set out in schedule 2.5 (Security Management Plan);

(e) **clause 48** (Guarantee).

59.1.5.6 the Supplier's level of performance constitutes a Critical Service Failure as defined by schedule 2.2 (Service Levels) and in relation to a default under limb (c) of the definition of Critical Failure the Supplier hasn't remedied the default in accordance with the Correction Plan;

59.1.5.7 an Insolvency Event affecting the Supplier occurs;

59.1.5.8 in respect of a Financial Distress Event in accordance with the provisions of paragraph 4 of schedule 7.4 (Financial Distress);

59.1.5.9 as a result of the Supplier's Default the Customer suffers damages that exceed 80% the aggregate value of liability caps as set out in clause 55 (Limitations on Liability);

59.1.5.10 the cap on the Delay Payments as set out in clause 55.2.6 which the Customer is entitled to claim from the Supplier pursuant to paragraph 7 of Schedule 7.1 is reached;

59.1.5.11 the Guarantor is in breach or anticipatory breach of the Guarantee (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Customer) or the Guarantor suffers an Insolvency Event; or

59.1.5.12 the occurrence of:

(a) any breach; or

(b) any event which with the giving of notice, lapse of time, determination of materiality or fulfilment of any other applicable condition or any combination of the foregoing would constitute an event of breach,

which is continuing, unremedied and unwaived, under or in connection with any document or arrangement relating to any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) of the Supplier or the Guarantor or any subsidiary undertaking of the Guarantor in respect of money that has been borrowed exclusively for the purposes of financing the provision of the Services by the Supplier;

59.1.5.13 the Supplier committing a Default (other than as a consequence of a Default by the Customer) which results in the criminal investigation, prosecution and conviction of the Supplier or any Sub-contractor under the Health and Safety Regime. In determining whether to exercise any right of termination pursuant to this clause 59.1.5.13 the Customer shall:

- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
- (b) give all due consideration, where appropriate, to action other than termination of this Contract;

59.1.5.14 there has been a disaster and the Supplier has not acted in accordance with its obligations under the BCDR Plan and such failure to act is in itself a material Default or the result of such failure to act has a material adverse impact on the Customer;

59.1.5.15 the Supplier makes any public announcement or a director of the board of directors of the Supplier advises an officer of the Customer that the Supplier is no longer going to continue to develop or to offer the provision of services similar to the Services and there is evidence that such announcement will materially adversely impact the ability of the Supplier to provide the Services;

59.1.5.16 a breach of this Contract which has a material adverse effect on the operations of the Customer (which shall include operational policing).

59.2 The rights of the Customer (to terminate or otherwise) under this clause 59 are in addition (and without prejudice) to any other right or remedy which the Customer or any Contracting Authority may have to claim the amount of loss or damage suffered by the Customer or the Contracting Authority on account of the acts or omissions of the Supplier (or to take any action other than termination of this Contract).

### 59.3 **Termination for Convenience by the Customer**

59.3.1 The Customer may terminate this Contract for convenience at any time on giving a minimum of four (4) months written notice to the Supplier. The amount of notice given affects the payments that the Customer is

obliged to make as a consequence of termination and this is dealt with in clause 62 (Payments made on Termination).

- 59.3.2 Subject to any obligation to provide the Services in accordance with the Exit Plan, the Supplier's obligation to provide the Services shall end on the date set out in the Customer's notice.
- 59.3.3 Without prejudice to clause 59.3.2 and unless otherwise stipulated by the Customer in its notice of termination, any part of the Services that has not commenced at the date of the Customer's notice shall be cancelled automatically.
- 59.3.4 This right of termination is in addition to any other rights of the Customer under this Contract and its exercise shall be without prejudice to any claim, remedy or right of action that either Party may have in relation to this Contract. Without prejudice to the generality of the foregoing, if at any point following the issue of any notice in accordance with clause 59.3.1 but prior to the date on which the Contract terminates in accordance with the Termination Notice, the Customer becomes aware that any of the circumstances specified in clause 59.1.5 (Termination for Cause) has occurred, the Customer shall be entitled to terminate this Contract in accordance with clause 59.1.1 (Termination for Cause) and the provisions of clause 62 (Payments made on Termination) shall apply accordingly, with no liability accruing to the Customer in respect of any Termination Payment or Compensation Payment.

#### 59.4 Termination for Change of Control

- 59.4.1 The Customer may terminate this Contract by written notice without penalty if there is a Change of Control of the Supplier to which the Customer objects pursuant to **clause 59.4.2** except where the Customer:
  - 59.4.1.1 notwithstanding that **clause 59.4.2** applies, has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
  - 59.4.1.2 subject to the Supplier's compliance with **clause 59.4.3**, has not served its notice within six months of the later of the date the Change of Control took place or the date on which the Customer was given notice of the Change of Control.
- 59.4.2 The Customer shall only be entitled to object to a Change of Control of the Supplier where the Customer:



59.4.2.1 has concerns over the new entities ability to deliver the Services or the Project; or

59.4.2.2 the new entity is unpalatable to the Customer due to the policing environment in which it operates.

59.4.3 The Supplier shall notify the Customer in writing within one month of any Change of Control taking place.

## 59.5 Partial Termination

59.5.1 Subject to the provisions of clauses 59.5.2, 59.5.3, 59.5.4 and 60 (Remedial Plan Process), the Customer may, by one month's prior written notice, require the Partial Termination of any part of the Services on the occurrence in relation to that part of a material Default by the Supplier, where the Default is not capable of remedy or, if the Default is capable of remedy, the Default has not been remedied in accordance with the Remedial Plan Process.

59.5.2 The Supplier shall return to the Customer on demand if, and to the extent it so requires, the aggregate sum of all Reclaimable Milestone Payments paid to the Supplier in respect of the achievement of Milestones related to any part of the Services partially terminated pursuant to clause 59.5.1 (Partial Termination) prior to the Contract Performance Point provided that if the Customer has served a termination notice on the Supplier pursuant to clause 59.1 (Termination for Cause by the Customer) or a Correction Plan on the Supplier pursuant to **clause 5.6.2.4** prior to the date set out in limb (c) of the definition of Contract Performance Point, the Customer shall not lose its entitlement to reclaim the Reclaimable Milestones from the Supplier after the Contract Performance Point in relation to termination notice or default that gave rise to the Correction Plan.

59.5.3 On receipt of the Customer's notice of Partial Termination, the Supplier may respond to the Customer in writing within the notice period provided for in clause 59.5.1 as follows:

59.5.3.1 accept the Partial Termination of this Contract; or

59.5.3.2 reject the Partial Termination of this Contract.

59.5.4 If the Supplier rejects the Partial Termination the Customer may, in its sole discretion and within one month of receiving the Supplier's election under clause 59.5.3.2, terminate the whole Contract.

59.5.5 The Parties shall agree the effect of any Change made necessary to the Contract by the Partial Termination, including the effect the Partial Termination may have on any other Services and the Charges, in accordance with the Change Control Procedure, provided that:

59.5.5.1 the Supplier shall not be entitled to an increase in the charges if the Partial Termination arises pursuant to clause 59.5.1; and

59.5.5.2 any increase to the Charges (if any) shall not be unreasonable and in any event shall be calculated in accordance with the Supplier's financial model in schedule 7.1 (Charges and Invoicing); and

59.5.5.3 the Supplier shall not be entitled to reject the Change.

59.5.6 Termination in accordance with this clause 59.5 shall be without prejudice to any right of action or remedy of either Party which has accrued or which subsequently accrues.

#### **59.6 Termination by the Supplier**

59.6.1 The Supplier may terminate this Contract only if the Customer is in material breach of its obligation to pay undisputed Charges by giving the Customer 90 days written notice specifying the breach and requiring its remedy (with a copy of the notice to be sent to the Head of ICT and Procurement). The Supplier's right of termination under this clause shall only arise if the Customer has failed to remedy the breach specified in the written notice within the ninety (90) days notice period. The Supplier's right of termination under this clause 59.6 shall not apply to non-payment of the Charges by the Customer where such non-payment is due to the Customer exercising its rights under clause 20 (Recovery of Sums Due).

59.6.2 The Supplier shall not exercise, or purport to exercise, any right to terminate this Contract (or accept any repudiation of this Contract) except as expressly set out in this Contract.

#### **59.7 Termination for Continuing Force Majeure Event**

Either Party may, by written notice to the other, terminate this Contract, or require the Partial Termination of any part of the Services on the occurrence in relation to that part, if:

- 59.7.1 a Force Majeure Event occurs which prevents a Party from performing its obligations in respect of all or a substantial part of the Services for a continuous period of more than 90 days; or
- 59.7.2 a Force Majeure Event occurs which prevents a Party from performing its obligations in respect of a part but not a substantial part of the Services for a continuous period of more than 120 days.

## 60. **REMEDIAL PLAN PROCESS**

- 60.1 Subject to clause 59.1.3 or 59.5.1, if the Supplier commits a material Default and the Default is capable of remedy, the Customer may not terminate this Contract in whole or in part without first operating the Remedial Plan Process.
- 60.2 The Remedial Plan Process is as follows:
  - 60.2.1 The Customer notifies the Supplier that it considers that the Supplier is in material Default and that it requires a Remedial Plan. The notice may specify the matters complained of in outline but must contain sufficient detail so that it is reasonably clear what the Supplier has to remedy.
  - 60.2.2 The Supplier shall serve a draft Remedial Plan within 20 Working Days (or any other period agreed by the Parties) even if the Supplier disputes that it is responsible for the matters complained of.
  - 60.2.3 If the Customer considers that the draft Remedial Plan is insufficiently detailed to be properly evaluated, or will take too long to complete or will not remedy the matters complained of then it may either agree a further time period for the development and agreement of the Remedial Plan or escalate any issues with the draft Remedial Plan using the Escalation Process.
  - 60.2.4 If despite the measures taken under clause 60.2.3 a Remedial Plan cannot be agreed within 10 Working Days of the date of its submission then the Customer may elect to end the Remedial Plan Process at the end of the Escalation Process and serve a Termination Notice which will take effect unless the Supplier remedies the Default within a period specified in the Termination Notice which shall not be less than 30 days from the date on which the Termination Notice is sent to the Supplier.
  - 60.2.5 If a Remedial Plan is agreed between the Parties but the Supplier fails to implement the Remedial Plan within the time period set out in the Remedial Plan (or, if no time period is stated, within ten (10) Working Days of the date of the agreement of the Remedial Plan) the Customer may either give the Supplier a further opportunity to resume full

implementation of the Remedial Plan within such period as the Customer shall specify or escalate any issues arising out of the failure to implement the Remedial Plan using the Escalation Process.

60.2.6 If the reasons for the Supplier's failure to implement the Remedial Plan have not been resolved despite the use of the Escalation Process in accordance with clauses 60.2.3 or 60.2.5, and the Supplier has not otherwise remedied the Default, then the Customer may serve a Termination Notice and the Contract shall terminate on the last day of the period specified by the Customer in its notice, which shall not be less than 30 days from the date on which the Termination Notice is sent to the Supplier.

60.2.7 The Customer shall not be obliged to follow the Remedial Plan Process if a Remedial Plan has been implemented but the Supplier has failed to remedy the Default by those means or if there is a repetition of substantially the same material Default within a period of three months following the conclusion of the Remedial Plan. In either case the Customer may serve a Termination Notice and the Contract shall terminate on the last day of the period specified by the Customer in its notice, which shall not be less than 30 days from the date on which the Termination Notice is sent to the Supplier, unless the Supplier remedies the Default within that period.

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

61.1 Following the service of a Termination Notice for any reason the Supplier shall continue to be under an obligation to provide the Services to the required Service Levels and to ensure that there is no degradation in the standards of the Services until the date of the termination.

61.2 In the event of termination or expiry, the Supplier shall:

61.2.1 repay to the Customer all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination;

61.2.2 comply with its obligations contained in the Exit Plan; and

61.2.3 subject to the content of the Exit Plan, cease to use the Customer Data and, at the direction of the Customer:

61.2.3.1 provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form in the formats and on media

agreed with the Customer and/or the Replacement Supplier; and

61.2.3.2 on the earlier of the receipt of the Customer's written instructions or 12 months after the date of expiry or termination, destroy all copies of the Customer Data, excepting a copy of any such Customer Data which is also a record as set out in schedule 8.4 (Record Provisions) and promptly provide written confirmation to the Customer that the data has been destroyed.

61.2.4 provide access to the Customer and/or the Replacement Supplier in accordance with paragraph 7.4 of schedule 8.5 (Exit Management) to:

61.2.4.1 such information relating to the Services as remains in the possession or control of the Supplier; and

61.2.4.2 such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier,

61.2.4.3 provided that the Customer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier in responding to requests for access under this clause 61.2.4 in accordance with the principles set out in paragraph 7.4.2 of schedule 8.5 (Exit Management).

61.3 The provisions of clauses 26 (Audits), 35 (Non-Solicitation), 36 (Intellectual Property Rights), 37 (Licences Granted by the Supplier), 43 (Protection of Personal Data), 44 (Freedom of Information), 45 (Confidentiality), 54 (Indemnities), 55 (Limitations on Liability), 56 (Insurance), 61 (Consequences of Termination), 62 (Payments made on Termination), 63 (Exit Management), 68 (Prevention of Bribery), 70 (Severance), 72 (Entire Agreement), 73 (Third Party Rights) and 75 (Governing Law and Jurisdiction), and the provisions of schedules 1 (Definitions), 7.1 (Charges and Invoicing), 7.2 (Payments on Termination), 8.5 (Exit Management) and 9.1 (Staff Transfer) and any other relevant clauses and schedules which expressly or by implication are stated to survive termination or expiry of this Contract) shall survive the termination or expiry of this Contract.

## 62. **PAYMENTS MADE ON TERMINATION**

62.1 Save for any payments in respect of any assets made in accordance with schedule 8.5 (Exit Management), the Customer shall not make a payment to the Supplier:

62.1.1 on the expiry of the Term;

- 62.1.2 for termination for cause by the Customer in accordance with clause 59.1 or for Partial Termination in accordance with clause 59.5.1; or
  - 62.1.3 for termination for Change of Control in accordance with clause 59.4.1.
- 62.2 The Customer shall pay the Supplier the Termination Payment if this Contract is terminated by the Customer pursuant to clause 59.3 (Termination for Convenience by Customer) or by the Supplier pursuant to clause 59.6 (Termination by the Supplier).
- 62.3 If:
  - 62.3.1 the notice given by the Customer pursuant to clause 59.3 (Termination for Convenience by Customer) is less than 12 months; or
  - 62.3.2 the period between the date of the material breach by the Customer referred to in clause 59.6 (Termination by the Supplier) and the date on which termination pursuant to clause 59.6 (Termination by the Supplier) takes effect is less than 12 months,

the Customer shall also make the Compensation Payment calculated in accordance with schedule 7.2 (Payments on Termination).
- 62.4 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Contract pursuant to clause 59.7 (Termination for Continuing Force Majeure Event).
- 62.5 The Compensation Payment and/or the Termination Payment shall be the Supplier's sole remedy for the Customer's termination of this Contract in accordance with clause 59.3 (Termination for Convenience by the Customer) or the Supplier's termination of this Contract in accordance with clause 59.6 (Termination by the Supplier).

### **Payments made by the Supplier**

- 62.6 The Supplier shall return to the Customer on demand (if, and to the extent the Customer requires) the aggregate sum of all Reclaimable Milestone Payments if this Contract is terminated by the Customer pursuant to clause 59.1 (Termination for Cause by the Customer) prior to the Contract Performance Point.
- 63. **EXIT MANAGEMENT**
  - 63.1 The Customer and the Supplier shall comply with the Exit Management requirements set out in schedule 8.5 (Exit Management) and any current Exit Plan. Notwithstanding any other provision of this Contract the Customer shall

have the rights set out in paragraphs 6.12 to 6.14 (inclusive) of schedule 8.5 (Exit Management):

63.1.1 if an Insolvency Event occurs, in which case the Customer's rights under paragraphs 6.12 to 6.14 (inclusive) of schedule 8.5 (Exit Management) shall be exercisable by the Customer at any time before the winding up of the Supplier or any other consequence of the occurrence of those events, including the appointment of a liquidator, receiver, manager or administrator;

63.1.2 in the event of termination of this Contract for any reason; and/or

63.1.3 upon the expiry of this Contract.

63.2 The Supplier shall not, without the Customer's consent, encumber any Supplier Equipment in any way which would require the consent of a third party to the exercise by the Customer of its rights under schedule 8.5 (Exit Management) or which would in some other way restrict the exercise by the Customer of its rights under that schedule. For the purposes of this clause 63.2 "encumber" does not include any leasing agreement but shall include any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, security interest, any other security agreement or arrangement (except for a floating charge attaching generally to the assets and undertaking of the Supplier which has not crystallised) or which otherwise restricts the Supplier's ability to use and deal with the relevant item of Supplier Equipment.

63.3 Unless the Customer otherwise requires, during the time between service of a notice of termination of this Contract, or for Partial Termination in accordance with clause 59.5, and such termination or exercise taking effect, the Supplier shall take all steps, which are necessary and consistent with its continuing obligations, to mitigate any losses, costs, liabilities and expenses which the Supplier may incur as a result of the termination, including to:

63.3.1 cancel all capital and recurring cost commitments in connection with the Implementation Plan and/or the provision of Services on the most cost-effective terms;

63.3.2 terminate all relevant contracts or the relevant parts of relevant contracts with its Sub-contractors in connection with the provision of Services on the most favourable terms as can be achieved in the particular circumstances, having first ascertained from the Customer whether such contracts are required to be transferred to the Customer or Replacement Supplier instead;

63.3.3 reduce labour costs by the redeployment or release of Supplier Personnel who are employed or engaged in the provision of the Services other than Key Personnel to the extent possible in the circumstances; and

63.3.4 apply any insurance monies available to the reduction of any unavoidable costs remaining in respect of the required actions in clauses 63.3.1 to 63.3.3 (inclusive),

provided that the Supplier shall not be in breach of clause 63.3.2 where the Customer has refused to consent to the termination of a Sub-contract pursuant to paragraph 8 of schedule 8.5 (Exit Management).

63.4 If the cost of any Supplier Equipment has not been fully paid for through Milestone payments or otherwise amortised at the time of expiry or termination of this Contract or otherwise recovered through a Termination Payment or Compensation Payment, the Customer shall pay the Supplier the Net Book Value of any Supplier Equipment that the Customer elects to have transferred to it in accordance with schedule 8.5 (Exit Management). The Parties agree that this clause is unlikely to be applicable as the Customer shall pay for any Hardware upon delivery.

63.5 If the Supplier does not fulfil its obligations in accordance with clause 63.3, the Customer shall not pay any sums in excess of those which the Customer would have paid had such action been taken.

#### 64. **STEP-IN RIGHTS**

64.1 The Customer may take action under this clause in the following circumstances:

64.1.1 there is a Default entitling the Customer to terminate in accordance with clause 59.1 (Termination for Customer Cause);

64.1.2 there is a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any part of the Services;

64.1.3 there is a Delay that has or the Customer reasonably anticipates will result in the Supplier's failure to Achieve a Milestone in respect of Authority to Proceed or CPP by its Milestone Date;

64.1.4 a Force Majeure Event occurs which materially prevents or materially delays the performance of the Services or any part of the Services;

64.1.5 the Supplier has accrued [redacted] or more Service Points in any period of [redacted] consecutive months;



- 64.1.6 the Supplier has accrued Delay Payments in excess of [redacted];
- 64.1.7 where the Supplier is not in breach of its obligations under this Contract but the Customer considers that the circumstances constitute an emergency;
- 64.1.8 where a Regulatory Body has advised the Customer that the exercise by the Customer of its rights under this clause is necessary;
- 64.1.9 because a serious risk exists to the health or safety of persons, property or the environment;
- 64.1.10 to discharge a statutory duty; and/or
- 64.1.11 on the occurrence of an Insolvency Event in respect of the Supplier.

#### **Action To Be Taken Prior To Exercise Of The Right Of Step-in**

- 64.2 Before the Customer exercises its right of step-in under this clause 64 it shall permit the Supplier the opportunity to demonstrate to the Customer's reasonable satisfaction within 5 Working Days that the Supplier is still able to provide the Services in accordance with the terms of this Contract and/or remedy the circumstances giving rise to the right to step-in without the requirement for the Customer to take action.
- 64.3 If the Customer is not satisfied with the Supplier's demonstration pursuant to clause 64.2, the Customer may:
  - 64.3.1 where the Customer considers it expedient to do so, require the Supplier by notice in writing to take those steps that the Customer considers necessary or expedient to mitigate or rectify the state of affairs giving rising to the Customer's right to step-in;
  - 64.3.2 appoint any person to work with the Supplier in performing all or a part of the Operational Services (including those provided by any Sub-contractor); or
  - 64.3.3 take the steps that the Customer considers appropriate to ensure the performance of all or part of the Operational Services (including those provided by any Sub-contractor).
- 64.4 The Supplier shall co-operate fully and in good faith with the Customer, or any other person appointed in respect of clause 64.3.2, and shall adopt any reasonable methodology in providing the Operational Services recommended by the Customer or that person.

#### **Exercise of the Right of Step-in**

64.5 If the Supplier:

- 64.5.1 fails to confirm within 10 Working Days of a notice served pursuant to clause 64.3.1 that it is willing to comply with that notice; or
- 64.5.2 fails to work with a person appointed in accordance with clause 64.3.2; or
- 64.5.3 fails to take the steps notified to it by the Customer pursuant to clause 64.3.1,

then the Customer may take action under this clause either through itself or with the assistance of third party contractors, provided that the Supplier may require any third Parties to comply with a confidentiality undertaking equivalent to clause 45 (Confidentiality).

64.6 If the Customer takes action pursuant to clause 64.5, the Customer shall serve notice ("**Step-in Notice**") on the Supplier. The Step-in Notice shall set out the following:

- 64.6.1 the action the Customer wishes to take and in particular the Operational Services it wishes to control;
- 64.6.2 the reason for and the objective of taking the action and whether the Customer reasonably believes that the primary cause of the action is due to the Supplier's Default;
- 64.6.3 the date it wishes to commence the action;
- 64.6.4 the time period which it believes will be necessary for the action;
- 64.6.5 whether the Customer will require access to the Supplier's premises and/or the Sites; and
- 64.6.6 to the extent practicable, the effect on the Supplier and its obligations to provide the Services during the period the action is being taken.

64.7 Following service of a Step-in Notice, the Customer shall:

- 64.7.1 take the action set out in the Step-in Notice and any consequential additional action as it reasonably believes is necessary to achieve (together, the "**Required Action**");
- 64.7.2 keep records of the Required Action taken and provide information about the Required Action to the Supplier;

- 64.7.3 co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide any Operational Services in relation to which the Customer is not assuming control; and
- 64.7.4 act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Customer's rights under this clause.
- 64.8 For so long as and to the extent that the Required Action is continuing, then:
  - 64.8.1 the Supplier shall not be obliged to provide the Operational Services to the extent that they are the subject of the Required Action;
  - 64.8.2 subject to clause 64.9, the Customer shall pay to the Supplier the Charges after the deduction of any applicable Service Credits in relation to any Services which are not the subject of the Required Action, Delay Payments and the Customer's costs of taking the Required Action.
- 64.9 If the Required Action results in:
  - 64.9.1 the degradation of any Operational Services not subject to the Required Action; or
  - 64.9.2 the non-Achievement of a Milestone,beyond that which would have been the case had the Customer not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges, provided that the Supplier can demonstrate to the reasonable satisfaction of the Customer that the Required Action has led to the degradation or non-Achievement.
- 64.10 Before ceasing to exercise its step-in rights under this clause the Customer shall deliver a written notice to the Supplier ("**Step-Out Notice**"), specifying:
  - 64.10.1 the Required Action it has actually taken; and
  - 64.10.2 the date on which the Customer plans to end the Required Action ("**Step-Out Date**") subject to the Customer being satisfied with the Supplier's ability to resume the provision of the Operational Services and the Supplier's plan developed in accordance with clause 64.11.
- 64.11 The Supplier shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Customer's approval a draft plan ("**Step-Out Plan**") relating to the resumption by the Supplier of the Operational Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Contract.

- 64.12 If the Customer does not approve the draft Step-Out Plan, the Customer shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Customer for the Customer's approval. The Customer shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 64.13 The Supplier shall bear its own costs in connection with any step-in by the Customer under this clause 64, provided that the Customer shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Customer under:
- 64.13.1 clauses 64.1.4 or 64.1.7; or
- 64.13.2 clauses 64.1.8, 64.1.9 and 64.1.10 (insofar as the primary cause of the Customer serving the Step-In Notice is identified as not being the result of a Supplier's Default).

## **SECTION L - MISCELLANEOUS AND GOVERNING LAW**

### **65. ASSIGNMENT AND NOVATION**

- 65.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Contract without the prior written consent of the Customer.
- 65.2 The Customer may:
- 65.2.1 assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract and any associated third party licences to any other Contracting Authority; or
- 65.2.2 novate this Contract and any associated third party licences to any other body which substantially performs any of the functions that previously had been performed by the Customer. If this transfer increases the burden of the Supplier's obligations or risk profile under this Contract the Supplier shall be entitled to any additional Charges that are reasonable by way of compensation and which can be agreed through the Change Control Procedure.
- 65.3 A change in the legal status of the Customer shall not (subject to clause 65.4) affect the validity of this Contract and this Contract shall be binding on any successor body to the Customer.
- 65.4 If this Contract is novated to a body which is not a Contracting Authority, or a body which is not a Contracting Authority succeeds the Customer, (both "transferee" in the rest of this clause):

- 65.4.1 the Supplier shall be entitled to exercise a right of termination if:
- 65.4.1.1 the transferee suffers an Insolvency Event; or
  - 65.4.1.2 the transferee commits:
    - (a) a material Default which Default, subject to the exercise of a process equivalent to the Remedial Plan Process, is not remedied within 30 days after notice of Default from the Supplier to the transferee requiring its remedy; or
    - (b) a material Default which is irremediable;
- 65.4.2 the transferee may only assign, novate or otherwise dispose of its rights and obligations under this Contract (or any part) with the prior written consent of the Supplier (which consent shall not be unreasonably withheld or delayed); and
- 65.4.3 the following clauses shall be varied from the date of the novation or the date of the Customer's change of status (as appropriate) as if this Contract had been amended by the Parties in accordance with the Change Control Procedure:
- 65.4.3.1 in clauses 20 (Recovery of Sums Due) and 68 (Prevention of Bribery) the words "or any other Crown Body" shall be deleted; and
  - 65.4.3.2 the definition of "Crown Body" in schedule 1 (Definitions) shall be deleted and clause 45.6.1 (Confidentiality) shall be deleted.

## **66. WAIVER AND CUMULATIVE REMEDIES**

- 66.1 The rights and remedies provided by this Contract may be waived only in writing by the relevant Representative in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.
- 66.2 Unless a right or remedy of either Party is expressed to be an exclusive right or remedy, the exercise of it by that Party is without prejudice to that Party's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.
- 66.3 The rights and remedies provided by this Contract are cumulative and, unless otherwise provided in this Contract, are not exclusive of any right or remedies provided at law or in equity or otherwise under this Contract.

**67. RELATIONSHIP OF THE PARTIES**

67.1 Nothing in this Contract is intended to:

- 67.1.1 create a partnership, or legal relationship of any kind that would impose liability upon one Party for the act or failure to act of the other Party, or to authorise either Party to act as agent for the other Party. Neither Party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other Party;
- 67.1.2 create a relationship of employer or employee between the Customer and the Supplier and any Supplier Personnel.

**68. PREVENTION OF BRIBERY**

68.1 The Supplier:

- 68.1.1 shall not, and shall procure that any Supplier Party and all Supplier Personnel shall not, in connection with this Contract commit a Prohibited Act;
- 68.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Customer, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Customer before execution of this Contract.

68.2 The Supplier shall:

- 68.2.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption, including the Bribery Act ("Relevant Requirements");
- 68.2.2 promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Contract;
- 68.2.3 immediately notify the Customer (in writing) if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Contract);
- 68.2.4 if requested, provide the Customer with any reasonable assistance, at the Customer's reasonable cost, to enable the Customer to perform any activity required by any relevant government or agency in any

relevant jurisdiction for the purpose of compliance with the Bribery Act;

- 68.2.5 within twenty (20) Working Days of the Effective Date, and annually thereafter, certify to the Customer in writing (such certification to be signed by an officer of the Supplier) compliance with this clause 68 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request.
- 68.3 The Supplier shall have an anti-bribery policy, including adequate procedures under the Bribery Act, (which shall be disclosed to the Customer) to prevent any Supplier Party or Supplier Personnel from committing a Prohibited Act and to ensure compliance with the Relevant Requirements, and shall enforce it where appropriate.
- 68.4 The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 68 ("Relevant Terms"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.
- 68.5 If any breach of clauses 68.1 to 68.4 is suspected or known, the Supplier must notify the Customer immediately.
- 68.6 If the Supplier notifies the Customer that it suspects or knows that there may be a breach of clauses 68.1 to 68.4, the Supplier must respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit books, records and any other relevant documentation. This obligation shall continue for seven years following the expiry or termination of this Contract.
- 68.7 The Customer may terminate this Contract by written notice with immediate effect if the Supplier, Supplier Party or Supplier Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches clauses 68.1, 68.2, 68.3 and/or 68.4. In determining whether to exercise the right of termination under this clause 68.7, the Customer shall give all due consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Supplier or a senior officer of the Supplier or by an employee, Sub-contractor or supplier not acting independently of the Supplier. The expression "not acting independently of" (when used in relation to the Supplier or a Sub-contractor) means and shall be construed as acting:

68.7.1 with the authority; or

68.7.2 with the actual knowledge,

of any one or more of the directors of the Supplier of the Sub-contractor (as the case may be); or

68.7.3 in circumstances where any one or more of the director of the Supplier ought reasonably to have had knowledge.

68.8 Any notice of termination under clause 68.7 must specify:

68.8.1 the nature of the Prohibited Act;

68.8.2 the identity of the party whom the Customer believes has committed the Prohibited Act; and

68.8.3 the date on which this Contract will terminate.

68.9 Any termination under clause 68.7 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer.

68.10 Notwithstanding clause 29 (Disputes), any dispute relating to:

68.10.1 the interpretation of clause 68; or

68.10.2 the amount or value of any gift, consideration or commission,

shall be determined by the Customer and the decision shall be final and conclusive.

68.11 For the purpose of this clause 68, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), section s6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 68 a person associated with the Supplier includes but is not limited to any subcontract of the Supplier.

## **69. PUBLICITY AND BRANDING**

69.1 The Supplier shall not:

69.1.1 Disclose or permit disclosure of any details of this Contract to the news, media or any third party other than a Sub-contractor or make any press announcements or publicise this Contract or its contents in any way;



69.1.2 use the Customer's name or brand in any promotion or marketing or announcement of orders; or

69.1.3 disclose that the Customer is a customer or client of the Supplier,

without the prior written consent of the Customer, which shall not be unreasonably withheld or delayed.

69.2 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Supplier System and the Customer System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

## 70. **SEVERANCE**

If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions. If a provision of this Contract that is fundamental to the accomplishment of the purpose of this Contract is held to any extent to be invalid, the Supplier and the Customer shall immediately commence good faith negotiations to remedy that invalidity.

## 71. **FURTHER ASSURANCES**

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

## 72. **ENTIRE AGREEMENT**

72.1 This Contract, together with the documents referred to in it and/or attached to it, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the Parties in relation to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.

72.2 Each of the Parties acknowledges and agrees that in entering into this Contract and the documents referred to in it and/or attached to it, does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract. The only remedy available to either Party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Contract.

72.3 Nothing in this clause 72 shall operate to exclude any liability for fraud.

### 73. **THIRD PARTY RIGHTS**

73.1 Subject to clause 45.3 (Confidentiality), and paragraph 8 of schedule 9.1 (Staff Transfer), this Contract is not intended to and does not give any person who is not a Party to this Contract any rights to enforce any provisions contained in this Contract under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

73.2 No consent of any person who is not party to this Contract is necessary for any variation (including any release or compromise in whole or in part of any liability) or termination of this Contract or any one or more clauses of it.

### 74. **NOTICES**

74.1 Any notices given under or in relation to this Contract shall be in writing, signed by or on behalf of the Party giving it and shall be served by delivering it personally or by sending it by pre-paid first class post, recorded delivery or registered post or by fax or delivering it to, or leaving it at:

<b>Supplier</b>	<b>Customer</b>
The Contracts and Commercial Director	Head of Procurement
250 Brook Drive, Green Park, Reading, RG2 6UA	Police Headquarters, Glan y Don, Colwyn Bay, Colwyn, LL29 8AW
[redacted]	<a href="mailto:Patricia.Strong@nthwales.pnn.police.uk">Patricia.Strong@nthwales.pnn.police.uk</a>
Fax: [redacted]	Fax: N/A

### 74.2 **Provision of Information to Representatives**

Where any information or documentation is to be provided or submitted to the Representatives it shall be provided in writing, signed by or on behalf of the party giving it and shall be served by sending it by pre-paid first class post, recorded delivery or registered post or by fax or by email to or delivering it to or leaving it at:

<b>Supplier Representative</b>	<b>Customer Representative</b>
The Customer Engagement Director	Head of IT and Procurement
250 Brook Drive, Green Park, Reading, RG2 6UA	Police Headquarters, Glan y Don, Colwyn Bay, Colwyn, LL29 8AW

Fax: [redacted]	Fax: N/A
[redacted]	Keith.Williams@nthwales.pnn.police.uk

**74.3 Change of Details**

74.4 Either party to this Contract (and either Representative) may change its nominated address or facsimile number or email by prior notice to the other party.

74.5 A notice shall be deemed to have been received:

74.5.1 if delivered personally, at the time of delivery;

74.5.2 in the case of pre-paid first class post, three Working Days from the date of posting; and

74.5.3 in the case of fax, on the day of transmission if sent before 16:00 hours of any Working Day and otherwise at 09:00 hours on the next Working Day and provided that, at the time of transmission of a fax, an error-free transmission report has been received by the sender.

74.6 In proving service, it shall be sufficient to prove that the envelope containing the notice was addressed to the relevant Party at its address previously notified for the receipt of notices (or as otherwise notified by that Party) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the relevant Party at its fax number previously notified for the receipt of notices (or as otherwise notified by that Party).

**75. GOVERNING LAW AND JURISDICTION**

This Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law and without prejudice to the Dispute Resolution Procedure each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

**76. COUNTERPARTS/DUPLICATES**

76.1 This Contract may be executed in any number of counterparts, each of which shall constitute an original, but which shall together constitute one agreement.

76.2 This Contract may be executed in duplicate, each of which shall constitute an original.

**IN WITNESS** of which this Contract has been duly executed by the Parties.

**SIGNED** by Winston Roddick Police and **SIGNED** by [redacted] (Senior Vice  
Crime Commissioner for and on behalf of President for public services) on behalf of  
the Office of the Police and Crime the Supplier  
Commissioner North Wales

Signature..... Signature.....

Name..... Name.....

Position..... Position.....

Date..... Date.....

## SCHEDULE 1

### Definitions

Unless the context otherwise requires the following expressions shall have the meanings set out below.

<b>"Achieve"</b>	in respect of a Test, to successfully pass a Test without any Test Issues and, in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with schedule 6.2 (Testing Procedures), and <b>"Achieved"</b> and <b>"Achievement"</b> shall be construed accordingly;
<b>"Additional Services "</b>	the services which may be requested by the Customer in addition to the services currently being provided pursuant to this Contract but which are within the scope of the contract notice (385195 – 2013) dated 14 <sup>th</sup> November 2013 in the Official Journal of the European Union and in accordance with clauses 9.12 to 9.16 (Additional Services);
<b>"Affected Party"</b>	the Party seeking to claim relief in respect of a Force Majeure Event;
<b>"Affiliate"</b>	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
<b>"Application"</b>	means a software application in respect of which, at the time in question, the Supplier is required to provide Services under this Contract;
<b>"Assets"</b>	means all assets and rights used by the Supplier to provide the Services in accordance with this Contract but excluding the Customer Assets;
<b>"Asset Register"</b>	means the register of Assets and Customer Assets to be maintained by the Supplier in accordance with the provisions of clauses 17.16 and 17.17;
<b>"Associates"</b>	means any entity in which the ultimate parent entity of the Supplier (whether directly or indirectly) owns 20% or more of the issued capital and/or is able to

	influence the exercise of 20% or more of its voting;
<b>"ATP Milestone Date"</b>	the Milestone Date on which the Supplier is granted Authority to Proceed in respect of the Operational Services;
<b>"Authority to Proceed" or "ATP"</b>	the point at which the Supplier is authorised to provide the Operational Services to the Customer provided in the form of a Milestone Achievement Certificate relating to the Milestone which is recorded as being linked to ATP in the Outline Implementation Plan;
<b>"Base Case Financial Model"</b>	means the Financial Model projecting Costs and Charges in relation to the provision of Services prepared by the Supplier as at the Effective Date and consistent with the requirements in schedule 7.5 (Financial Model);
<b>"Base Cost"</b>	<p>means the direct cost to the Supplier, calculated per work day, of employing the Supplier Personnel who are employed or engaged in the provision of the Services, expressed per individual, and including (without limitation):</p> <ul style="list-style-type: none"> <li>(g) salary cost;</li> <li>(h) staff training;</li> <li>(i) work place accommodation;</li> <li>(j) ICT equipment and tools;</li> <li>(k) pension allowances;</li> <li>(l) car allowances; and</li> <li>(m) any other fringe benefits;</li> </ul>
<b>"BDCR Plan"</b>	any plan prepared pursuant to schedule 8.6 (Business Continuity and Disaster Recovery Plan) as may be amended from time to time;
<b>"Bribery Act"</b>	the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the

	legislation;
<b>"Capital Costs"</b>	means those costs which would be treated as capital costs according to generally accepted accounting principles within the UK which shall include the cost to be charged in respect of Assets by the Supplier to the Customer or (to the extent that risk and title in any Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Assets;
<b>"Change"</b>	any change to this Contract;
<b>"Change Control Procedure"</b>	the procedure for changing this Contract, as set out in schedule 8.2 (Change Control Procedure);
<b>"Change of Control"</b>	a change in Control of the Supplier or a material Sub-contractor;
<b>"Change in Law"</b>	any change in Law, which impacts on the performance of the Services which comes into force after the Effective Date;
<b>"Change Request"</b>	has the meaning given to it in Schedule 8.2 (Change Control Procedure);
<b>"Charges"</b>	the charges for the provision of the Services set out in and derived in accordance with schedule 7.1 (Charges and Invoicing), including any Milestone Payments or Service Charge;
<b>"Clearance"</b>	the national security clearance and employment checks undertaken by and/or obtained in accordance with the ACPO policy;
<b>"Commencement Date"</b>	the date on which the Services start;
<b>"Commercially Sensitive Information"</b>	the information listed in schedule 4.2 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;

<b>"Comparable Supply"</b>	the supply of services to another customer of the Supplier that are the same or similar to the Services;
<b>"Compensation Payment"</b>	the payment calculated in accordance with paragraph 3 of schedule 7.2 (Payments on Termination);
<b>"Confidential Information"</b>	the Customer's Confidential Information and/or the Supplier's Confidential Information;
<b>"Contract"</b>	the clauses of this Contract together with the schedules and appendices and annexes to it and any documents referred to or attached to it;
<b>"Contracting Authority"</b>	any contracting authority as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Customer <b>"Contracting Authorities"</b> shall be construed accordingly;
<b>"Contract Performance Point" or "CPP"</b>	<p>the later of:</p> <ul style="list-style-type: none"> <li>(a) the date falling three months after the ATP Milestone Date provided that the Supplier has demonstrated that the Supplier's Solution or any relevant Service is Working Satisfactorily in its operating environment; or</li> <li>(b) if the Supplier is not able to demonstrate that the Supplier's Solution or any relevant Service is working satisfactorily in its operating environment by the date falling three months after the ATP Milestone Date, the date on which the Supplier does demonstrate to the Customer that the Supplier's Solution or any relevant Service is Working Satisfactorily in its operating environment; or</li> <li>(c) if the provisions of limbs (a) and (b) have not been achieved by the date falling 10 months after the ATP Milestone Date, the date falling 12 months ATP Milestone Date;</li> </ul>



<b>"Contract Year"</b>	a period of 12 months (or shorter period in the period immediately prior to the end of the Term) commencing on the Effective Date or on an anniversary of the Effective Date;
<b>"Control"</b>	means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;
<b>"Conviction"</b>	other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being made the subject of a prohibition or restriction under section 218(6) of the Education Reform Act 1988);
<b>"Correction Plan"</b>	the Supplier's plan for the remediation of any: <ul style="list-style-type: none"> <li>(a) Test Issues or the resolution of any non-conformities in any Deliverable to be agreed in accordance with clause 5 (Implementation Delays - General Provisions); or</li> <li>(b) Service Failure in accordance with clause 11 (Service Levels);</li> </ul>
<b>"Costs"</b>	means the costs to be incurred by the Supplier in providing the Services including the Base Cost and the Overhead;
<b>"Credit Ratings"</b>	the credit ratings set out in Schedule 7.4 (Financial Distress);
<b>"Critical Service Failure"</b>	has the meaning given to it in Schedule 2.2 (Service

Levels);

**"Crown Body"**

any department, office or agency of the Crown;

**"Customer Assets"**

means the Customer Materials, the specially written material, the Customer infrastructure and any other data, software, assets, equipment or other property owned by the Customer and which is or may be used in connection with the provision or receipt of the Services;

**"Customer Cause"**

any breach by the Customer of any of the Customer's Responsibilities (except to the extent to which it was caused or contributed to by the Supplier or a Force Majeure Event or caused or contributed to by any act or omission by the Customer to which the Supplier has given its prior consent);

**"Customer Confidential Information"**

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

**"Customer Data"**

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

**"Customer Engagement Director"**

the person in the role of the "Customer Engagement Director" from time to time or such person in the role that replaces the role of the Customer Engagement Director from time to time;

**"Customer Materials"**

means the Customer Data together with any materials, documentation, information, programs and codes supplied by the Customer to the Supplier, the IPR in which:

- (i) are owned or used by or on behalf of the Customer; and
- (ii) are or may be used in connection with the provision or receipt of the Services,

but excluding any specially written material, Supplier Material and Third Party Material;

**"Customer Premises"**

means premises owned, controlled or occupied by the Customer which are made available for use by the Supplier or its Sub-contractor for the provision of the Services (or any of them) on the terms set out in this Contract or any separate Contract or licence;

**"Customer Representative"**

the representative appointed by the Customer pursuant to clause 23.1 (Representatives);

**"Customer Requirements"**

means the Customer's requirements for the provision of the Services as set out in schedule 2.1 (Services Requirements) to this Contract with respect to the Services;

**"Customer's Responsibilities"**

the responsibilities of the Customer specified in schedule 3 (Customer Responsibilities);

**"Customer Software"**

software which is owned by or licensed to the Customer as at the date of this Contract but excluding the Supplier Software including:

- (a) CAD Applications or Server Infrastructure ;
- (b) ICCS Applications or Server Infrastructure ;

- (c) RMS Applications or Server Infrastructure ;
- (d) Microsoft Exchange and Lync Applications or Server Infrastructure ;
- (e) Microsoft Hyper-V Applications or Server Infrastructure ;
- (f) Citrix XenApp Applications or Server Infrastructure ;
- (g) VMWare vSphere Applications or Server Infrastructure; and
- (h) ANPR (QRO) Applications or Server Infrastructure ;

**"Customer Specific Change in Standards"**

means a change in any of the Customer Specific Policies and/or the Security Policy where change is specific to the Customer and does not reflect developments in the environment in which the Customer functions or general changes which affect or relate to a Comparable Supply;

**"Customer Specific Policies"**

means those policies and standards included in Annex 1 to Schedule 2.3 (Standards)

**"Customer System"**

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

**"Data Controller"**

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

**"Data Processing Agreement"**

the data processing agreement which is set out in schedule 13 and shall be entered into between the Parties as at the date of this Contract;

**"Data Processor"**

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

<b>"Data Protection Legislation"</b>	the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commission;
<b>"Data Subject"</b>	shall have the same meaning as set out in the Data Protection Act 1998;
<b>"Database"</b>	the rights in or to the database developed maintained and/or supplied by the Supplier to the Customer in accordance with the terms of this Contract but excluding any Supplier's Background IPR and IPRs owned by a third party that are embedded in or which are an integral part of the database;
<b>"Date Compliant"</b>	means that no previous or future date change has had or will have any adverse impact on the performance or functionality of the Supplier System;
<b>"Default"</b>	any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or Sub-contractors in connection with or in relation to the subject-matter of this Contract and in respect of which such Party is liable to the other;
<b>"Delay"</b>	the period of time by which the implementation of the Services by reference to the Implementation Plan is delayed arising from a failure to Achieve a Milestone;
<b>"Delay Payments"</b>	the amounts payable by the Supplier to the Customer in respect of a Delay and specified in

schedule 7.1 (Charges and Invoicing);

**"Deliverable"**

an item, feature or service associated with the provision of the Services or a change in the provision of the Services which is required to be delivered by the Supplier at a Milestone Date or at any other stage during the performance of this Contract;

**"Deposited Software"**

the Software which is provided by the Supplier by way of a New Project or a Change and which the Parties agree pursuant to the applicable Change or New Project shall be placed in escrow;

**"Detailed Implementation Plan"**

means the plan developed in accordance with paragraph 4 of schedule 6.1 (Implementation Plan);

**"Disclosed Data"**

information relating to this Contract disclosed to the Supplier and its advisers prior to the Effective Date including the information contained in the data room which is included on a CD included as an appendix to this Contract and initialled by the Parties;

**"Dispute"**

any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

**"Dispute Resolution Procedure"**

the dispute resolution procedure set out in schedule 8.3 (Dispute Resolution Procedure);

**"Documentation"**

descriptions of the Services and Service Levels, technical specifications, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:

- (a) is required to be supplied by the Supplier to the Customer under this Contract;
- (b) is required by the Supplier in order to provide the Services; or

(c) has been or shall be generated for the purpose of providing the Services;

**"Effective Date"**

the date on which this Contract is signed by both Parties;

**"Employee Liabilities"**

all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract or statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation), and any legal costs and expenses;

**"Employment Regulations"**

the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Council Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses;

**"Enhanced Licence Terms"**

the licence terms set out in Part B of schedule 5.2 (Licence Terms);

**"Environmental Information Regulations"**

the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commission or relevant Government Department in relation to such regulations;

**"Escalation Process"**

the initial stages of the process for dealing with Disputes without the intervention of third Parties as

set out in paragraph 2 of schedule 8.3 (Dispute Resolution Procedure);

**"Escrow Contract"**

The contract set out in Schedule 5.3 (Escrow Terms);

**"Euro Compliant"**

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

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



	supporting the Customer's normal business practices, operates in euro and/or the national currency of the UK;
<b>"Executive Board"</b>	has the meaning given to it in Schedule 8.1 (Governance);
<b>"Existing Services"</b>	the ICT services provided by the Customer prior to the date of this Contract;
<b>"Exit Management"</b>	the obligations and rights of the respective Parties pertaining to managing a smooth transition from the provision of the Services by the Supplier to the provision of Replacement Services by the Customer or any Replacement Supplier, all as set out in schedule 8.5 (Exit Management);
<b>"Expiry Date"</b>	1 April 2010;
<b>"FBC"</b>	the final business case as further defined in Schedule 11 (New Projects Schedule);
<b>"Financial Model"</b>	means the Base Case Financial Model or where an Updated Financial Model exists, the most recent Updated Financial Model;
<b>"Financial Ratios"</b>	means the financial analysis of the following ratios by reference to a Sub-contractor's latest published accounts:
( Current Ratio	$\frac{\text{Current Assets}}{\text{Current Liabilities}}$
( Net Working Ratio	$\frac{\text{Total Assets} - \text{Total Liability}}{\text{Total Assets}}$
( Earnings Before Interest and Taxes (EBIT)	Operating Revenue; less Operating Expense; plus Non-operating Income
( Price Earning Ratio	$\left[ \frac{\text{Price Per Share}}{\text{Annual Earnings per Shares}} \right]$
( Debt Ratio	$\frac{\text{Total Debt}}{\text{Total Assets}}$

( Gross Profit Margins	$\frac{\text{Sales} - \text{Costs of Sales}}{\text{Sales}}$
( Asset Turnover	$\frac{\text{Sales}}{\text{Average Total Assets}}$
( Accounts Receivable Turnover	$\frac{\text{Sales}}{\text{Average Accounts Receivables}}$

**"FOIA"**

the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commission or relevant Government Department in relation to such legislation;

**"Force Majeure Event"**

any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier, the Supplier Personnel or any other failure in the Supplier or the Sub-contractor's supply chain unless such failure in such supply chain is due to the member of the Supplier's or a Sub-contractor's supply chain being affected by such an act, event, omission, happening or non-happening which is beyond the reasonable control of the member of the Supplier's or a Sub-contractor's supply chain;

**"Full Business Case"**

has the meaning given to it in Schedule 11 (New Projects Schedule);

**"General Change in Law"**

a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;

**"General Change in Standards"**

a change in any of the Standards and/or the Security Policy, but excluding any Customer Specific Change in Standards;

<b>"Good Industry Practice"</b>	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;
<b>"Guarantee"</b>	the deed of guarantee in favour of the Customer entered into by the Guarantor on or about the date of this Contract (which is in the form set out in schedule 10 (Deed of Guarantee)), or any guarantee acceptable to the Customer that replaces it from time to time;
<b>"Guarantor"</b>	[redacted]
<b>"Hardware"</b>	any items of hardware to be supplied by the Supplier by way of a New Project or a Change;
<b>"Head of IT and Procurement"</b>	the person in the role of the "Head of IT and Procurement" from time to time or such person in the role that replaces the role of Head of IT and Procurement;
<b>"Health and Safety Regime"</b>	the Food Safety Act 1990 (and associated regulations), the Health & Safety at Work etc. Act 1974 (and associated regulations), the Fire Precautions Act 1971, the Environmental Protection Act 1998, the Water Industry Act 1991, the Water Resources Act 1991 and any similar or analogous health, safety or environmental legislation in force from time to time;
<b>"HR Policies"</b>	the Customer's HR Policies set out at Annex 1 to Schedule 2.3 (Standards);
<b>"ICT"</b>	information and communications technology;
<b>"ICT Environment"</b>	the Customer System and the Supplier System;
<b>"Impact Assessment"</b>	has the meaning given to it in Schedule 8.2 (Change Control Procedure);
<b>"Implementation Plan"</b>	means the Outline Implementation Plan or (if and when approved by the Customer pursuant to clause 3 (Implementation Plan)) the Detailed Implementation Plan as updated in accordance with paragraph 4 of schedule 6.1 (Implementation Plan)

from time to time;

**"Incident"**

means any call made to the Service Desk that relates to an event which affects the performance of, or has caused or may cause disruption to, or a reduction in, or access to the functionality or the quality of the Application (or any part thereof);

**"Information"**

has the meaning given under section 84 of the Freedom of Information Act 2000;

**"Information System"**

means a system for generating, sending, receiving, storing or otherwise processing electronic communications;

**"Initial Term"**

the initial five year term of the Contract as referred to in **clause 58.1** (Term);

**"Insolvency Event"**

the occurrence of any of the following events (or any event analogous to any of the following in a jurisdiction other than England and Wales) in relation to the relevant entity:

- (a) the entity passing a resolution for its winding up or a court of competent jurisdiction making an order for the entity to be wound up or dissolved or the entity being otherwise dissolved;
- (b) the appointment of an administrator of or, the making of an administration order in relation to the entity or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or part of the entity's undertaking, assets, rights or revenue;
- (c) the entity entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or takes steps to obtain a moratorium or makes an application to a court of competent jurisdiction for protection from its creditors;
- (d) the entity being unable to pay its debts or

being capable of being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

- (e) the entity entering into any arrangement, compromise or compromise or composition in satisfaction of its debts with its creditors;

However, a resolution by the relevant entity or a court order that such entity be wound up for the purpose of a bona fide reconstruction or amalgamation shall not amount to an Insolvency Event;

**"Insurances"**

all or any of the policies of insurance required to be maintained by the Supplier pursuant to this Contract as set out in paragraph 2 of schedule 2.6 (Insurance Requirements);

**"Intellectual Property Rights" or "IPRs"**

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- (c) all other rights having equivalent or similar effect in any country or jurisdiction;

**"IPR Claim"**

any claim that the use of or possession by the Customer, or use by the Supplier in the performance of its obligations under this Contract of:

- (a) IPR used to provide the Services;
- (b) the Software; or

- (c) any other materials provided by the Supplier (or to which the Supplier has provided access) to the Customer in the fulfilment of the Supplier's obligations pursuant to this Contract,

infringes IPR of a third party;

**"IT Service Continuity or ITSC"** the Supplier's IT service continuity functions which contribute to and support the end-to-end ITSCM function;

**"IT Service Continuity Management" or "ITSCM"** an end-to-end managed IT Service Continuity function to coordinate and integrate the approach to managing all ITSCM Events and activities, across all Customer systems, including those of third party suppliers, that impact, or have the potential to impact, on IT service continuity and its onward impacts on delivery of business services;

**"IT Service Continuity Management Event" or "ITSCM Event"** an event which prevents the Supplier from providing all or a material part of the Services or an event which prevents a Third Party Provider from providing all or a material part of any services such Third Party Provider provides to the Customer;

**"IT Service Continuity Plan" or "ITSC Plan"** a plan developed and maintained by the Supplier in accordance with section 25 of the Responsibility Matrix in schedule 2.1 and Schedule 8.6, detailing the processes and procedures to be followed in order to recover from and support recovery from an ITSCM Event;

**"Key Personnel"** those members of the Supplier Personnel described in schedule 9.3 (Key Personnel) as such is modified by agreement by the Parties;

**"Key Sub-contract"** means each Sub-contract with a Key Sub-contractor;

- "Key Sub-contractor"**
- (a) each of the Key Sub-contractors listed as such in paragraph 1 of schedule 4.3 (Notified Sub-contractors);
  - (b) any Sub-contractor replacing any Key Sub-contractor listed as such in paragraph 1 of

	schedule 4.3 (Notified Sub-contractors);
	(c) any Sub-contractor which in the reasonable opinion of the Customer performs a business critical role in the provision of the Services;
<b>"Know-How"</b>	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the Supplier's or the Customer's possession before this Contract;
<b>"Law"</b>	any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;
<b>"Liability Year"</b>	means each consecutive 12 month period commencing on the Commencement Date;
<b>"Licence Terms"</b>	the licence terms set out in schedule 5.2 (Licence Terms);
<b>"Liquid Key Sub-contractor Market"</b>	means that there are sufficient willing parties (being at least two parties, each of whom is capable of being a substitute Key Sub-contractor) in the market of similar contracts for the provisions of the services (in each case similar to the existing Key Sub-contract) for a price which is fair value;
<b>"List x"</b>	means, in relation to a Sub-contractor, one who has been placed on List x in accordance with Ministry of Defence guidelines and procedures, due to that Sub contractor undertaking work on its premises marked as CONFIDENTIAL or above;
<b>"Man Day"</b>	means 7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
<b>"Man Hours"</b>	means the hours spent by the Supplier Personnel properly working on the Services including time spent travelling (other than to and from the

	Supplier's offices, or to and from the premises at which the services are to be principally performed) but excluding lunch breaks;
<b>"Malicious Software"</b>	any software program or code intended to destroy, interfere with, corrupt, or enable unauthorised access to, or cause other undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
<b>"Management Information"</b>	the management information specified in schedule 2.2 (Service Levels), schedule 7.1 (Charges and Invoicing) and schedule 8.1 (Governance) to be provided by the Supplier to the Customer;
<b>"Milestone"</b>	an event or task described as a "Milestone" in the Implementation Plan which, if applicable, must be completed by the relevant Milestone Date, including a milestones in respect of Authority to Proceed and any CPP;
<b>"Milestone Achievement Certificate"</b>	has the meaning given in schedule 6.2 (Testing Procedures);
<b>"Milestone Date"</b>	the date set against the relevant Milestone in the Implementation Plan;
<b>"Milestone Payment"</b>	a payment identified in schedule 7.1 (Charges and Invoicing) made following the issue of a Milestone Achievement Certificate;
<b>"month"</b>	a calendar month, and "monthly" shall be interpreted accordingly;
<b>"Net Book Value"</b>	the value of any item being its purchase price less an amount equal to the amortisation of such item in a straight line at the time such value is to be calculated;
<b>"New Project"</b>	new projects or tasks which fall outside of and/or are ancillary to the scope of the Services described in this Contract and which are identified from time to time by the Customer or the Supplier pursuant to



**clause 16** (Services Improvement);

**"Non-conformance Report"**

a report including detail of the reasons why any Test has failed or of any non-conformities in respect of any Milestone;

**"Open Book Accounting" or  
"Open Book"**

means:

- (d) maintenance of separate records of the following:
  - (i) full particulars of the costs of performing the Services, including those related to finance, investment and maintenance of the Supplier System;
  - (ii) a summary of any of the costs referred to above, including details of any funds held by the Supplier specifically to cover such costs, in such form and detail as the Customer may reasonably require to enable the Customer to monitor the performance by the Supplier of its obligations under this Contract;
  - (iii) such other records as the Customer may reasonably require having regard to the cost to the Supplier of maintaining and providing such records;
- (e) the keeping of books of account in accordance with best accountancy practice with respect to this Contract showing in detail:
  - (i) administrative costs
  - (ii) payments made to sub-contractors
  - (iii) capital and revenue expenditure,

and

- (iv) such other items as the Customer may reasonably require in order to conduct cost audits for verification of cost expenditure or estimate expenditure, for the purposes of this Contract;

the making available of books of account for inspection by the Customer which shall only be requested by the Customer acting in good faith, and if reasonably requested a report of these;

**"Open Source Software"  
("OSS")**

any third party software code which is licensed upon terms which materially conform to either:

- (a) the Open Source Definition laid down by the body known as the Open Source Initiative at the relevant time; or
- (b) any generally accepted replacement for or alternative to such Open Source Definition at the relevant time;

**"Operational Phase"**

the phase in which the Supplier will deliver the Operational Services, identified as such in the Implementation Plan and commencing from the Operational Service Commencement Date;

**"Operational Service  
Commencement Date"**

the date on which the Operational Services commence as identified in the Implementation Plan;

**"Operational Services"**

the operational services described as such in the Services Requirements;

**"Operations Manual"**

a framework of operational processes and procedures documents for the delivery of the Services;

**"Operating Environment"**

the Customer System and the Sites;

**"Outline Business Case"  
("OBC")**

has the meaning given to it in Schedule 11 (New Projects Schedule);

**"Outline Implementation Plan"**

means the plan set out at paragraph 2 of schedule

6.1 (Implementation Plan);

**"Overhead"**

means those costs which are intended to recover a proportion of the Supplier's indirect corporate costs, which shall not include any Base Costs or Capital Costs or any cost separately included in the Base Cost or Capital Cost;

**"Partial Termination"**

the partial termination of this Contract to the extent that it relates to the provision of any part of the Service as further provided for in clause 59.5 (Termination);

**"Parties"**

means the Customer and the Supplier, and includes their permitted successors and assigns;

**"Personal Data"**

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

**"Planned ATP Milestone Date"** 1 April 2015

**"Pre-Operational Phase"**

the phase during which the Supplier will deliver Pre-Operational Services, being the period from the Commencement Date until the date of successful achievement of the ATP Milestone (as recorded in the appropriate Milestone Achievement Certificate);

**"Pre-Operational Services"**

the services provided by the Supplier for the design, build, test, implementation and roll out of the Operational Services as described in the Services Requirements;

**"Process"**

has the meaning given to it under the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic processing and "Processing" and "Processed" shall be construed accordingly;

**"Problem"**

means the underlying cause of one or more Incidents;

**"Prohibited Act"**

the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer a financial or other advantage

to:

- (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- (c) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation creating offences concerning fraudulent acts;
  - (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Customer; or
  - (iv) defrauding, attempting to defraud or conspiring to defraud the Customer;

**"Project"**

the provision of the Services by the Supplier to the Customer as contemplated by this Contract;

**"Project Specific IPRs"**

- (a) IPRs in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items; and/or
- (b) IPRs arising as a result of the performance of the Supplier's obligations under this Contract;

but which shall not include the Supplier's

Background IPRs, IPRs in the Database or the Specially Written Software;

**"Quality Criteria"**

the criteria in the PRINCE 2 product description for the relevant product to be provided by the Supplier as referred to in 3B and 3C of Schedule 2.1 (Services Requirements) and in Appendix 1 to Schedule 6.1 (Implementation Plan);

**"Quality Plans"**

the Supplier's plan that reflects the quality management systems as further described in clause 15 (Quality Assurance and Performance Monitoring);

**"Rating Agency"**

the rating agencies listed in Appendix 1 to schedule 7.4 (Financial Distress);

**"Registers"**

has the meaning set out in paragraph 2.1 of schedule 8.5 (Exit Management);

**"Reclaimable Milestone Payments"**

Milestone Payments which:

- (a) have been paid to the Supplier in respect of the achievement of Milestones; and
- (b) are expressed as being reclaimable in paragraph 2 of schedule 7.1 (Charges and Invoicing);

**"Regulatory Bodies"**

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

**"Release"**

means a set of related changes to, or the introduction of a new Application, which are scheduled for simultaneous implementation which typically form a single regression test baseline point;

**"Release Management"**

means the management service to be provided by the Supplier as described in schedule 2.1 (Services

	Requirements) to manage the release process which includes the planning, packaging, scheduling, testing, authorising and implementation of Releases;
<b>"Relevant Conviction"</b>	a Conviction that is relevant to the nature of the Services to be provided;
<b>"Relevant Requirements"</b>	has the meaning given to it in clause 68.2.1;
<b>"Remedial Plan"</b>	the plan referred to in clause 60 (Remedial Plan Process) to correct a material Default;
<b>"Remedial Plan Process"</b>	the process set out in clause 60 (Remedial Plan Process);
<b>"Renewal Period"</b>	the period by which the Initial Term of the contract is extended as referred to in <b>clause 58.2</b> (Term);
<b>"Repair"</b>	means to implement a measure such that no subsequent steps are required to permanently rectify the Incident or rectify the Problem;
<b>"Replacement Supplier"</b>	any third party service provider of Replacement Services appointed by the Customer from time to time;
<b>"Replacement Services"</b>	any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Contract, whether those services are provided by the Customer internally and/or by any third party;
<b>"Representatives"</b>	either or both of the Customer Representative and the Supplier Representative;
<b>"Request for Information"</b>	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>"Required Action"</b>	has the meaning given in clause 64.7.1 (Step-In Rights);
<b>"Responsibility Matrix"</b>	means where used in schedule 2.1 (Services Requirements), the tables headed "Responsibility

	Matrix";
<b>"Revised Milestone Date"</b>	any revised date which is set for the Achievement of a Milestone;
<b>"Root Cause Analysis"</b>	the analytical activity to be undertaken to determine the underlying cause of a Incident or Problem;
<b>"RPIx"</b>	shall have the meaning given at clause 1.7;
<b>"Security Management Plan"</b>	the Supplier's security management plan prepared pursuant to paragraph 3 of schedule 2.5 (Security Management Plan) and as attached as in Appendix 1 to schedule 2.5 (Security Management Plan);
<b>"Security Policy"</b>	the Customer's security policy referred to in paragraph 3 of schedule 2.5 (Security Management Plan);
<b>"Security Management Plan"</b>	Has the meaning given to it in Schedule 2.5 (Security Management Plan)
<b>"Security Standards"</b>	the Standards in relation to security which the Supplier is required to adhere to in performance of the Services which are set out in paragraph 2.1 of schedule 2.3 (Standards);
<b>"Self Help"</b>	means a system providing Users with the capability to undertake their own Incident diagnosis and resolution and satisfy information requests through the use of frequently asked questions and a knowledge database. Self Help must have a confirmation process to verify resolution;
<b>"Service Charges"</b>	periodic payments made in accordance with schedule 7.1 (Charges and Invoicing) in respect of the supply of the Operational Services;
<b>"Service Credits"</b>	the sums payable in respect of the failure by the Supplier to meet one or more Service Levels as specified in schedule 7.1 (Charges and Invoicing);
<b>"Service Delivery Board"</b>	has the meaning given to it in <b>Schedule 8.1</b> (Governance);
<b>"Service Delivery Managers"</b>	has the meaning given to it in <b>Schedule 8.1</b>

	(Governance);
<b>"Service Desk"</b>	the service desk to be provided by the Supplier pursuant to the Services Requirements and Supplier's Solution;
<b>"Service Failure"</b>	means a failure to deliver any part of the Services in accordance with the Service Levels;
<b>"Service Points"</b>	Has the meaning given to it in Schedule 2.2 (Service Levels)
<b>"Service Levels"</b>	the levels of service required to be provided, as prescribed in schedule 2.2 (Service Levels);
<b>"Service Notification Threshold"</b>	the level as prescribed in schedule 2.2 (Service Levels) which triggers a notification event under sub-clause 11.3 of this Contract;
<b>"Service Threshold"</b>	has the meaning given to it in Schedule 2.2 (Service Levels);
<b>"Services"</b>	any and all of the services to be provided by the Supplier under this Contract including those set out in schedule 2.1 (Services Requirements);
<b>"Services Requirements"</b>	the description of the Services set out in schedule 2.1 (Services Requirements);
<b>"Services Employees"</b>	those employees of the Supplier who shall from time to time be engaged in the performance of the Services in the relevant part of the undertaking within the Supplier and who may be transferred on the expiry or termination of this Contract under the Employment Regulations to the Customer or a Replacement Supplier;
<b>"Sites"</b>	any premises from which the Services are provided or from which the Supplier manages, organises or otherwise directs the provision or the use of the Services or where any part of the Supplier System is situated or where any physical interface with the Customer System takes place;
<b>"Software"</b>	as applicable:  (a) any Specially Written Software, Supplier



Software and Third Party Software which is provided by the Supplier by way of a Change or a New Project; or

(b) any Customer Software;

**"Source Code"**

computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all technical information and documentation necessary for the use, reproduction, modification and enhancement of such software;

**"Specially Written Software"**

any software created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract;

**"Specific Change in Law"**

a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply;

**"Staff Transfer"**

the transfer of staff pursuant to the Employment Regulations under this Contract;

**"Staff Vetting Procedures"**

the Customer's procedures and departmental policies set out Annex 1 of Schedule 2.3 (Standards) for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989;

**"Standard Licence Terms"**

the licence terms set out in schedule 5.2 (Licence Terms);

**"Standards"**

the British or international standards, the Customer Specific Policies and the Security Standards referred to in schedule 2.3 (Standards) together with any other specified policies or procedures identified in schedule 2.3 (Standards) as updated from time to time during the Term;

**"Step-In-Notice"**

shall have the meaning given in clause 64.6 of this Contract;

<b>"Step-Out Date"</b>	shall have the meaning given in clause 64.10.2 of this Contract;
<b>"Step-Out Notice"</b>	shall have the meaning given in clause 64.10 of this Contract;
<b>"Step Out Plan"</b>	shall have the meaning given in clause 64.11 of this Contract;
<b>"Sub-contract"</b>	any contract or agreement or proposed contract or agreement between the Supplier (or any agent, servant or sub-contractor of the Supplier) and any third party whereby that third party agrees to provide to the Supplier (or the relevant agent, servant or sub-contractor of the Supplier) the Services or any part thereof or facilities or services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
<b>"Sub-contractor"</b>	the third party with whom the Supplier (or any agent, servant or sub-contractor of the Supplier) enters into a Sub-contract;
<b>"Supplier's Final Tender"</b>	the final tender submitted by the Supplier to the Customer on 14 <sup>th</sup> October 2014;
<b>"Sub-contractor Financial Distress Event"</b>	the occurrence of one or more of the events referred to in paragraph 3.1 of schedule 7.4 (Financial Distress) in respect of a Key Sub contractor;
<b>"Supplier's Background IPRs"</b>	<p>IPRs proprietary to the Supplier which is or will be used by the Supplier for the purposes of providing the Services which compromise:</p> <p>(a) IPRs owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or</p>

(b) IPRs created by the Supplier independently of this Contract,

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

**"Supplier's Confidential Information"**

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

**"Supplier Equipment"**

the hardware, computer and telecoms devices and equipment supplied by the Supplier or its Sub-contractor (but not hired, leased or loaned from the Customer) for the provision of the Services;

**"Supplier's Group"**

the Supplier, its ultimate holding company and all subsidiaries of its ultimate holding company, the definitions of "holding company" and "subsidiary" being those set out in section 1159 of the Companies Act 2006;

**"Supplier Materials"**

means the Supplier Software together with the Documentation relating to the Supplier Software;

**"Supplier Party"**

- (a) any officer, servant, agent, sub-contractor (of any tier) or Affiliate of the Supplier and any officer, servant or agent of such a person;
- (b) any person on or at any of the Sites at the express or implied invitation of the Supplier (other than the Customer);

**"Supplier Personnel"**

all employees, directors, officers, contractors, agents, consultants and suppliers of the Supplier and/or of any Sub-contractor;

**"Supplier Representative"**

the representative appointed by the Supplier

	pursuant to clause 23.1 (Representatives);
<b>"Supplier Software"</b>	software which is proprietary to the Supplier which is or will be used by the Supplier for the purposes of providing the Services but excluding any Specially Written Software;
<b>"Supplier's Solution"</b>	the Supplier's solution for the Services attached to this Contract at schedule 4.1 (Supplier's Solution);
<b>"Supplier System"</b>	the information and communications technology system used by the Supplier in performing the Services including the Software, the Supplier Equipment and related cabling (but excluding the Customer System);
<b>"Term"</b>	the period commencing on the Effective Date and ending on the Expiry Date or on earlier termination of this Contract;
<b>"Technology and Strategy Board"</b>	the contract management board whose roles and responsibilities are outlined in schedule 8.1 (Governance);
<b>"Termination Notice"</b>	a notice to terminate this Contract or part of the Services either immediately or at a date specified in the notice;
<b>"Termination Payment"</b>	the payment calculated in accordance with the formula set out in paragraph 2 of schedule 7.2 (Payments on Termination);
<b>"Test," "Testing," and "Tested"</b>	as applicable: <ul style="list-style-type: none"> <li>(a) any tests required to be carried out under this Contract, as further described in schedule 6.2 (Testing Procedures); or</li> <li>(b) in relation to any Hardware, any tests that are agreed as part of a New Project or a Change;</li> </ul>
<b>"Testing Procedures"</b>	the applicable testing procedures and Test Success Criteria set out in schedule 6.2 (Testing Procedures);

<b>"Test Success Criteria"</b>	the test success criteria referred to in paragraph 6 of schedule 6.2 (Testing Procedures);
<b>"Third Party Agreements"</b>	the agreements identified in schedule 2.9 (Transferred Assets);
<b>"Third Party Item"</b>	shall have the meaning set out in clause 25.13 of this Contract;
<b>"Third Party Materials"</b>	the Third Party Software together with the Documentation relating to the Third Party Software;
<b>"Third Party Provider"</b>	a provider that is not a party to this Contract;
<b>"Third Party Software"</b>	software which is proprietary to any third party other than an Affiliate of the Supplier (and in which IPRs are not owned by the Supplier) which is or will be used by the Supplier for the purposes of providing the Services or provided by the Supplier by way of a New Project or a Change, and including OSS but excluding any Specially Written Software;
<b>"Time and Materials Charges"</b>	shall have the meaning given in paragraph 8.2 of schedule 7.1 (Charges and Invoicing);
<b>"UK"</b>	the United Kingdom;
<b>"Updated Financial Model"</b>	means the Base Case Financial Model as updated pursuant to paragraph 5.1 of schedule 7.5 (Financial Model);
<b>"Use"</b>	<p>(a) with respect to the Standard Licence Terms, the right to load, execute, store, transmit, display and copy (for the purposes of loading, execution, storage, transmission or display) that Software;</p> <p>(b) with respect to the Enhanced Licence Terms for Software, the right to load, execute, store, transmit, display, copy (for the purposes of loading, execution, storage, transmission or display), modify, adapt, enhance, reverse compile, decode, translate, or otherwise utilise that Software; and</p>

- (c) with respect to the Enhanced Licence Terms for Project Specific IPR other than Software, the right to copy, adapt, publish (including on the ICT Environment), distribute or otherwise use any other Project Specific IPR; and
- (d) with respect to the Enhanced Licence Terms for Supplier's Background IPR or IPRs owned by a third party, the right to copy, adapt, publish (including on the ICT Environment) distribute or otherwise use such IPR;

**"User"** means any person authorised by the Customer to access and use the Customer's Systems;

**"VAT"** value added tax as provided for in the Value Added Tax Act 1994;

**"Warning Notice"** has the meaning given in sub-clause 15.10;

**"Workforce Code"** the Code of Practice on Workforce Matters in Local Authority Service Contracts;

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

**"Working Satisfactorily"** means that the Services are provided to such a standard that:

- (a) the aggregate number of Service Points does not equal or exceed [redacted] Service Points over a period of [redacted] consecutive months;
- (b) an agreed Correction Plan is in place to remedy any Service Failures (if required pursuant to the terms of the Contract); and
- (c) there have been no Critical Service Failure or Service Failures below the Service Threshold

## **SCHEDULE 2.1**

### **SERVICES REQUIREMENTS**

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1. **DEFINITIONS**

Refer to Schedule Part 1 (Definitions)



## 2. **ICT SERVICE REPORTING AND SERVICE REVIEW**

The Supplier shall:

- (a) collate and format service performance statistics and supporting information in a format agreed with the Customer;
- (b) prepare and publish adequate and accurate service performance reports to demonstrate delivery against Service Levels for each ICT service identified;
- (c) provide monthly service performance reports to the Customer by the end of the fifth (5<sup>th</sup>) Working Day of the new calendar month unless agreed otherwise;
- (d) implement a web-based portal for the Customer that shall enable all reports to be held and viewed electronically by appropriate Customer personnel;
- (e) provide digital dashboard presentation of information where appropriate;
- (f) implement access controls to restrict access to various reports to various users as specified by the Customer;
- (g) for all resolved incidents, provide 10% of representative users (as defined by the Customer) who logged the incident with a follow up contact to assess their satisfaction with the resolution of the call and report this monthly. The format of this shall be agreed with the Customer. All negative comments shall be investigated by the Supplier and the outcome of the investigations reported to the Customer;
- (h) implement and operate a complaints register and escalation register with monthly reporting;
- (i) grant the Customer or its agents the right to audit the service reports to determine if they represent a true and fair view of the Supplier's performance; and
- (j) conform to the Customer's report review requirements which may result in changes to the content, format and timing of such reports.

The primary interface for day-to-day service management shall be the Supplier's service desk, which shall monitor the performance against the agreed Service Levels and outputs, and shall provide the Customer with their specific ICT services reports.

Real time information – The Supplier's service desk personnel shall use the Supplier's system capabilities to monitor real-time Incident status information. The Supplier shall provide to the service desk personnel key metric information relating to the service performance.

The Supplier shall also implement a full infrastructure management solution based around an appropriate dashboard product set. This shall provide support staff with critical information on the current service.

Services Report - The Supplier shall provide the Customer on a monthly basis a report outlining the performance of all areas of the service provided against the agreed Service Levels.

The services reports shall be presented by the Supplier during the monthly service review with the Customer's client managers. This is in addition to the online reporting that shall be available to the Customer on a day-to-day basis.

The appropriate members of the delivery areas shall be in attendance and available to explain any changes to the service. The services report shall cover performance against Key Performance Indicators and shall also report on key events such as projects and activities during the reporting period.

The format of the services report shall contain all of the information as set out in this schedule and shall be finalised with the Customer during the transition phase. Examples of the type of information contained in the report shall include but not be limited to:

- (i) Call statistics – number of calls, pick up rate, number of abandoned calls.
- (ii) Complaints and major incidents;
- (iii) First time fix rate – number of calls fixed whilst the user is on the phone as a percentage.
- (iv) Analysis of calls by severity and by fix group.
- (v) Customer surveys – number completed and the scores.
- (vi) Number outstanding incidents – by length and severity.
- (vii) Number of service requests – implemented, waiting by implementation area.
- (viii) Continuous improvement – completed, planned.

- (ix) Project status – RAG report on current projects.
- (x) Capacity management – reports on key capacity areas

### **Digital Dashboard**

On-line monitoring and reporting of the Customer's ICT service shall also be performed by the integrated toolset. The toolset shall give centralised visibility and control of the Customer's ICT estate.

The online tool shall provide the Customer with customised data based upon permissions with extensive drill down capabilities.

### **Customer Satisfaction**

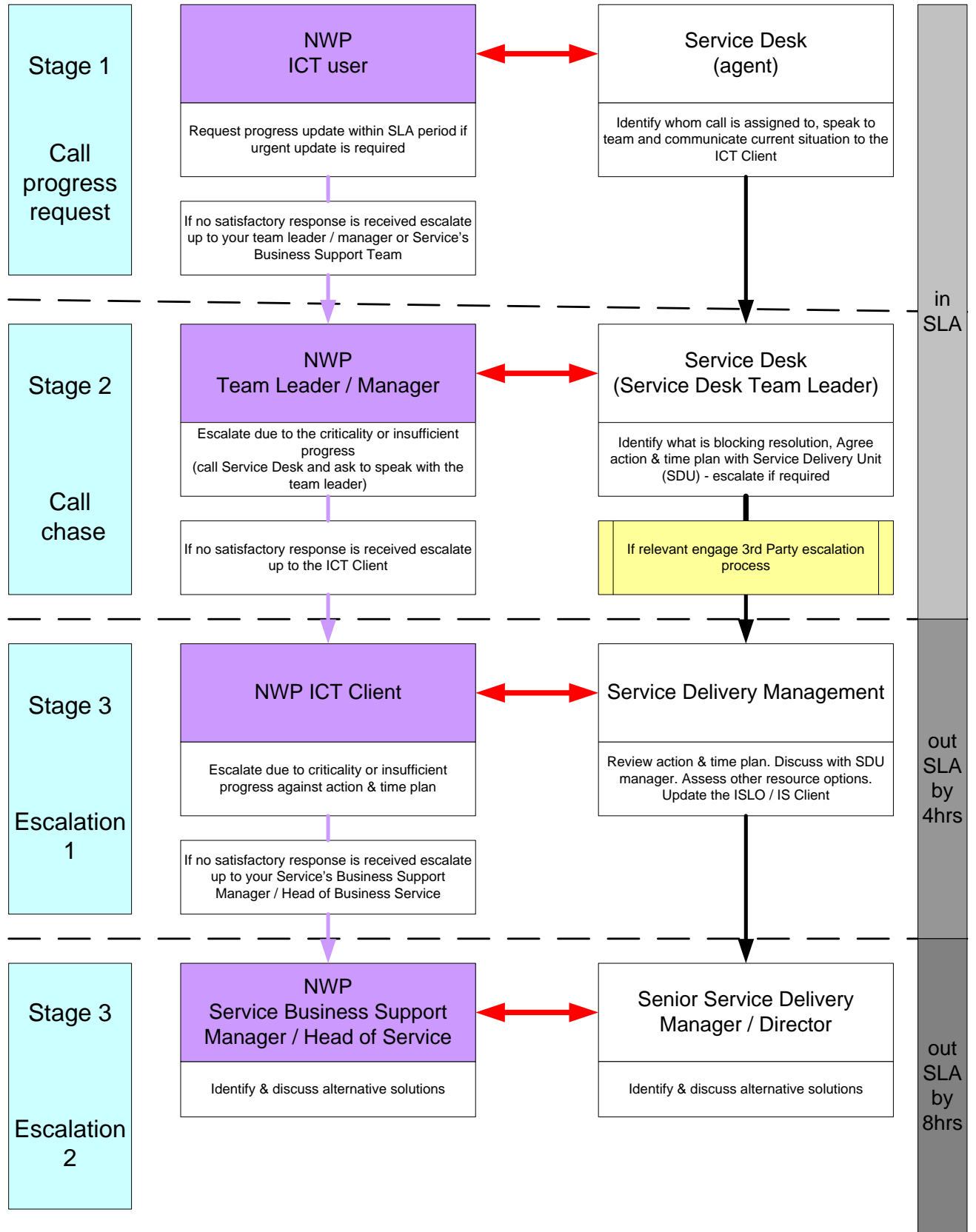
The Supplier shall measure customer satisfaction using an appropriate survey tool.

The Supplier shall measure user satisfaction monthly using data gathered from surveying 10% of all resolved incidents (please note that as, at present, 100% of all incident responses will allow a self-service form to be completed by the user) . The measures shall lead to the publication of user perception ratings for various elements of the service. This user perception level shall be reported to the relevant governance group and any scores not meeting the agreed targets shall be investigated and actioned appropriately.

### **Escalation**

The Supplier shall maintain an escalation register. The initial point of escalation shall be via the service desk that shall then pass it on to the respective and appropriate Supplier personnel who shall act as the escalation channel for any issues relating to service delivery. If escalation is unable to resolve the service issues further escalation shall be made using the formal escalation process agreed with the Customer as described below and overleaf.

# Escalation process



## Audit

The Supplier acknowledges and accepts the requirement of the Customer for the right to audit the performance reports to determine that they reflect a true view on the service delivery in accordance with the agreement.

The Customer shall establish a client management team for the Supplier to engage with on a day-to-day basis.

The following responsibility matrix specifies in further detail the respective roles and responsibilities of each party.

<b>Roles and Responsibilities</b>	<b>Supplier</b>	<b>Customer</b>
<b>Service Reporting</b>		
1. Define service level requirements and reporting cycles.		<b>X</b>
2. Document service-level objectives and requirements.	<b>X</b>	
3. Manage and track and report on application defects.	<b>X</b>	
4. Measure and analyse performance relative to requirements.	<b>X</b>	
5. Develop improvement plans.	<b>X</b>	
6. Authorise and approve improvement plans.		<b>X</b>
7. Implement improvement plan.	<b>X</b>	
8. Report service-level results.	<b>X</b>	
9. Coordinate monitoring and reporting with the service desk.	<b>X</b>	
10. Provide appropriate metrics and measures of performance to appropriate Customer representatives.	<b>X</b>	

### 2.1 **Transition**

The Customer and Supplier shall work together to achieve the transition activities and 'to be' outcomes outlined below in accordance with the Agreement and relevant schedules.

The Supplier shall:

<b>Transition</b>	<b>Transition Outcomes</b>
(a) Identify and understand the current ICT service reports. (b) Agree the metrics and measures that shall form part of the service reporting solution. (c) Agree the format, content and frequency of the service reports. (d) Review existing processes and inputs to service reporting. (e) Agree the digital dashboard requirements. (f) Discuss the approach and define the format, content and mechanism for customer satisfaction surveys	(a) Implementation of the Supplier's user satisfaction survey tool. (b) Develop complaints management processes with the Customer to improve resolution rate and improve service delivery. (c) Develop and implement the dashboards to support service reporting. (d) Ensure that the Customer can audit the performance reports.

requirements. (g) Discuss the approach and define the format, content and mechanism for customer satisfaction surveys.	
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## 2.2 ***Detailed Requirements***

### 2.2.1 Monthly and Quarterly Service Reviews

Each month the Supplier shall carry out a service review of the services which shall include but not be limited to:

- 2.2.1.1 establish whether the Supplier is providing the services in accordance with Schedule 2.2 (Service Levels) and other requirements of this Agreement;
- 2.2.1.2 assess the Supplier's performance of the services as against the KPIs and other PIs; and
- 2.2.1.3 the review shall meet the objectives stated in this schedule and shall be carried out on the basis of the detailed requirements of this ICT services reporting and service review section.
- 2.2.1.4 By the tenth (10th) Working Day of each month (or where the Supplier, having used reasonable endeavours to gather the information from Third Parties, does not have such information at this time, as soon as reasonably practical thereafter) the Supplier shall submit to the Customer a comprehensive and detailed written ICT service report carried out in accordance with this schedule and the main agreement, such reports to be based on a service review and to contain:
  - (a) a status report of the progress of any projects being undertaken by the Supplier;
  - (b) the results of the measurement of the Supplier's performance of the services including:
    - (i) system/network availability;
    - (ii) service desk calls analysis including by priority, type and department;

- (iii) service desk incidents;
- (iv) service desk performance;
- (v) performance against KPIs within Schedule 2.2 (Service Levels);
- (vi) security report;
- (vii) infrastructure performance and capacity report
- (viii) service requests analysis;
- (ix) financial/costing/billing analysis;
- (x) customer satisfaction;
- (xi) asset register;
- (xii) complaints register;
- (xiii) register of changes under change control procedure;
- (xiv) service improvement plan;
- (xv) where relevant, any further significant issues surrounding service performance which are not covered by the matters referred to in section 2 above and ways in which such issues have been addressed;
- (xvi) any other matters reasonably requested by the Customer; and
- (xvii) the Supplier's proposal for implementing the outcome of its review including the action which the Supplier proposes to take in order to improve its performance in the areas for improvement identified together with the timescales for taking that action and relevant information to enable the Customer to assess the actions identified as necessary in previous service reviews.

The Supplier shall ensure that each report clearly shows the results of the KPIs for the immediately preceding thirteen (13) service reviews such that the Customer can evaluate the monthly performance trend.

No later than ten (10) Working Days after the end of each quarter the Supplier shall submit to the Customer a comprehensive high level written summary report based upon the last three monthly services report. The purpose of the quarterly report is to provide a strategic overview of the Supplier's performance over the previous three (3) months. The report shall contain an action plan setting out newly proposed or previously agreed improvements or actions required of either party in order to enhance the delivery of the services and the progression and likelihood of success of the projects together with relevant timescales for such action.

#### 2.2.2 Annual service reviews

2.2.2.1 Prior to and after each review date the Supplier shall carry out a review of the provision of the services by or on behalf of the Supplier in the year up to the review date (including a review of the performance of relevant parts of the Supplier's organisation carrying out the services and any Sub-Suppliers). Such review shall take account of the relevant service development plan and compare the objectives in the service development plan with the actual provision of the services.

2.2.2.2 No later than twenty (20) Working Days after the relevant review date the Supplier shall submit to the Customer a comprehensive written report of the outcome of the annual service review, such report to contain:

- (a) an explanation of the process undertaken by the Supplier in carrying out the review;
- (b) results of the review of performance against KPIs and PIs and against the requirements of Schedule 2.2 (Service Levels) and the service credit regime and generally, including an analysis of trends and reasons for trends;
- (c) set out a detailed and transparent tracking of any proposed incremental improvements and any other changes to the Service Levels, against each relevant area of Schedule 2.2 (Service Levels) which is being supplemented, varied or replaced;
- (d) a status report on progress of any projects undertaken by the Supplier and details of work



undertaken by the Supplier in relation to proposals for projects in that year such information shall also be set out in the service development plan; and

- (e) set out the action which the Supplier proposes to take in order to improve its performance in the areas for improvement identified by the review together with the timescales for taking that action.

### 2.2.3 **Outcome of Service Reviews**

If the Customer is satisfied with the monthly, quarterly and/or annual service report issued by the Supplier, the Supplier shall forthwith implement the proposals set out in the service report (including any actions which have been identified) in accordance with the timescales set out in the report. If the Customer is not satisfied with the service report, the Customer shall (acting reasonably) suggest amendments or clarifications and provided they are reasonable, the Supplier shall make such amendment or provide such clarification of the monthly, quarterly and/or annual service report as reasonably requested by the Customer within ten (10) Working Days of the request by the Customer or such other period agreed between the parties.

The following provision applies to the conduct of annual service reviews. Upon acceptance of the report, the Supplier shall (if applicable and agreed) vary the Service Levels as set out in the report with effect from the date of acceptance of a Change raised in accordance with the Change Control Procedure.

In no circumstances shall the Service Levels or KPIs deteriorate or diminish as a result of the annual service review. If the Customer does not accept the outcome and proposals set out in the Supplier's report this agreement shall continue in full force and effect and neither the Service Levels, KPIs or any other provision of this Agreement shall change or be deemed to have changed as a result.

### 3. **PROJECT MANAGEMENT SERVICES**

The Supplier shall:

- (a) provide project management services, as required and requested by the Customer. The details of the project management services to be provided shall be agreed by the parties on an individual project basis;
- (b) ensure that any project management service provided uses the main elements of the PRINCE2™ methodology (e.g. project initiation, project planning, progress reporting, risk management, project organisation, project documentation management project closure and post implementation reviews) The Supplier shall conform to the Customer's requirements in respect of project gateway reviews unless agreed by the Customer to the contrary; The Supplier shall conform to changes required to project methodologies as a result of the project management reviews, changes to industry best practice or Customer requirements;
- (c) provide, maintain and make available to the Customer all project documentation, including management, specialist and quality documentation associated with the project and provide the Customer with a perpetual licence to use and distribute such documentation;
- (d) ensure that sufficient and adequate communication shall take place between the Supplier's project management staff and the Suppliers service management staff and where appropriate Customer staff to ensure that all aspects of project handover and exit are handled efficiently;
- (e) provide project progress information, by an on line project portal in addition to individual progress reports as required by the Customer in hard or soft copy format; and
- (f) ensure that any programme management provided uses the main elements of the "Managing Successful Programmes" (MSP®) methodology unless agreed by the parties to the contrary.

The Supplier shall provide project and programme management services as requested by the Customer. The Supplier shall seek to understand current operations, and then agree a framework within which to deliver project services, based upon the main elements of the MSP® and PRINCE2™ methodologies.

The overall aim of the service is to provide a project management service that shall ensure all project work is managed effectively; that is on time,

to budget, quality and specification, whilst also allowing the Customer to realise the benefits defined within the business case.

The Supplier can deploy its programme and project management resources for the Customer to either lead or support the Customer's in-house teams, or take responsibility for managing complete projects and work streams. In addition, the Supplier shall put in place a fully resourced Programme Management Office (PMO). This shall include supporting task management and administration resources, and the critical internal and external communications function.

The Supplier shall provide continuity of project resources to the Customer by assigning a core project team for each individual project engagement, with the necessary project management skills and the required technical skills. Specialist and additional resources shall be added if required by a particular project or projects. The Supplier shall provide project managers to the Customer to manage projects from the Supplier's resource pool or by use of third parties. The skill levels and experience required for any particular project shall be taken into account by the Supplier before assignment, or in the case of a project manager new to the Customer, before that project manager is proposed.

The Supplier shall establish a process allowing the Customer to review CVs and interview potential project managers new to the Customer when they are proposed for particular projects. Once individual Supplier staff have been assigned to a Customer project, the Supplier shall provide continuity of these personnel for the duration of the project engagement.

The Supplier shall agree with the Customer a flexible commercial model for the delivery of project and programme services; designed to ensure that the Customer receives value for money and only pays for project services that have been used.

The Customer shall: hand over or procure the handover of the documentation for any projects that are underway that shall transfer to the Supplier on the Commencement Date.

The following responsibility matrix specifies in further detail the respective roles and responsibilities of each party.

<b>Roles and Responsibilities</b>	<b>Supplier</b>	<b>Customer</b>
<b>Project Management Services</b>		
1. Determine and agree the strategic development plan for new projects required by the Customer on an annual basis.		<b>x</b>
2. Provide project managements services in support of the Customer's strategic development plan.	<b>x</b>	
3. Attend individual project board meetings for projects as required by the project board.	<b>x</b>	
4. Attend the Customer's corporate project planning meetings on a quarterly basis or as otherwise required up to a maximum number of 6 per annum.	<b>x</b>	
5. Take responsibility for managing individual projects within the framework of the PRINCE2™ project management methodology as required by the Customer utilising all the key attributes of the methodology as appropriate to the size and complexity of the project and including the development and maintenance of appropriate project documentation.	<b>x</b>	
6. Provide Programme Management services within the framework of the OGC's MSP® methodology or as otherwise required by the Customer and including the development and maintenance of appropriate programme documentation.	<b>x</b>	
7. Approve project and programme plans submitted by the Supplier.		<b>x</b>
8. Authorise the initiation of all projects and Programmes.		<b>x</b>
9. Initiate the development of business cases in accordance with the Customer's agreed methodology.		<b>x</b>
10. Provide business case development services as required by the Customer.	<b>x</b>	

### 3.1 Transition

The Customer and Supplier shall work together to achieve the transition activities and 'to be' outcomes outlined below, in accordance with the Agreement and relevant schedules.

The Supplier shall;

<b>Transition</b>	<b>Transition Outcomes</b>
<ul style="list-style-type: none"> <li>(a) Evaluate and define a plan to intercept, deliver or monitor the delivery of in-flight projects by the Customer or third parties as appropriate.</li> <li>(b) Understand current project authorisation and sign-off processes.</li> <li>(c) Agree commercial arrangements for delivery of Projects.</li> <li>(d) Agree with the Customer the content, format, timing of any project reports.</li> </ul>	<ul style="list-style-type: none"> <li>(a) Deliver an agreed plan for taking over and delivering in flight projects.</li> <li>(b) Familiarise Customer staff involved in project delivery under Supplier management in PRINCE2™ and authorisation processes. Establish an agreed way of managing and tracking all projects from request through to delivery and business benefit realisation.</li> <li>(c) Establish the ground rules for commissioning projects and detailed arrangements for</li> </ul>

	paying for project management services and milestone /deliverables.
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#### 4. **SERVICE AND SERVICE DESK MANAGEMENT**

The Supplier shall:

- (a) provide a service desk for all the ICT services which shall manage all service and support requests through multiple communications channels including but not limited to phone, email and web portal. The service desk shall be the primary point of user contact with the Supplier for incident reporting, problem management and resolution, change requests, service extensions and ad-hoc requests; and provide reasonable advice, information and guidance on all service related matters. The service desk shall be available at the times specified with each level of service required and shall have a designated single telephone number and shall use a single designated email address and have an associated self-service web portal with the ability to track the progress of incidents and requests;
- (b) provide the ability to log calls outside the core service desk hours;
- (c) allow for all calls to be logged/registered onto the Supplier's service desk;
- (d) prioritise and resolve each call according to the severity of incident in accordance with the Service Levels;
- (e) ensure the service desk shall co-ordinate fault resolution and incident management for all incidents and enquiries relating to the services through the service desk including those relating to third party suppliers;
- (f) provide first line support to users so that operational incidents and queries are resolved as quickly as possible;
- (g) provide and manage an asset management service (including an asset register) for all Configuration Items and ensure that a comprehensive and accurate asset register is maintained at all times and a knowledge base is built up about assets and any related incidents. Access to the asset register shall be provided to nominated Customer staff; and
- (h) resolve support calls in line with the requirements of Schedule 2.2 (Service Levels).
- (i) implement, deliver and maintain a customer care policy to support the users. The policy shall ensure that the Supplier complies with all of the requirements relating to the service desk and that in particular:
  - (i) service desk staff respond to users in a professional and courteous manner;

- (ii) service desk staff follow up complaints and enquiries; and
  - (iii) the Supplier takes ownership of and responsibility for all support calls until the call is resolved.
- (j) use appropriate management systems and tools to enable support calls to be logged, tracked, analysed and escalated;
  - (k) use appropriate management systems to promote user knowledge and competency including answers to frequently asked questions;
  - (l) provide a web based system which shall allow a user to log and track all support calls logged on a 24x7 basis irrespective of the method the support call was originally communicated to the service desk. Appropriate access, including report generation, to Customer service management records to be provided for up to 8 Customer authorised users;
  - (m) notify key Customer staff of call resolutions and closure for all severity 1 and 2 incidents via email;
  - (n) notify the Customer via SMS of open and closed severity 1 and 2 incidents to a designated list of Customer staff;
  - (o) provide user self service facilities, these shall include password reset options; and
  - (p) develop appropriate Operational Level Agreements with all third party suppliers and Customer internal teams with agreed responsibilities in relation to the resolution of particular service issues.

Service desk staff shall assign a severity level with the user to the agreed severity level definitions and standards.

The service desk staff shall gather and record as much information as necessary concerning the incident and attempt an initial resolution at the first point of contact. Where this is not possible then the call shall be passed to the agreed resolver group. These incidents shall then be tracked and progressed until closure. When incidents are likely to exceed their agreed performance levels then the service desk staff shall escalate the incidents as per the escalation process.

When it is believed that an incident is resolved then the service desk shall contact the end user (if available) and ensure that it is fixed to his/her satisfaction and shall then close the incident otherwise it shall be placed in a pending state awaiting user feedback. Where the user reports that the incident is not resolved then the incident shall be returned to the relevant party for further investigation.

The service desk shall generate statistics and shall produce reports in the agreed format as part of the agreed service monitoring arrangements.

All service desk agents shall have access to system management tools to enable them to remotely diagnose, manage and resolve incidents and access both internal and external knowledge repositories. End users shall be able to access frequently asked questions held on these knowledge repositories.

The toolset that is used by the service desk agents shall also record all asset information and populate the system with the information related to the user and their associated assets.

The Supplier shall use the toolset to ensure that user satisfaction surveys are performed in accordance with the requirements of the Customer. The output from this shall be reported on in the monthly service review and actioned accordingly.

The Supplier shall also enable users to perform self-service password resets via an appropriate tool.

The following responsibility matrix specifies in further detail the respective roles and responsibilities of each party.



<b>Roles and Responsibilities Matrix</b>	<b>Supplier</b>	<b>Customer</b>
<b>General</b>		
1. Monitor and manage incidents until successful incident resolution	<b>X</b>	
2. Assist users or operations with output devices (printers, MFDs) problems 3. Communicate any temporary changes to Service Levels or service degradation and any relevant scheduled maintenance information.	<b>X</b>	
4. Define policies and procedures		<b>X</b>
5. Enable self help features for support	<b>X</b>	
6. Utilise remote controls for troubleshooting desktop from remote locations	<b>X</b>	
7. Ensure that root cause analysis is performed and reported on all recurring incidents	<b>X</b>	
<b>Planning &amp; Analysis</b>		
8. Perform service desk capacity monitoring and planning	<b>X</b>	
9. Perform service desk staffing analysis to ensure service desk is staffed with personnel having the appropriate sets of skills, training, and experience in line with Customer capacity and technology	<b>X</b>	
10. Design service desk physical layout	<b>X</b>	
11. Install/test/maintain service desk systems and portals	<b>X</b>	
<b>Operations &amp; Administration</b>		
12. Staff and maintain a service desk as per the Customer's requirements	<b>X</b>	
13. Provide single point of contact (SPOC) for all Customer end-user requests for assistance for all in-scope areas	<b>X</b>	
14. Provide SPOC call-in access via a charge-free number for all in-scope locations and business regions	<b>X</b>	
15. Monitor and respond to service requests submitted via email and other communication channels	<b>X</b>	
16. First point of contact for all problem determination and resolution.	<b>X</b>	
17. Categorise and log ICT information requests incidents/problems/service requests in accordance with agreed processes and standards	<b>X</b>	
18. Resolve incident/problem request/service resolution requirements	<b>X</b>	
19. Restore and/or resolve inquiry/problem within prescribed time limits, if possible, otherwise escalate to appropriate Level	<b>X</b>	

20. Identify problem characteristics and, wherever possible, root cause analysis in order to create a knowledge management repository	X	
21. Notify the Customer and vendor management as required	X	
22. Issue broadcast messages regarding system status approved by the Customer	X	
23. Monitor and manage problems until successful problem resolution	X	
<b>Root Cause Analysis</b>		
24. Flag all Severity Level 1 and Severity Level 2 Incidents as requiring root cause analysis	X	
25. Ensure that appropriate resources within the Supplier are assigned as may be necessary to identify and remedy the failure, and track and report any consequences of the failure	X	
26. Identify root cause of Severity 1 and Severity 2 level problems or failures and recommend appropriate resolution action, where/whenever possible	X	
27. Track and report on progress of all Severity 1 and Severity 2 level problems that are escalated to Level 2 support to ensure that root cause analysis performed and reported on (incident reports / tickets to remain open until root cause analysis report is completed and submitted)	X	
28. Provide the Customer with a written report detailing the cause of and procedure for correcting such failure; provide updates on a monthly basis until closure	X	
29. Substantiate to the Customer that all reasonable actions have been taken to prevent recurrence of such failure	X	
30. Review and approve actions for resolution of problems as reported in root cause analysis recommendations		X
<b>Asset Management</b>		
31. Manage/track service orders	X	
32. Coordinate delivery and installation of new products and services	X	
33. Ensure compliance with established Customer ICT standards and architectures	X	
34. Adhere to Customer acceptance process		
35. Terminate, dispose of, relocate assets as required by the Customer	X	
36. Recycle devices in accordance with the Customer asset disposal policies	X	
<b>Monitoring &amp; Reporting</b>		
37. Define service desk SLA		X
38. Document service-level objectives and agreements	X	
39. Measure and analyze performance relative to objectives and agreements	X	

40. Develop improvement plans where appropriate	<b>X</b>	
41. Authorise improvement plans where appropriate		<b>X</b>
42. Implement improvement plans	<b>X</b>	
43. Report service-level results	<b>X</b>	
44. Report service desk statistics and trends as requested	<b>X</b>	
45. Audit results & operations periodically		<b>X</b>
46. Reset passwords and disable accounts in accordance with the Customer's ICT standards and procedures as notified from time-to-time	<b>X</b>	

#### 4.1 Transition

The Customer and Supplier shall work together to achieve the transition activities and 'to be' outcomes outlined below in accordance with the Agreement and relevant schedules.

The Supplier shall:

Transition	Transition Outcomes
<ul style="list-style-type: none"> <li>(a) Examine the outgoing provider and Customer retained Resolver Groups (if appropriate) and evaluate the current processes.</li> <li>(b) Undertake a skills and process gap analysis with the proposed Supplier's service desk.</li> <li>(c) Define the critical systems and VIP users.</li> <li>(d) Define and begin the knowledge transfer from the outgoing provider and local resolver groups, in relation to the service to be provided by the service desk.</li> <li>(e) Define the operational model between service desk and supporting services (second and third line support) and service operation.</li> <li>(f) Begin set-up of the service operation activities including problem, change, event,.</li> <li>(g) Define asset and SLA reporting requirements in detail.</li> <li>(h) Undertake service desk recruitment and training .</li> <li>(i) create the Operations Manual and present this for</li> </ul>	<ul style="list-style-type: none"> <li>(a) Agree service catalogue items.</li> <li>(b) Establish Operational Level Agreements with all relevant third parties and Customer retained local resolver groups, which the service desk shall interact with.</li> <li>(c) Establish a 'User Forum' to represent user opinion in periodic meetings with the service desk and to agree a "User Charter" which shall cover the 'softer' customer service elements not formally agreed through SLA measures.</li> <li>(d) Agree the format for the customer surveys and implement the tool.</li> <li>(e) Implement password and other self-service systems and processes.</li> <li>(f) Create and deliver, with the Customer, a publicity campaign highlighting the channels of communication into the ICT services (primarily the service desk)</li> <li>(g) Familiarise Customer staff with Supplier's "Customer Care Policy".</li> </ul>

<p>Customer review</p> <p>(j) Implement the Provider's service management toolset.</p> <p>(k) Establish the local Customer Resolver Groups.</p> <p>(l) Bring into service an Automatic Call Delivery ("ACD") system to accept calls from the Customer and present these to the appropriate service desk agents.</p> <p>(m) Document service knowledge articles in its SKMS incorporating relevant information from Customer, outgoing provider and third parties.</p> <p>(n) Establish escalation procedures including names, telephone numbers etc.</p>	
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The Customer shall:

- (a) sign-off the agreed service desk model;
- (b) assist in the knowledge transfer to the Supplier;
- (c) assist in the promotion and support of the new service desk model to its user base and the alignment of the local resolver teams;
- (d) work with the Supplier to implement service improvement and incident reduction initiatives;
- (e) make available Customer their retained business support desk staff to assist in user training on the Supplier's system management toolset;
- (f) assist in obtaining relevant documentation related to the service;
- (g) assist in the creation of OLAs for retained business support desks and/or teams;
- (h) retain the management of the business support desks; and
- (i) ensure that the retained business support desks utilise the service desk toolset.

## 5. **INCIDENT AND PROBLEM MANAGEMENT**

The Supplier shall:

- (a) monitor all open incidents and must escalate unresolved incidents, in accordance with the agreed escalation procedures when Service Levels are not achieved;
- (b) allow incidents to be tracked via a self service portal;
- (c) provide a call closure procedure to be agreed by the Customer whereby after an incident has been resolved and the user has been informed, there is the opportunity for the user either to agree to the call closure or to disagree;
- (d) proactively monitor incident trends to identify where multiple incidents have the same symptoms and resolution. These incidents are to be classified as a 'Problem' and given a unique problem reference number. All Problems shall be recorded in an electronic problem log which is to be made available to the service desk and Customer Identified Problems should be converted into Known Errors and a permanent resolution or workaround developed within the period defined in the SLA. A permanent resolution must be provided unless it can be demonstrated to the reasonable satisfaction of the Customer that no permanent resolution is available for the Problem.

If a third party supplier becomes involved in resolving a support call, then the service desk, acting in agreement and in conjunction with the local application administrator shall:

- (e) manage and liaise with the third party to resolve the incident and leave the call open until resolved;
- (f) obtain from the third party supplier details of the actions taken by and ensure that any details provided are updated to the appropriate records maintained by the Supplier;
- (g) be responsible for liaising with the third party supplier to obtain progress information on a regular basis consistent with the priority of the incident and the agreed Service Levels; and shall (where the relevant support contract is between the Customer and the third party) act as the technical contact on behalf of the Customer;
- (h) follow the agreed major incident process as defined in the Operations Manual; and

- (i) use reasonable endeavours to verify that all incidents assigned to third parties are resolved within the agreed time as specified in the relevant Managed Supplier Contract Service Levels.
- (j) resolve all incidents assigned to CGI resolvers in line with the Service Levels defined in Schedule 2.2 (Service Levels).

All incidents shall be recorded on the Supplier's management system, together with an agreed priority (severity), applicable Service Levels and escalation agreements. These shall be able to be monitored by users via the self-service portal.

The Supplier shall gather and record as much information as necessary concerning the fault and attempt an initial resolution at the first point of contact. Where this is not possible then the call shall be passed to the agreed resolver group. These incidents shall then be tracked and progressed until closure. Where incidents are likely to exceed their agreed performance levels then the service desk staff shall escalate the incidents as per the escalation process.

When it is believed that an incident is resolved then the service desk shall contact the end user using the appropriate contact method as determined by the Customer (if available) and ensure that it is fixed to his/her satisfaction and shall then close the incident otherwise it shall be placed in a pending state awaiting user feedback. If the user does not respond within ten Working Days then the call shall be auto-closed. Where the user reports that the incident is not resolved the incident shall be returned to the relevant party for further investigation.

The Supplier's problem management function within the service desk shall proactively monitor incidents using its ITIL aligned problem management processes.

Where an incident occurs in relation to suspected or actual security breach, the Supplier shall inform the Customer and assist the Customer as appropriate in managing the incident in accordance with Customer Security Incident Process and the agreed ISMS.

Where trends and repeat incidents are identified a problem record shall be created and all relevant incidents shall be assigned to the problem. A resolution or workaround to these problems shall be formulated and may require the assistance of different resolver groups, technical resources, third parties or the Customer. The liaison and management of the differing resources shall be owned and managed by the Supplier's problem managers. Once a resolution or workaround has been established it is the responsibility of the problem manager to obtain the

information from the relevant parties, formulate a formal response and discuss this with the Customer.

All problems shall be entered into the known errors database and a workaround or permanent resolution shall be established within twenty (20) Working Days or as agreed between the parties.

The Supplier shall generate statistics and shall produce a report in the agreed format as part of the service monitoring arrangements.

All service desk agents shall have access to system management tools to enable them to remotely diagnose, manage and resolve incidents and access both internal and external knowledge repositories. End users shall be able to access frequently asked questions held on these knowledge repositories.

The Customer shall:

- (a) provide input from the service prior to the services commencement date into establishing the new service;
- (b) assist in the knowledge transfer to the Supplier from the Customer;
- (c) provide relevant local business skills and expertise to assist the Supplier in problem resolution;
- (d) make available all relevant third party agreements; and
- (e) appoint the Supplier as managing agent (or similar) to enable the Supplier to place calls with third party suppliers on behalf of the Customer.

## 5.1 Transition

The Customer and Supplier shall work together to achieve the transition activities and 'to be' outcomes outlined below, in accordance with the agreement and relevant schedules.

The Supplier shall:

Transition	Transition Outcomes
<ul style="list-style-type: none"><li>(a) Obtain existing incident and problem information (where possible).</li><li>(b) Review the known error database.</li><li>(c) Discuss the known error database with the local resolver groups and or the outgoing provider with the aim of establishing an up to date view of known errors.</li><li>(d) Engage with all key third parties and investigate the approach to incident and problem management.</li><li>(e) Obtain third party agreement to the approach to be undertaken to service operation changes with a focus on incidents.</li><li>(f) Agree a major incident process.</li></ul>	<ul style="list-style-type: none"><li>(a) Define the incident and problem management handling process.</li><li>(b) Up to date and accurate CMDB and knowledge data base.</li><li>(c) Review incident data on regular basis with the aim of populating the known error database.</li><li>(d) Review and gather information for reactive and later proactive problem management.</li><li>(e) Undertake problem and incident reviews of the user base in an effort to understand the success of the service.</li><li>(f) Review problem progress of all major incidents and undertake post Major incident reviews ("MIR").</li><li>(g) Define working agreements between incident and problem management and the change management function.</li></ul>



## 6. **CONFIGURATION, CHANGE AND RELEASE MANAGEMENT**

The Supplier shall:

- (a) be responsible for managing, maintaining and documenting the configuration of the ICT infrastructure;
- (b) the configuration documentation shall be accurate and complete and shall contain up-to-date information, including historical changes and source information, to a level of detail needed to maintain and manage the Infrastructure. Where updates need to be made these shall be agreed and signed off by the Customer's client manager;
- (c) implement, change, upgrade and undertake release management in line with ITIL and ISO/IEC 20000 standards;
- (d) prepare release plans to be discussed during monthly reviews, or sooner if appropriate, for all non-incident based upgrades as agreed by the Customer and which are to be treated as either scheduled maintenance or as an emergency release as part of an incident resolution;
- (e) maintain appropriate test environments as agreed by the Customer which can be isolated from the Customer's live production environment and in accordance with the Customer's security policy for the express purpose of testing upgrades and hardware releases
- (f) liaise with the Customer to agree scheduled outages as described in the scheduled maintenance plan, which plan shall be agreed between the Customer and the Supplier on an annual and quarterly basis;
- (g) operate version control to ensure tested and reliable images only are run, and using the most recently created images as appropriate;
- (h) maintain, on behalf of the Customer, the current production versions of images in a fully comprehensive asset register;
- (i) maintain an asset register on behalf of the Customer with the accuracy as defined in the SLA as measured on a monthly basis; and
- (j) ensure that there is only be one instance of the asset register.

### 6.1 **Configuration Management**

Configuration management and the configuration management database ("CMDB") shall be at the heart of the Supplier's service management toolset. Good quality inventory management information shall form the foundation on which the Supplier's configuration management process is

built. The inventory register shall act as the 'single source of accuracy' containing the information relating to the managed components within the Customer's ICT estate.

The Supplier's service management tool shall hold the Customer's inventory list; the information held in the inventory list shall be a combination of automatically gathered technical attributes and manually managed information such as owners and locations. Inventory information shall form an integral component of the overall CMDB.

The CMDB shall hold a comprehensive range of information that can be related to any item in the Customer's inventory list. Listed below are the main inventory sections of the Supplier's CMDB and a short description of the information that is held within them.

### **Location and Categorisation**

Every item in the inventory list shall be tagged with a non-branded asset sticker using a consistent format that is used throughout the system. Categorisation shall ensure that other system modules e.g. change management, can effectively search and relate to configuration items ("CIs"). The system shall also track both the physical and business location of equipment.

### **End User Relationships**

The system tracks the relationships between CIs and people. Relationship types include for example users, owners and support groups.

### **CI Relationships**

The system shall maintain parent, child and peer-to-peer relationships between CIs. The relationship information held between inventory items is further supplemented by the detailed configuration relationships and business service relationships.

### **CI Audit**

The system shall maintain full version control and an audit trail of every data field within a CI record. The system also automatically generates manual audit forms that require support teams to physically visit a device and verify the accuracy of the data maintained within Service Management System.

### **External Attributes**

Where applicable the Supplier's system shall maintain URL links to management tools that hold additional information relating to an individual CI.

### **Additional Attributes**

To ensure complete flexibility in terms of the information that is held in the CMDB each categorisation of CI, (e.g. printers, desktops, and routers) shall have a specific attribute set applied to them. This enables the system to hold detailed attribute information for specific types of equipment within a single centralised CMDB.

### **Documentation**

The system shall maintain links out to document repositories where additional information relating to a device is residing, for example a server build document. Document links shall include references to the Customer's document management system.

Wherever a change to a CI is required, in order to minimise the risk to the Customer, the Supplier's change management processes and procedures shall apply.

## **6.2 Change Management**

A change management function shall be provided by the Supplier as part of the core service provided to the Customer. This service shall be provided in line with the agreed change policy through a forward schedule of change ("FSC") and ITIL process.

The change management function shall ensure that standard and major changes are assessed and implemented in such a way as to minimise the risk of an adverse impact on service. Change management shall also ensure that the benefits of a change are balanced against the costs (financial, reputational, institutional or opportunity) and risks associated with the implementation of the change.

The Supplier shall utilise an appropriate method to document and manage change, which shall provide a full audit trail. Change management shall manage change activities and provide input to the CMDB control process.

The Supplier shall:

- (a) Implement change management across all areas supported by the Supplier in the Customer

- (b) Integrate the change management output with standard reporting mechanisms to the Customer.
- (c) Ensure that the release management process is used as required.

The change management service shall require a joint Change Advisory Board (CAB).

The Change Advisory Board (CAB) shall have responsibility for making recommendations as to whether changes should be accepted and implemented, or rejected. The CAB members shall potentially include:

- (a) Change Manager – CAB Chair
- (b) Customer representative(s)
- (c) Relevant ICT services staff
- (d) Suppliers, maintainers and developers (as applicable)
- (e) Experts – technical consultants (as applicable)
- (f) Other Supplier or Customer personnel as required

Within the change management service the Supplier shall review, categorise and assess requests for change ("RFC"), communicating with the impacted Customer's business units e.g. OSS, LPS, AJD and/or the Supplier departments where necessary before authorising the RFC.

The Supplier's staff shall attend the Change Advisory Board (CAB) with the Customer where authorisation of RFC's and the Forward Schedule of Change (FSC) shall be agreed. If the Supplier believes that the RFC shall have a detrimental effect on the infrastructure then it shall recommend to the CAB that the change be rejected or modified. The FSC and performance of the change, release and configuration, regression planning shall also be discussed in the monthly service review meetings.

In order that the full CAB does not need to personally authorise each small change, a series of standard changes shall be agreed which can be conducted by the delivery organisation. This shall include standard request items such as, user additions/deletions, agreed software deployments, anti-virus upgrades etc.

Where numerous Configuration Items (CI's) are affected by a change (e.g. a new system roll-out or large scale patch), the release process may be triggered (the metrics used for triggering the release management process shall be agreed beforehand in the release policy).

### 6.3 Release Management

The Supplier shall create a release management model whose key objective is the process of planning, building, testing and deploying hardware and/or software changes to the live ICT infrastructure environment, whilst ensuring tight and effective interfaces with other relevant service management processes.

Through its interface to change management, which provides controls as to how hardware and software changes are packaged into scheduled releases and deployed to the live environment, release management shall ensure that a consistent method is followed for change deployments to reduce the likelihood of incidents as a result of rollouts. The Supplier's release management process shall ensure that tested and accepted versions of hardware and software are stored and controlled in the definitive software library (DSL) and definitive hardware store ("DHS"). The creation and management of a virtual definitive software library (DSL) shall form the foundation for systems software management and support. These two repositories form an integral part of the configuration management database, maintained via the configuration, change and release management processes.

By maintaining a list of all authorised software in use throughout the infrastructure, the Supplier shall actively manage:

- (a) Software components discovered within the infrastructure that are not part of the DSL.
- (b) Support agreements and warranties for items within the DSL.
- (c) Audit history, vendor and version information.
- (d) Packaging information for applicable desktop applications.

The Supplier shall integrate the DSL into a software license register to ensure that all software it supplies is related to a specific software license record. The management of software licenses shall include procurement information sufficient to provide proof of purchase.

The following responsibility matrix specifies in further detail the respective roles and responsibilities of each party.

<b>Roles &amp; responsibilities</b>	<b>Supplier</b>	<b>Customer</b>
<b>Configuration management</b>		

1. Define, recommend, and document configuration management policies and procedures.	<b>X</b>	
2. Approve configuration management policies and procedures.		<b>X</b>
3. Implement, manage, and maintain the approved configuration management policies and procedures.	<b>X</b>	
4. Perform configuration management activities in accordance with approved policies and procedures throughout the software application development and maintenance life cycle, including but not limited to: <ul style="list-style-type: none"> <li>• Maintaining configuration management database</li> <li>• Implementing approved changes to configuration management database</li> </ul>	<b>X</b>	
5. Review and approve, as appropriate all proposed/recommended configuration changes		<b>X</b>
6. Provide online access to the configuration management database and the Configuration Management tools to designated Customer personnel	<b>X</b>	
7. Review and approve as appropriate all configuration management results.		<b>X</b>
<b>Change and Release Management</b>		
8. Define, recommend, and document comprehensive change and release management policies and procedures that are in line with industry-recognised change management standards.	<b>X</b>	
9. Participate in development of the change and release management policies and procedures.		<b>X</b>
10. Approve change and release management policies and procedures.		<b>X</b>
11. Implement, manage, and maintain the approved change and release management policies and procedures.	<b>X</b>	
12. Perform change management activities in accordance with approved policies and procedures throughout software application development and maintenance life cycle, including but not limited to the following: <ul style="list-style-type: none"> <li>• determine change logistics</li> <li>• determine change cost and impact</li> <li>• schedule and conduct change management meeting</li> <li>• determine change schedule</li> <li>• notify affected users of timing and impact of authorised changes as part of release management procedures</li> </ul>	<b>X</b>	
13. Approve all changes to be implemented by the Customer in line with the agreed Change Management Policy as defined in the Operations Manual.	<b>X</b>	<b>X</b>
14. Development and implement authorised changes	<b>X</b>	
15. Verify that change met objectives and did not have other, negative impacts, and rework as necessary to correct any adverse / unplanned results	<b>X</b>	

16. Document and report results of change	<b>X</b>	
17. Propose change requirements (call management systems, call equipment)	<b>X</b>	
18. Approve change requirements		<b>X</b>
19. Determine change logistics	<b>X</b>	
20. Determine change impact (technical and operational)	<b>X</b>	
21. Schedule and conduct change management meetings	<b>X</b>	
22. Authorise change		<b>X</b>
23. Notify affected clients of change timing and impact	<b>X</b>	
24. Implement change	<b>X</b>	
25. Verify that change met objectives and did not have other, negative impacts	<b>X</b>	
26. Conduct and approve user acceptance tests		
27. Schedule and dispatch field support personnel for system software installations and fixes	<b>X</b>	

#### 6.4 Transition

The Customer and Supplier shall work together to achieve the transition activities and 'to be' outcomes outlined below in accordance with the Agreement and relevant schedules.

The Supplier shall:

<b>Transition</b>	<b>Transition Outcomes</b>
(a) Baseline, review and confirm the configuration of the ICT estate. (b) Baseline and review the current configuration information. (c) Agree with the Customer a scheduled maintenance plan. (d) Agree with the Customer the level of configuration documentation required.	(a) Increase user perception through regular direct customer interfaces, feedback and the continuous service improvement plan. (b) Build and implement the Supplier's service management toolset, integrated, where possible, with existing Customer tools. (c) Establish the configuration database and related links to other tools. (d) Establish change and release management procedures in line with ITIL guidelines and the Supplier's existing change and

	<p>release processes.</p> <p>(e) Establish a model office environment to ensure that thorough testing can be done for all intrusive changes and releases.</p> <p>(f) Establish a 'definitive software library' which shall hold all authorised versions of software for the Customer and hold images/builds for specific hardware items.</p>
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The Customer shall:

- ensure (where this is available) that the Supplier has access to all documentation and configuration information currently in place; and
- ensure copies of all licenced (and unlicensed bespoke) software are available to populate the DSL.



## **7. TRAINING REQUIREMENTS**

This section is not included in the Contract.

## 8. LICENCE MANAGEMENT

The Supplier shall:

- (a) verify that the Customer has in place such licences as the Customer requires from time to time in terms of number of users, level of functionality and volume of transactions and utilise the appropriate licence management software tool as agreed by the Customer;
- (b) procure software licences required in order for the Customer to receive the core ICT services and to undertake all its usual business functions. This shall be subject to the Supplier utilising any volume discount agreement which the Supplier may benefit from, which shall be demonstrated to the Customer on an Open Book, auditable and justifiable basis. The Customer may elect to procure a direct licence of any software in the event that the Customer is able to obtain a more favourable rate, however the Supplier shall (unless agreed otherwise) remain responsible for integrating, implementing, maintaining and/or supporting such software;
- (c) verify that a licence is in place for each instance of software being used and ensure there are sufficient licences deployed to maintain infrastructure (for example device licences for unified communications) and to inform the Customer of any known unlicensed software being used and details of any unused software licences;
- (d) where the Supplier is unaware whether a software instance is licensed, to make all reasonable endeavours to determine the software licence status. This includes but is not limited to checking with the person responsible for the purchase of the hardware or software and the user on the device and where appropriate record the software on the asset management system and Customer license software tool;
- (e) make sure that software licence details procured either by the Supplier or the Customer are recorded for all new components in the asset register and make sure evidence of ownership and/or proof of ownership is provided by the software owner;
- (f) liaise with the software suppliers to take out or renew software licences as required to meet the Customer's requirements;
- (g) undertake an annual 'true up' audit to verify compliance and remove any software that does not have a valid software licence or valid proof of purchase, subject to the Customer's prior agreement this exercise to include all remote and mobile device software licences;

- (h) maintain an organised library of software licences, manuals, documentation, software installation discs for current and (at the Customer's request) previous versions of the software. This to be made available to the Customer upon request; and
- (i) ensure that all licences required for the Customer are managed properly in accordance the licensors' requirements and obtained lawfully in line with the software licensor's policy.

The Supplier shall provide the following services:

### **Licensing Audit**

The Supplier shall work with the Customer from the Commencement Date to rationalise the licensing position of the Customer. This shall require the formation of a project and a structured approach of information gathering from the estate and from all sources that have previously purchased software. The integrated toolset that the Supplier shall install after service go live shall assist in the process as it shall be able to remotely audit desktop and mobile assets and ascertain what software is deployed on them. Once the information is gathered and correlated and the current licensing position is fully understood the Supplier shall work with the Customer to determine the best licensing regime/ mechanisms for all the required software.

This audit shall provide the benchmark position against which the Supplier shall then deliver the license management service as described below.

### **Request Management**

The service shall be delivered from the Supplier's delivery team and shall be the focus for all software purchasing. This team shall manage all quotes, orders and queries from point of receipt through to closure. A single point of contact shall be responsible for the logging and the successful resolution of all requests in the Supplier's system as a service request, and subsequently include all queries, updates and escalations. The single point of contact shall be supported by a team of licensing experts, which shall be called upon for their specialist knowledge when needed. By using the Supplier's system the Supplier shall create a single point of information for all software purchases and enable this information to be integrated with other asset information as required.

### **Software Management**

This shall be delivered from the Supplier's delivery team and shall be the focus for all software licence management. The software management service shall give the Customer an accurate picture of all the software licences owned at any one time and enable the Customer to make more accurate purchasing and deployment decisions based on up-to-date information. The Supplier shall create an effective licence position report detailing Customer software entitlement position by vendor, product, version and licence on an annual basis.

<b>Roles and Responsibilities</b>	<b>Supplier</b>	<b>Customer</b>
<b>License Management</b>		
1. Verify that the Customer at all times has such licences as it requires for the number of users, for the level of functionality and volume of transactions, as required by the Customer.	<b>X</b>	
2. Manage the procurement of all licenses on the Customer's behalf and ensure that all licenses are properly recorded by the service desk in the asset register database and the agreed license dashboard database.	<b>X</b>	
3. Undertake a full license audit on an annual basis or as required by the Customer	<b>X</b>	
4. Manage all aspects of the Customers Enterprise and or Select agreements.	<b>X</b>	
5. Take responsibility for verifying that all software used by the Customer complies with the supplier's licensing conditions and has been obtained lawfully, and where this is not the case undertake a planned removal with the Customer's agreement.	<b>X</b>	
6. Retain ownership of all license assets.		<b>X</b>
7. Jointly develop a licence management policy.	<b>X</b>	<b>X</b>

### 8.1 Transition

The Customer and Supplier shall work together to achieve the transition activities and 'to be' outcomes outlined below in accordance with the Agreement and relevant schedules.

The Supplier shall:

<b>Transition</b>	<b>Transition Outcomes</b>
(a) Identify immediate opportunities for cost savings through consolidation and co-termination of contracts due for renewal.	(a) Benchmarking at renewal. (b) Consolidation of suppliers to leverage volumes. (c) Harvest unused software assets.
(b) Understand the effective license position and reconcile any differences with the Customer.	(d) Identify and exploit optimum upgrade options and licensing agreements.
(c) Set up a request management	(e) Identify and exploit competitive

service. (d) Set up tools to assist licence management. (e) Define packaging requirements with the Customer.	and promotional deals. (f) Begin build of software license library. (g) In conjunction with the Customer work on the licensing audit. (h) Set up strategic purchasing agreements.
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The Customer shall:

- (a) retain licence ownership;
- (b) fulfil licence management for the line of business applications that remain under support with the Customer;
- (c) work with the Supplier to rationalise the licensing position and take the appropriate steps to rectify any issues;
- (d) grant the Supplier 'Managing Agent' status for all licensing arrangements where appropriate;
- (e) supply all historic software issue media to the Supplier where available to form a software library;
- (f) work with the Supplier to agree a licence management policy;
- (g) where possible assist the Supplier with the centralisation of software purchasing across the Customer;
- (h) agree with the Supplier and support a software deletion policy; and
- (i) supply the Supplier with any previous 'Federation Against Software Theft' (FAST) or Business Software Association (BSA) audit information and reports.

## 9. **MANAGED DESKTOP SERVICES**

### **Desktop Management Services**

9.1 The Supplier shall:

- (a) provide a comprehensive design, installation, maintenance (including hardware), support and upgrade service to the 'desktop';
- (b) update the asset register with all authorised changes to such systems;
- (c) manage all third party hardware support arrangements;
- (d) design, provide support, maintain and deploy printers and configure infrastructure components to enable access to Multi Functional Devices (MFDs) which are provided for printing, scanning and copying excluding user replaceable items such as consumables;
- (e) deliver and maintain operating systems and office automation software configurations, as agreed from time to time as a set of 'standard client images'.
- (f) configure the systems are appropriately so that they interface correctly with Customer infrastructure and its applications ,the Supplier shall ensure that all desktops are configured in accordance with the Customer's lock down configuration as required by the Customer and shall ensure that the all devices both desk tops and peripherals (as appropriate) are managed in accordance with the Customer's energy saving policy administered through Active Directory where and when required by the Customer;
- (g) test any updates to prevent interference with or overwriting of previously installed software residing on devices in accordance with arrangements agreed with the Customer;
- (h) iCorporat IMAC activities shall be provided on a transactional chargeable basis as per the definition of work covering IMAC activities for up to 5 PCs or similar devices (plus any ancillary equipment such as printers) in one request greater than 5 shall be treated as a Project;
- (i) provide other desktop type support activities to enable user working (over and above normal service desk fault and support calls etc) to continue, for example, desktop software deployment;
- (j) provide any hot standby equipment and parts required to deliver business as usual support;

- (k) document all log on procedures in accordance with the Customer's security policy as specified by the Customer from time to time;
- (l) dispose of redundant assets used for the provision of the service in an environmentally friendly manner in line with legislation and the Customer's environment and disposal policies including Infosec Standard No. 5 (IS5); and
- (m) ensure that Customer data is securely removed from all disposed-of assets.

9.2 The Supplier shall deliver the comprehensive desktop service to the Customer delivering a full asset lifecycle management service. This is a cradle to grave service for all desktops, laptops, thin client and other agreed peripherals. Key components of the service shall include but not be limited to;

- (a) Portfolio management - The Supplier shall ensure that the recommended desktop and laptop systems meet the technical requirements of the Customer, as well as enabling the most efficient support programme and minimising disruption from technology transitions. This shall be used to create the correct items in the standard product and service catalogue.
- (b) Order management – The Customer shall be able to access the on-line product and service catalogue using the order management systems 24 hours per day, 7 days per week, with additional contact methods (e.g. phone, e-mail or Web) available from 09:00 -17:30 on Working Days. The online catalogue shall give access to a broad catalogue of products, including availability information, enabling the Customer to rapidly deploy or upgrade any aspect of their ICT infrastructure.
- (c) Configuration and delivery - Where appropriate, equipment shall arrive at Customer sites pre-configured to the agreed standard images, including appropriate tools and other process- and policy-specific software. The Supplier shall dispose of all packaging using best environmentally aware practices, and deliver systems to site. The equipment shall then be installed, specific configuration requirements shall be applied and the device shall be connected and tested on Customer network sites. Once fundamental functionality is proven, any additional agreed software and hardware added as required by the individual user shall be connected and tested. The user shall then be familiarised with the new equipment and signed-off by the end user before the process is complete. Any residual packaging left over shall then be disposed of in the required environmentally friendly way. The new equipment shall then be connected to the asset management system via the toolset but a check

shall be made by the installation engineer to ensure that details are correct

- (d) IMAC – all Customer requests for individual moves, additions and changes shall be logged in the Supplier's system via a service request. The IMACs shall then be centrally controlled and scheduled before being assigned to an engineer. Multi-skilled engineers familiar with Customer infrastructure and processes shall implement these IMACs.
- (e) Software support – a key element of the desktop service shall be to prepare standard builds and the pre-packaging of all agreed desktop software. The integrity of the builds and packages including operating systems, patches and application software shall be tested in the appropriate test environment.
- (f) Desk-side support and hardware maintenance – the Supplier shall deliver this service in such a way as to resolve end-user problems quickly and effectively, minimising user disruption. Wherever possible, this shall be managed at the point of first contact using remote management tools. If this is not possible a local, qualified engineer who understands Customer infrastructure shall attend the user to resolve the issue.
- (g) Disposal – the service shall include end-to-end management, equipment recovery (from site), re-use, secure data wiping in accordance with the Customer's security policy and remarketing and/or environmental recycling and disposal services with zero landfill. This service shall ensure that any residual value from retiring assets is realised by the Customer and that the highest levels of environmental compliance are maintained and exceeded.
- (h) Printer/MFD maintenance service – the Supplier shall repair or replace printing/MFD equipment / parts based on an economic assessment basis. The desk-side service shall include a level of user familiarisation should the device be replaced.

The following responsibility matrix specifies in further detail the respective roles and responsibilities of each party.

<b>Roles and Responsibilities Matrix</b>	<b>Supplier</b>	<b>Customer</b>
<b>Desktop/End-User Requirements</b>		
1. Define Desktop/end-user requirements		<b>X</b>
2. Define services and standards for supporting the desktop/end-user requirements	<b>X</b>	<b>X</b>
3. Participate in defining and approve services and standards for supporting the desktop/end-user capabilities		<b>X</b>
4. Manage and support links to storage services	<b>X</b>	



<b>Roles and Responsibilities Matrix</b>	<b>Supplier</b>	<b>Customer</b>
5. Manage and support personal productivity and office automation services	<b>X</b>	
6. Manage and support support for applications services	<b>X</b>	
7. Manage and support intranet/Internet/Extranet services to the desk top	<b>X</b>	
8. Manage and support standalone desktop services	<b>X</b>	
<b>Desktop/End-User Infrastructure Products Standards and Provisioning</b>		
9. Define services and standards for infrastructure products	<b>X</b>	
10. Approve services and standards for infrastructure products		<b>X</b>
11. Manage and support,clients including but not limited to thin client devices, Notebooks, and laptop computers	<b>X</b>	
12. Manage and support printers, storage devices, client devices and miscellaneous peripherals	<b>X</b>	
13. Manage and support software	<b>X</b>	
14. Manage and support network interface adapters	<b>X</b>	
<b>Desktop/End-User Support Services</b>		
<b>Planning and Analysis</b>		
15. Define services and standards for planning and analysis activities	<b>X</b>	
16. Participate in defining and approve services and standards for planning and analysis activities		<b>X</b>
17. Recommend policies and procedures to implement planning and analysis activities	<b>X</b>	
18. Authorise policies and procedures		<b>X</b>
19. Perform business liaison function to Customer business units		<b>X</b>
20. Perform technical planning for capacity and performance	<b>X</b>	
21. Continuously monitor technical trends through independent research; document and report on products and services with potential use for the Customer	<b>X</b>	<b>X</b>
22. Following installation. moves or changes perform tests on affected equipment to ensure that the installation, move or change has been successful in accordance with the Customer's requirements	<b>X</b>	
23. Develop scripts and macro programs to automate standard Customer processes as appropriate for example, upgrading desktop profiles and system optimisation checks	<b>X</b>	
<b>Maintenance</b>		
24. Perform diagnostics on hardware, software, peripherals and services (as appropriate)	<b>X</b>	

<b>Roles and Responsibilities Matrix</b>	<b>Supplier</b>	<b>Customer</b>
25. Install security patches, service packs, firmware and software maintenance releases, BIOS upgrades, etc.	<b>X</b>	
26. Perform software distribution and version control, both electronic and manual	<b>X</b>	
27. Replace defective parts, upon failure	<b>X</b>	
28. Conduct maintenance and parts management and monitoring during warranty and off-warranty periods	<b>X</b>	
29. Perform routine system management on support applications, for example, system tuning	<b>X</b>	
30. Perform maintenance on peripherals and special purpose devices	<b>X</b>	
<b>Technical Support</b>		
31. Define technical support policies and procedures	<b>X</b>	
32. Participate in defining and approve technical support policies and procedures		<b>X</b>
33. Test, install and tune technical environment hardware, software, peripherals and services	<b>X</b>	
34. Manage hardware, software, peripherals and services to optimise service level and minimise resource requirements	<b>X</b>	
35. Provide second line technical assistance and support for end-users	<b>X</b>	

### 9.3 Transition

The Customer and Supplier shall work together to achieve the transition activities and 'to be' outcomes outlined below in accordance with the Agreement and relevant schedules.

The Supplier shall:

<b>Transition</b>	<b>Transition Outcomes</b>
(a) Commence the implementation of the system management toolset. (b) Agree, create and test the standard desktop builds. (c) Review desktop application portfolio, and agree the standard applications. (d) Agree with the Customer the content of the product catalogues. (e) Baseline the services and measurements. (f) Build a model office environment. (g) Baseline the current asset	(a) Develop and maintain agreed desktop builds. (b) Undertake continuous improvement workshops to share best practice across service lines. (c) Undertake problem management of desktop incidents. (d) Operate 'drop-in' sessions to help drive incident volume down. (e) Monitoring and reporting against internal and external KPIs.

information and feed into Supplier system. (h) Establish third party relationships, contracts and OLAs for supply installation, maintenance and disposal.	
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The Customer shall:

- (a) work with the Supplier to minimise the necessary standard builds;
- (b) facilitate the provision of details of all builds and packages in place at the Operational Service Commencement Date;
- (c) provision suitable equipment and software licences to the Supplier to enable the appropriate test environment(s) to be established.

10. **REMOTE/MOBILE/HOME USER SUPPORT SERVICES**

For all of the end users who are supported under the Contract, the Supplier shall:

- (a) provide the same single point of contact as per the service desk for mobile computing support including but not limited to the installation, configuration, support, management, third party supplier liaison and security management;
- (b) the support service shall include software installation and update, configuration changes and security updates;
- (c) provide mobile computing support within the user's home by appointment with the User subject to remote support or return to base not being possible;
- (d) provide infrastructure support for our Mobile network infrastructure; and
- (e) arrange installation of broadband connections through the defined Customer provider contract as required.

**Remote and Home Working Support Arrangements**

All calls related to this requirement shall be logged and managed by the service desk. The agents shall then attempt to provide the user with a First Point of Contact Fix. If they are unable to resolve the incident then it shall be passed to the relevant resolver group. Initially, this shall follow the same process as local desktop related incidents where a remote fix shall be attempted using the system management toolset.

If an incident cannot be remotely fixed then the user shall be offered a home visit or asked to visit Customer nominated sites for a return to base fix.

Should the fault be a hardware component then a spare shall be dispatched and fitted by the Supplier in accordance with the agreed Service Levels.

If the resolution requires a whole unit replacement, this shall be managed from a pre-built and configured spares pool, which shall be maintained by the Supplier's desktop team. Before dispatch this shall be 'personalised' and then subsequently 'swapped out' with the faulty device to ensure that the user disruption is minimised.

The engineer shall transfer all data from the faulty machine to the replacement laptop where this is technically feasible.

Support of all remote access infrastructure such as ISA servers and Citrix Gateways as required in the ISMS shall be provided from the Supplier's local delivery teams with suitable third party hardware and software support contracts to support them. These elements of the infrastructure shall be integrated into the core management toolset and monitored, using automated tools 24 hours per day, 7 days per week.

The Supplier shall support connection of suitable external trunks into the IP Telephony environment.

#### 10.1 Transition

The Customer and Supplier shall work together to achieve the transition activities and 'to be' outcomes outlined below in accordance with the Agreement and relevant schedules.

The Supplier shall:

Transition	Transition Outcomes
<ul style="list-style-type: none"> <li>(a) Establish the service desk.</li> <li>(b) Implement the Supplier's service management toolset.</li> <li>(c) Bring into service an Automatic Call Delivery ("ACD") system to accept calls from the Customer and present these to the appropriate service desk agents.</li> <li>(d) Develop a home user support policy.</li> <li>(e) Baseline the services and measurements.</li> </ul>	<ul style="list-style-type: none"> <li>(a) Measure performance against best practice.</li> <li>(b) Continuous improvement workshops to share best practice across service lines.</li> <li>(c) Monitoring and reporting against internal and external KPIs.</li> <li>(d) Investigate and recommend suitable backup and restore solutions for remote users if required by the Customer.</li> </ul>

The Customer shall:

- (a) agree to the home user support policy;
- (b) provide documentation (where possible) for infrastructure at the Commencement Date;
- (c) provide full details of remote mobile users in accordance with the Customer agile working policy, including name, address, role and any special arrangements as may be necessary for the Supplier to fulfil its obligations;
- (d) update the Supplier with any changes to the agreed list or remote mobile users; and
- (e) ensure such users provide suitable home-office accommodation with appropriate, access to equipment for Supplier engineers.



11. **ICT PROCUREMENT SERVICE**

The Supplier shall:

- (a) provide a procurement service for the Customer for the purchase of ICT assets and/or services (and consumables if required);
- (b) develop a co-ordinated ICT procurement policy for the Customer and manage the procurement of ICT assets/services for the Customer;
- (c) ensure any agreed technology refresh programme is compliant with the agreed strategic and technical direction of the Customer;
- (d) pass onto the Customer, on an open book, auditable and justifiable basis, any volume discount obtained by the Supplier, subject to the terms of such volume discount agreement;
- (e) provide professional and technical advice in the procurement of major new systems, from development of the specification of requirements (including the development of outline and full business cases) through to post-implementation review or in any tender exercises;
- (f) run quarterly vendor and cost/price comparison benchmarking reviews and ensure the Customer obtains competitive pricing for the purchase of its ICT assets/services;
- (g) provide professional advice and assistance to enable the Customer to take advantage of competitive funds (e.g. MGF) where ICT is a significant element; and
- (h) provide an on-line procurement service for purchasing ICT assets with a maintained list of standard equipment. The Supplier must integrate any such application into the Customer's financial governance processes at no cost to the Customer.

The Supplier shall deliver a comprehensive end to end procurement service for the Customer for the purchase of ICT hardware, software, peripherals, other assets and if required consumables. The Supplier shall provide a procurement advisory service which shall assist the Customer in all aspects of procurement including but not limited to applications procurement bringing a best practice approach to the procurement service provided to the Customer. The Supplier shall manage all supported assets through the complete lifecycle from discovery, procurement, management and support, refresh through to decommissioning and disposal having regard for all relevant legislation including but limited to the WEEE regulations.

The Supplier shall implement an on-line product and service catalogue solution which is a browser based ICT procurement tool. This tool shall be available to authorised users 24 hours per day, 7 days per week and shall contain a wide variety of products and services that shall be agreed with the Customer and shall be capable of being updated to reflect new and additional products and services.

The Supplier shall operate the on line catalogue where appropriate in accordance with the appropriate contract schedule.

The system shall also enable authorised Customer users to procure, obtain information relating to product, pricing, availability, configuration and compatibility. Users shall be able to produce a wide range of reports and view order progress.

The Supplier's procurement service to the Customer shall include the following elements:

- (a) One central point of contact via the service desk, plus a second point of contact in the event that the service desk is unavailable and a defined escalation procedure as appropriate.
- (b) All requests shall be managed using the Supplier's system with a single call reference assigned to each request. This shall allow the requester to track the progress of their requirement at any stage. The Supplier's system shall be capable of storing retrieving and reporting on historical procurement requests.
- (c) Provision of quotations, either via on line catalogue or e-mail or as required by the Customer using existing E procurement systems.
- (d) An acknowledgement service providing notification to the Customer of order placement and expected time of arrival.
- (e) Provide notification, where applicable, of late or delayed deliveries and revised delivery date.
- (f) Development and management of a price list for standard catalogue products and service requests.
- (g) Pro-active bench marking activities to ensure best value is offered, taking account of cost and Service Levels.



- (h) Continuous review of products on the market and recommendation of alternatives offering better value. This to include an evaluation service for new lines, models.
- (i) Regular reviews to discuss the latest ICT developments within the ICT industry.
- (j) Regular reporting on agreed parameters as defined by the Customer and in accordance with agreed timeframes.
- (k) When a user generates a requirement they shall contact the Supplier's service desk who shall log the request and confirm the specification of the requirement and shall allocate the call to the procurement team.
- (l) If the request is for a quotation, the local procurement team shall obtain pricing within the SLA and shall update the call with the price and e-mail the quote to the requestor.

If the request is for goods to be ordered, then an order shall not be placed until an authorised purchase requisition or order is received from the user. The call shall then be updated with the order details and delivery date and is assigned to the relevant support team, depending on the item being procured.

A continual attempt to improve the overall service to the Customer by the Supplier procurement team.

The Supplier shall work with the Customer current suppliers where appropriate to ensure continued best value for all items procured. The Supplier as a matter of process shall continually monitor suppliers against the delivery of the service and benchmark them against industry standards and pricing in accordance with the provisions of Schedule 7.3 (Value for Money Provisions).

The following responsibility matrix specifies in further detail the respective roles and responsibilities of each party.

<b>Roles and Responsibilities</b>	<b>Supplier</b>	<b>Customer</b>
<b>ICT Procurement Services</b>		
1. Provide a procurement service for the Customer for the purchase of ICT assets and/or services (and consumables if required), the Customer's procurement standards and processes, to be available on line in real time. Undertake regular benchmarking reviews to ensure continuous VFM for the Customer in the procurement of ICT goods and services.	<b>X</b>	

2. Develop and coordinate a corporate procurement policy for the Customer		<b>X</b>
3. provide a procurement advisory service, providing advice on all aspects of procurement including but not limited to the procurement of business applications.	<b>X</b>	
4. Approve the Customer's procurement policy and relevant standards and determine the benchmarking regime used by the service provider.		<b>X</b>
5. Develop a refresh programme for ICT assets in accordance with the Customer's requirements.	<b>X</b>	
6. Approve any refresh programmes developed by the Supplier.		<b>X</b>
7. Provide technical advice in respect of the procurement of major ICT systems from the development of specifications through to tender acceptance stage and where required develop outline and full business cases for the Customer's consideration.	<b>X</b>	
8. Agree and approve outline and full business cases developed by the Supplier.		<b>X</b>
9. Provide professional advice and assistance to the Customer so that it can take advantage of competitive funds and grant aided programmes where ICT is a significant element.	<b>X</b>	

### 11.1 Transition

The Customer and Supplier shall work together to achieve the transition activities and 'to be' outcomes outlined below in accordance with the Agreement and relevant schedules.

The Supplier shall:

<b>Transition</b>	<b>Transition Outcomes</b>
(a) Implement on-line procurement catalogue. (b) Define and agree with the Customer the content of the on-line product and service catalogue. (c) Undertake staff induction and training in the new processes and systems. (d) Agree reporting requirements. (e) Formalise governance and vendor relationships. (f) Review procurement history, current standards, and relationships with vendors. (g) Agree the procurement authorisation process with the Customer.	(a) Run regular vendor commercial reviews. (b) Manage competitive tenders. (c) Provide advice and guidance on technologies. (d) Benchmark third party suppliers. (e) Exploit promotions and discount schemes. (f) Provide monthly reporting and reviews.

The Customer shall:

- (a) sign-off the contents of the product and service catalogue agreed with the Supplier;
- (b) provide a link to the service catalogue from Customer Intranet;
- (c) where agreed provide secure accommodation for the storage of procured/decommissioned items;
- (d) provide a list of authorised signatories from the Customer, these will be used by the Supplier to ensure that requests to procure equipment are only obtained from authorised staff;
- (e) authorise all requests for procurement of both service catalogue and non-catalogue items before passing to the Supplier for procurement; and
- (f) sign-off when completed.

12. **APPLICATIONS MANAGEMENT DEVELOPMENT AND SUPPORT SERVICES**

For the purposes of providing Applications Management Development and Support Services the Supplier shall provide such services in accordance with the Customer's requirements and in accordance with the categories agreed and as further described below: -

**Strategic Applications Portfolio Management**

The Supplier shall assist the Customer in managing its applications portfolio and other ICT related developments by:

- (a) assisting with the prioritisation of investment in services and projects, assessed against objective and consistent criteria, to deliver tangible outcomes of most benefit to the Customer;
- (b) helping identify cost efficiency savings for approval by the Customer, through innovative use of technology, people and other shared resources, this shall include the use of open source software where appropriate and subject to risk assessment; and
- (c) working with the Customer to improve business planning, by linking and assessing the Customer's ICT services and projects against the Customer's priorities, aims and objectives and corporate plan and any potential rationalisation opportunities.

The Supplier shall assist the Customer to introduce new processes for applications portfolio management, in support of the defined business objectives detailed above.

The overall aim of applications portfolio management shall be to reduce cost, complexity and diversity within the application portfolio whilst at the same time increasing business alignment, value and return on investment. Applications portfolio management shall be a joint ongoing activity between the Customer and the Supplier.

Overall responsibility for applications portfolio management shall remain with the Customer, with the Supplier playing a supporting advisory role to help identify future requirements, potential innovations and help maximise the value derived from ICT.

The Supplier's approach shall be based on 6 main phases:

- (A) **Establish Central Governance**

Activities to create central governance structure for the creation, development, on-going maintenance and management of the application portfolio.

(B) **Identification Phase: Establish or Revise Applications Inventory**

Measures/dimensions that should be used in the ranking/classification of each application are highlighted below; this list shall not be construed as exhaustive:

- (a) **Technical alignment** – the application is evaluated against factors such as maintainability, stability, and effective use of technology. This assessment shall be performed in facilitated meetings jointly with the staff that support the applications and the Customer
- (b) **Functional alignment** – a measure of how well the application meets the needs of the business. Factors shall include system usefulness, ease of use, reliability, and responsiveness to changes to the business. This measure is determined in a facilitated survey with the operational users of the system and managers/executives who use the system for management or strategic decision-making.
- (c) **Strategic alignment** – how well the application shall meet future business requirements.
- (d) **TIME category** – future plans for the application; tolerate, integrate, migrate or eliminate (“TIME”).
- (e) **Level of features implemented** – features/services that have been implemented in a production environment. (High, Medium or Low)
- (f) **Latent value/potential** – what is the future enhancement/development potential of the application/service.
- (g) **Business value** – this measures the relative importance of a business function to the company and how critical the application is in performing that function. The ratings (**High**, **Medium** or **Low**) are assigned by the Customer. A **High** indicates that the function, service and/or application give the Customer a service advantage. A **Low** implies that the application is not critical to the business.
- (h) **Skill sets availability** – the availability of the required skills to effectively and efficiently support the application (High, Medium or Low).
- (i) **Quality** – overall quality of the application based on such factors as functional completeness, data integrity and consistency, ease of use, performance & reliability.

- (j) **Application class** – ERP, Enterprise, Directorate, Business Unit or User.
- (k) **Risk level** – overall score of risk level (High, Medium or Low) of the application to the business based on vendor stability, technology stability, security, disaster recovery, Regulatory compliance, staffing.
- (l) **Maximum acceptable outage** – a value in days or fractions of days. This shall be used going forward for disaster recovery and business continuity arrangements and alignment.
- (m) **Number of business services supported (now and future)** – the number of business/customer services supported.
- (n) **Volatility** – the number of changes, including planned upgrades, applied to an application p.a. (High, Medium or Low).
- (o) **Support costs** – annual support costs that can be identified.
- (p) **Supplier type** – commercial off the shelf (“COTS”) or bespoke
- (q) **Supplier market share** – Dominant, High, Medium, Low or Niche
- (r) **User satisfaction** – measures overall satisfaction (application and support), load of calls to technical and functional support functions, system transactions, distribution of users geographically and organisationally, user satisfaction, timeliness and quality of changes, and education by volume and quality.
- (s) **Client preference/satisfaction** – system owners’ preference for the current solution (High, Medium or Low).
- (t) **Number of users** – total number of users of a system/service.
- (C) **Evaluation Phase: Rank and Categorise Applications**

The Supplier shall facilitate an agreed series of workshops, to be scheduled during the Implementation period, when ICT staff and its customers shall assess each application using different measures/dimensions (as agreed see above). How an application scores relative to the other applications in the application portfolio shall help guide investment decisions.

Outputs from this phase:

- (a) Create an as-is state document/analyses.
- (b) Cluster applications based on technology and business criteria.

- (c) Shortlist suitable strategies for each application cluster.
- (d) Test the validity of each of these strategies for each application cluster.
- (e) Develop recommendations.

(D) **Assessment Phase – Application/Business Value Assessment**

Business value assessment and review applications against TIME analysis. This includes the on-boarding of new applications and/or services.

For key applications this shall also involve discussions, and workshops/presentations, from the supplier(s) in order to provide insight in to how they believe their chosen market(s) shall develop and how their supporting products/services shall support such services going forward.

Outputs from this phase:

- (a) Gap analysis between as-is state and to-be view of the application portfolio – also taking in to account standards (local, national and international) and other related strategies e.g. ICT strategy, business strategy, community plan etc. Also look against the architecture to see what functional/service components are missing or duplicated e.g. enterprise reporting and workflow and are common gaps at the enterprise level.
- (b) Detailed transition plan for the application portfolio, either for individual applications or 'clusters' of applications, to move towards to-be state.
- (c) Develop a business case for each transition plan to determine the direction and feasibility of the proposed transition.

(E) **Optimise and Rationalise the Application Portfolio**

Using the plans drawn up in the previous step, the Supplier and the Customer jointly shall create a programme of work that specifically aims to re-align the applications portfolio with the to-be state, on a business case by business case basis.

(F) **On-going Management of Portfolio**

Applications portfolio management is a continuous process and as such the application portfolio shall need to be accurately maintained and aligned with the current and future business needs/outcomes - in order to track, realise and maximise expected benefits over time.

## 12.1 **Transition**

The Customer and Supplier shall work together to achieve the transition activities and 'to be' outcomes, in accordance with the Agreement and relevant schedules.



The Supplier shall:

<b>Transition Activities</b>	<b>Transition Outcomes</b>
(a) Obtain further information about the current Customer applications portfolio, usage of business applications and future plans. (b) Define roles and responsibilities for the Supplier and the Customer with regard to application (c) Establish a schedule of regular innovations meetings to discuss future use of applications and technology.	(a) To make applications portfolio management an integral cultural approach for the Customer, agreeing objective and consistent criteria to assess applications and other ICT related developments against. (b) To enable the Customer to better prioritise investment in products and services.

The Customer shall:

- (a) play a full and active part in application portfolio management, both during the transition phase and throughout the life of the Agreement;
- (b) retain overall responsibility for applications portfolio management; and
- (c) retain responsibility for ICT and applications strategy.

## **12.2 APPLICATION DEVELOPMENT**

The overall aim of the service shall be to provide an application development service that shall ensure all applications project work is delivered effectively; that is on time, to budget, quality and specification, whilst also allowing the Customer to realise the benefits defined within the project business case.

The Supplier shall:

- (a) provide application development, and integration services to the Customer as specified by the Customer;
- (b) undertake Application development services based on the Customer's criteria, procedures and processes.
- (c) provide details of resource, costs and time requirements to carry out development work at the chargeable rates agreed between the Customer and the Supplier.
- (d) produce detailed plans within an agreed period following acceptance of the details of resource, costs and time requirements to carry out the work in accordance with Schedule 6.1 (Implementation Plan).

- (e) agree acceptance criteria with the Customer, including complying with any technical and testing procedures and standards in accordance with Schedules 2.3 (Standards), 6.1 (Implementation Plan) and 6.2 (Testing Procedures) where appropriate. Where technical standards are not defined comply with good industry practice;
- (f) monitor and record requests for change to the specification and if appropriate re-estimate the time and cost of completion of the requested work at no additional cost;
- (g) install new software and carry out testing and acceptance in respect of agreed changes/projects;
- (h) provide full user and management support until software is working to the agreed specification as part of the change or project;
- (i) produce, maintain, update and make available to the Customer documentation for any software or other deliverable developed and store it in a secure and easily retrievable location in accordance with agreed configuration management and version control in accordance with ITIL v3 standards;
- (j) ensure the asset register is updated with all changes to the IT infrastructure as a result of development works; and
- (k) provide access to project development information and project progress information through an on-line project portal.

### 12.3 Transition

The Customer and the Supplier shall work together to achieve the transition activities and 'to be' outcomes outlined below in accordance with the Agreement and relevant schedules.

The Supplier shall:

Transition Activities	Transition Outcomes
(a) Understand current processes for in-house application development and plans for application lifecycles.	(a) Share best practice across the Supplier development teams in relation to enterprise architecture and Customer enterprise architecture.
(b) Ensure that key skills are retained.	(b) Create a best practice development framework, reducing non-standard components. Implement
(c) Understand planned and in-flight development projects, standards and policies.	Industry best practice aligned processes, and ITIL aligned testing and release
(d) Introduce the Supplier's support methodology' into all developments (Projects and	

business as usual changes)	management processes.
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#### 12.4 **Application Support and Maintenance Services**

The overarching requirement for this service is to support (and where required to provide) the Customer's application portfolio that meets the Customer's requirements for capacity, security, availability and robustness.

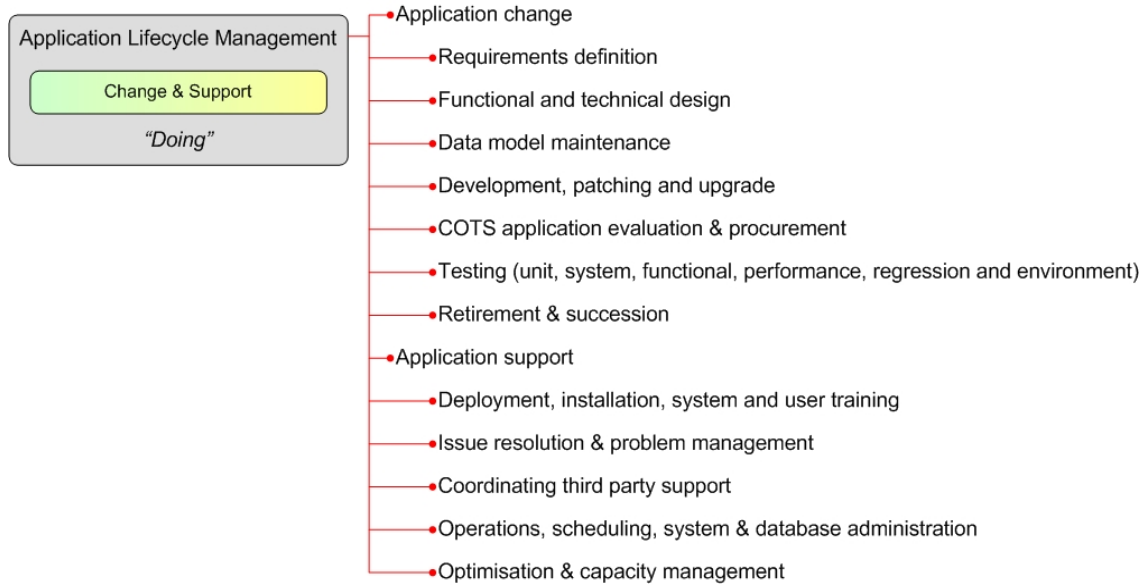
The Supplier shall:

- (a) provide maintenance and support for the Customer's applications portfolio including the installation of any maintenance, patch and security releases, corrective fixes, hot fixes, bug fixes and upgrade versions available to the Customer; For the avoidance of doubt the Supplier shall maintain and support all appropriate and relevant application interfaces.
- (b) provide further maintenance and support for applications outside the scope of this agreement as may be requested on a business case by business case basis;
- (c) provide an out of hours application support service (to include major infrastructure components if appropriate) when requested;
- (d) as and when notified by the Customer, implement changes to the applications user base (including adding any users or removing users) as shall be specified by the Customer from time to time; and
- (e) support the Customer's Intranet system which is Alterian Content Manager Corporate Edition.

The Supplier shall provide application support services as requested by the Customer.

The overall aim of the service is to provide a service to enable the identified applications meet the Service Levels in terms of availability of the Application functionality and capacity to perform business operations. The Supplier shall manage the applications proactively through monitoring, ITIL problem management and reactively using ITIL incident management to ensure the agreed Service Levels are met.

The Supplier shall use an appropriate industry recognised Application Lifecycle methodology in providing application support services.



The split of roles and responsibilities for support of the identified applications, between the Supplier, the Customer, shall need to be agreed. The Supplier shall be responsible for the installations of maintenance, patch and security releases for the supported applications.

The Supplier shall support the Customer's Intranet system and the addition and removal of users to the user base, as requested.

The following responsibility matrix specifies in further detail the respective roles and responsibilities of each party.

<b>Roles and Responsibilities</b>	<b>Supplier</b>	<b>Customer</b>
<b>Application Development and Maintenance Support Services</b>		
<b>Strategy and Policy</b>		
1. Recommend and define policy standards and guidelines, and the procedures for managing the planning and analysis activities.	<b>X</b>	
2. Participate in the development of policy standards and guidelines for planning and analysis activities.		<b>X</b>
3. Authorise and approve the planning and analysis policy standards, guidelines, and management procedures.		<b>X</b>
4. Implement the authorised and approved standards, guidelines, and procedures.	<b>X</b>	
5. Perform business liaison function to operational units.		<b>X</b>
6. Perform business planning for capacity and performance for all systems.		<b>X</b>
7. Continuously monitor technical trends through independent research; document and report on products and services with potential use for the Customer.	<b>X</b>	
8. Perform feasibility studies for the implementation of new technologies that best meet the Customer's business needs and cost/service-level expectations.	<b>X</b>	
9. Conduct annual technical and business planning sessions to establish standards, architecture and project initiatives.	<b>X</b>	
10. Participate in annual technical and business planning sessions to establish standards, architecture and project initiatives.		<b>X</b>
11. Conduct bi annual workshops on industry trends and best practices.	<b>X</b>	
<b>Requirements Definition and Project Initiation</b>		
1. Define standards, methodologies, content, and documentation formats to be used in defining and documenting Customer user requirements and project initiation.	<b>X</b>	
2. Review and approve standards, methodologies, and documentation formats for determining user requirements.		<b>X</b>
3. Specify end-user/business unit functional, operational, and service level requirements for application(s)		<b>X</b>
4. Conduct interviews, group workshops and surveys to determine user requirements.	<b>X</b>	<b>X</b>
5. Meet with the Customer's service's representatives.	<b>X</b>	<b>X</b>
6. Serve on appropriate requirements groups and panels.	<b>X</b>	
7. Determine software upgrade conversion requirements for COTS hardware and software.	<b>X</b>	
8. Document all requirements in required formats (e.g., system specifications, integration schematics, data models, and network design schematics).	<b>X</b>	
9. Recommend technology platform and development environment and tools that best meets the Customer's business needs and cost/service level expectations	<b>X</b>	
10. Review recommendations and authorise and approve technology platform, development environment, and tools as appropriate		<b>X</b>

<b>Roles and Responsibilities</b>	<b>Supplier</b>	<b>Customer</b>
11. Review and approve all requirements definition documents.		<b>X</b>
<b>Design Specification</b>		
12. Design and configure technical environment through an annual technology plan based on the Customer's standards, architecture and project initiatives.	<b>X</b>	
13. Authorise and approve technology plan through coordination with the appropriate Customer technology standards group.		<b>X</b>
14. Conduct site surveys for design efforts as required.	<b>X</b>	
15. Develop functional and detailed technical specifications that support the approved functional, operational, and service level requirements	<b>X</b>	
16. Design data structures	<b>X</b>	
17. Design program modules	<b>X</b>	
<b>Programming/Development</b>		
18. Establish programming/development policies and procedures.	<b>X</b>	
19. Establish overall programming/development project schedule and module release schedule	<b>X</b>	
20. Review/approve programming/development policies, procedures and project schedules.		<b>X</b>
21. Perform, or manage Third Party vendors to perform, all necessary engineering and programming functions as required to develop and implement the approved design plans and specifications for the application development product(s), including but not limited to A creating program code B conducting module-level unit testing C implementing and maintaining approved change control procedures D compiling code into program run-time executables E creating, updating and maintaining appropriate code libraries and code documentation F transferring completed programs to Quality Assurance for integration testing	<b>X</b>	
22. Manage all on-site and off-site programming/development efforts using industry-standard project management tools and methodologies.	<b>X</b>	
23. Conduct development reviews and provide written report on results to the Customer	<b>X</b>	

24. Review/approve results of Supplier development reviews.		<b>X</b>
25. Approve programming/development plans and procedures where there is an impact on other Customer entities/facilities.		<b>X</b>
<b>Third Party Commercial Off-the-Shelf Software (COTS) Packages</b>		
26. Develop COTS package selection process and selection criteria	<b>X</b>	<b>X</b>
27. Participate in development of COTS package selection criteria		<b>X</b>
28. Review and approve selection process and criteria		<b>X</b>
29. Check hardware and software standard compliance in conformance with Customer selection criteria	<b>X</b>	
30. Determine customisation requirements for integration and usage with Customer application development and deployment environment	<b>X</b>	
31. Perform utilisation impact analysis	<b>X</b>	
32. Conduct COTS package evaluation process and recommend appropriate package solutions, including feature/function, technology, skills, and cost analysis	<b>X</b>	
33. Participate in COTS selection process		<b>X</b>
34. Provide report with comparison analysis and recommendations as to the most appropriate COTS technology packages	<b>X</b>	
35. Review and approve COTS selection		<b>X</b>
36. Negotiate COTS license and third party support agreements and acquire approved packages	<b>X</b>	
37. Participate in negotiations and approve contract terms and conditions		<b>X</b>
<b>Implementation/Deployment</b>		
38. Define unique business unit specific adaptations, deployment criteria, and delivery requirements.		<b>X</b>
39. Define implementation and deployment policies, project schedules and staffing requirements to meet deployment and delivery requirements.	<b>X</b>	
40. Review and approve implementation and deployment policies, schedules and staffing levels.		<b>X</b>
41. Conduct pre-installation site surveys.	<b>X</b>	
42. Provide recommendations for local adaptations to technical architecture or services provided, where applicable and appropriate, including cost and time estimates for implementation	<b>X</b>	
43. Review and approve recommendations for local adaptations to technical architecture or services		<b>X</b>
44. Implement approved and authorised local adaptations for technical architecture	<b>X</b>	
45. Perform local installation of new or enhanced system components, functions and features, including hardware, software, peripherals and configurations as required by the Customer	<b>X</b>	
46. Coordinate deployment and support activities with Customer local business unit management team.	<b>X</b>	
47. Participate in migration of all production-ready implementation and deployment processes		<b>X</b>

48. Provide in-person technical assistance and knowledge transfer to local Customer business unit personnel during deployment as requested by the Customer.	X	
49. Perform data migration by either electronic or manual methods as a result of implementation or migration.	X	
50. Perform appropriate tests on all installs, moves, additions and changes.	X	
51. Conduct post-implementation system integration and system acceptance tests, as appropriate.	X	
52. Participate in all post-implementation system integration and system acceptance tests		X
53. Review/approve acceptance test results.		X
54. Provide system and user documentation and training materials	X	
55. Review and approve system and user documentation		X
56. Provide end-user training for new products and services, as applicable.	X	
57. Provide second line support where appropriate	X	
58. Review and approve successful application implementation		X
59. Approve production implementation "Go/No-Go" decisions.		X
<b>Application Maintenance Services</b>		
<b>Operations and Administration</b>		
60. Define Operations and Administration policies.	X	
61. Approve Operations and Administration policies.		X
62. Define test-to-live service environment requirements.	X	
63. Approve test-to-live service environment requirements.		X
64. Perform test-to-live service environment	X	
65. Authorise and approve test-to-live service environment changes.		X
66. Report results from test-to-live service activities.	X	
67. Perform quality control on test-to-live service results.	X	
68. Approve quality control report on test-to-live services results.		X
69. Coordinate user support activities with the Service desk as appropriate.	X	
70. Perform day-to-day service area operations and administration activities, for example: <ul style="list-style-type: none"> <li>Identify, log and resolve problems</li> <li>for internal boundary Provide inventory tracking and management including support for centralised warranty and license management.</li> </ul>	X	
71. Responds quickly and efficiently to all installation and maintenance initiatives.	X	
72. Identifies, designs and implements metrics and reports for ICT service-area systems.	X	
73. Approve metrics and collection methods.		X
74. Identify possible Application enhancement opportunities for improved performance and potential cost savings.	X	
75. Approve projects to implement Application enhancement opportunity.		X
76. Provide operations activity support as described in Section 2.	X	
77. Provide administration activity support as described in Section 2.	X	



78. Perform configuration management and change control activities.	X	
79. Approve configuration management and Change control results.		X
<b>Maintenance</b>		
80. Define maintenance and repair services and standards requirements		X
81. Define maintenance and repair policies and procedures.	X	
82. Approve maintenance and repair policies and procedures.		X
83. Manage and track maintenance requests and orders	X	
84. Perform diagnostics on hardware, software, peripherals and services (as appropriate), including, but not limited to: <ul style="list-style-type: none"> <li>• diagnose Incident problem state with maintenance request owner</li> <li>• recommend and implement as appropriate temporary workaround solution</li> <li>• analyse existing program code</li> <li>• determine problem cause</li> <li>• determine problem resolution</li> <li>• document problem and problem resolution</li> <li>• report recommended problem resolution to appropriate Supplier and Customer staff</li> <li>• initiate Change request</li> </ul>	X	
85. Review, authorise and approve recommended problem resolution		X
86. Perform necessary tasks and activities to implement authorised changes per Change management procedures, including but not limited to: <ul style="list-style-type: none"> <li>• develop and document functional specifications and spec changes</li> <li>• create or modify program code</li> <li>• conduct unit testing of affected modules</li> <li>• test change for conformance to functional specifications</li> <li>• install local system fixes as needed</li> <li>• recover and load data as required</li> </ul>	X	
87. Install manufacturer field change orders, service packs, firmware and software maintenance releases, BIOS upgrades, etc.	X	
88. Perform software distribution and version control, both electronic and manual.	X	
89. Perform routine system management on applications such as system tuning.	X	
90. Provide corrective maintenance or manage the provision of corrective maintenance by Third Party Providers.	X	
91. Provide preventative maintenance or manage the provision of preventative maintenance by Third Party Providers.	X	
92. Provide adaptive maintenance or manage the provision of adaptive maintenance by Third Party Providers.	X	
93. Provide perfective maintenance or manage the provision of perfective maintenance by Third Party Providers.	X	
94. Provide release packaging of software changes	X	
95. Approve release packaging of software changes.		X
96. Establish the priority of service requests.		X
<b>Monitoring and Reporting</b>		
97. Define Service Level requirements and reporting cycles.	X	

98. Approve Service Level requirements and reporting cycles.		<b>X</b>
99. Document Service-Level objectives and requirements.	<b>X</b>	
100. Measure and analyse performance relative to requirements.	<b>X</b>	
101. Develop improvement plans.	<b>X</b>	
102. Authorise and approve improvement plans.		<b>X</b>
103. Implement improvement plan.	<b>X</b>	
104. Report service-level results.	<b>X</b>	
105. Coordinate monitoring and reporting with the service desk.	<b>X</b>	
106. Provide appropriate metrics and measures of performance to appropriate Customer representatives.	<b>X</b>	

## 12.5 Transition

The Customer and Supplier shall work together to achieve the transition activities and 'to be' outcomes outlined below in accordance with the Agreement and relevant schedules.

The Supplier shall:

<b>Transition Activities</b>	<b>Transition Outcomes</b>
<ul style="list-style-type: none"> <li>(a) Identify and understand the current applications in use which require support.</li> <li>(b) Populate the software library with release media and patch information relating to general applications.</li> <li>(c) Understand and review licensing arrangements for application software.</li> <li>(d) Understand the existing support arrangements for all the identified applications.</li> <li>(e) Understand the future roadmap for applications</li> <li>(f) Novation and/or management of existing support agreements</li> <li>(g) Review the existing implementations and solutions, plus future plans and projects in scope</li> <li>(h) Agree standards and framework for future development work</li> </ul>	<ul style="list-style-type: none"> <li>(a) Investigate software standardisation programme where possible to reduce incidents and support overhead.</li> <li>(b) Package the agreed standard applications for ease of distribution and management.</li> <li>(c) Populate knowledge bases and offer self-help facilities to reduce support incidents.</li> <li>(d) Implement a model office environment for rigorous testing and planning facilities to support new releases and upgrades.</li> <li>(e) Implement ITIL change and release management to reduce the number of incidents associated with patching and upgrades</li> <li>(f) Establish back to back support agreements with vendors and suppliers to support applications.</li> <li>(g) Novate and/or manage support contracts with a view to standardisation and rationalisation of suppliers.</li> </ul>

13. **HOSTING SERVICES**

Where the Supplier provides a hosting data centre service it shall:

- (a) provide a comprehensive hosting service that provides access to applications available to registered users at defined Service Levels and performance;
- (b) manage the data centre environment and security in line with current good industry practice and the Customer's specific requirements;
- (c) run batch work in accordance with a business/processing timetable agreed in advance with the relevant department;
- (d) monitor network and server performance and eradicate areas where poor performance is inhibiting service delivery;
- (e) ensure the data centre site or sites utilised by the Supplier shall have sufficient scalability and capacity to allow for the implementation and installation of new systems (and upgrades or new versions of existing systems) to accommodate the reasonably likely future requirements of the Customer (such requirements to be the basis of typical police force of its size) without the Customer being liable for any additional site costs;
- (f) ensure that the ICT hosting infrastructure is appropriately resilient to meet the required Service Levels, in line with current industry recognised best practices as appropriate for a police force;
- (g) Not used;
- (h) unless otherwise agreed by the Customer, when new applications, systems and platforms are implemented by the Supplier, they shall not be hosted on shared Supplier infrastructure. The Supplier shall ensure that the Customer architecture is logically discrete from Supplier's other clients, except where the system is an integral part of the Supplier's core management systems or network. The Customer may consider shared infrastructure and hosted systems subject to strict adherence by the Supplier to securing data and user access and taking into account the Customer's requirements at end the of the Agreement. Such security to be guaranteed within the acceptance documentation for any new application or system;
- (i) suggest the most appropriate server platform, including virtualisation;
- (j) Not used; and
- (k) work with the Customer within CESG approved management policies.

### 13.1 Transition

The Customer and Supplier shall work together to achieve the transition activities and 'to be' outcomes outlined below in accordance with the Agreement and relevant schedules.

The Supplier shall:

Transition	Transition Outcomes
<ul style="list-style-type: none"><li>(a) Understand the current hosting environment and service delivery mechanisms.</li><li>(b) Pre-allocate the required data centre hosting space and facilities.</li><li>(c) Baseline current response times.</li><li>(d) Pre-build an appropriate environment, having in place a resilient network, to accept the hosted elements within its data centre(s).</li><li>(e) Work with the Customer to develop and agree an appropriate programme of work to relocate the agreed servers into the pre-built data centre environment.</li><li>(f) Undertake a comprehensive risk assessment and provide mitigation actions where appropriate.</li><li>(g) Order and commission all required network components to connect the Supplier's data centre to Customer premises.</li><li>(h) Implement automated 24 x 7 monitoring and management of the network and server estate to assure that mission critical services are available to the Customer.</li><li>(i) Document all batch processing requirements to produce a batch processing schedule.</li></ul>	<ul style="list-style-type: none"><li>(a) Undertake a server rationalisation review to assist the Customer to make more efficient use of its server estate.</li><li>(b) Develop capacity planning reports from the Supplier toolset.</li></ul>

The Customer shall:

- (a) use reasonable endeavours to ensure the outgoing provider(s) shall provide all reasonable assistance with the decommissioning and removal of identified equipment from the current hosting environment or to transfer management and support responsibility for such systems to the Supplier;
- (b) provide resource for user acceptance testing at the proposed stages of the data centre migration; and
- (c) facilitate reasonable access to the current data centre(s) to determine the facilities requirements.

14. **NETWORK MANAGEMENT**

For the avoidance of doubt the Customer shall be the design authority for the overall network and IPT infrastructure.

The Supplier shall:

- (a) manage and support the Customer's network including active network and any future wireless components, that shall enable access to and exchange of data between servers and users' desktops and other ICT devices and act as a first point of contact for all connectivity issues;
- (b) provide a full end to end network management service including the management of third party in accordance with the agreed problem resolution procedures and processes as defined by the Customer;
- (c) manage and support the Customer's voice network including active network components and ensure quality of service and take full responsibility for the management of the telephony network and all aspects of the telephony service;
- (d) manage the voice and data network cost billing including the provision of a tariff benchmarking function ensuring that the Customer receives value for money in its data and telephony services;
- (e) undertake the management and support of video conferencing infrastructure
- (f) provide a converged approach to voice, video and data network support. In conjunction with the desktop support service, the Supplier shall provide for an integrated service to facilitate any new installations or office moves;
- (g) provide pro-active network and infrastructure monitoring and support on a 24x7 basis;
- (h) provide incident and problem logging, management and resolution;
- (i) provide a telephony IMAC service as per the definition of work covering IMAC activities;
- (j) provide all maintenance and support of the data and voice communications network (including all hardware and software components). Where this maintenance and support is provided through external network suppliers, this service shall include the management of such maintenance and support;

- (k) develop and maintain the network infrastructure to ensure availability of ICT systems across the Customer network to the agreed performance standards;
- (l) undertake change configuration of server, network and IP Telephony elements as authorised by the change management procedure;
- (m) carry out capacity planning and monitor and resolve slow performance and undertake monthly identification of performance bottlenecks, trends, capacity issues and risks;
- (n) maintain full documentation including configuration files, details of active components and configuration, network topology, and other relevant network documentation, readily and easily accessible when required by the Customer;
- (o) maintain and provide an up to date voice and network diagram to the Customer on request;
- (p) make available such reports as required by the Customer using an appropriate call logging tool to demonstrate call profiles, call durations etc in order that the Customer can effectively manage and monitor its telephony services;
- (q) provide standard reports detailing availability, health and utilisation of the Customer estate;
- (r) deliver configuration management to enable effective control of the active network components;
- (s) carry out a wireless security assessment at a particular site, on request, for the purpose of identifying rogue access points that have been installed without the network administrator's knowledge and approval;
- (t) provide assistance for VPN application installation onto builds should be provided, and helpdesk support;
- (u) act as the first point of contact and responsible owner of third party connectivity issues;
- (v) procure and warrant all new cabling necessary to support the Customer's data and telephony services;
- (w) provide the Customer with the functionality to allow all telephone calls to be recorded via the telephony system; and

- (x) accommodate the Customer's requirement to provide secure connectivity and provide the required level of security in accordance with the Customer's data sharing policies and other relevant standards.

The Supplier shall take a holistic view when managing a converged environment in order to resolve service faults in a converged system. The Supplier shall have tools specifically designed for this type of environment, which allows the set-up of synthetic voice calls across the network infrastructure, to continually monitor voice quality and user experience. These tools shall enable the Supplier to ensure that Customer users are receiving a network service appropriate to their specific application requirements at that time. Change activity shall be similarly unified in its approach.

The Supplier's system management tools shall provide proactive 24 hours per day seven days per week automated monitoring of the communications infrastructure status, performance against pre-defined thresholds, or alerts / event that indicate a potential to impact the service. The Supplier shall raise an incident where the pre-defined threshold is exceeded or an alert / event is detected. Additionally, Customer users can raise incidents via the Supplier service desk.

A request for change shall mean a request for a modification to the communication infrastructure which can be completed remotely (typically requests for change are defined as minor or soft) and do not require resources or equipment such as:

Consultancy, project management or implementation resources.

Additional hardware or software.

Requests for change that require resources or equipment as detailed above shall be processed as a service request.

The Supplier shall validate that the change requestor is an authorised Customer representative. Any unauthorised change requests shall be recorded and escalated for approval.

The Supplier shall undertake appropriate risk assessment, planning and develop backup, regression and test plans for all major and significant requests for change.

The Supplier shall update the network documentation to reflect the request for change once the request for change is completed.

#### **Documentation & Backup Management**



The Supplier shall maintain a database which details the current hardware and software specification for each managed communications infrastructure device. The Supplier shall also maintain up to date documentation as detailed in the table overleaf:

<b>Document</b>	<b>Description</b>	<b>Format</b>
High Level Topology	This high-level topology diagram shall show the major sites in the Customer network and their interconnection	TBA
Detailed Topology	A diagram or diagrams showing all network devices, common names, links and link speeds and IP addresses of each interface.	TBA
Network Bandwidth Details and Suppliers	Shall contain details of each link, with the carrier, link size and operating parameters such as CIR & port speeds.	TBA

The Supplier shall ensure that all documentation and software configurations held on the Supplier management systems are backed up regularly and backups of the latest versions shall also be stored in a secure off-site location for the duration of the agreement, and available to authorised Customer representatives.

Interpretative reports shall be provided on a monthly basis, whilst real-time reports shall be available at any time to nominated Customer representatives.

### **Lifecycle Management**

The Supplier shall work with the Customer to manage the availability, performance and utilisation of the communications infrastructure.

The Supplier shall undertake such monitoring and management arrangements in respect of Network management as defined by the Customer in accordance with the Customer's governance arrangements and:

- (a) Provide monthly availability and capacity reports.
- (b) Attend strategy and planning meetings on a quarterly basis..
- (c) Provide on going advice via regular scheduled conference calls to the Customer, at the Customer's request in respect of the communications infrastructure availability, performance, utilisation and capability to support new applications and business initiatives.

- (d) Facilitate briefing sessions on a six monthly basis providing a summary of technology and service advances that may benefit the Customer in respect to improving the network services that are delivered or reducing the costs of delivering those services.

### **Software Lifecycle Management**

On a minimum six-monthly basis the Supplier shall review the levels of software running on the communications infrastructure and produce a report which shall be presented at the next service review meeting. The report shall:

- (a) provide a high level summary of the current communication infrastructure software levels; and
- (b) identify components where there is a potential issue with respect to the current level of software and its potential ability to negatively impact the performance of the communications infrastructure along with recommendations to address those weaknesses.

The Supplier shall undertake physical audits of the voice and data network infrastructure as required by the Customer from time to time and produce audit reports in the format as specified by the Customer.

The following responsibility matrix specifies in further detail the respective roles and responsibilities of each party.

<b>Roles and Responsibilities</b>	<b>Supplier</b>	<b>Customer</b>
<b>General Responsibilities for Voice and Data Network Management</b>		
1. Define services and standards for Voice and Data environment	<b>X</b>	<b>X</b>
2. Review and approve services and standards for Voice and Data environment		<b>X</b>
3. Provide Voice and Data communications connectivity, including but limited to all network traffic originating from end user devices, other voice network devices, and other approved and agreed user premise devices.	<b>X</b>	
<b>Planning and Analysis</b>		
4. Define functional and service requirements		<b>X</b>
5. Participate in defining services and standards for planning and analysis activities	<b>X</b>	
6. Review and approve services and standards for planning and analysis activities		<b>X</b>
7. Recommend policies and procedures to implement planning and analysis activities	<b>X</b>	
8. Review, authorise, and approve policies and procedures		<b>X</b>

<b>Roles and Responsibilities</b>	<b>Supplier</b>	<b>Customer</b>
9. Perform business liaison function to network carrier for capacity planning and analysis in conjunction with the Customer	<b>X</b>	<b>X</b>
10. Perform technical planning with Customer client staff for capacity and performance for LAN/WAN services	<b>X</b>	<b>X</b>
11. Perform the enterprise-level capacity planning and analysis	<b>X</b>	<b>X</b>
12. Continuously monitor technical trends through independent research; document and report on products and services with potential use for the Customer	<b>X</b>	
13. Perform feasibility studies for the implementation of new technologies that best meet the Customer's business needs and cost/service-level expectations	<b>X</b>	
14. Conduct annual technical and business planning sessions to establish standards, architecture and project initiatives		<b>X</b>
15. Participate in annual technical and business planning sessions to establish standards, architecture and project initiatives	<b>X</b>	<b>X</b>
16. Conduct biannual technical reviews with participation from the Customer	<b>X</b>	
17. Conduct biannual workshops on industry trends and best practices with participation from the Customer	<b>X</b>	
18. Perform capacity analysis and planning based upon results of data gathered from operations monitoring activities	<b>X</b>	

The Customer shall:

- (a) use reasonable endeavours to ensure the outgoing provider(s) shall provide all reasonable assistance with the transfer of management and support responsibility to the Supplier or its subcontractor(s);
- (b) provide, or procure from its outgoing provider(s), accurate documentation for the legacy network (including IPT, LAN, WAN, analogue and digital voice services); and
- (c) ensure that management policies are in place to restrict users from introducing unauthorised changes, such as rogue access points.

15. **EMAIL MANAGEMENT**

The Supplier shall:

- (a) provide and maintain the performance, availability and functionality of the Customer's email systems through all access channels, including but not limited to Webmail, desktop clients and mobile devices;
- (b) Ensure that the email system and its management automatically generates a PNN compliant alias for use by the Customer staff;
- (c) take all actions necessary to optimise the performance of the Customer's Email Systems including but not limited to defragmenting disc space, taking backups of mailboxes, mail stores and archives;
- (d) carry out mail box restores as required;
- (e) provide expert user advice and guidance on the functionality and operation of the Customer's email system;
- (f) inform the Customer of any future upgrades available to the Customer's email systems released by the software supplier;
- (g) document all systems administration, systems management and housekeeping jobs;
- (h) take responsibility for the application of any agreed upgrades or patches having proposed and had accepted a roll back process in the event of failure;
- (i) identify processes initiated by the Customer's users which may have a detrimental effect on the performance of the Customer's email systems, and contact the appropriate authorised user to gain their approval to any actions necessary to protect the operational integrity of the email systems, including stopping the process; and
- (j) identify email incidents which potentially have a security aspect as defined in the Customers security incident process, inform the Customer when such incidents arise, and assist the Customer to manage them in accordance with the Customers security incident process and the agreed ISMS.

The Supplier shall initially take on the service from the outgoing provider and migrate email systems to the Supplier's data centre, and the service shall be operated in the same manner using the same scripts, devices and software as are currently used email filtering policies.

The Supplier shall review all the current infrastructure, software, hardware, processes, scripts and documentation, to ensure they are capable of delivering the email service required by the Customer. This shall be reviewed against current, industry standards and the business requirements of the Customer to create a list of short, medium and long term actions required to deliver a best practice email service.

Anything requiring immediate action shall be discussed with the Customer and remedied before service commencement date if practically possible.

The remaining medium and long term recommendations from this exercise shall feed into the service improvement plan and be discussed with the Customer and the relevant actions instigated.

The email systems being subject to the present contract, and network hardware shall be integrated into the Supplier's corporate service and support management toolsets and the relevant software installed on the email servers to ensure the application and its performance is monitored as well as the hardware used to run it.

The Supplier's delivery team shall be able to obtain both real time and statistical information about the performance and issues of the email system and its delivery network and components.

This information shall be used to inform both management information reporting, service improvement plans and strategic reviews of the service in line with the agreed governance procedures.

Mailbox restores shall be requested by the user raising a service request and responded to by the support team.

The Supplier shall apply delivery and consultancy experience and high level expert advice and guidance to the Customer as well as sharing the developments and good practice it has developed in local government email systems.

The Supplier shall inform and assess the applicability for the Customer of all new releases, product roadmaps and local government initiatives planned for Exchange its associated products and underlying operating systems.

The tools that shall be deployed shall enable the Supplier to monitor the systems performance, if any rogue processes, or software and hardware events occur they shall be automatically alerted on, by the tools. This shall both create an Incident and be alerted to the delivery team. If on

examination this requires immediate corrective action, the agreed process shall be followed, including a notification to the Customer. This would then be documented by a retrospective change to ensure the activity is recorded. This in turn (as an incident has been raised) shall feed into the problem management processes, so if it recurs regularly a suitable long term resolution shall be found.

All relevant patches, upgrades and releases shall be applied following the change process and authorisation by the Customer. This shall require suitable back out plans to have been made to address any roll back or restore recovery action deemed necessary.

At all points during the transition phase and for the remainder of the agreement the email systems, along with all others, shall be fully documented and subject to rigorous change management to ensure accuracy.

#### 15.1 Transition

The Customer and Supplier shall work together to achieve the transition activities and 'to be' outcomes outlined below in accordance with the Agreement and relevant schedules.

The Supplier shall:

Transition	Transition Outcomes
<ul style="list-style-type: none"> <li>(a) Understand and develop plans to migrate the delivery of the corporate email systems, including webmail with no disruption to the current service.</li> <li>(b) With the Customer, review the plans and associated risks where identified and agree the required operations and responsibilities.</li> <li>(c) Audit current email policies and resolve any outstanding issues.</li> <li>(d) Audit the current email service and produce a corrective action plan for the immediate 'post live' service.</li> <li>(e) Audit and update any documentation received from the incumbent supplier.</li> <li>(f) Develop and agree an emergency procedure to deal with rogue processes and events.</li> </ul>	<ul style="list-style-type: none"> <li>(a) Ensure that the latest service packs and relevant hot fixes are applied to keep the most recent versions of the operating system software.</li> <li>(b) Ensure problem methodologies are developed documented and implemented by the Supplier.</li> <li>(c) Implement space management processes.</li> <li>(d) Examine current mobile email access provision and recommend solutions to maximise reliability and reduce cost of this provision whilst ensuring alignment with the Customer's ICT strategy.</li> <li>(e) Provide recommendations to align the delivery of the email solution with industry best practice.</li> <li>(f) Provide surgery help sessions, FAQ and quick reference guides to help drive down the volume of email incidents recorded with</li> </ul>

	the service desk.
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The Customer shall:

- (a) assist with enabling the Supplier to have appropriate access to the existing systems in the outgoing provider's data centre;
- (b) ensure all software, scripts; hardware and documentation used to deliver the email service are made available to the Supplier;
- (c) agree an emergency process for resolution of emergency incidents;
- (d) provide appropriate representatives to the joint service meetings in accordance with agreed governance arrangements as detailed in schedule 8.1 (Governance); and
- (e) publish and maintain acceptable use policies and guidelines for employee usage of email systems.

16. **SYSTEMS ADMINISTRATION**

The Supplier shall for defined service areas:

- (a) provide support and administration for all aspects of the Customer's systems including but not limited to:
  - (i) access control;
  - (ii) wireless access points (as may be installed in the future);
  - (iii) group policies;
  - (iv) software distribution;
  - (v) printer/MFD controls;
  - (vi) permissions;
  - (vii) content, file and device encryption;
  - (viii) capacity and availability management;
  - (ix) user administration;
  - (x) asset management;
  - (xi) management of desktops connected to the Customer's domain;
  - (xii) patch management (OS and applications); and
  - (xiii) application control including encryption software;
- (b) provide system administration in accordance with the recommendations and best practice guidance's of the supplier of the system administration tools and adhering to the Customer's policies and procedures;
- (c) document and keep the system components consistent and accurate e.g.: Schema, configuration data and domain data; and
- (d) perform compliance and quality audits of all domains, logging each anomaly as an incident and making changes at the Supplier's own cost.

On receipt of an authorised service request, the Supplier shall action the request, service requests shall include but not be limited to areas such as password resets, setting up new users, removal of account locks.

The Supplier shall ensure that the application, and associated components e.g. interfaces, are running effectively, and shall include but



not be limited to user access control, running of planned/regular batch jobs, scheduling.

Where the service requires an on-site presence to effect a resolution i.e. moves, adds, changes, etc. then the relevant resources shall be engaged to complete the request.

The Supplier shall maintain documentation in accordance with the requirements, ensuring that all core system components are consistent and accurate in accordance with good industry practice and Customer policies. This shall cover but not be limited to the following:

- (a) Access control;
- (b) Group and user policies;
- (c) Schemas;
- (d) Configuration data;
- (e) Domain data.

The Supplier shall undertake regular compliance and quality audits of all Active Directory domains, ensuring that no inconsistencies are present. Where inconsistencies are found, the Supplier shall notify the Customer and take the required remedial action using the prescribed change management procedures.

The Supplier shall examine the current suite of applications and tools used for system administration and shall recommend solutions, which use the minimum number of different toolsets and attempt to provide an integrated end-to-end approach to system and user lifecycle management using tools aligned to the Customer's ICT strategy.

Where limited system administration rights are required by the Customer, the Supplier shall create group and user policies/permissions that enable these requirements for nominated users.

#### **16.1 Transition**

The Customer and Supplier shall work together to achieve the transition activities and 'to be' outcomes outlined below in accordance with the Agreement and relevant schedules.

The Supplier shall:

Transition	Transition Outcomes
<ul style="list-style-type: none"> <li>(a) Understand and implement the system administration processes and procedures in relation to the Customer's published policies and procedures.</li> <li>(b) Ensure that consistent and accurate documentation relevant to the core system components is kept.</li> <li>(c) Prepare a program of compliance and quality audits of all domains to ensure compliance with published Customer security policies.</li> </ul>	<ul style="list-style-type: none"> <li>(a) Audit the current and future Customer data access requirements and shall recommend solutions to manage the Customer user's identity and data.</li> <li>(b) Develop a proposal for a secure laptop for mobile/home workers if required by the Customer.</li> <li>(c) Investigate content, file and disk encryption technologies and recommend a solution based on the Customer's strategy of using Microsoft technologies.</li> <li>(d) Implement the introduction of self-help password reset system to enable users to reset system passwords without the need to contact the service desk or raise an incident.</li> <li>(e) Implement the deployment of or adoption of existing service management tools to centrally manage the installation, updating and removal of desktop and server software applications.</li> <li>(f) Implement a desktop and server management toolset to enable automated patch management and the collation of configuration information.</li> </ul>

The Customer shall:

- (a) agree boundaries of responsibility and accountability for user administration services where required between the Supplier and specific and specialist Customer or retained Third Party Provider service areas; and
- (b) provide or facilitate the provision of:
  - (i) an up to date hardware and software inventory;
  - (ii) the documentation of the Active Directory Domains; and
  - (iii) up to date documentation covering any administration rights and associated users for systems and applications.

17. **DATABASE ADMINISTRATION**

The Supplier shall:

- (a) proactively monitor all database systems to identify error messages and alarms and run any routines which check and or restore the databases' integrity;
- (b) keep a record of all Customer database owners;
- (c) agree with the Customer any remedial action necessary to restore data integrity and carry out the agreed remedial action promptly in accordance with agreed deadlines;
- (d) re-organise, de-fragment and re-size tables on the databases whenever required to optimise the database and performance. Where this applies to application servers this activity should be carried out in consultation with the Customer system owners;
- (e) give reasonable advice and guidance on the functionality and construction of new databases to the Customer;
- (f) gain approval from the Customer to any actions necessary to protect the operational integrity of the service, including stopping any processes that may, or are, having a detrimental effect on the performance of a database;
- (g) ensure that the databases are updated when required and that all updates are controlled and logged to enable recovery to take place from damaged databases; and
- (h) maintain and make available to the Customer on request all documentation relating to databases administered by the Customer, including data file structures, database management design and protocols.

The Supplier shall provide the Customer with a comprehensive database administration service.

The Supplier's staff shall use system management tools and adhere to industry best practice processes and procedures to maintain the availability and performance of the Customer's databases.

The Supplier shall take all necessary actions to ensure that the Customer's databases are available. Alert monitoring shall be used to proactively monitor and check availability. Corrective action shall be taken when a threshold is breached. All reasonable efforts shall be taken

to fix availability problems in-house but if necessary, the Supplier shall liaise with third Party software suppliers.

The Supplier's database team shall be responsible for:

- (a) Database sizing;
- (b) Resizing and defragmenting databases;
- (c) Tuning and maintaining databases;
- (d) Capacity management and planning;
- (e) Database integrity;
- (f) Maintaining database documentation;
- (g) Optimising database capabilities;
- (h) Applying upgrades and patches;
- (i) Database replication to an agreed timescale agreed with the Customer and using the change management process;
- (j) Setting up and maintaining (where appropriate) disk mirroring and configuration;
- (k) Database re-organisation as required and agreed with the Customer using the change management process;
- (l) Database version control as required and agreed with the Customer using the change management and release management processes;
- (m) Database security including stopping any detrimental processes as agreed;
- (n) Software installation and re-installation as required and agreed with the Customer using the change management process;
- (o) Software updates as required and agreed with the Customer using the change management process;
- (p) Data archiving;
- (q) Monitor databases; and
- (r) Providing advice and guidance to database users upon request.

The Supplier's DBAs shall also use appropriate monitoring and housekeeping tools to reduce operational running costs and improve the availability of the service.

#### 17.1 Transition

The Customer and Supplier shall work together to achieve the transition activities and 'to be' outcomes outlined below in accordance with the Agreement and relevant schedules.

The Supplier shall:

Transition	Transition Outcomes
<ul style="list-style-type: none"> <li>(a) Introduction of the Supplier's standard processes and best practice in line with the Customer's requirements.</li> <li>(b) Implement processes, procedures and tools to enable proactive response to incident detection which shall result in faster incident fix times.</li> <li>(c) Introduce the Supplier's standard practices to identify and improve problem areas before they can become serious issues affecting the service to the end user.</li> <li>(d) Work with the Customer to build up a list of existing database owners.</li> <li>(e) Review all relevant documentation relating database structures.</li> <li>(f) Liaise with local application owners or administrators to agree a process for database optimisation on application servers.</li> </ul>	<ul style="list-style-type: none"> <li>(a) Produce, monitor and action items for service development plan to identify issues which are not causing immediate problems but which shall if not acted on.</li> <li>(b) Identify areas of the service, which can be improved e.g. by increasing system availability by restructuring backup schedules.</li> <li>(c) Improve monitoring and problem alerting through the introduction of: <ul style="list-style-type: none"> <li>• Regular database availability checks;</li> <li>• Undertaking standard administration tasks;</li> <li>• Monitoring the health of the databases.</li> </ul> </li> <li>(d) Implement continuous database performance monitoring.</li> <li>(e) Increased remote resolution which shall allow the DBAs to provide a more effective service by utilising the economies of scale available when operating from a central shared resource group.</li> <li>(f) Implement a program of working to best practice processes and procedures supported by the right toolset.</li> <li>(g) Implement the Supplier's best practice to ensure an efficient, effective and repeatable service is delivered to the Customer.</li> <li>(h) Continually maintain database documentation.</li> </ul>

The Customer shall:

- (a) make available all relevant documentation relating to the deployment and database structures that are currently in use and active;
- (b) inform the Supplier of all databases in operation at the Effective Date;
- (c) inform the Supplier of all database owners at the Effective Date;
- (d) inform the Supplier of all changes to the portfolio of databases or their owners that arise between the Effective Date and Operational Service Commencement Date;
- (e) perform all necessary housekeeping and administrative tasks assigned to its local application owners or administrators as required to enable the Supplier to fulfil its obligations;
- (f) receive, review and, where necessary, agree to the Supplier's recommendations in a timely manner that enables the Supplier to fulfil its obligations; and
- (g) remain the licensee of all database licences.

18. **INFRASTRUCTURE OPERATIONS SERVICES**

The Supplier shall:

- (a) use appropriate tools to proactively monitor, optimise and support the server and network infrastructure on a continuous basis to prevent or minimise any failures and to support service provision to Service Levels;
- (b) control and load media onto the server or network hardware including storing and moving backup media to and from storage;
- (c) take all reasonable actions to optimise the performance of the server and network infrastructure;
- (d) change configuration of network elements as authorised by the change management procedure;
- (e) carry out and document all housekeeping jobs (e.g. user administration, back-ups, message clearing, re-booting and performance monitoring) for server and network infrastructure; and
- (f) proactively provide reasonable advice and guidance to the Customer with regard to any improvements that can be made in the light of changes in technology to the Customer's configurations for the server and network infrastructure.

The Supplier shall manage proactively the availability of the Customer's server and network infrastructure.

All the server and network hardware for the Customer shall be maintained in a secure and controlled environment suitable to sustain the infrastructure. The infrastructure shall be maintained in line with manufacturer recommendations.

The Supplier shall utilise system management tools to provide proactive monitoring of the server and network infrastructure. This monitoring shall be configured to proactively monitor the servers and network and alert the Supplier automatically of any potential incidents. Proactive monitoring shall include but is not limited to disk usage, CPU utilisation, services and communication failure.

In addition to the proactive monitoring, the Supplier shall perform regular maintenance tasks on pre agreed hardware components which shall be undertaken in line with the Supplier's best practice and industry recommendations. When appropriate the results of this maintenance shall be used to amend the documentation kept for each server and network.

Additional infrastructure services the Supplier shall provide include: -

- (a) Providing maintenance of the Supplier's secure environment.
- (b) Media management and off-site storage management.
- (c) Devising, implementing and testing backup strategy through a series of recovery tests.
- (d) Production of recovery documentation and verification of the backup strategy by regular restores of selected files from tape backup securities.
- (e) Scheduling and monitoring backups.
- (f) Data recovery from backups.
- (g) Organisation and execution of planned routine maintenance that may include liaising with the Customer for server and network components downtime on occasions.
- (h) Operating server and network components resource management.
- (i) Maintenance of supported versions of server and network component software. This involves the application of operating system patches as recommended by the vendor, subject to the agreed Release policy and any limitations of the applications.
- (j) Adding, deleting and modification of user accounts and customising their profiles.
- (k) Maintain and apply the Customer's security policy and access controls.
- (l) Capacity management.
- (m) Monitoring of server and network components availability, connectivity and performance.
- (n) Monitoring server and network components resource trends to proactively avoid affecting services.
- (o) Responding to operating system related incidents or issues and taking corrective action in a controlled manner.
- (p) On-going performance tuning of the server and network components operating systems.
- (q) Monitoring of server and network components system log files to detect system problems.



The Supplier shall work with the Customer to manage the availability, performance and utilisation of the communications infrastructure.

The Supplier shall :

- (a) Provide monthly availability and capacity reports.
- (b) Attend strategy and planning meetings on a quarterly basis.
- (c) Provide on going advice via regular, scheduled conference calls to the Customer if requested by the Customer.
- (d) Facilitate six monthly briefing sessions providing a summary of technology and service advances that may benefit the Customer in respect to improving the services that are delivered or reducing the costs of delivering services.

#### 18.1 Transition

The Customer and Supplier shall work together to achieve the transition activities and 'to be' outcomes outlined below in accordance with the Agreement and relevant schedules.

The Supplier shall:

Transition	Transition Outcomes
<ul style="list-style-type: none"> <li>(a) Review the existing tools used to monitor and support the existing infrastructure and where appropriate integrate with the Supplier's monitoring platform.</li> <li>(b) Implement the Supplier's system management toolset.</li> <li>(c) Understand the current media handling processes and procedures and maintain continuity of the current operations.</li> <li>(d) Review and update the existing documentation that outlines the processes and procedures relevant to the housekeeping requirements of the server and network infrastructure.</li> </ul>	<ul style="list-style-type: none"> <li>(a) Review and align media operations, control, loading and storage to a best practice model that fulfils the Customer's requirements.</li> <li>(b) Investigate, and make recommendations for an on going programme of infrastructure optimisation targeted at delivering the optimum performance from each of the service component elements.</li> </ul>

19. **CAPACITY PLANNING/PERFORMANCE MONITORING**

The Supplier shall:

- (a) proactively provide capacity planning and performance monitoring on all server and network components and identify/propose plans to alleviate any potential capacity or performance pressure points;
- (b) size all proposed new systems to determine computing and network resources required;
- (c) monitor, and collect capacity statistics and report on an exception basis including but not limited to:
  - (i) CPU utilisation;
  - (ii) disk space; and
  - (iii) network utilisation;
- (a) provide a monthly analysis to the Customer for all network and server hardware, including but not limited to performance, capacity, and utilisation. Include forecasts and any recommendations for amendments/upgrades to the infrastructure; and
- (b) provide work plans to the Customer (at least one month in advance of the work commencing) to address potential risks to the performance of the infrastructure. The plan should be presented to the Customer with sufficient time to allow the proposed work to be agreed, co-ordinated, resourced and carried out in advance of any impact to the Customer's business operations.

**Infrastructure Performance Monitoring**

The Supplier shall operate an infrastructure performance monitoring service that monitors, captures and analyses real time information (where appropriate and technically feasible) from the hardware and software used to deliver the ICT services to the Customer.

During the transition phase the Supplier shall review the tools, methods and processes currently in use to achieve this. As soon as is practicable software monitoring agents shall be installed on all items of infrastructure requiring monitoring.

This shall be based on the Supplier tools. These shall then be connected to the Supplier's centralised monitoring and alerting systems .This shall

form the basis for both the proactive and reactive capacity and performance reporting.

Once connected, thresholds shall be set for each separate element and the proactive monitoring switched on. These dictate the level at which alerts are raised, which shall inform the delivery teams of possible issues via the Supplier's management dashboard and monitoring screens. A 'ticket' shall then be automatically raised in the Supplier's service management system. These shall then be reacted to, resolved, and closed down. At all times incident, problem and change processes shall be adhered to and details of corrective actions recorded in the Supplier's service management system. This information forms both the core of the monthly reporting pack for infrastructure incidents, and provides base information for problem management.

### **Capacity Planning**

The services provided to the Customer shall include a combination of people, process and tools to provide a comprehensive capacity planning service. The service shall take into account resource, service and business planning (in conjunction with the Customer) to provide a comprehensive service.

Infrastructure reporting. The performance information generated by the above tools shall be stored centrally and collated to form the basis for infrastructure capacity planning. The data shall be analysed on a regular basis and provide input to the monthly service review meeting. The report shall include:

- Server
  - CPU
  - Memory
  - disk space
- Network hardware utilisation
- Network link utilisation

The Supplier and the Customer shall define the detailed content of the report during the transition phase.

The Supplier shall:

- (a) Produce work plans in line with the Customer's business planning cycle, identifying capacity requirements early enough to take account of procurement lead times and the Customer's approval processes
- (b) Report and plan the need for any increase or reduction in hardware based on Service Levels and cost constraints.
- (c) Assess new technology and its relevance to the Customer in terms of performance benefits and cost.
- (d) Assess new hardware and software products for use by capacity management that shall improve the efficiency and effectiveness of the process.
- (e) Carry out performance testing of new systems.
- (f) Report performance against targets.
- (g) Recommend tuning of systems and make recommendations to the Customer on the design and use of systems to help ensure optimum use of all hardware and operating system software resources.
- (h) Recommend resolutions to performance-related incidents and problems
- (i) Carry out ad-hoc performance and capacity studies on request from the Customer.
- (j) Carry out or, participate in, risk reviews of potential changes and business plans to minimise the risk of all changes.

A primary output from the Supplier's capacity planning process shall be a formal "capacity plan" a living document that shall reflect ICT infrastructure plans in the context of the Customer's business and Education service plans. This plan shall be reviewed and revised quarterly.

#### 19.1 Transition

The Customer and Supplier shall work together to achieve the transition activities and 'to be' outcomes outlined below in accordance with the Agreement and relevant schedules.

The Customer shall:

Transition	Transition Outcomes
(a) Review and understand the current capacity planning/performance	(a) Undertake a project to review the capacity of all components of the Customer's ICT server

<p>monitoring processes and procedures used within the Customer.</p> <p>(b) Baseline the Customer's current ICT estate's potential capacity and performance.</p> <p>(c) Implement capacity management/performance monitoring procedures and processes based upon the baselined service.</p> <p>(d) Define the required level of reporting.</p> <p>(e) Define the required level of alerting.</p>	<p>and network components to identify potential capacity pinch-points.</p> <p>(b) Make recommendations to alleviate any potential capacity pinch-points within the server and network components through either, fine tuning or additional resource.</p> <p>(c) Implement the Supplier's capacity management/performance monitoring toolsets to provide finer granularity of information gathered.</p> <p>(d) Implement capacity alerting.</p> <p>(e) Implement capacity reporting.</p>
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The Customer shall:

- (a) be responsible for business level capacity planning, based on technical capacity and availability reports from the Supplier;
- (b) remain the communications infrastructure design authority, and any change shall be subject to Customer approval;
- (c) agree the equipment, software and application that shall require monitoring and reporting;
- (d) receive, review and, where necessary, agree to the Supplier's recommendations in a timely manner that enables the Supplier to fulfil its obligations;
- (e) for Cloud based Infrastructure as a Service services, jointly assess and agree with the Supplier the capacity and performance parameters for each virtual server to be provisioned from the Cloud in terms of compute (VM replication Service Levels, vCPU cycles and vRAM), storage (storage performance tier, data replication and/or mirroring Service Levels) and backup Service Levels; and
- (f) agree the thresholds for both re-active and proactive monitoring.

20. **SCHEDULED MAINTENANCE SERVICES**

The Supplier shall:

- (a) manage the process of scheduling maintenance in accordance with agreed release management procedures. Scheduled maintenance shall be any activity which can be scheduled, and is necessary, and which if not carried out would have an adverse impact on the achievement of the Service Levels;
- (b) prepare a monthly maintenance plan;
- (c) carry out emergency maintenance during the allocated scheduled maintenance hours where it is agreed with the Customer. There shall be no scheduled outages of the network during business hours unless otherwise agreed by the Customer and Supplier;
- (d) where appropriate, ensure that automated tools are used to deploy scheduled maintenance services;
- (e) carry out routine OS and application patch maintenance;
- (f) carry out application upgrades in line with the agreed Release Policy, to keep the the Customer application portfolio at current versions of the applications (or as agreed), subject to relevant release and integration testing, this shall include service packs, and any legislative changes;
- (g) carry out scheduled re-boots when appropriate;
- (h) ensure the continuity of automatic software update processes; and
- (i) ensure scheduled maintenance is not carried out to the exclusion or detriment of any of the other services.

The Supplier shall agree with the Customer a patching policy, based on the Supplier's best practices, for the treatment of anti-virus (AV) updates, patches and/or releases. This shall define all aspects of the categorisation, treatment, testing, application, documentation and change management of these updates.

With the exception of emergency maintenance all installations shall be subject to rigorous risk assessment and change management and be signed off by the Customer through the Change Advisory Board ( CAB) before they are applied to the estate. Emergency maintenance shall be subject to the predefined emergency change policy and applied and documented as appropriate, but shall still require agreement from the Customer before it is performed.

The CAB shall have members from the Supplier and the Customer as is deemed necessary by the Customer. CAB shall discuss, agree and sanction any changes that are being proposed and provide both a business and technical view of the impact of these changes. A forward schedule of changes shall also be developed by the Supplier (with input from the Customer) to help in the assessment of risk to the Customer's businesses.

As part of the ongoing service the Supplier shall regularly review the hardware, software and application suppliers' patch, release information and anti virus updates to determine their applicability to the Customer ICT estate.

When AV updates, patches and/or releases are considered to be applicable to the Customer ICT estate they shall be categorised to determine their implementation importance, e.g. immediate (serious security) or scheduled, to the agreed policy.

For non mission critical patches these shall be built into periodic maintenance releases and tested before application within either the model office environment or on test servers where they exist, to ensure no problems shall arise from the deployment. These shall then be deployed during the monthly maintenance slot. This maintenance plan shall be regularly reviewed jointly by both the Customer and the Supplier to ensure no problems occur as a result of specific periods of high activity etc.

A maintenance plan shall then be generated to include all planned activities for the maintenance slot for agreement with the Customer and sign off by the CAB before any activities are performed. Regular activities such as system reboots shall be assign a regular change and thereby be scheduled into the forward schedule of change for assessment by the CAB.

Urgent/critical patches shall be applied at the first possible opportunity and the Customer notified at the earliest possible opportunity following the emergency change procedure as defined by the Supplier and agreed by the Customer This could be inside or outside of core working hours as is deemed necessary by the criticality of the patch.

All AV updates, patches and releases to be deployed shall be packaged ready for deployment using automated deployment tools. Once scheduled the deployment shall take place as agreed, as the deployment progresses the Supplier's system management tools shall create the

necessary information to update the asset and configuration database to reflect the changes made.

At all times the Supplier shall ensure that any scheduled maintenance shall not impact upon the services and carry out risk assessments if required.

## 20.1 Transition

The Customer and the Supplier shall work together to achieve the transition activities and 'to be' outcomes outlined below in accordance with the Agreement and relevant schedules.

The Supplier shall:

Transition	Transition Outcomes
<ul style="list-style-type: none"> <li>(a) Confirm composition, volume and location of the current ICT estate.</li> <li>(b) Baseline, review and confirm the current release and patch levels applied to the ICT estate.</li> <li>(c) Review the manufacturer's current patch and release level information and compare to those currently deployed.</li> <li>(d) Identify where patch and/or release levels are not to the current recommended deployment level.</li> <li>(e) Review application patch requirements and known errors, where possible.</li> <li>(f) Prepare and agree with the Customer a programme to bring the ICT estate to a common level of patch and release version.</li> <li>(g) Deploy the appropriate patch and release levels according to the agreed program</li> <li>(h) Update the inventory information to reflect the patch and release levels deployed.</li> <li>(i) Create and agree comprehensive change and release processes</li> <li>(j) Set up and convene the 'Change Advisory Board' ("CAB").</li> <li>(k) Create and agree scheduled maintenance and emergency maintenance procedures.</li> <li>(l) Agree monthly maintenance</li> </ul>	<ul style="list-style-type: none"> <li>(a) Regularly review the manufacturers' patch and release notices to determine their applicability to the Customer ICT estate.</li> <li>(b) Work with the Customer to understand the application patch state and requirements.</li> <li>(c) Pre-test any patch or release prior to deployment within a model office environment.</li> <li>(d) Implement or adopt and where necessary reconfigure existing automated tools that shall deploy patch and release versions to the ICT estate and update the configuration management database.</li> </ul>



slots for up to 1 year in advance. (m) Determine the list of scheduled reboots required.	
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The Customer shall:

- (a) work with the Supplier to baseline the current application release levels, patch states and known errors;
- (b) assign suitably authorised staff resources from the Customer to enable effective and efficient operation of the change advisory board;
- (c) receive, review and, where necessary, agree to the Supplier's recommendations in a timely manner that enables the Supplier to fulfil its obligations,
- (d) grant the Supplier appropriate rights to use its existing SCCM infrastructure to enable remote capture of inventory details, remote deployment of patches and image updates; and
- (e) assign authorised staff resources to enable effective and efficient operation of the emergency change processes.

21. **SECURITY MANAGEMENT SERVICE**

The Supplier shall:

- (a) manage all technical security aspects of the in scope systems and infrastructure (including, but not limited to, mobile devices such as laptops, telephones, VPN software and PDAs) and implement appropriate measures to ensure that the infrastructure is protected from deliberate or accidental breach of security, ensuring confidentiality of information and data and preventing unauthorised access;
- (b) take appropriate steps in accordance with agreed policy and process to ensure the security architecture protects the Customer from the latest security attacks and threats and notify the Customer immediately of any potential major risk/threat to the Customer's network e.g impending virus attack;
- (c) provide a service that embraces the principles and working practices as defined in ISO/IEC 117799 /BS27001 and any revision or updates to this standard, with the aim of ensuring the confidentiality, integrity and availability of in-scope Customer data;
- (d) provide all necessary guidance to the Customer on detecting and preventing security incidents and provide such information as is necessary for the Customer to comply with its statutory and business requirements such as PSN and PSBA and PCI compliance ;
- (e) provide internal network security and access controls in conjunction with the Customer and other suppliers, and in accordance with agreed process and responsibilities, Customer policies and recognised industry standards and the Customer's specific requirements;
- (f) maintain records of all users with administration rights or additional access rights authorised by the Customer, and manage and maintain user access rights in accordance with the Customer instructions and policies and procedures, for all in-scope delivery;
- (g) technically enforce and manage in scope systems security with immediate notification to the Customer of potential incidents, suspected or identified systems security breaches in accordance with the agreed ISMS;
- (h) enforce and manage appropriate in scope systems security and protection policies across all Customer systems/assets and infrastructure

- (i) proactively monitor the infrastructure and assets for any internal or external activity which would compromise its security, integrity or availability, including:
  - (i) users gaining or attempting to gain access to the infrastructure which they are not authorised to access; and/or
  - (ii) attempts to log onto the Infrastructure using invalid passwords, invalid IDs or logical addresses;
- (j) notify the Customer within 60 minutes (or such other period as may be agreed in relation to particular types of incidents) of detection of any incidents of suspected, attempted or actual misuse of, or security incidents affecting the infrastructure, including any deliberate attempts of which it is aware to gain unauthorised access to any component of the infrastructure; and
- (k) manage all encryption keys and other physical security devices provided or prescribed by the Customer that are required for the delivery of the ICT service.

<b>Roles &amp; responsibilities</b>	<b>Supplier</b>	<b>Customer</b>
<b>Security Management Service</b>		
1. Establish and specify security requirements for the physical and logical development and support environment.		<b>X</b>
2. Authorise and approve logon/security level access for Customer and Supplier employees, agents, and Sub-Suppliers.		<b>X</b>
3. Develop security policies and procedures that comply with the Customer's security requirements.	<b>X</b>	<b>X</b>
4. Review and approve Supplier's security policies and procedures.		<b>X</b>
5. Implement and maintain security methodologies, practices, and monitoring processes that are in compliance with approved policies and procedures.	<b>X</b>	
6. Maintain physical security of facilities, networks, systems, data and assets.	<b>X</b>	<b>X</b>
7. Maintain logical security of facilities, networks, systems, data, and assets.	<b>X</b>	
8. Conduct periodic security checks per requirements, document results of checks in security reports, and provide reports to the Customer.	<b>X</b>	<b>X</b>
9. Monitor security and investigate and report security violations and breaches.	<b>X</b>	<b>X</b>
10. Resolve security violations and breaches that are determined to be within Supplier's controlled environment parameters, liaise with the Customer as appropriate and report actions taken to avoid recurrence.	<b>X</b>	
11. Resolve security violations and breaches that are determined to be within Customer controlled environment parameters with the assistance of the Supplier as appropriate.		<b>X</b>

## 21.1 Transition

The Customer and Supplier shall work together to achieve the transition activities and 'to be' outcomes outlined below in accordance with the Agreement and relevant schedules.

The Supplier shall:

Transition	Transition Outcomes
<ul style="list-style-type: none"><li>(a) Develop a firm understanding of the Customer's existing information assurance and security status.</li><li>(b) Work directly with the Customer's security officer(s) to develop and implement the necessary controls and processes to meet operational and regulatory requirements.</li><li>(c) Assist in promoting a "security aware" culture across the Customer.</li><li>(d) Review the security service on a regular basis to confirm that it meets current/new requirements.</li><li>(e) Run a security health-check based on ISO27001, to baseline the existing service and identify any weaknesses or opportunities for improvement.</li></ul>	<ul style="list-style-type: none"><li>(a) Appoint a security officer who shall be the focal point within the Supplier's organisation for all security matters related to the ICT service provided to the Customer.</li><li>(b) Implement appropriate protective monitoring and reporting functionality to meet operational and regulatory requirements.</li><li>(c) Participate, in a "joint security working group" that reviews security incidents, authorises new projects or services, and agrees priorities.</li></ul>

The Customer shall:

- (a) develop a joint security group, the primary role of this group shall be to ensure that information security requirements are considered across all elements of the Customer's ICT infrastructure/service. They shall review any security incidents in the previous period and agree solutions, learning points etc. They shall also review any new/updated projects or services to ensure that the relevant security requirements were in place;
- (b) subject the infrastructure to independent penetration tests by a third party accredited to CESA (CLAS) and CHECK, as defined in Schedule 2.5 (Security Management Plan). Any deficiencies or failures that are highlighted as part of a penetration test shall be discussed with the Supplier and an agreed action plan to rectify these shall be developed. The Supplier shall carry out the activities defined in the action plan subject to Change control;

- (c) receive, review and, where necessary, agree to the Supplier's recommendations in a timely manner that enables the Supplier to fulfil its obligations; and
- (d) be responsible for defining their security policy.

## 22. **FIREWALL & ANTIVIRUS**

The security administration function shall include monitoring ICT assets for any security breaches, attacks and any malicious activities. The Supplier shall take appropriate actions to control the impact any breaches, attacks or malicious acts have on the Customer's ICT assets, and take necessary actions to restore the system/services to normal functioning in the case of any events.

The Supplier shall:

- (a) configure and manage all internal Firewalls (as set out in Appendix A.3 Inventory of Hardware and Software Assets), maintain firewall rule base and apply security upgrades and patches as required in a timely manner to maintain the security architecture. The Supplier shall maintain and update approved changes to including but not limited to domain names, address ranges, URLs, Network, Users and user groups;
- (b) ensure all internal firewall rules are documented and have a full explanation for their existence and undertake regular fire wall changes as directed by the Customer;
- (c) manage, maintain and support the anti-virus software such that any files distributed across (Incoming and outgoing) the Customers networks including e-mail attachments, are scanned before use and prior to distribution;
- (d) ensure that all devices authorised to connect to the network are covered by the anti-virus software and that all devices are configured to automatically receive updates;
- (e) ensure that the anti-virus software is updated automatically as required to maintain the Customer's anti virus protection on a daily basis or more frequently if required by the Customer;
- (f) perform an impact assessment to mitigate possible detrimental effects on known problem areas;
- (g) configure, operate and manage such systems and infrastructure under its management responsibility as to enable the Customer to meet the PSN(P) code of connection requirements defined by CESG; and
- (h) provide a monthly report on security activities and incidents relating to the scope of service, as part of service management reporting.

### 22.1 **Transition**

The Customer and Supplier shall work together to achieve the transition activities and 'to be' outcomes outlined below in accordance with the Agreement and relevant schedules.

The Supplier shall:

Transition	Transition Outcomes
<p>(a) As part of an overall "security health-check" the Supplier shall review network security including:</p> <ul style="list-style-type: none"> <li>• review of release and patch levels;</li> <li>• verify that all services are up to date;</li> <li>• review process and procedures for update.</li> </ul> <p>(b) Work with the Customer's information security officer(s) and/or ICT manager(s) to review security requirements from an access control perspective.</p>	<p>(a) Review the existing controls external/third party access and identify any weaknesses or opportunities for improvement.</p> <p>(b) Develop a "Code of Connection" strategy that covers access to and from the Customer's infrastructure.</p>

The Customer shall:

- (a) provide current configurations, processes, rule-sets etc.;
- (b) manage its existing perimeter security provider;
- (c) procure such assistance and cooperation from its existing perimeter security provider as is necessary for the Supplier to fulfil its obligations;
- (d) remediate, or procure the remediation by relevant Third Parties, of any material defects in the security of the Customer environment as may be identified by the Supplier; and
- (e) provide details on identities roles and access control lists rights.

## 23. AUTHENTICATION SERVICES

The Supplier shall:

- (a) be responsible for managing and maintaining Active Directory based authentication services for the Customer and Supplier domains;
- (b) be responsible for managing and maintaining the Customer's in scope claims based authentication; and
- (c) be responsible for managing and maintaining enabling infrastructure in support of government authentication schemes such as entitlement cards and other smartcards and equivalent technologies, the introduction of such services to be subject to change management.

The Supplier's security officer shall be responsible on behalf of the Supplier for all elements of information security within the Customer's infrastructure in scope of the contracted services. On a day-to-day basis the Supplier's technical staff shall undertake administration of Active Directory and other authentication, authorisation and accounting systems.

### 23.1 Transition

The Customer and Supplier shall work together to achieve the transition activities and 'to be' outcomes outlined below in accordance with the Agreement and relevant schedules.

The Supplier shall:

Transition	Transition Outcomes
(a) Identify opportunities to redesign and consolidate the existing Active Directory environment(s). (b) Identify authentication requirements of the Customer, its employees and citizens who require access to Customer provided services.	(a) Develop recommendations for each of the above areas and agree an approach to pilot each of the recommendations with the Customer.

The Customer shall:

- provide input into the organisational structure of the AD design; and
- receive, review and, where necessary, agree to the Supplier's recommendations in a timely manner that enables the Supplier to fulfil its obligations.





24. **BACKUP SERVICES**

The Supplier shall:

- (a) agree backup schedules, retention arrangements and working practices with the Customer to meet the Customer's business and statutory requirements and implement as necessary;
- (b) provide appropriate on and off-site back-up of all applications so that all data on these applications can be reconstituted. Back up procedures shall be based on good industry standards, including standards regarding integrity and frequency and physical location, as well as the Customer's specific requirements;
- (c) take appropriate daily and weekly and other required frequency back-ups of all applications. These back-ups must support and enable the agreed DR activities and objectives to be met. The backup media used may form a part of any disaster recovery strategy drawn up by the Customer. All backups to be moved and stored in an appropriate, secure off-site facility before start of business hours the following Working Day;
- (d) provide, manage and support appropriate corporate backup and restore tools;
- (e) backup all software (including configuration data) and data before and after any change or maintenance is carried out;
- (f) provide a data restoration service, as agreed with the Customer;
- (g) provide all consumables necessary for the provision of the backup service;
- (h) carry out regular test restores on a monthly basis for a variety of applications and databases; and
- (i) at any time with reasonable notice, demonstrate to the Customer that effective restore from the backups can be done which may include a random selection of files.

The Supplier shall initially take on the service from the incumbent supplier together with all associated tapes and media.

The Supplier shall review all the current processes, scripts, mechanisms, software and hardware as soon as possible, to verify it is capable of delivering the backup and recovery service required by the Customer.

This shall be reviewed against current best practice, industry standards, the disaster recovery services requirements and the business requirements of the Customer to create a list of short, medium and long term actions required to deliver a comprehensive backup service.

Anything requiring immediate action shall be discussed with the Customer during the transition phase and remedied at the Customer or Third Party expense before the Commencement Date.

The remaining medium and long term recommendations from this exercise shall feed into the service improvement plan and be discussed with the Customer and the relevant actions instigated under Change Management.

A suitable off site and tape movement methodology shall be put into delivery and operated at the start of each Working Day.

The Supplier shall agree with the Customer a test restore regime which the Supplier shall then action and report upon as part of the normal reporting regime and monthly service review meetings. This shall be demonstrable to the Customer given reasonable notice.

The system management toolsets the Supplier shall employ on Customer infrastructure estate shall provide backups of the infrastructure configurations to ensure these are both restorable and remotely deployable in the event of an issue arising from either hardware failure or as result of a change.

#### 24.1 Transition

The Customer and Supplier shall work together to achieve the transition activities and 'to be' outcomes outlined below in accordance with the Agreement and relevant schedules.

The Supplier shall:

Transition	Transition Outcomes
(a) Understand and plan to maintain the existing backup processes and procedures.	(a) Review the backup processes and procedures and fix any issues.
(b) Ensure that the backup service is maintained during the transfer/Transition Phase.	(b) Where appropriate develop new processes and procedures aligned to best practice.
(c) Agree a test restore plan.	(c) Implement monthly restore testing.
(d) Set up the offsite tape storage facility.	(d) Review existing backup technologies and propose new alternatives.
(e) Agree the offsite tape policy with the Customer.	(e) Review existing backup
(f) Agree a data retention policy.	

(g) Audit all received media. (h) Test all received backup and report on the state of the backup estate. (i) Deliver a once off backup status report.	software and propose consolidated alternatives if appropriate.
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The Customer shall:

- (a) make available to the Supplier the backup scripts used before the Commencement Date; and
- (b) remediate any inherited defects identified by the Supplier, at Customer or Third Party cost.

25. **BUSINESS CONTINUITY MANAGEMENT AND DISASTER RECOVERY SERVICES**

The Supplier shall:

- (a) develop and maintain, in conjunction with the Customer, an ICT services continuity plan and disaster recovery plan. This shall take into account the need to continue to provide the services in the event of a disaster situation to any equipment or premises used by the Supplier to provide the ICT service. The Supplier shall provide the service according to a prioritisation of applications based on business criticality as determined by the Customer, and the plan shall allow applications to be restored on that basis for the defined applications and services as listed in schedule 8.6 (Business Continuity and Disaster Recovery Plan);
- (b) allow the Customer to review the ICT services continuity plan and disaster recovery plan for the continuation of their normal business services in the event of a disaster affecting the Supplier's ability to deliver the ICT services. The arrangements shall be appropriate to the services provided to the Customer. This review shall take place up to twice a year or by agreement with the Supplier more than twice in a year where a specific impending potential major risk has been identified;
- (c) provide appropriate backup and resilience services (DR services) to enable the ICT services to be provided at different geographical locations in the event of a major disaster. The ICT services continuity/DR Plan set out in schedule 8.6 (Business Continuity and Disaster Recovery Plan) must include inherent resiliency features of the delivery centres from which remote services are being delivered. Where aspects of the infrastructure are hosted by the Supplier, provide full ICT service continuity/DR facilities documented in the ICT service continuity/DR Plan;
- (d) test the ICT service continuity/DR Plan at 12 month intervals. Within 2 weeks of the completion of the test, a detailed report is to be made available to the Customer including an action plan to address any shortcomings in the arrangements highlighted by the test;
- (e) provide a disaster recovery service for the servers and applications hosted infrastructure and components, SAN storage, Firewalls with an agreed recovery time for the detailed servers and applications;
- (f) provide details and an indication of costs of how additional DR requirements can be added and incorporated into the DR service; and
- (g) in the event of a disaster or incident affecting the Customer the Supplier shall work constructively with the Customer to deliver a prompt resilience

of service. The decision to invoke the service continuity/DR plan shall be taken by the Customer in conjunction with the Supplier.

The Supplier shall develop and maintain an ICT services continuity and disaster recovery ("DR") Plan in conjunction with the Customer. This shall take into account the need to continue to provide services for critical business applications as defined in the DR Plan (to be agreed during the transition Phase).

On an ongoing basis, and in particular following the results of a DR test, the Supplier and the Customer shall review the DR Plan to ensure that it is fit for purpose and meets the overall objectives.

The Supplier shall have its own DR facilities and plan for provision of its services, the Customer shall be allowed to review these plans on an agreed basis to ensure it is satisfied in so much as it effects the Supplier's ability to provide the relevant services.

The Supplier shall assess the Customer's requirements by conducting a business impact analysis ("BIA"), to an agreed scope. The BIA process shall involve the identification and analysis of corporate risks, recovery requirements, recovery time objectives and recovery alternatives which shall be balanced to produce the most cost effective business resumption strategy.

The next stage shall be to develop an agreed strategy to address the exposures, prioritised according to the potential impact to the business and the investment available to reduce such impact.

The strategy shall cover:

- (a) Risk reduction, e.g. enhanced security, fire protection, power supply contingency etc.
- (b) Provision of cold restart facilities for the temporary replacement of a machine room environment.
- (c) Provision of warm restart facilities for the temporary supply of alternative processing and network facilities.
- (d) Provision of hot standby facilities for the provision of duplicate servers, mirrored discs etc.
- (e) Provision of work area recovery, the temporary use of a fully equipped office suite.

- (f) Provision of fall back telephony services as currently provided to the service centre and emergency bunker.

The Disaster Recovery Plan shall also cover how data is to be backed up and recovered to meet the planned requirements.

Once the strategy is established, the Supplier shall work together with the Customer to plan and implement the required solution.

The DR Plan shall be tested at 12-month intervals. The Supplier shall, within 2 weeks of the test completion, provide a detailed report to the Customer. This shall include an action plan to address any issues identified by the test.

The following responsibility matrix specifies in further detail the respective roles and responsibilities of each party.

<b>Roles &amp; responsibilities</b>	<b>Supplier</b>	<b>Customer</b>
<b>Business Continuity Services and DR services</b>		
1. Establish business continuity recovery requirements for minimising potential disruption of the delivery of services to the Customer (i.e., minimum time to restore full agreed level of core ICT services in the event of a disaster at a Customer site or Supplier's centre).		<b>X</b>
2. Develop plans and methodologies that support the Customer business continuity recovery requirement capability, including procedures to exercise the plan to ensure it can be executed successfully.	<b>X</b>	
3. Approve business continuity management recovery plans.		<b>X</b>
4. Identify Business Continuity Management Response Team.	<b>X</b>	
5. Implement the approved business continuity recovery plans and methodologies and conduct a test exercise of the plan to validate that it can be executed successfully.	<b>X</b>	
6. Provide and maintain a structured process for monitoring, managing, periodically testing and reporting on actions related to disaster activities.	<b>X</b>	
7. Perform business continuity processes as require by the Customer.	<b>X</b>	
8. Establish disaster recovery requirements.		<b>X</b>
9. Implement and maintain a DR plan in accordance to the Customer's requirements.	<b>X</b>	
10. Test plan periodically and adjust as necessary and/or as required by the Customer to ensure ongoing operational effectiveness.	<b>X</b>	
11. Track and provide written report test results to the Customer as required by the Customer.	<b>X</b>	

## 25.1 Transition

The Customer and Supplier shall work together to achieve the transition activities and 'to be' outcomes outlined below in accordance with the Agreement and relevant schedules.

The Supplier shall:

<b>Transition</b>	<b>Transition Outcomes</b>
(a) Review critical applications list and supporting infrastructure. (b) Undertake impact analysis and DR planning activities to inform future DR and BC strategy and in particular as DR and BC provisions relate to the service centre and 'emergency bunker'	(a) Create a Disaster Recovery Plan linked to the Customer's wider business continuity plan. (b) Establish new DR arrangements (c) Undertake the initial DR test and feed findings back into an ongoing review cycle designed to ensure the DR provision is appropriate and adequate.

The Customer shall:

- (a) provide timely input to the creation of the DR Plan;
- (b) provide details of its own BCDR arrangements and requirements;
- (c) assign suitably authorised staff to any testing or invocation activities;
- (d) sign-off of the agreed DR Plan; and
- (e) if required, invoke the Plan in conjunction with the Supplier.



**SCHEDULE 2.2**  
**SERVICE LEVELS**

<b>"Availability"</b>	has the meaning given to it in paragraph 1.2 of the Appendix to Part A of schedule 2.2 (Service Levels), and "Available" shall be construed accordingly;
<b>"Core Hours"</b>	The period after 08:00 until 18:00 in each Working Day;
<b>"Critical Service Failure"</b>	<p>any of the following events:</p> <ul style="list-style-type: none"> <li>(a) the performance of the Services by the Supplier falling to, or below, any of the Service Thresholds in respect of greater than or more than half of the KPIs and PIs in any period of [redacted];</li> <li>(b) the Supplier accruing in aggregate [redacted] more Service Points (in terms of the number of points allocated) in any period of [redacted]; or</li> <li>(c) the Supplier accruing [redacted] or more Repeat Failures in any period of [redacted];</li> </ul>
<b>"Emergency Maintenance"</b>	<p>ad hoc and unplanned maintenance provided by the Supplier where:</p> <ul style="list-style-type: none"> <li>(i) the Customer reasonably suspects that the Services, or any part thereof, has or may have developed a fault, and notifies the Supplier of the same; or</li> <li>(ii) the Supplier reasonably suspects that the Services, or any part thereof, has or may have developed a fault;</li> </ul>
<b>"End User"</b>	any person authorised by the Customer to use the Services;

<b>"Excused Performance"</b>	means the situation where there is a Service Failure but the Supplier demonstrates to the Customer that such failure was directly attributable to one of the circumstances specified in paragraph 8.3 of Part A of schedule 2.2 (Service Levels);
<b>"Key Performance Indicator or KPI "</b>	each of the key performance indicators set out in Table 1 in Appendix 1 to Part A;
<b>"Major Service Failure"</b>	a service failure under the heading "KPI Service Threshold" in either Table 1 or Table 2 (as applicable) in Appendix 1 to Part A or where a Service Failure results in the Non-Availability of the Services and the Customer has elected to treat that Service Failure as a Major Service Failure in accordance with the notes contained in Appendix 1 to Part A of this Schedule;
<b>"Minor Service Failure"</b>	a service failure under the heading "Minor Service Threshold" in either Table 1 or Table 2 (as applicable) in Appendix 1 to Part A
<b>"Maintenance Schedule"</b>	shall have the meaning set out in paragraph 7.1 of Part A of schedule 2.2 (Service Levels);
<b>"Non-Availability"</b>	in relation to the Services, that Services are not Available; and <b>"Non-Available"</b> shall be construed accordingly;
<b>"Non-Core Hours"</b>	All periods other than the period after 08:00 until 18:00 in each Working Day;
<b>"Operating Service Level"</b>	the minimum level of performance for a Service Level which is required by the Customer if the Supplier is to avoid the need to account to the Customer for Service Credits, which levels are identified in the third column of Table 1 or Table 2 (as applicable) in the Appendix 1 to Part A of this schedule 2.2 (Service Levels) and identified as "Operating Service Levels";
<b>"Outline Performance"</b>	has the meaning set out in paragraph 1.5 of

<b>"Monitoring System"</b>	Part B of this Schedule 2.2 (Service Levels);
<b>"Payment Retention"</b>	has the meaning given to it in paragraph 3.2 of Schedule 7.1;
<b>"Performance Indicator, or PI"</b>	a performance indicator as set out in Table 2 in Appendix 1 to Part A;
<b>"Performance Monitoring Report"</b>	the monthly report prepared by the Supplier in accordance with paragraph 4 of Part B of this schedule 2.2 (Service Levels);
<b>"Performance Review Meeting"</b>	the regular meeting between the Supplier and the Customer to manage and review the Supplier's performance under the Contract, as further described in paragraph 4.5 of Part B of this schedule 2.2 (Service Levels);
<b>"Permitted Maintenance"</b>	shall have the meaning set out in paragraph 7.2.3 of Part A of this schedule 2.2 (Service Levels);
<b>"Quarter"</b>	the first three Service Periods and each subsequent three Service Periods (or reduced period immediately prior to the end of the Term);
<b>"Quarterly Summary"</b>	the summary of the performance by the Supplier to be provided by the Supplier to the Customer pursuant to paragraph 4.4 of Part B of this schedule 2.2 (Service Levels);
<b>"Repeat Failure"</b>	has the meaning given to it in paragraph 3.1 of Part A of this schedule 2.2 (Service Levels);
<b>"Satisfaction Survey"</b>	a survey undertaken by the Customer pursuant to paragraph 5 of Part B of this schedule 2.2 (Service Levels);
<b>"Service Desk"</b>	the single point of contact service desk set up and operated by the Supplier pursuant to the help desk Service described in Schedule 2.1 (Service Requirements);
<b>"Service Downtime"</b>	any period of time during which a Service is not Available;

<b>"Service Failure"</b>	any defect in or failure of any Service which results (or would result if End Users were, at the relevant time, using that Service) in a failure to provide that Service in accordance with the requirements of this Contract or which results in the provision of that Service to End Users not complying with the requirements of this Contract and for the avoidance of doubt an operational Incident does not constitute a Service Failure;
<b>"Service Failure Log"</b>	the hard copy and electronic version of the log created and maintained by the Supplier as part of the Services in accordance with paragraph 3 of Part B of this schedule 2.2 (Service Levels);
<b>"Service Failure Report"</b>	the first notification of a Service Failure received by the Supplier (including from the Supplier) in respect of that Service Failure;
<b>"Service Level Report"</b>	the report which summarises the performance by the Supplier against each of the Service Levels, which report shall be prepared by the Supplier and submitted to the Customer pursuant to paragraph 2.2 of Part A of schedule 2.2 (Service Levels);
<b>"Service Period"</b>	shall have the following meaning: <ul style="list-style-type: none"> <li>(i) the first Service Period of this Contract shall begin on the Operational Service Commencement Date and shall expire at the end of the calendar month in which the Operational Service Commencement Date falls; and</li> <li>(ii) after the first Service Period of this Contract a Service Period shall be a calendar month during this Contract save that the final Payment Month of this Contract shall</li> </ul>

commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term;

**"Service Points"**

the points that are set out under the heading "Service Points" in the Appendix to Part A of this schedule 2.2 (Service Levels) in either Table 1 or Table 2 (as applicable) in relation to relevant severity level and which shall accrue to the Supplier in the event of any failure by the Supplier to achieve an Operating Service Level;

**"Service Notification Threshold"**

the thresholds set out in paragraph 2.2 of Part B of this Schedule 2.2;

**"Service Threshold"**

the level below which the quality of any Services becomes unacceptable to the Customer as set out under the column headed "KPI Service Threshold" in either Table 1 or Table 2 (as applicable) in Appendix 1 to Part A of this schedule 2.2 (Service Levels);

**"Severe Service Failure"**

a service failure under the heading "Severe Service Failure" in either Table 1 or Table 2 (as applicable) in Appendix 1 to Part A or where a Service Failure results in the Non-Availability of the Services and the Customer has elected to treat that Service Failure as a Severe Service Failure in accordance with the notes contained in Appendix 1 to Part A of this Schedule;

## **SCHEDULE 2.2 - SERVICE LEVELS**

### **1. SCOPE**

This schedule 2.2 (Service Levels) sets out the Service Levels which the Supplier is required to achieve when delivering the Services and 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;
- 1.3 Part B: Performance Monitoring; and
- 1.4 Appendix to Part B - Outline Performance Monitoring System.

## **PART A**

### **Service Levels**

#### **1. OBJECTIVES**

The objectives of the Payment Retention, Service Levels, Service Points and Service Credits are to:

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

#### **2. SERVICE LEVELS**

- 2.1 Appendix 1 to Part A and Appendix 2 to Part A of this schedule sets out Service Levels for the Services.
- 2.2 The Supplier shall monitor its performance of each of the Services by reference to the Service Level(s) for that Service and shall send the Customer a report detailing the level of service which was achieved in accordance with the provisions of Part B of this schedule 2.2.
- 2.3 The Supplier shall, at all times, provide the Services in such a manner that the Operating Service Level for each Service is achieved.
- 2.4 If the level of performance of the Supplier of any element of a Service during a Service Period:
  - 2.4.1 achieves the Operating Service Level in respect of each element of the Service, no Service Points will accrue to the Supplier in respect of that element of the Service;
  - 2.4.2 is below the Operating Service Level but above the Service Threshold in respect of each element of the Service, the appropriate number of Service Points will accrue to the Supplier in respect of that element of the Service which shall, subject to paragraph 5.5 of this Schedule 2.2 be converted into Service Credits in accordance with paragraph 6 of Schedule 7.1; or



2.4.3 constitutes a Critical Service Failure, the Customer shall, subject to clause 5.6 (Correction Plan) be entitled to terminate this Contract pursuant to clause 59.1.5.6 (Termination Rights) and/or seek damages in addition to any Service Points which have already been accrued by the Supplier and for which Service Credits are payable by the Supplier to the Customer.

### 3. REPEAT AND PERSISTENT FAILURES

3.1 If the Supplier fails to achieve any Service Level during 2 consecutive Service Periods or during 3 Service Periods in any 6 month period, the second such failure shall be a "**Repeat Failure**". Any subsequent failure by the Supplier to achieve that same Operating Service Level shall also be a Repeat Failure.

3.2 If any Repeat Failure occurs, the number of Service Points that shall accrue to the Supplier in respect of such Repeat Failure shall be the number of Service Points that would normally accrue in respect of an initial failure of that Service Level multiplied in accordance with the following table:

Number of Repeat Failures	Multiplier
0 (initial failure)	[redacted]
1	[redacted]
2	[redacted]
3	[redacted]
4 or more	[redacted]

### 4. RELATED FAILURES

Where a specific Service Failure occurs that causes the Supplier to miss two or more Service Levels then the Supplier shall only be deemed to have failed the Service Level which has the highest value of Service Credits applying to it, taking into account any increased Service Credits due to any Repeat Failures as described in paragraph 3.2.

### 5. SERVICE CREDITS AND SERVICE POINTS

5.1 In relation to the Key Performance Indicators set out in table 1 in Appendix 1 to Part A, the Supplier shall accrue the number of Service Points as set out in that table which correspond to the level of performance provided by the Supplier. All Service Points accrued by the Supplier in respect of Key Performance Indicators

shall be converted into Service Credits and deducted from the Retention Payment in accordance with Schedule 7.1.

- 5.2 In relation to the Performance Indicators set out in table 2 in Appendix 1 to Part A, the Supplier shall accrue the number of Service Points as set out in that table which correspond to the level of performance provided by the Supplier. The Service Points accrued in respect of Performance Indicators shall not be converted into Service Credits.
- 5.3 All Service Points accrued in respect of Key Performance Indicators and Performance Indicators shall count towards the aggregation of any Service Points for the purposes of this Agreement and as such shall count towards the calculation of a Critical Service Failure, the Service Points in clause 11.5.1 and the Service Points in clause 64.1.5.
- 5.4 Schedule 7.1 (Charges and Invoicing) sets out the mechanism by which Service Points are converted into Service Credits. A worked example is set out in the notes under Table 2 in Appendix A to Part A.
- 5.5 The Customer 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.
- 5.6 The Supplier agrees that Service Credits are a reduction to the Payment Retention in respect of the Services and do not include VAT. The reduction to be made to the Payment Retention in respect of the Service Credits accrued shall be applied by the Customer in accordance with the provisions of schedule 7.1 (Charges and Invoicing).

## 6. **NATURE OF SERVICE CREDITS**

The Supplier confirms that it has modelled the Service Credits and the Payment Retention and has taken them into account in setting the level of the Charges. Both parties agree that the Payment Retention and the deduction that can be made to the Payment Retention for the Service Credits are a reasonable method of price adjustment to reflect poor performance.

## 7. **MAINTENANCE**

- 7.1 The Supplier shall create and maintain a rolling maintenance schedule with regard to the Services ("**Maintenance Schedule**") to be agreed with the Customer. The Maintenance Schedule shall be discussed and updated by the Project Board in accordance with the procedures set out in schedule 8.1 (Governance).

- 7.2 When the Supplier wishes to carry out any maintenance to the Services (other than Emergency Maintenance), it shall ensure that:
- 7.2.1 the timing of the planned maintenance is in accordance with the requirements of the Maintenance Schedule or is as otherwise agreed in writing with the Customer's Representative at least 20 Working Days in advance;
  - 7.2.2 it is carried out during Non-Core Hours;
  - 7.2.3 oOnce agreed with the Customer's Representative the planned maintenance (which shall be known as "**Permitted Maintenance**") is forthwith entered onto the Maintenance Schedule; and
  - 7.2.4 the Permitted Maintenance is subsequently carried out in accordance with the Maintenance Schedule.
- 7.3 The Supplier will be allowed to book a maximum of 16 hours Service Downtime for Permitted Maintenance in any one Service Period which shall take place between the hours and on the day specified in the Maintenance Schedule unless otherwise agreed in writing with the Customer. For the avoidance of doubt Permitted Maintenance shall not exceed 4 hours per week.
- 7.4 Service Downtime arising due to Permitted Maintenance that is carried out by the Supplier in accordance with paragraph 7.3 will be subtracted from the total number of hours in the relevant Service Period when calculating Availability, in accordance with the Appendix 1 to this Part A.
- 7.5 Service Points shall accrue as set out in the Appendix to this Part A if any Service Downtime occurs as a result of Emergency Maintenance undertaken by the Supplier or where maintenance undertaken by the Supplier exceeds 16 hours in any Service Period.
- 7.6 The Supplier shall carry out any necessary maintenance where it reasonably suspects that the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the Services.
- 7.7 The Supplier shall give as much notice as is reasonably practicable to the Customer's Representative prior to carrying out any Emergency Maintenance.

## 8. **EXCUSED PERFORMANCE**

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

- 8.2 The Supplier shall advise the Customer 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 4 (Performance Monitoring and Performance Review) of Part B to this schedule 2.2 (Service Levels). Failure to so advise the Customer shall prevent the Supplier from claiming that the relevant events or circumstances gave rise to Excused Performance.
- 8.3 The Supplier shall be entitled to Excused Performance in respect of a Service Failure if and to the extent (and subject to the Supplier demonstrating to the reasonable satisfaction of the Customer) that:
- 8.3.1 the Service Failure was caused by a Force Majeure Event which the Supplier could not have foreseen, prevented or mitigated and which directly affected the Supplier's ability to provide the Services in respect of the relevant Service Levels, provided that the Supplier has timeously and effectively implemented any applicable disaster recovery or business recovery plan that would enable the Supplier to resume providing the Services to the Operating Service Levels; or
- 8.3.2 the underlying cause of the Service Failure was due to an act or omission of (a) the Customer, its employees or contractors or (b) a third party service provider (except to the extent that the Supplier has any service and/or management obligations and/or contractual relationship in respect of such third party in which case the Supplier shall not be entitled to relief pursuant to this paragraph 8.3.2).
- 8.4 Notwithstanding the cause of any Excused Performance, the Supplier shall use all reasonable endeavours and take all reasonable steps within its control to mitigate the impact to the Customer of any Services failing to achieve the Operational Service Levels.
- 8.5 Service Points shall continue to be applied as referred to in paragraph 2.4 except to the extent that the Supplier has demonstrated Excused Performance in respect of any Service Failure.

## APPENDIX 1 TO PART A

### Service Levels and Severity Levels

**TABLE 1 – KEY PERFORMANCE INDICATORS**

No.	Key Performance Indicator Title	Service Points				
		0	[redacted]	[redacted]	[redacted]	[redacted]
		Severity Levels				
		Operating Service Level	Minor Failure	Serious Failure	Severe Failure	KPI Service Threshold
KPI-1	Customer satisfaction - Monthly	90%	87.5%	85%	82.5%	<82.5%
KPI-2	Service desk call abandonment rate	5%	6%	7%	8%	>8%
KPI-3	First call resolution rate	80%	77.5%	75%	72.5%	<72.5%
KPI-4	Follow-on contacts due to problem after initial fix failed	= <5%	5% to 7%	8% to 10%	11% to 13%	>13%
KPI-5	Hardware and software asset inventory	99%	98%	97%	96%	<96%
KPI-6	Severity 1 incident resolution within applicable SLA relating to that system (n incidents occur in monitoring period)	n-1 incidents resolved within SLA	n-2 incidents resolved within SLA	n-3 incidents resolved within SLA	n-4 incidents resolved within SLA	>n-4 incidents resolved within SLA
KPI-7	Severity 2 incident resolution within applicable SLA relating to that system (n incidents occur in monitoring period)	n-1 incidents resolved within SLA	n-2 incidents resolved within SLA	n-3 incidents resolved within SLA	n-4 incidents resolved within SLA	>n-4 incidents resolved within SLA
KPI-8	End-to-end applications Availability for defined applications portfolio (Defined applications TBA) (See worked example below table for illustration)	100% within mean average SLA for the portfolio	99.9% within mean average SLA for the portfolio	99.8% within mean average SLA for the portfolio	99.7% within mean average SLA for the portfolio	<99.7% within mean average SLA for the portfolio

**TABLE 2 – PERFORMANCE INDICATORS**

No.	Performance Indicator Title	Service Points				
		0	[redacted]	[redacted]	[redacted]	[redacted]
		Severity Levels				
		Operating Service Level	Minor Failure	Serious Failure	Severe Failure	KPI Service Threshold
PI-1	Senior customer satisfaction - annual	90%	85%	80%	75%	<75%
PI-2	Severity 3 incident resolution within agreed SLA	90%	85%	80%	75%	<75%
PI-3	Severity 4 incident resolution within agreed SLA	90%	85%	80%	75%	<75%
PI-4	System software – Current release level	100%	97.5%	95%	92.5%	<92.5%
PI-5	Application software – Current release level	100%	97.5%	95%	92.5%	<92.5%
PI-6	Backup of all systems and applications	100%	99%	98%	97%	<97%

**Notes:**

1. A Severe Service Failure is the highest (i.e. most serious) severity level and Minor Service Failure is the lowest (i.e. least serious) severity level.
2. Notwithstanding the provisions of Table 1 and Table 2 above, a Service Failure which results in the Non-Availability of the Services shall always be classified as either a Major Service Failure or a Severe Service Failure at the Customer's discretion.
3. The element of the Payment Retention which is withheld from the Supplier for failure to meet the Service Levels shall be calculated on a linear basis in relation to the number of Service Points accrued for each element of the Services. For example, if the Operating Service Levels are met fully, then 100% of the Payment Retention shall be paid in accordance with paragraph 6.1 of Schedule 7.1. If the Operating Service Threshold is not met in respect of a single KPI then the Payment Retention is reduced by [redacted] for each Service Point accrued. If the Service Threshold is not met for a single KPI, the Payment Retention shall be reduced by [redacted]
4. The above KPIs and PIs are more fully defined in Appendix 2 to this Part A.

## 9. **Availability**

- 9.1 The Supplier shall measure the Availability of the Operational Services and shall monitor it in accordance with the Performance Monitoring System.
- 9.2 The Operational Service shall be Available (and "Available" shall be interpreted accordingly) when End Users are able to access and utilise all of the Operational Services during the Core Hours.
- 9.3 The Customer reserves the right to verify the Availability of the Operational Services.
- 9.4 Availability for each individual application or service 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.

- 9.5 The mean average Availability across the application portfolio which is managed by the Supplier shall be calculated by adding the percentage availability for each application or service within the portfolio and dividing this by the number of applications or services in the portfolio.
- 9.6 As an example, there are 60 application services measured, each with varying Availability targets. Of these, 58 achieve or exceed their target and 2 achieve 95% of target during a given Service Period. The mean average availability across the portfolio is therefore:

$$\frac{(58 \times 100) + (2 \times 95)}{60}$$

Which equals 99.83%.

## 10. **Service Desk Response Times**

- 10.1 The parties have agreed to measure the Service Desk response times. The response times are those set out in paragraph 10.1 of this Schedule 2.2.
- 10.2 Measurement will be based on the time taken for a Service Desk operative to answer a call. Calls receiving an automated response or placed into a queuing system shall be deemed not to have been answered.
- 10.3 The Service Levels shall apply to the average Service Desk response times over the course of a Service Period.
- 10.4 The Supplier shall monitor the Service Desk response times in accordance with the Performance Monitoring System, and shall provide the results of such monitoring to the Customer in accordance with the provisions of Part B of this schedule.
- 10.5 The following target response times will apply:

Call Type	Target Response
All calls	No more that 5% of calls waiting more than 20 seconds shall be abandoned by the end user



## APPENDIX 2 TO PART A

### Key Performance Indicators and Performance Indicators

Service Level Subject	Service Level Requirement	Service Provider/Service Recipient responsibilities
KPI-1: Customer Satisfaction - Monthly	90% very satisfied or higher	<p>The percentage of Customer respondents to a Service Desk customer satisfaction survey carried out in a Measurement Period whose overall rating was satisfied or very satisfied.</p> <p>In order to carry out the Calculation, the Supplier shall sample all Users on ticket closure via email. Users will be asked to rate the quality of the IT Services on a scale of 1 to 5 in respect of a number of attributes, where the scale is represented to them as:</p> <ul style="list-style-type: none"> <li>5. Very Good</li> <li>4. Good</li> <li>3. Satisfactory</li> <li>2. Poor</li> <li>1. Very Poor</li> </ul> <p>All scores below 3 will be evaluated by the Supplier and if a score is considered to be unjustified, the Supplier shall request that it is excluded from the measure. The Customer shall not unreasonably withhold agreement to this.</p>
KPI-2 Call Abandonment Rate	<5% of calls will be abandoned that were not answered within 20 seconds	Recording and managing calls that are abandoned to less than prescribed service level
KPI-3 First Call Resolution Rate	80% of resolvable calls will be resolved at first contact. The list of in-scope calls will be	Provide required assistance (non-technical and technical) to satisfy Service Recipient end-user needs on the initial call to the service desk

KPI-4 Follow-on contacts due to problem repeated after initial fix failed	agreed during transition and will be recorded and maintained in the Operations Manual.	Commit to increase the FCR % of all calls by at least 2% per annum for the first 2 years of service, future service improvement targets to be agreed and captured in the Operations manual.
	No more than 5%	<p>Examples of call types in “Resolvable Calls List” are included in Annex A.</p> <p>The Supplier will measure the volume of tickets that a re-opened from a status of ‘Resolved’ for subsequent further remedial action on a monthly basis.</p> <p>This measure shall apply only to tickets where the Supplier is responsible for resolution.</p> <p>The equivalent performance for tickets where Third Parties are responsible for resolution will be excluded from this measure.</p> <p>Such tickets and Third Party performance will be tracked and reported by the Supplier, and used to manage Third Parties’ performance on behalf of NWP.</p> <p>In addition, the Supplier will conduct trending analysis on all Incidents raised on a weekly and monthly basis.</p> <p>Problem tickets to investigate the cause of repeat incidents identified in proactive trending activities will be raised and managed as per the Problem Management process.</p>
KPI-5 Hardware and/or Software Inventory Accuracy	99% of changes implemented during normal working hours will be reflected in the CMDB within 4 working hours of the change being implemented/accepted.	<p>Notification to service recipient on a daily basis through posting to CMDB.</p> <p>Changes implemented outside normal working hours will be reflected in the CMDB within 4 hours of the next normal working day.</p> <p>This excludes high volume project based changes.</p> <p>The measurement method to be used will be defined and agreed during Implementation as there is no automated facility to provide this</p>

<p>KPI-6 Severity 1 incident resolution within applicable SLA relating to that system (n incidents occur in monitoring period)</p>	<p>Due to the small monthly sample sizes associated with P1 and P2 tickets, the following revised Service Level Objective measures are proposed:</p> <p>The sample size for the month is <math>n</math>.</p> <p>The number of P1 tickets resolved within the resolution target for the relevant system must be at least <math>n-1</math>.</p>	<p>information. The expected method is a sample of BAU RFCs.</p> <p>Resolve problem and have "broken system" up and running or replacement provided within designated time.</p> <p>This measure shall apply <u>only</u> to tickets where the Supplier is responsible for resolution.</p> <p>The equivalent performance for tickets where Third Parties are responsible for resolution will be excluded from this measure.</p> <p>Such tickets and Third Party performance will be tracked and reported by the Supplier, and used to manage Third Parties' performance on behalf of NWP.</p> <p>Response and Resolution Targets for each system in the scope of this measure are included at Annex B.</p>
<p>KPI-7: Severity 2 incident resolution within applicable SLA relating to that system (n incidents occur in monitoring period)</p>	<p>Due to the small monthly sample sizes associated with P1 and P2 tickets, the following revised Service Level Objective measures are proposed:</p> <p>The sample size for the month is <math>n</math>.</p> <p>The number of P2 tickets resolved within the resolution target for the relevant system must be at least <math>n-1</math>.</p>	<p>Resolve problem and have "broken system" up and running or replacement provided within designated time.</p> <p>This measure shall apply <u>only</u> to tickets where the Supplier is responsible for resolution.</p> <p>The equivalent performance for tickets where Third Parties are responsible for resolution will be excluded from this measure.</p> <p>Such tickets and Third Party performance will be tracked and reported by the Supplier, and used to manage Third Parties' performance on behalf of NWP.</p> <p>Response and Resolution Targets for each system in the scope of this measure are included at Annex B.</p>
<p>KPI-8: End-to-end applications</p>	<p>% availability is defined in core applications</p>	<p>End-to-end applications availability to be specified either through an</p>

availability for defined applications portfolio which shall be agreed between the Parties within 30 days of entering into the Contract	SLAs or otherwise as agreed	<p>existing SLA associated with that application or as agreed.</p> <p>This measure shall be based on the component availabilities of:</p> <ol style="list-style-type: none"> <li>The application being presented to the NWP wide area network.</li> <li>The wide area network availability, by site.</li> </ol> <p>where:</p> <ol style="list-style-type: none"> <li>The application services are delivered from the Supplier designed infrastructure or inherited systems that the Supplier has accepted into service for this measure.</li> <li>Any inherited defects have been remediated at NWP or Third Party expense.</li> <li>Software providers have accepted the flow-down of service levels.</li> <li>Outages to be measured arise from issues that are fully within the direct control of the Supplier. For example, where an outage is due to a failed release that has undergone the necessary testing and validation prior to deployment and been accepted into service, but subsequently failed, the Supplier will be granted relief from this measure.</li> </ol> <p>The impact of multiple desktop failures or LAN failure at smaller sites has been recognised and a process to address this defined in Annex C to this schedule.</p> <p>The target per application/service is to be determined during Implementation. Performance per application/service will be manually derived from P1/2 ticket duration data.</p>
PI-1: Senior Customer Satisfaction - Annual	7 on a scale of 1 to 10	The Satisfaction Survey will be based on a scale of 1-10, with 1 being worst and 10 being best level of satisfaction.
PI-2: Severity 3 incident resolution within agreed SLA	90% within the SLA applying to that application/system	<p>Resolve problem and have "broken system" up and running or replacement provided within designated time</p> <p>Response and Resolution Targets for each system in the scope of this</p>

PI-3: Severity 4 incident resolution within agreed SLA		measure are included at Annex B.
	80% within the SLA applying to that application/system	Resolve problem and have "broken system" up and running or replacement provided within designated time  Response and Resolution Targets for each system in the scope of this measure are included at Annex B.
PI-4: System Software - Current release level	Unless otherwise agreed	Maintain system software in line with the agreed Release Policy for the system as defined in the Operations Manual. This shall be to within one version of the manufacturer's current supported, stable and tested release unless agreed otherwise, provided that the Customer has the appropriate software licence and maintenance agreements with the manufacturer. This does not apply to any Supplier cloud-based Infrastructure as a Service as the Supplier will maintain currency of the operating software within the service.
PI-5: Application Software current release	Unless otherwise agreed	Excludes minor releases and delta or patch releases. Maintain application software in line with the agreed Release Policy for the system as defined in the Operations Manual. This shall be to within one version of the manufacturer's current supported, stable and tested release unless agreed otherwise, provided that the Customer has the appropriate software licence and maintenance agreements with the manufacturer. This does not apply to any Supplier cloud-based Software as a Service as the Supplier will maintain currency of the software within the Service.
PI-6: Backup of all systems and applications	Perform backups and archive retention in line with the agreed Backup and Data Retention Policies as defined in the Operations Manual.	Excludes minor releases and delta or patch releases. Replicate/move to off-site backup within 12 hours.  The Backup Policy shall reflect the RTO and RPO requirements for each application service.  The Data Retention Policy shall reflect the data retention and security governance requirements of the Force, including mandated national

	<p>requirements.</p> <p>The detailed measures are not defined and will be agreed during Implementation. This will include database snapshots and cross-site replication.</p> <p>Any systems identified from the Current State Assessment that are not configured to achieve the required backup regime shall be excluded from this measure until any remediation needed has been completed.</p>
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## Annex A – Resolvable Call categories

The following list provides a baseline view of the Incident and Service Request categories that shall fall within the resolution capability of the Service Desk. It is provided for illustration purposes and shall not be maintained under contract Change Control.

The Resolvable Call list shall be replicated in the Operations Manual and managed as a “living document” under operational Change Management. During the Transition period, this list will be expanded to include Customer specific categories, particularly relating to the Customer’s business applications and external resolvers.

Incident Type	Incident type (examples only)	Possible Resolution by Service Desk
T0	Service Request/fault logging – logging and passing request/fault to second-line support or customer/third-party support team – in line with agreed call handling instructions.	No resolution
T1	Password reset – simple Wintel password resets using the User Manager tool and Active Directory Locked account – unlocking Wintel accounts using the User Manager tool and Active Directory Email re-directs – Redirecting incoming emails from one mailbox to another Office Productivity tools configuration or advice and guidance issues.	Yes
T2	Known errors (applications, scripts – details captured in SKMS) Mailsweeper (or similar) e-mail releases Triage to decide which support team is most suitable	Yes
T3	Complex technical diagnosis, qualification and detailed data capture of incidents and routing to relevant second line resolver groups. Share permissions Access to shared folder	Yes
Technical T4	Remote access –remote access software Remote telephony configuration (IPT, Lync etc) Specialist remote engineering capability	Yes

## Annex B – Response and Resolution Targets – Supplier and Current Application Provider Measures

### Supplier Service Level Targets

Severity	Response Time	Resolution Time
P1	30 minutes (or as agreed for critical application services)	4 hour
P2	1 hour	8 hours
P3	4 hours	24 hours
P4	8 hours	72 hours

### Current Provider Measures

	ICAD CAT A Cover	ICAD CAT B Cover	ICCS (on site)	KCOM TIER 1	KCOM TIER 2	KCOM TIER 3	RMS	HOLMES
Call Answering	Not Specified	Not Specified	Within 20 Seconds	Not Specified	Not Specified	Not Specified	Not Specified	Nothing specified other than 24*7*364 support (no Xmas Day)
Incident Response	2 Hours	4 Hours		15 Minutes	15 Minutes	15 Minutes		
P1	Not Specified	Not Specified	4 Hours	Not Specified	Not Specified	Not Specified	15 Mins	
P2	Not Specified	Not Specified	5 Hours	Not Specified	Not Specified	Not Specified	1 Hour	
P3	Not Specified	Not Specified	1 Working Day	Not Specified	Not Specified	Not Specified	4 Hours	
P4	Not Specified	Not Specified	3 Working Days	Not Specified	Not Specified	Not Specified	Next Business Day	



Incident Resolution	Not Specified	Not Specified		4 Hours	4 Hours	4 Hours	
<i>P1</i>	Not Specified	Not Specified	HW Exchange (if parts onsite) 4.5 Hours	Not Specified	Not Specified	Not Specified	4 Hours
<i>P2</i>	Not Specified	Not Specified	HW Exchange (if parts onsite) 5.5 Hours	Not Specified	Not Specified	Not Specified	8 Hours
<i>P3</i>	Not Specified	Not Specified	HW Exchange (if parts onsite) 1 Working Day	Not Specified	Not Specified	Not Specified	24 Hours
<i>P4</i>	Not Specified	Not Specified	HW Exchange (if parts onsite) 3 Working Days	Not Specified	Not Specified	Not Specified	48 Hours
Availability							
<i>Site Availability</i>				99.90%	99.50%	98.76%	
<i>Managed Service System Availability</i>				99.90%	99.90%	99.90%	
<i>Mitel Availability Aggregated across all switches within each Tier</i>				99.90%	99.50%	98.76%	
<i>Incident Detection</i>							Monitoring Frequency 5 Mins
<i>Incident Closure</i>							3 Closure Attempts

Miscroft PRODUCTS

Levels	Response Time
Critical Level A	1hr
Critical Level B	2hrs
Critical Level C	4hrs

## Annex C – SLA 12 Availability: Desktop & LAN availability assurance process

The aim of this assurance process is to focus the service on maintaining the availability of key business applications to all users in the Customer estate.

For Tier 4 sites as defined in the agreed WAN design connected to the WAN via ADSL services the Service Desk shall have appropriate scripting to enable the analyst to identify where the impact of an Incident affects more than 50% of the users.

This might include a situation where multiple LAN ports are unavailable, or multiple desktop clients have failed.

In these circumstances, the Priority of the Incident ticket shall be raised to reflect the impact and provide a rapid resolution of the Incident.

For Tier 1, Tier 2 and Tier 3 sites as defined in the agreed WAN design connected to the WAN via resilient high speed Ethernet services] there will be no variation from normal prioritisation as there are sufficient client devices to ensure resilience.

## **PART B**

### **Performance Monitoring**

This Part B is to be read in conjunction with schedule 8.1 (Governance).

#### **1. PRINCIPAL POINTS**

1.1 This Part B provides the methodology for monitoring the Services:

1.1.1 to ensure that the Supplier is complying with the Service Levels; and

1.1.2 for identifying any Service Failures in the performance of the Supplier and/or delivery of the Services ("**Performance Monitoring System**").

1.2 Within three months of the Effective Date the Supplier shall provide the Customer with a Performance Monitoring System which shall comply with relevant provisions of the ICT Infrastructure Library guidelines developed by the Office of Government Commerce and as a minimum, include details of the Supplier's proposals in respect of the following:

1.2.1 notifications to the Service Desk of Service Failures and other defects in the Supplier's performance and/or delivery of the Services;

1.2.2 Supplier self monitoring in accordance with the Performance Monitoring System using an industry recognised service desk tool;

1.2.3 Satisfaction Surveys;

1.2.4 performance review;

1.2.5 Customer audit;

1.2.6 the processes and systems the Supplier will put in place to monitor effectively its performance of the Services as against the Service Levels;

1.2.7 the format and content of the Performance Monitoring Report; and

1.2.8 how the Supplier will comply with the obligations set out in Part B of this schedule 2.2.

1.3 The Customer shall notify the Supplier within 10 Working Days of its receipt of the draft Performance Monitoring System and of its response (approval or rejection) to it. The draft Performance Monitoring System shall not be deemed to have been approved if no notice of approval is given during such period. If

the draft Performance Monitoring System is approved by the Customer it shall be adopted immediately.

- 1.4 If the Customer gives notice of its rejection of the draft Performance Monitoring System, it shall in such notice identify the changes it requires to be made to it. The Supplier shall amend the draft Performance Monitoring System so as to incorporate the changes required by the Customer and re-submit the amended draft Performance Monitoring System to the Customer for approval within five Working Days of receipt of the Customer's rejection notice. If the Customer does not approve the draft Performance Monitoring System following its resubmission to the Customer pursuant to the provisions of this paragraph 1.4, the matter shall be resolved in accordance with the Dispute Resolution Procedure.
- 1.5 An outline Performance Monitoring System ("**Outline Performance Monitoring System**") has been agreed between the Customer and the Supplier and is set out in Schedule 2.1. The Outline Performance Monitoring System shall be binding upon the Supplier from the Effective Date until the Performance Monitoring System is agreed between the Parties.
- 1.6 The Supplier shall ensure that the Performance Monitoring System shall be maintained and updated on a monthly basis by the Supplier as may be necessary to reflect the then current state of the Services. Any updated Performance Monitoring System shall be forwarded to the Customer for approval within five Working Days of receipt by the Supplier of the request from the Customer for the update. The Customer shall be entitled to require reasonable amendments to the updated Performance Monitoring System and the Supplier shall make such amendments and re-submit a further updated Performance Monitoring System to the Customer for approval. Until such time as the updated Performance Monitoring System is approved by the Customer the Performance Monitoring System then existing (that is to say prior to the update) shall continue to apply.
- 1.7 Without prejudice to the obligations imposed upon the Supplier and the rights afforded to the Customer pursuant to paragraph 1.3 of this Part B, the parties shall consider and review the Performance Monitoring System at the Project Board meetings pursuant to schedule 8.1 (Governance).
- 1.8 The Customer shall be entitled to reasonably require, and the Supplier must comply with requests for, routine changes to the Performance Monitoring System.
- 1.9 Without prejudice to the provisions of paragraphs 1.5 and 1.6 of this Part B each of the Customer and the Supplier shall have the right to propose any Changes to the Performance Monitoring System in accordance with the Change Control Procedure. For the avoidance of doubt, any requests for Changes to the

Performance Monitoring System shall be dealt with via the Change Control Procedure.

## 2. **SERVICE NOTIFICATION THRESHOLDS**

- 2.1 The Supplier shall monitor the Service Notification Thresholds in accordance with the Performance Monitoring System.
- 2.2 The following Service Notification Thresholds will apply in accordance with the provisions of clause 11.3 of this Contract:

Service	Service Notification Threshold
All services	[redacted] of the same KPI or PI Service Failure in a rolling [redacted] period.

## 3. **REPORTING OF SERVICE FAILURES**

- 3.1 The Customer shall report all Service Failures to the Supplier's Service Manager.
- 3.2 The Supplier shall ensure that all Service Failures are logged immediately on receipt of notification, on the Service Failure Log. The Customer shall have verification rights in relation to the Service Failure Log.
- 3.3 Where the Supplier receives more than one report of the Service Failure then all such reports shall be logged on the Service Failure Log (but for the avoidance of doubt, the first report shall be deemed to be the Service Failure Report).
- 3.4 The Supplier shall ensure that, as a minimum, the following details are recorded by the Supplier in the Service Failure Log in respect of each Service Failure:
- 3.4.1 a unique report number (report numbers shall be applied sequentially);
  - 3.4.2 the date and time the report is received by the Supplier;
  - 3.4.3 the nature and location of the Service Failure;
  - 3.4.4 the person/organisation making the report;
  - 3.4.5 the level assigned to the Service Failure by the Customer (in accordance with the Appendix to Part A of this schedule);
  - 3.4.6 an estimate (produced with all due care and diligence) of the number of End Users which are affected by the Service Failure (whether they are individual users or groups of users);

- 3.4.7 the action intended to be taken or which has been taken to rectify the Service Failure;
  - 3.4.8 details of any communication with the Customer's Representative in connection with the Service Failure;
  - 3.4.9 notes/comments regarding any mitigating circumstances with regard to the Service Failure;
  - 3.4.10 the Supplier's plans for remedying the Service Failure and/or for preventing the Service Failure from re-occurring including details where applicable of the estimated time within which such Service Failure will be remedied; and
  - 3.4.11 the reasons for any inability of the Supplier to meet the Operating Service Level so as to resolve the Service Failure.
- 3.5 The Supplier shall provide to the Customer's Representative a copy of the entry in the Service Failure Log in respect of each Service Failure within 2 hours of receipt of the Service Failure Report or within such shorter period as the Customer shall reasonably require with respect to any Service Failure which has resulted in the Supplier's performance of a Service falling below a Service Threshold and/or with respect to any Major Service Failure or Severe Service Failure.
- 3.6 Whenever requested by the Customer's Representative (acting reasonably), the Supplier shall, at intervals of no more than 1 hour or as otherwise agreed, provide to the Customer's Representative an up-to-date status report with respect to each Service Failure.
- 3.7 The Customer shall determine the level which relates to each Service Failure as determined in accordance with the Appendix to Part A of this schedule. The Supplier shall be entitled to challenge the level which is allocated by the Customer. Any such challenge shall not affect the obligations of the Supplier to respond to the Service Failure in accordance with the level initially allocated by the Customer.

#### 4. **PERFORMANCE MONITORING AND PERFORMANCE REVIEW**

- 4.1 Within 10 Working Days of the end of each Service Period, the Supplier shall provide a Performance Monitoring Report to the Customer's Representative.
- 4.2 The Performance Monitoring Report shall be in the format set out in the Performance Monitoring System and shall contain, as a minimum, the following information in respect of the Service Period just ended:

- 4.2.1 the monitoring which has been performed in accordance with the Performance Monitoring System with a summary of any issues identified by such monitoring;
- 4.2.2 for each Service Level, the actual performance achieved over the Service Period, and that achieved over the previous 3 Service Periods;
- 4.2.3 a summary of all Service Failures that occurred during the Measurement Period;
- 4.2.4 the level of each Service Failure which occurred;
- 4.2.5 which Service Failures remain outstanding and progress in resolving them;
- 4.2.6 for any Major Service Failure occurring in the Service Period, the cause of the fault and any action being taken to reduce the likelihood of recurrence;
- 4.2.7 for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
- 4.2.8 for any Service Failures for which the Supplier believes Excused Performance will apply, the underlying cause and origin of such Service Failures. The Supplier 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;
- 4.2.9 the number of Service Points awarded to each Service Failure in that Service Period;
- 4.2.10 the Service Credits to be applied in respect of that Service Period indicating the Service Failure(s) to which the Service Credits relate;
- 4.2.11 a rolling total of the number of Service Failures that have occurred and the amount of Service Credits that have been incurred by the Supplier over the past six months;
- 4.2.12 relevant particulars of any aspects of the performance by the Supplier which fail to meet the requirements of the Contract;
- 4.2.13 the updated risk log referred to in clause 9.17.2; and
- 4.2.14 such other details as the Customer may reasonably require from time to time.

- 4.3 The draft Performance Monitoring Report shall be reviewed and its contents agreed by the parties at the Performance Review Meeting which immediately follows the issue of such report in accordance with paragraph 4.5 of this Part B.
- 4.4 The Supplier shall provide the Customer's Representative with a quarterly written summary of the monthly Performance Monitoring Reports that have been prepared during that Quarter ("**Quarterly Summary**"). The Quarterly Summary shall be provided by the Supplier to the Customer within ten Working Days of the end of each Quarter, and shall be reviewed at the Performance Review Meeting which immediately follows its issue. The Quarterly Summary shall contain such details as the Customer shall reasonably require.
- 4.5 The parties shall attend Performance Review Meetings on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and the Customer of the Performance Monitoring Reports and Quarterly Summaries (where relevant). The Performance Review Meetings shall (unless otherwise agreed):
- 4.5.1 take place within one (1) week of the Performance Monitoring Report being issued by the Supplier;
  - 4.5.2 take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance;
  - 4.5.3 be attended by the Supplier's Representative and the Customer's Representative; and
  - 4.5.4 be fully minuted by the Customer. The prepared minutes will be circulated by the Customer to all attendees at the relevant meeting and also to the Supplier's Representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Customer's Representative at each meeting.
- 4.6 The Customer shall be entitled to raise any additional questions and/or request any further information regarding any Service Failure.
- 4.7 The Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified period.

5. **SATISFACTION SURVEYS**



- 5.1 In order to assess the level of performance of the Supplier, the Customer may undertake satisfaction surveys in respect of End Users or various groups of End Users ("**Satisfaction Surveys**"). These surveys may consider:
- 5.1.1 the assessment of the Supplier's performance by the Users against the agreed Service Levels; and/or
- 5.1.2 other suggestions for improvements to the Services.
- 5.2 The Customer shall be entitled to notify the Supplier of any aspects of their performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not meeting the Services Requirement.
- 5.3 The Supplier shall, as soon as reasonably practicable after notification from the Customer in accordance with paragraph 5.2 of this Part B ensure that such measures are taken by it as are appropriate to achieve such improvements as soon as is reasonably practicable.
- 5.4 All other suggestions for improvements to the Services shall be dealt with as part of the continuous improvement programme pursuant to schedule 2.4 (Continuous Improvement).

## 6. **RECORDS**

- 6.1 The Supplier shall keep appropriate documents and records (e.g. Service Desk records, Service Failure log, staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc) 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 Supplier 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 Customer upon the Customer's request. The records and documents of the Supplier referred to in this paragraph 6.1 shall be available for inspection by the Customer and/or its nominee at any time and the Customer and/or its nominee may make copies of any such records and documents.
- 6.2 In addition to the requirement in paragraph 6.1 of this Part B to maintain appropriate documents and records, the Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance of the Supplier both before and after the Operational Service Commencement Date and the calculations of the amount of Service Credits for any specified period.
- 6.3 The Supplier shall ensure that the Performance Monitoring System and any variations or amendments thereto, the Service Level Log, any reports and

summaries produced in accordance with this schedule and any other document or record reasonably required by the Customer are available to the Customer on-line and capable of being printed.

## **AGREEMENT SCHEDULES**

### **SCHEDULE 2.3**

#### **STANDARDS**

The Supplier shall comply with the following standards:

1. **TECHNICAL**

[www.cabinetoffice.gov.uk/e-government](http://www.cabinetoffice.gov.uk/e-government)

1.1 **e-Government Interoperability Framework**

1.2 **Technical Standards Catalogue**

1.3 **e-Government Metadata Standard (e-GMS)**

1.4 **ITIL Guidelines**

1.4.1 The Supplier shall follow the guidelines contained in the Office of Government Commerce's IT Infrastructure Library ("**ITIL guidelines**") for delivering the Services.

1.4.2 The Supplier shall ensure that its service support processes include:

1.4.2.1 Configuration Management;

1.4.2.2 Service Desk ("Help Desk");

1.4.2.3 Incident Management;

1.4.2.4 Problem Management;

1.4.2.5 Change Management; and

1.4.2.6 Release Management,

1.4.3 The Supplier shall ensure that its service delivery processes include:

1.4.3.1 Service Level Management;

1.4.3.2 ICT Financial Management;

1.4.3.3 Capacity Management;

1.4.3.4 Availability Management;

1.4.3.5 ICT Service Continuity Management; and

1.4.3.6 Security Management.

1.4.4 Within three (3) months after the Effective Date, the Supplier will prepare and deliver to the Customer for approval full documentation of the processes listed at **paragraphs 1.4.2** and **1.4.3** above. and to align with requirements of ISO 20000. If the documentation is not

approved by the Customer, the Supplier shall amend it within fifteen (15) Working Days of a notice of non-approval and re-submit to the Customer for approval. No approval to be given by the Customer pursuant to this **paragraph 1.4.4** may be unreasonably withheld or delayed.

1.4.5 The Supplier's ICT service management functions shall interface with the Customer in accordance with the Customer's ICT service management framework.

1.4.6 The Supplier shall on reasonable request provide the Customer with documents showing how ITIL guidelines have been followed in the provision of the Services.

1.4.7 The Supplier shall on request allow the Customer or its Representatives to audit any or all of its ICT service management functions to ensure that ITIL guidelines are being followed in the delivery of the Services.

## 2. **SECURITY**

2.1 The Supplier shall ensure that security is maintained to the level required by the Standards set out in **schedule 2.5**, and subject to the relevant audit rights at **clause 26**.

## 3. **ENVIRONMENT**

3.1 The Supplier undertakes to follow a sound environmental management policy so that its activities comply with all applicable environmental legislation and regulations and that its products or services are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of, in ways that are appropriate from an environmental protection perspective.

3.2 The Supplier warrants that it has obtained ISO 14000/14001 certification for its environmental management and shall comply with and maintain such certification requirements.

3.3 The Supplier shall comply with relevant obligations under the Waste Electrical and Electronic Equipment Regulations 2002/96/EC.

## 4. **PROJECT MANAGEMENT**

The Supplier shall generally make use of Prince2 methodology or similar, supplemented where appropriate by the tools and methods of the Supplier's own project management methodologies.

5. **VERSION CONTROL**

The Supplier shall develop procedures which ensure that only the correct release or version of a Deliverable can be delivered to the Customer. The Supplier shall provide a copy of the draft procedures to the Customer for its approval. On receipt of such approval, the Supplier shall then operate those procedures.

6. **POLICIES**

The Supplier shall comply with the Customer policies which are set out in Annex 1 of this Schedule which have a “yes” next to the relevant policy, as shown in the forth column of the spreadsheet.

## ANNEX 1



ICT Review - Policy  
Register 28 11 14.xls

## **AGREEMENT SCHEDULES**

### **SCHEDULE 2.4**

#### **CONTINUOUS IMPROVEMENT**



## 1. **SCOPE OF SCHEDULE**

- 1.1 One of the Customer's fundamental business objectives in entering into this Contract is that the Supplier will continually improve the Services.
- 1.2 This **schedule 2.4** (Continuous Improvement) describes the Supplier's obligations to:
  - 1.2.1 ensure that it complies with a systematic process improvement mechanism;
  - 1.2.2 create and deliver innovation;
  - 1.2.3 contribute to the Customer's obligations to deliver efficiency savings.
- 1.3 The provisions of this **schedule 2.4** (Continuous Improvement) are without prejudice to the Supplier's other obligations under this Contract, including in particular its obligations to:
  - 1.3.1 comply with the Service Levels including any improvements in the Service Levels specified in **schedule 2.2** (Service Levels);
  - 1.3.2 develop, agree and comply with a Quality Plan under **clause 15** (Quality Assurance and Performance Monitoring) of this Contract;
  - 1.3.3 comply with any improvements set out in the Supplier Solution; and
  - 1.3.4 to remedy Defaults.

## 2. **SYSTEMATIC PROCESS IMPROVEMENT**

- 2.1 The Supplier will design and document a model of its business processes relating to the provision of the Services and performance of its obligations under this Contract for incorporation into the Quality Plan to be developed pursuant to **clause 15** (Quality Assurance and Performance Monitoring) of this Contract which:
  - 2.1.1 defines inputs and outputs, showing the sequence, and how the various processes inter-relate with each other to ensure they operate as a network;
  - 2.1.2 identifies the sub-processes of each of the main business processes;
  - 2.1.3 identifies process owners from within the Supplier's organisation and gives them authority and responsibility;
  - 2.1.4 includes processes that visibly support the achievement of the Customer's business objectives. The Customer's business objectives are set out in the Services Requirements; and

- 2.1.5 articulates how the Supplier's processes interact with those of its various suppliers.
- 2.2 The Supplier will comply with the appropriate governance structure as set out in **schedule 8.1** (Governance) that can clearly manage and control cross-functional processes, and that engages senior leadership.
- 2.3 The Supplier will ensure continuous improvement in its provision of the Services using the process approach outlined in ISO 9001:2008 and ISO 9004:2009 and the principles described below.
- 2.4 The Supplier will:
- 2.4.1 ensure that the processes referred to in **paragraph 2.1.1** are described in the Quality Plan;
  - 2.4.2 agree the Quality Plan with the Customer in accordance with **clause 15** of this Contract;
  - 2.4.3 implement the processes described in the Quality Plan;
  - 2.4.4 measure the performance of the processes;
  - 2.4.5 review whether the processes adequately meet the Customer's needs;
  - 2.4.6 investigate opportunities to effect process improvements;
  - 2.4.7 identify any performance gaps;
  - 2.4.8 develop improvement plans;
  - 2.4.9 improve the execution of the processes as required where the design is adequate but they are not being executed properly, for example by providing training;
  - 2.4.10 improve the design of the processes as required;
  - 2.4.11 document the improved processes in changes to the Quality Plan;
  - 2.4.12 obtain the Customer's approval to any changes to the Quality Plan in accordance with the Change Control Procedure; and
  - 2.4.13 regularly repeat the above operations.
- 2.5 The Supplier shall prepare and provide to the Customer an annual report relating to the improvements and efficiencies gained in implementing the process improvements detailed in this **paragraph 2** (Systematic Process Improvement).

### 3. **CREATION AND DELIVERY OF INNOVATION**

- 3.1 The Supplier shall identify and propose Services improvements through a written report and send this to the Technology and Strategy Board as detailed in **schedule 8.1** (Governance) on a quarterly basis ,unless an alternative frequency is agreed between the Supplier and Customer and documented in the Governance section of the Operations Manual at least five (5) Working Days before the applicable meeting. This includes:
- 3.1.1 identification of how the Supplier will ensure future sustainability of its systems and services at the end of the contract;
  - 3.1.2 identification and raising the Customer's awareness of new technologies suited to the operational activities of the Customer;
  - 3.1.3 evaluation of potential new technologies that may improve the ICT Environment and/or delivery of the Services and where such technologies are considered suitable, provide implementation timelines;
  - 3.1.4 outline new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
  - 3.1.5 outline new or potential improvements to the interfaces or integration of the Services with other services and software provided by third parties or the Customer which might result in efficiency or productivity gains or in the reduction of operational risk;
  - 3.1.6 outline changes in business processes and ways of working that would enable the Services to be delivered at lower costs and/or provide other benefits to the Customer;
  - 3.1.7 outline changes to the ICT Environment, business processes and ways of working that would enable reductions in the total energy consumed annually in the delivery of the Services.
- 3.2 The Supplier shall ensure that the information that it provides to the Customer shall be sufficient for the Customer to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Customer reasonably requests.
- 3.3 The Customer shall at all times be responsible for determining its own ICT strategy. The Customer may notify the Supplier of any changes to the Customer's ICT strategy and request the Supplier to consider, review and respond to that strategy. If, in the Supplier's opinion, any notified change to the Customer ICT strategy would impact upon the provision of the Services, the Supplier shall refer the matter to the Technology and Strategy Board.

- 3.4 If the Customer wishes to incorporate any improvement or innovation projects identified by the Supplier, the parties shall agree the improvements that constitute a Contract Change in accordance with the Change Control Procedure. The Supplier shall comply with **schedules 7.1** (Charging and Invoicing) and **8.2** (Change Control Procedure) in determining the charges for any such improvement or innovation projects.

#### 4. **DELIVERY OF EFFICIENCY SAVINGS**

- 4.1 The Customer will derive benefit in the form of value for money resulting from the Supplier's continuous improvement processes.
- 4.2 Without prejudice to its other obligations under this Contract, and in line with **schedule 7.3** (Value for Money Provisions) the Supplier may, at any time during the term of this Contract, identify other beneficial opportunities for improvements to the Services or Software and cost reductions arising as a result of implementing such improvements.

## **AGREEMENT SCHEDULES**

### **SCHEDULE 2.5**

#### **SECURITY MANAGEMENT**

<b>"Breach of Security"</b>	<p>shall mean the occurrence of:</p> <ul style="list-style-type: none"> <li>(a) any unauthorised (including deliberate or accidental) access to or use of the Services, the Customer Premises, the Sites, the Supplier System and/or any ICT, information or data used by the Customer and/or the Supplier in connection with this Agreement; and/or</li> <li>(b) the loss (including unauthorised modification or destruction) or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including any copies of such information or data, used by the Customer and/or the Supplier in connection with this Agreement;</li> </ul>
<b>"ISMS"</b>	<p>the Information Security Management System as defined by ISO/IEC 27001. In particular the governing principle behind an ISMS is that an organisation should design, implement and maintain a coherent set of policies, processes and systems to manage risks to information assets, thus ensuring acceptable levels of information security risk;</p> <p>The ISMS will clearly describe the security-related roles and responsibilities assigned to each party in relation to the protection of the services delivered by the Customer. This will include responsibility for the maintenance of the ISMS itself.</p>
<b>"Protectively Marked"</b>	shall have the meaning as set out in the Security Policy Framework;
<b>"Security Management Plan"</b>	the Supplier's security plan prepared pursuant to paragraph 3;
<b>"Security Policy Framework"</b>	Means the HMG Security Policy Framework (available from the Cabinet Office Security Policy Division);
<b>"Security Tests"</b>	shall have the meaning set out in paragraph 4.1 of schedule 2.5;

<b>“Statement of Applicability”</b>	shall have the meaning set out in ISO/IEC 27001 and as agreed by the parties during the procurement phase.
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## **1. INTRODUCTION**

- 1.1 This schedule covers:
  - 1.1.1 principles of protective security to be applied in delivering the Services;
  - 1.1.2 wider aspects of security relating to the Service;
  - 1.1.3 the development, implementation, operation, maintenance and continual improvement of an ISMS;
  - 1.1.4 the creation and maintenance of appropriate Security Management Plans;
  - 1.1.5 security audit and testing;
  - 1.1.6 conformance to ISO/IEC 27001 (Information Security Requirements Specification) and ISO/IEC 27002 (Information Security Code of Practice) and;
  - 1.1.7 obligations in the event of actual, potential or attempted breaches of security.

## **2. PRINCIPLES OF SECURITY**

- 2.1 The Supplier acknowledges that the Customer places great emphasis on the confidentiality, integrity and availability of information and consequently on the protection provided by the ISMS.
- 2.2 Both Parties shall jointly ensure the effective performance of the ISMS and shall at all times provide a level of security which:
  - 2.2.1 is in accordance with Good Industry Practice, Law and this Agreement;
  - 2.2.2 is based on implementation and operation of the security controls referred to in the Security Management Plans;
  - 2.2.3 complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4);
  - 2.2.4 complies with the Customer's security documentation, including policy from national accreditation bodies for the police service to which the Customer is required to comply. For example:
    - 2.2.4.1 Codes of Connection, for example the PSN and PSNP
    - 2.2.4.2 Force Information Security Policy (FISP)
    - 2.2.4.3 Policy with regard to mobile computing devices
    - 2.2.4.4 Risk Management Accreditation Document Sets (RMADS) for systems and networks operated by the Force



- 2.2.5 meets identified security threats;
  - 2.2.6 complies with ISO/IEC 27001 and ISO/IEC 27002 in accordance with paragraph 5 of this schedule;
  - 2.2.7 complies with the security requirements as set out in schedule 2.1 (Services Description); and
  - 2.2.8 complies with the Customer's ICT standards.
- 2.3 Subject to clause 49.3, the references to standards, guidance, policies Codes of connection and RMADS set out in paragraph 2.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance, policies, Codes of Connection and RMADS from time to time.
- 2.4 In the event of any inconsistency in the provisions of the above standards, guidance, policies, Codes of Connection and RMADS the Supplier should notify the Customer's Representative of such inconsistency immediately upon becoming aware of the same, and the Customer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

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

#### 3.1 **Introduction**

- 3.1.1 The Supplier shall develop, maintain and continuously improve an ISMS which will, without prejudice to paragraph 2.2, be approved, by the Customer, tested pursuant to paragraph 4, periodically updated and audited.
- 3.1.2 The Supplier shall develop and maintain the ISMS and Security Management Plans in collaboration with the Customer as per paragraph 3 of this Schedule 2.5 to apply during the Term and which shall be approved by the Customer in accordance with paragraphs 3.2.1 and 3.4.4.
- 3.1.3 Both the ISMS and the Security Management Plans shall, unless otherwise specified by the Customer, aim to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Customer Premises, the Sites, the Supplier System and any ICT, information and data. For the avoidance of doubt
  - 3.1.3.1 the Customer remains accountable for the ISMS;
  - 3.1.3.2 the scope of the ISMS is not to be constrained by the

areas for which the Supplier is responsible and must cover those areas for which the Customer and/or other suppliers retain responsibility for delivery;

3.1.3.3 further to 3.1.3.1, where the Supplier is not responsible for an area of delivery then they must seek to ensure that the relevant supplier of that area remains: (i) aware of their security related responsibilities and (ii) fulfill their responsibilities in line with this ISMS;

3.1.3.4 if and when issues (or concerns) arise the Supplier must notify the Customer.

3.1.4 Both Parties shall comply with their obligations set out in the ISMS and Security Management Plans. The Supplier will retain responsibility for ensuring that the subcontractors they use to deliver the contracted services to the Customer meet their obligations under the ISMS. The Customer retains responsibility for those third party suppliers with whom they contract directly. The Supplier shall Provide advice and guidance to the Customer when requested in respect of such obligations.

## **3.2 Development of the ISMS and Security Management Plans**

3.2.1 Both Parties will commence work on the development of the ISMS and Security Management Plans at the Effective Date in accordance with paragraph 3.3 (Content of the ISMS and Security Management Plans) and will continue to develop the ISMS and Security Management Plans collaboratively in accordance with paragraphs 3.4 (Amendment and Revision of the ISMS and Security Management Plans) and 3.2.3.

3.2.2 In addition to ongoing dialogue and collaboration, both parties will conduct a formal acceptance meeting twenty (20) Working Days prior to Service Commencement Date to ensure that all controls defined within the ISMS and Security Management Plans are suitable to meet the security requirements for the Service at Service Commencement Date. Any identified remedial actions must be actioned and verified through subsequent agreed formal acceptance meeting(s) prior to Service Commencement Date.

3.2.3 If the ISMS or Security Management Plan, or any subsequent revision to them in accordance with paragraph 3.4 (Amendment and Revision of the ISMS and Security Management Plans), is approved by the Customer it will be adopted immediately and will replace the previous version of the ISMS or Security Management Plan accordingly. If the ISMS or Security Management Plan is not approved by the Customer the Supplier shall amend it within ten

(10) Working Days of a notice of non-approval from the Customer and re-submit to the Customer for approval. The parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than twenty-five (25) Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the Customer. If the Customer does not approve the ISMS or Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Customer pursuant to this paragraph may be unreasonably withheld or delayed. However any failure to approve the ISMS or Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 3.3.4 shall be deemed to be reasonable.

### **3.3 Content of the ISMS and Security Management Plans**

- 3.3.1 The ISMS and Security Management Plans will set out the security measures to be implemented and maintained by the Supplier, Customer and third party suppliers in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this schedule (including the principles set out in paragraph 2.2);
- 3.3.2 The ISMS and Security Management Plans (including the draft versions) should also set out the plans for transiting all security arrangements and responsibilities from those in place at the Effective Date to those which are set out in the schedule 6.1 (Implementation Plan) for the Supplier to meet the full obligations of the requirements at schedule 2.1.
- 3.3.3 The ISMS and Security Management Plans will be structured in accordance with ISO/IEC 27001 and ISO/IEC 27002, cross-referencing if necessary to other schedules of this Agreement which cover specific areas included within that standard.
- 3.3.4 The ISMS and Security Management Plans shall be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the Services and shall only reference documents which are in the possession of the Customer or whose location is otherwise specified in this schedule.
- 3.3.5 The ISMS will describe the frequency of meetings between the Customer and the Supplier.

### 3.4 **Amendment and Revision of the ISMS and Security Management Plans**

3.4.1 The ISMS and Security Management Plans will be fully reviewed and updated by the Supplier annually, or from time to time to reflect:

3.4.1.1 emerging changes in Good Industry Practice;

3.4.1.2 any change or proposed change to the Supplier System, the Services and/or associated processes;

3.4.1.3 any new perceived or changed security threats;

3.4.1.5 any change or proposed change to Customer's security documentation, including policy from national accreditation bodies for the police service to which the Customer is required to comply;

3.4.1.4 any reasonable request by the Customer.

3.4.2 The Supplier will provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plans at no additional cost to the Customer. The results of the review should include, without limitation:

3.4.2.1 Suggested improvements;

3.4.2.2 Updates to the risk assessments;

3.4.2.3 Proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the Services;

3.4.2.4 Suggested improvements in measuring the effectiveness of controls.

3.4.3 On receipt of the results of such reviews, the Customer will approve any amendments or revisions to the ISMS or Security Management Plans in accordance with the process set out at paragraph 3.2.3.

3.4.4 Any change or amendment which the Supplier proposes to make to the ISMS or Security Management Plans (as a result of an Customer request or change to the schedule 2.1 (Service Description) or otherwise) shall be subject to the Change Control Procedure and shall not be implemented until approved in writing

by the Customer.

#### 4. TESTING

- 4.1 The Supplier shall conduct tests ("Security Tests") on an annual basis or as otherwise agreed by the parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Customer and documented in the Security Management Plans. Types of tests may include, for example:
- Penetration testing
  - Inspections
  - Reviews
  - Audit
  - Resilience and DR testing
- 4.2 The Customer shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Customer with the results of such tests (in a form approved by the Customer in advance) as soon as practicable after completion of each Security Test.
- 4.3 Without prejudice to any other right of audit or access granted to the Customer pursuant to this Agreement, the Customer and/or its authorised representatives shall be entitled, at any time and without giving notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plans. The Customer shall notify the Supplier of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Services. If such tests adversely affect the Supplier's ability to deliver the Services to the agreed Service Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the tests.
- 4.4 Where any Security Test carried out pursuant to paragraphs 4.2 or 4.3 above reveals any actual or potential Breach of Security, the Supplier shall promptly notify the Customer of any changes to the ISMS and to the Security Management Plans (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Customer's approval in accordance with paragraph 3.4.4, the Supplier shall implement such changes to the ISMS and the Security Management Plans in accordance with the timetable agreed with the Customer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plans to address a non-compliance with the Security Policy or security requirements (as set out in schedule 2.1), the change to the ISMS or Security Management Plans shall be at no cost to the Customer...

5. **COMPLIANCE WITH ISO/IEC 27001**

- 5.1 Both Parties shall jointly ensure compliance of the ISMS to ISO/IEC 27001.
- 5.2 If certain parts of the ISMS do not conform to good industry practice, or controls as described in ISO/IEC 27002 are not consistent with the requirements described in paragraph 2.2, and, as a result, the Supplier reasonably believes that it is not compliant, the Supplier shall promptly notify the Customer of this and the Customer in its absolute discretion may waive the requirement for certification in respect of the relevant parts.
- 5.3 The Supplier shall carry out such regular security audits as may be required, and in accordance with Good Industry Practice, in order to ensure that the ISMS maintains compliance with the principles and practices of ISO/IEC 27001.
- 5.4 If, on the basis of evidence provided by such audits, it is the Customer's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the Supplier, then the Customer shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001. If the Supplier does not become compliant within the required time then the Customer has the right to obtain an independent audit against these standards in whole or in part.
- 5.5 If, as a result of any such independent audit as described in paragraph 5.4 the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Customer in obtaining such audit.

6. **BREACH OF SECURITY**

- 6.1 Either party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 6.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 6.1, the Supplier shall:
- 6.2.1 immediately take all reasonable steps necessary to:
- 6.2.1.1 remedy such breach - in so far this does not prejudice

any investigation into the cause of the incident; and

6.2.1.2 prevent an equivalent breach in the future.

Such steps shall include any action or changes reasonably required by the Customer. In the event that such action is taken in response to a breach that is determined by the Customer acting reasonably not to be covered by the obligations of the Supplier under this Agreement, then the Supplier shall be entitled to refer the matter to the Change Control Procedure; and

6.2.2 as soon as reasonably practicable provide to the Customer full details of the Breach of Security or the potential or attempted Breach of Security.

## **AGREEMENT SCHEDULES**

### **SCHEDULE 2.6**

#### **INSURANCE REQUIREMENTS**



**"Joint Insured"**

one of the insured's in a type of insurance policy covering more than one insured;

**"Required Insurances"**

the policies of insurance listed at **paragraph 2** of this **schedule 2.6** (Insurance Requirements).

1.

## **INSURANCE COVENANTS**

### **1.1 The Supplier:**

- 1.1.1 shall maintain the Required Insurances in full force and effect at all times from the Effective Date until the date which is six (6) years following the end of the Term;
- 1.1.2 shall not cancel the Insurances or make any material change thereto which impact this Agreement ; and
- 1.1.3 may change the insurers with whom the Insurances are held on annual basis. In the event that such a change results in revisions to the terms or cover which impact this Agreement the Supplier will notify the Customer.

### **1.2 The Insurances shall be maintained on terms that are as favourable to those generally available to a prudent contractor in respect of risks insured in the international insurance market.**

### **1.3 The Insurances shall be maintained with a reputable insurance company.**

### **1.4 The Supplier shall procure, at no cost to the Customer, in respect of each of the public liability, and employer's liability and product liability Insurances that:**

- 1.4.1 each such Insurance shall include an indemnity to principals clause; and

provided that the Customer shall as though they were the insured under the Insurances, observe, fulfil and be subject to the terms, exclusions, conditions and endorsements of the Insurances so far as they can apply.

### **1.5 The Supplier shall procure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any Insurance or cover, or to treat any Insurance, cover or claim as avoided in whole or part. The Supplier shall use reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind,**

suspend or avoid any Insurance, or any cover or claim under any Insurance in whole or in part.

- 1.6 The Customer may purchase (if possible) any of the Insurances which the Supplier has failed to maintain in full force and effect pursuant to this Agreement. The Customer may recover the premium and other costs incurred in doing so as a debt due from the Supplier.
- 1.7 On request from the Customer, the Supplier shall, not more than ten (10) Working Days after the Effective Date, and within fifteen (15) Working Days after the renewal of every Insurance, forward a certificate of insurance from its insurance brokers who arranged the Insurances.
- 1.8 The Customer may from time to time submit a request in writing to the Supplier, demanding evidence of the existence of all Insurances, in the form of a certificate of insurance and the Supplier shall provide all such evidence within five (5) Working Days of such written request.

2. **REQUIRED INSURANCES**

<b>Class</b>	<b>Minimum Sum Insured</b>
Public Liability	[redacted]
Employers Liability	[redacted]
Professional Indemnity	[redacted]

## **Appendix**

### **Contents of Broker's Letter**

[Redacted]

**SCHEDULE 2.9**

**TRANSFERRED ASSETS**

## 1. PURPOSE OF THIS SCHEDULE

1.1 This schedule 2.9 (Transferred Assets) lists the Transferred Assets, Transferred Software and leased equipment transferred from the Customer to the Supplier as at the Commencement Date in accordance with clause 17.7 of the Contract.

1.2 This schedule also sets out the Transferred Software licences, third party agreements and equipment leases novated in favour of the Supplier (or made available by alternative means) pursuant to clause 17.7 of the Contract and indicates which such licences, third party agreements or equipment leases are the subject of continuing maintenance or service fees in accordance with clause 17.8.2 of the Contract.

## 2. TRANSFERRED ASSETS

Transferred Asset	Number	Continuing maintenance / service fees?	Net Book Value (£)
None			
<b>Total value</b>			

## 3. SOFTWARE

Transferred Software	Number	Licence novated / available made to Supplier	Continuing maintenance / service fees?	Net Book Value (£)
None				
<b>Total Value</b>				

\* indicates that the Supplier is required to act as the Customer's paying agent

#### 4. LEASED EQUIPMENT

Leased Equipment	Number	Lease novated / made available to Supplier	Continuing maintenance / service fees?	Net Book Value (£)
None				
<b>Total Value</b>				

\* indicates that the Supplier is required to act as the Customer's paying agent

#### 5. THIRD PARTY AGREEMENTS

Third Party Agreement	Novated/made available to Supplier	Continuing maintenance / service fees?
BT plc: OneBill for telephony charges including legacy BT Agile remote worker services.	Contract retained by NWP. Agency Managed by CGI.	Yes
Airwave Solutions: Menu services not included in Home Office funded core Airwave services, including CCI ports, SDS services; PTN link to telephony; BRI (bulk recording). Usage (up to allowance)	Contract retained by NWP. Agency Managed by CGI.	Yes
Sepura Ltd Ad hoc repair of radios.	Ad hoc T&M service via existing NWP suppliers, under CGI management.	Yes
MWL and Vodafone Mobile Device Management of current Blackberry estate.	No. Replaced by proposed CGI service from OSCD	No
Computacenter PLC Microsoft Enterprise Agreement	Contract retained by NWP. Licence Management under CGI service. Upon expiry, revised EA to be negotiated based on any	Yes Expires 31/3/16, can be extended to 31/3/17.

Unisys plc Holmes 2 managed service	Contract retained by NWP. Agency Managed by CGI.	CGI price assumes remote management and maintenance of infrastructure servers can be unbundled from Unisys contract and transfer to CGI from
Niche RMS Ongoing software support and maintenance -	Contract retained by NWP. Agency Managed by CGI.	Yes
HP Managed service of RMS hardware and operating environment including servers and storage.	No. Replaced by CGI service from SCD.	No
Telent ICAD MANAGED SERVICE -	Contract retained by NWP. Agency Managed by CGI.  Helpdesk and field services. Level 1. Replaced by CGI service from OCSD	Yes (Partial) Remote monitoring, Level 2 support and configuration changes to the Frequentis ICCS only.
Intergraph ICAD MANAGED SERVICE.	Contract retained by NWP. Agency Managed by CGI with the following variations: 1. On-site support: Replaced by CGI service from OSCD. Intergraph staff transfer to CGI under TUPE. 2. Remote monitoring of	Yes (Partial) Software Support ("Level 3") and maintenance.
MWL Service Desk and Managed Desktop including server support, Airwave helpdesk	Replaced by CGI service from OSCD.	No
KCOM WAN circuits/lines (data and voice), Maintenance and management;	Contract retained by NWP. Replaced by proposed CGI service from June 30 2015.	To June 30 2015 only
Vodafone CJX connectivity to Oct 2015, replaced by PSN gateway.	Vodafone Contract retained by NWP. Replaced by CGI service from October 31 2015	Yes To October 31 2015
2020 Vision Technology CCTV HOLYHEAD PORT	Contract retained by NWP. Agency Managed by CGI.	Yes
Cedar Group Software licence, Implementation and support Service Agreement	Contract retained by NWP. Agency Managed by CGI.	Yes
Civica Services Limited Tranman supply, implementation and support contract	Contract retained by NWP. Agency Managed by CGI.	Yes



4330 - DAC Ltd Hands Free Phones	Contract retained by NWP. Agency Managed by CGI.	Yes
Direct Path Solutions OWL (Online Watch Link)	Contract retained by NWP. Agency Managed by CGI.	Yes
ESRI UK Limited Corporate GIS Solution	Contract retained by NWP. Agency Managed by CGI.	Yes
i2Limited i2 Analyst Tool (Analysis Software)	Contract retained by NWP. Agency Managed by CGI.	Yes
Interface Management Systems MELS	Contract retained by NWP. Agency Managed by CGI.	Yes
InterFAX UK Ltd E MAIL TO FAX SOLUTION	Contract retained by NWP. Agency Managed by CGI.	Yes
NDI NPIA PNC Gateway SW	Contract retained by NWP. Agency Managed by CGI.	Yes
Northgate QAS Name Tracer- Mobile (Blackberry) National Intel Servers Compass Gazateer + PAF EIS Contract (business Objects) HR Systems	Contract retained by NWP. Agency Managed by CGI.	Yes
Point to Point Ltd Citrix Support	Replaced by CGI service from SCD.	No
4451 - Sinclair Voicenet LTD Voice Recording	Contract retained by NWP. Agency Managed by CGI. CGI price assumes remote management and maintenance of infrastructure servers can be unbundled from Sinclair contract and transfer to CGI from SCD.	Yes
Software Box Ltd (SBL) Lumension Software	Contract retained by NWP. Agency Managed by CGI. To be replaced during term, retire under CCN.	Yes. Until retired during term.
SOLUTION PROFILING (3AMI) 3 Ami Monitoring & Auditing Software	Contract retained by NWP. Agency Managed by CGI.	Yes
Xenario UK Limited Fotoware	Contract retained by NWP. Agency Managed by CGI. To be consolidated during contract term, retire under CCN.	Yes. Until retired during term.

\* indicates that the Supplier is required to act as the Customer's paying agent



## **AGREEMENT SCHEDULES**

### **SCHEDULE 3**

#### **CUSTOMER RESPONSIBILITIES**

##### **1. INTRODUCTION**

The responsibilities of the Customer set out in this **schedule 3** shall constitute the Customer Responsibilities under this Agreement.

The responsibilities specified within this schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the parties.

##### **2. GENERAL OBLIGATIONS**

The Customer shall:

- 2.1 perform such obligations as are placed upon the Customer as are set out in the clauses of this Agreement and the paragraphs of the schedules (including **schedules 2.1** (Services Description) but excluding **4.1** (Supplier Solution));
- 2.2 use its reasonable endeavours to provide the Supplier with access to appropriate members of the Customer's staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term;
- 2.3 provide sufficient and suitably qualified staff to fulfil the Customer's roles and duties under this Agreement as defined in the agreed implementation plan;
- 2.4 use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Agreement provided that such documentation, data and/or information is available to the Customer and is authorised for release by the Customer; and
- 2.5 procure for the Supplier such agreed access and use of the Customer's premises, facilities, including relevant ICT systems as is reasonably required for the Supplier to comply with its obligations under this Agreement, such access to be provided during the Customer's normal working hours on each Working Day or otherwise as agreed by the Customer (such agreement not to be unreasonably withheld or delayed).

##### **3. SPECIFIC OBLIGATIONS**

The Customer shall, in relation to this Agreement perform the Customer's

responsibilities identified as such in this Agreement the details of which are set out below:

1	The Customer will use reasonable endeavours to agree with the Supplier appropriate timescales for review and approval of Supplier documents (where a timescale for review and approval is not explicitly identified elsewhere in the Agreement) so as not to unduly delay the Supplier's performance of its obligations.	
2	The Customer will be responsible for any necessary internal communications with users of the Services.	
3	The Customer will maintain the existing server rooms on its sites with required power and cooling provision as agreed with the Supplier,	
4	The Customer will provide suitable facilities for the receipt and safe storage of equipment, manuals and software materials on delivery. The Supplier shall notify the Customer in advance of any large deliveries and within a reasonable period of time for the Customer to make any suitable facilities available.	
5	The Customer will use reasonable endeavour to ensure Users of Supplier provided equipment take reasonable care of such equipment including adherence to relevant Customer policies and procedures when it is in their custody and control	
6	The Customer shall upon reasonable request provide desks for the Supplier's implementation and project staff that are required to work on Customer's site in order to effectively perform their role as a minimum this will be 2 desks at Customer headquarters. Requirements for further desks will be agreed on a case by case basis .	

7	The Customer shall provide reasonable assistance to the Supplier in securing the co-operation of any third parties the Customer it has a relationship with, which the Supplier reasonable requires to be involved in connection with the implementation of the Services. Where the Customer is unable to secure such assistance the parties shall work together to develop a workaround to enable delivery of the Services	
8	The Customer will inform the Supplier of any facts affecting the Customer premises which are known to it or reasonably ought to have known and which would be likely to adversely affect the installation of the system or the health and safety of any person on the Customer premises during the installation of the system. The Supplier will adhere to any Customer notified Health and Safety policies whilst working on Customer site.	
9	The Customer will make available to the Supplier Customer Data in its current format to be migrated from their existing system	
10	The Customer will ensure compliance with those areas of the ISMS that it has responsibility for as referenced in Schedule 2.5	

11	The Customer will enable the Supplier to connect to the Customer's Premises and systems through the existing WAN networks. (The Supplier will connect their data centres to the legacy WAN until the new WAN is deployed.) subject to compliance with Customer security policies.	
12	The Customer will refresh end of life network equipment in accordance with OEM recommendations where such equipment is not part of the Services in order to maintain supportability and security accreditation. Such refresh shall be in line with plans and forecasts provided by Supplier and which are agreed by the Customer.	
13	Notwithstanding the requirements of Clause 44 of the Agreement, where the Customer determines that information in relation to the Supplier's performance or benchmarking will be released in response to a Freedom of Information request the Customer will use reasonable endeavours to consult with the Supplier regarding appropriate redactions to the information to be published in order to protect the Supplier's commercially sensitive information	

### **THIRD PARTIES; CUSTOMER RESPONSIBILITIES:**

The Customer shall in relation to this Agreement:

No.	Description	Document reference (include name of document, page and clause/paragraph reference)
14	Ensure that any incidents are resolved in a reasonable period of time where it is agreed that Customer Resolver Groups will be provided to enable resolution .	
15	The Customer will issue notification to its subcontractors of the agency management by the Supplier of its existing contracts from the Operational Service Commencement Date and assist the Supplier in the resolution of any subcontractor performance issues arising during the period of such management. In respect of any subcontracts that are to be novated to the Supplier the Customer will enter into the required novation agreements as soon as reasonably possible and subject to the co-operation of the relevant third party..	
16	Procure all required consumables (which shall mean anything which a manufacturer states that a user can change and which is used up recurrently) in accordance with the manufacturers' specifications, excluding those specifically set out in the Agreement to be provided by the Supplier.	
17	Use the equipment and any End-User Licensed Software in accordance with any user guide or other reasonable instruction of any manufacturer or supplier of the same and not copy, reverse engineer or modify any Software or End-User Licensed Software in any way save as permitted by law.	



18	The Customer is responsible for undertaking an assessment of the system safety risks (harm to individuals or environmental damage) together with appropriate planning and mitigating action associated with the Supplier's delivery of the Services and no such risks shall be transferred to the Supplier by entering into this Agreement or during the Term of this Agreement.	
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## **CUSTOMER RESPONSIBILITIES SPECIFIC TO THE DATA CENTRE HOSTING**

The Customer shall be responsible for the following:

19	Agreeing and defining overnight schedules (if any) and providing any batch scheduling tools (if required)	
20	In respect of the responsibilities for security that are being retained by the Customer and are documented in the ISMS, informing the Supplier if it becomes aware of any matters it reasonably considers may compromise the security of the Services	
21	Advising the Supplier of any proposed future material changes in Users who use or access the Services so that capacity can be managed appropriately.	

## **CUSTOMER RESPONSIBILITIES SPECIFIC TO THE APPLICATIONS MANAGEMENT HOSTING**

The Customer shall be responsible for the following:

22	Ensuring the Supplier has full access to Applications Management information, both documentation and people, including 3 <sup>rd</sup> party information and people, required for the Applications Portfolio Assessment, and to transfer knowledge for Applications Support to the Supplier provided that such documentation, and/or people are available to the Customer and subject to compliance with any confidentiality restrictions.	
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A large, abstract network diagram composed of numerous red circles of varying sizes connected by thin red lines. The diagram is spread across the right side of the page, with a denser cluster of nodes in the upper left and a more elongated, branching structure extending towards the bottom right. The nodes and lines are semi-transparent, allowing the text to be visible through them.

# Response to ITSFT

**Supplier  
Commitments  
Schedule  
(Schedule 4.1)**

## **North Wales Police**

**ICT Consolidated Managed  
Service Project**

**NWPQTLE-9D6D6Q**

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CGI Proprietary – Redacted in its entirety



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**AGREEMENT SCHEDULES**

**SCHEDULE 4.2**

**COMMERCIALLY SENSITIVE INFORMATION**

## Commercially Sensitive Information

### 1. INTRODUCTION

- 1.1 Without prejudice to the Customer's general obligation of confidentiality, the parties acknowledge that the Customer may have to disclose Information in or relating to the Agreement following a Request for Information pursuant to **clause 44** (Freedom of Information).
- 1.2 In this schedule the parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.
- 1.3 Where possible the parties have sought to identify where any relevant Information will cease to fall into the category of Information to which this schedule applies.
- 1.4 Without prejudice to the Customer's obligation to disclose Information in accordance with Freedom of Information Act, the Customer will, acting reasonably but in its sole discretion, seek to apply the commercial interests exemption set out in s.43 of the Freedom of Information Act 2000 to the Information listed in the Appendix.

## Appendix

### Commercially Sensitive Information

No.	Date	Item(s) )	Duration of Confidentiality
1	Tender submission onwards	The breakdown of any Charges, other than the totality of the Charges as a lump sum	Duration of the Agreement plus a period of 2 years
2	Tender submission onwards	The daily rates contained in Schedule 7.1	Duration of the Agreement plus a period of 2 years
3	Tender submission onwards	Profit margins, cost structures and/or overheads	Duration of the Agreement plus a period of 2 years
4	Tender submission onwards	Business Process documentation	Duration of the Agreement plus a period of 2 years
6	Tender submission onwards	Supplier Confidential Information and Intellectual Property Rights	In perpetuity
7	Tender submission onwards	Information protected under the Data Protection laws	In perpetuity



**AGREEMENT SCHEDULES**

**SCHEDULE 4.3**

**NOTIFIED SUB-CONTRACTORS**

## 1. KEY SUB-CONTRACTORS

In accordance with sub-**clause 25.5** (Supply Chain Rights) of this Agreement, the Supplier is entitled to Sub-contract its obligations under this Agreement to the following Key Sub-Suppliers listed in the table below:

Key contractor and Sub-Name	Company Number	Related Product/Service Description	Key Sub Price expected as a percentage of total projected Charges over lifetime of the Agreement
Computacenter Hatfield Business Park, Hatfield Avenue Hatfield Hertfordshire AL10 9TW	1584718	Desk-side support, on-premise break-fix services, supply of end-user devices	[Redacted]

## 2. SUB-CONTRACTORS

In accordance with sub-**clause 25.5** (Supply Chain Rights) of this Agreement, the Supplier is entitled to Sub-contract its obligations under this Agreement to the following Sub-contractors listed in the table below:

	Registered Office and Company Number	Related Product/Service Description
None		

## **AGREEMENT SCHEDULES**

### **SCHEDULE 5.1**

#### **SOFTWARE**

## INTRODUCTION

The Parties agree that, as at the date of this Agreement, the Supplier shall not be required to provide any Software. If it is agreed at a later date that the Supplier is required to provide any Software by way of a Change or a New Project, the Parties shall review and amend this Schedule 5 such that it applies to the provision of the Software.

- 1.1 This schedule details the various elements of the Software and categorises them into Specially Written Software, Supplier's Software and, Third Party Software and OSS. This schedule also lists which elements of the Software are to be placed into escrow as Deposited Software.
- 1.2 The Software is licensed in accordance with the provisions of Section G of the Agreement.
- 1.3 The parties agree that they will update this schedule periodically to record any software subsequently acquired from third parties or developed for the delivery of the Services.

## 2. SPECIALLY WRITTEN SOFTWARE

- 2.1 The Specially Written Software shall consist of any programs, codes and software written by or on behalf of the Supplier for use by the Supplier specifically in the provision of the Services (including any modifications or enhancements made to such software during the Term) and including (but not limited to) the following items:

Software	Supplier (if Affiliate of the Supplier)	Purpose	To be deposited in Escrow (Deposited Software)?
N/A			Yes / No
			Yes / No
			Yes / No
			Yes / No

### 3. **CONTRACTOR SOFTWARE**

The Supplier Software comprises the following items:

<b>Software</b>	<b>Supplier (if Affiliate of the Supplier)</b>	<b>Purpose</b>	<b><i>Number of Licences</i></b>	<b><i>Restrictions</i></b>	<b><i>Number of Copies</i></b>	<b><i>Other</i></b>	<b>To be deposited in Escrow (Deposited Software)?</b>
N/A							Yes / No
							Yes / No
							Yes / No
							Yes / No
							Yes / No
							Yes / No
							Yes / No
							Yes / No

4. **THIRD PARTY SOFTWARE**

The Third Party Software shall consist of the following items:

<b>Third Party Software</b>	<b>Supplier</b>	<b>Purpose</b>	<b><i>Number of Licences</i></b>	<b><i>Restrictions</i></b>	<b><i>Number of Copies</i></b>	<b><i>Other</i></b>	<b>To be deposited in Escrow (Deposited Software)?</b>	<b>Resale Third Party Software?</b>
N/A							Yes / No	
							Yes / No	
							Yes / No	
							Yes / No	
							Yes / No	
							Yes / No	
							Yes / No	

5. **DEPOSITED SOFTWARE**

The Supplier shall deposit the Software identified in **paragraphs 2, 3 and 4** above as Deposited Software into escrow in accordance with the provisions of **clause 40** (Escrow):

<b>Category (Specially Written Software, Supplier Software or Third Party Software)</b>	<b>Supplier</b>	<b>Description</b>	<b>Restrictions</b>	<b>Date Deposited</b>
N/A				

## 6. OSS

The OSS shall consist of the following items:

OSS	Supplier	Purpose	Number of Copies	Other
N/A				



## **AGREEMENT SCHEDULES**

### **SCHEDULE 5.2**

#### **LICENCE TERMS**

## DEFINITIONS

<b>"Licensed Materials"</b>	(e) with respect to the Standard Licence Terms, the licensed materials listed in <b>paragraph 1.1</b> of <b>Part A</b> (Standard Licence Terms) of <b>schedule 5.2</b> ; and  (f) with respect to the Enhanced Licence Terms, the licensed materials listed in <b>paragraph 1</b> of <b>Part B</b> (Enhanced Licence Terms) of <b>schedule 5.2</b> ;
<b>"Licensee"</b>	the [Customer][Licensee] or a Replacement Supplier;
<b>"Licensor"</b>	any person or entity that is required to grant a licence to the Licensee pursuant to <b>clause 38</b> , as the context requires.

## PART A Standard

### Licence Terms

#### 1. SCOPE OF THE STANDARD LICENCE TERMS

This part of the schedule sets out the Standard Licence Terms granted by the Licensor to the [Customer][Licensee] in respect of [the Supplier Software, Third Party Software, Supplier's Background IPR and any IPRs owned by a third party which are an integral part of the Supplier Software].

#### 2. LICENCE TERMS

2.1 Each licence granted under the Standard Licence Terms pursuant to **clause 37** (Licences Granted by the Supplier) shall be [perpetual, irrevocable,][for a period of [ ]], royalty free and non-exclusive and shall allow the [Customer][Licensee] to Use the Licensed Materials.

2.2 The [Customer][Licensee] may sub-license the rights granted to it pursuant to **paragraph 2.1** to a third party (including for the avoidance of doubt any Replacement Supplier) provided that:

2.2.1 the sub-licence only authorises the third party to Use the Licensed Materials for the benefit of the [Customer][Licensee]; and

2.2.2 the third party has entered into a confidentiality undertaking with the [Customer][Licensee].

2.3 The [Customer][Licensee] may copy the Licensed Materials in order to create an archival copy and a back-up copy of it. When copying the software, the [Customer][Licensee] shall include the original machine readable copyright notice, and a label affixed to the media identifying the software and stating: "This medium contains an authorised copy of copyrighted software which is the property of [*name of owner*]"

2.4 The Customer may:

2.4.1 assign, novate or otherwise dispose of its rights and obligations under the Standard Licence Terms to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Customer; or

2.4.2 [*transfer the Licences to other machines or users within the Customer.*]

- 2.5 Any change in the legal status of the Customer which means that it ceases to be a Contracting Customer] shall not affect the validity of any licence granted under the Standard Licence Terms. If the Customer ceases to be a Contracting Customer, the Standard Licence Terms shall be binding on any successor body to the Customer.
- 2.6 If a licence under the Standard Licence Terms is assigned, novated or otherwise disposed of pursuant to **paragraph 2.4.1** above or there is a change of the Customer's status pursuant to **paragraph 2.5** above, (in the remainder of this paragraph both such bodies are referred to as the "**Transferee**"):
- 2.6.1 where the Transferee is not a Contracting Customer, the Transferee may only assign, novate or otherwise dispose of its rights and obligations under the Standard Licence Terms (or any part of it) with the prior written consent (not to be unreasonably withheld or delayed) of the Licensor; and
- 2.6.2 the rights acquired by the Transferee relating to the Use of the Licensed Materials shall not extend beyond those previously enjoyed by the Customer.

### 3. **FIXES**

If the Supplier maintains a database containing information on known program defects, defect corrections, restrictions and bypasses in respect of the Supplier Software, it shall provide the [Customer][Licensee] with access to such database at no additional charge.

### 4. **TERMINATION**

- 4.1 A licence granted under the Standard Licence Terms shall survive the termination or expiry of the Agreement.
- 4.2 At any time during the Term or following termination or expiry of the Agreement, the Licensor may terminate a licence granted under the Standard Licence Terms with thirty (30) days notice in writing (or such other period as agreed by the parties) if the [Customer][Licensee] commits any material breach of the Standard Licence Terms which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Licensor giving the [Customer][Licensee][ and the Replacement Supplier (if applicable)] written notice specifying the breach and requiring its remedy.
- 4.3 When a licence under the Standard Licence Terms ends for whatever reason, the [Customer][Licensee] shall:

- 4.3.1 immediately cease all use of the Licensed Materials in respect of which the relevant licence has ended;
- 4.3.2 at the discretion of the Licensor, return or destroy the Licensed Materials in respect of which the relevant licence has ended, provided that if the Licensor has not made an election within six (6) months of the termination of the licence, the [Customer][Licensee] may destroy the relevant Licensed Materials; and
- 4.3.3 where requested by the Licensor, provide the Licensor with a written notice, signed and otherwise completed by an authorised signatory, to certify compliance with the provisions of **paragraphs 4.3.1 and 4.3.2** above.

## **PART B Enhanced**

### **Licence Terms**

#### **1. SCOPE OF THE ENHANCED LICENCE TERMS**

This part of the Schedule sets out the Enhanced Licence Terms granted by the Licensor to the [Customer][Licensee] in respect of the [Project Specific IPR, the Specially Written Software, the Database, and Supplier Background IPRs and/or IPRs owned by a third party that are embedded in or which are an integral part of Specially Written Software and Project Specific IPR].

#### **2. LICENCE TERMS**

- 2.1 Each licence granted under the Enhanced Licence Terms pursuant to **clause 37** (Licences Granted by the Supplier) shall be perpetual, royalty free, irrevocable and non-exclusive and shall allow the [Customer][Licensee] to Use the Licensed Materials.
- 2.2 The [Customer][Licensee] may sub-licence its rights to a third party (including, for the avoidance of doubt, any Replacement Supplier, provided that:
  - 2.2.1 the sub-licence only authorises the third party to Use the Licensed Materials for the benefit of the [Customer][Licensee]; and
  - 2.2.2 the third party has entered into a confidentiality undertaking with the [Customer][Licensee].
- 2.3 The Customer may assign, novate or otherwise dispose of its rights and obligations under the Enhanced Licence Terms to any other body (including any Contracting Customer or private sector body) which substantially performs any of the functions that previously had been performed by the Customer.
- 2.4 Any change in the legal status of the Customer which means that it ceases to be a Contracting Customer shall not affect the validity of any licence granted under the Enhanced Licence Terms. If the Customer ceases to be a Contracting Customer, the Enhanced Licence Terms shall be binding on any successor body to the Customer.
- 2.5 If a licence under the Enhanced Licence Terms is assigned, novated or otherwise disposed of pursuant to **paragraph 2.4** above or there is a change of the Customer's status pursuant to **paragraph 2.5** above, (in the remainder of this paragraph both such bodies are referred to as the "**Transferee**"):

- 2.5.1 where the Transferee is not a Contracting Customer, the Transferee may only assign, novate or otherwise dispose of its rights and obligations under the Enhanced Licence Terms (or any part of it) with the prior written consent (not to be unreasonably withheld or delayed) of the Licensor; and
- 2.5.2 the rights acquired by the Transferee relating to the Use of the Licensed Materials shall not extend beyond those previously enjoyed by the Customer.

## **AGREEMENT SCHEDULES**

### **SCHEDULE 6.1**

#### **IMPLEMENTATION PLAN**



## 1. **PURPOSE OF SCHEDULE**

The purpose of this schedule 6.1 is:

- 1.1 to describe the requirements, activities and outcomes to be performed by the Supplier to ensure smooth commencement of the Services with effect from the Operational Service Commencement Date;
- 1.2 to define a process for the preparation and implementation of the Outline Implementation Plan and Detailed Implementation Plan to deliver the Services; and
- 1.3 to identify the Milestones (and associated Deliverables) including the Milestones that trigger payment to the Supplier of the applicable Milestone Payments following the issue of the applicable Milestone Achievement Certificate.

## 2. **OUTLINE IMPLEMENTATION PLAN**

The table below shows the outline implementation plan including milestones and payment milestones, shown as red diamonds.

[Redacted]

### 3. MILESTONES AND MILESTONES DATES

- 3.1 The Supplier shall perform its obligations so as to Achieve each Milestone by the Milestone Date.
- 3.2 Changes to the Milestones set out in the table in **paragraph 2** of this schedule shall only be made in accordance with the Change Control Procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with **clause 7** (Delays to Milestone due to Customer Cause)).

### 4. DETAILED IMPLEMENTATION PLAN

- 4.1 The parties acknowledge the importance of detailed planning for the implementation of all of the Services under this Contract and the need to develop the Detailed Implementation Plan in accordance with this schedule and **clause 3** (Implementation Plan).
- 4.2 The Supplier shall ensure that the Detailed Implementation Plan prepared and delivered to the Customer in accordance with **clause 3** (Implementation Plan) incorporates all of the Milestones and Milestone Dates and includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:
  - 4.2.1 the completion of each design document;
  - 4.2.2 the completion of the build phase;
  - 4.2.3 the completion of testing of the Services in accordance with **schedule 6.2** (Testing Procedures); and
  - 4.2.4 training and roll-out activities.
- 4.3 The Supplier shall ensure that the Detailed Implementation Plan:
  - 4.3.1 clearly outlines in a detailed plan all the steps required to implement the Milestones to be achieved in the next six (6) months, together with a high level plan for the rest of the programme, in conformity with the Customer's Requirements and the Standards;
  - 4.3.2 clearly outlines the required roles and responsibilities of all parties concerned, including staffing requirements (subject to the list of Customer's Responsibilities and subject to the roles and responsibilities set out in **schedule 9.3** (Key Personnel)); and
  - 4.3.3 is produced using a software tool as specified, or agreed by the Customer.

- 4.4 During the development of the Detailed Implementation Plan in accordance with **clause 3** (Implementation Plan), the Customer shall have the right, at any time, to review any documentation produced by the Supplier: (i) in relation to the development of the Detailed Implementation Plan; and/or (ii) for the purposes of developing the initial draft of the Detailed Implementation Plan into the agreed Implementation Plan, including:
- 4.4.1 details of the Supplier's intended approach to the Detailed Implementation Plan and its development;
  - 4.4.2 copies of any drafts of the Detailed Implementation Plan produced; and
  - 4.4.3 any other work in progress in relation to the Detailed Implementation Plan.
- 4.5 The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan before it is submitted to the Customer in accordance with **clause 3** (Implementation Plan) or **paragraph 4.8** below as appropriate.
- 4.6 After approval of the Detailed Implementation Plan in accordance with **clause 3** (Implementation Plan) it shall be maintained and updated on a fortnightly basis by the Supplier as may be necessary to reflect the then current state of the implementation of the Services. Save for any amendments which are of a type identified and notified by the Customer (at the Customer's discretion) to the Supplier in writing as not requiring approval, any material amendments to the Detailed Implementation Plan shall be subject to the Change Control Procedure (and for the avoidance of doubt any amendments to elements of the Detailed Implementation Plan which reflect the contents of the Outline Implementation Plan shall be deemed to be material amendments) provided that in no circumstances shall the Supplier alter or attempt to alter any Milestone Date except in accordance with **clause 7** (Delays to Milestones Due to Customer Cause). Until such time as the updated Detailed Implementation Plan is approved by the Customer, the Detailed Implementation Plan then existing (that is to say prior to the update) shall apply.

In addition to maintaining and updating the Detailed Implementation Plan in accordance with **paragraph 4.8** of this schedule, the Supplier shall submit an updated Detailed Implementation Plan within twenty (20) Working Days of receiving notification from the Customer, or such longer period as the parties may agree (provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure), of being advised by the Customer

of an event reasonably identified by the Customer as requiring a revised Detailed Implementation Plan.

- 4.7 Any such revised Detailed Implementation Plan shall be submitted by the Supplier for approval in accordance with the procedure set out in **paragraph 4.8** above.
- 4.8 The parties shall consider and review the Detailed Implementation Plan and progress towards its successful implementation at the Project Board meetings held in accordance with **schedule 8.1** (Governance). In preparation for such meeting the current Detailed Implementation Plan shall be provided by the Supplier to the Customer not less than five (5) Working Days in advance of each meeting of the Project Board.
5. The Supplier shall provide the documents set out in the Appendix to this Schedule 6.1 to a standard that complies with Good Industry Practice to the Customer within the time period set out in the Detailed Implementation Plan.

Stage	Deliverables
Initiation Phase	Implementation Workstream Terms of Reference (ToR) Project Definition Workshop(s) Output Implementation Project Plan Implementation Governance Documents Communications Plan Testing Strategy and Plan BCP Plan Service Management Plan Project Initiation Document (PID) RAIDc Log

Discovery Phase	<p>Applications Assessment</p> <p>Infrastructure Assessment</p> <p>Knowledge Transfer/Management Plan</p> <p>Security Management Plan</p> <p>Service Desk Configuration/Scripting</p> <p>Service Management Plan</p> <p>System/Application Specifications</p> <p>Interface Specifications Systems</p> <p>In-flight Projects Report</p>
Setup Phase	<p>Training Plan</p> <p>Risk and Issues Log</p> <p>Implementation Plan</p> <p>Operations Plan</p> <p>Cutover Plan</p> <p>Project Schedule</p> <p>Service Management Plan</p> <p>System Test Report</p> <p>Risk and Issues Management Plan</p> <p>Project Schedule</p> <p>Service Management Plan</p> <p>Defects Log</p> <p>Training Scripts</p> <p>High Level Designs</p>
Delivery Phase	<p>Operational Acceptance Plan</p> <p>Acceptance into Service Approvals</p> <p>Operations Manual</p> <p>Quick Reference Guides</p> <p>Defects Log</p> <p>Low Level Designs</p>

Stabilisation Phase	<p>Programme Closedown and Team Release</p> <p>Post Implementation Report</p> <p>Service Delivery Reports</p> <p>Risk and Issues Log</p> <p>Service Management</p> <p>Lessons Learnt</p>
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## AGREEMENT SCHEDULES

### SCHEDULE 6.2

#### TESTING PROCEDURES

##### 1. DEFINITIONS

<b>"Expedited Dispute Timetable"</b>	has the meaning given to it in <b>schedule 8.3</b> (Dispute Resolution Procedure);
<b>"Material Test Issue"</b>	a Test Issue of severity level critical, the criteria for which are set out in <b>paragraph 9.1</b> of <b>schedule 6.2</b> (Testing Procedures);
<b>"Milestone Achievement Certificate"</b>	the certificate materially in the form of the document contained in <b>Appendix B</b> to <b>schedule 6.2</b> (Testing Procedures) granted by the Customer when the Supplier has Achieved a Milestone;
<b>"Quality Assurance Review"</b>	an inspection of the Supplier's implementation of the Services to ensure the adherence to the Standards;
<b>"Quality Manager"</b>	the Supplier's representative responsible for ensuring that the Supplier adheres to the Quality Plan;
<b>"Test Certificate"</b>	the certificate materially in the form of the document contained in <b>Appendix A</b> to <b>schedule 6.2</b> (Testing Procedures) issued by the Customer when a Deliverable has satisfied its relevant Test Success Criteria satisfactorily;
<b>"Test Issue"</b>	any variance or non-conformity of a Deliverable from its requirements as set out in the relevant Test Success Criteria;
<b>"Test Issue Management Log"</b>	a log for the recording of Test Issues as described further in <b>paragraph 9.2</b> of <b>schedule 6.2</b> (Testing Procedures);
<b>"Test Plan"</b>	a plan for the Testing of Deliverables and other agreed criteria related to the achievement of Milestones as described further in <b>paragraph 5</b> of <b>schedule 6.2</b> (Testing Procedures);

<b>"Test Report"</b>	a report setting out the results of any Tests which shall include without limitation the information set out in <b>paragraph 8.5 of schedule 6.2</b> (Testing Procedure);
<b>"Test Specification"</b>	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in <b>paragraph 6 of schedule 6.2</b> (Testing Procedure);
<b>"Test Strategy"</b>	a strategy for the conduct of Testing as described further in <b>paragraph 4 of schedule 6.2</b> (Testing Procedure);
<b>"Test Witness"</b>	any person appointed by the Customer pursuant to <b>paragraph 10.1 of schedule 6.2</b> (Testing Procedure).

## 2. INTRODUCTION

2.1 This schedule sets out the approach to Testing and the different Testing activities to be undertaken during the implementation phase of our contract, including the preparation and agreement of the Test Success Criteria, Test Strategy, Test Plans and Test Specifications.

2.1.1 Additional testing required as the result of of a Change or a New Project during the term of the Contract will be agreed via Change Control.

2.2 The Customer will issue an approved Test Certificate when a Deliverable satisfies the Test Success Criteria for the Tests related to that Deliverable. The Customer will grant an approved Milestone Achievement Certificate when all Tests relating to a Milestone have been completed and, subject to **clause 6.2** (Delays Due to Supplier Default), the Customer has issued approved Test Certificates in respect of all of the Tests relating to that Milestone.

## 3. RISK

3.1 The issue of a Test Certificate shall not operate to transfer any risk that the Deliverable will meet and/or satisfy the Customer's requirements for that Deliverable. The grant of a Milestone Achievement Certificate shall not operate to transfer any risk that the Milestone is complete or that it will satisfy the Customer's requirements for that Milestone. The grant of a Milestone Achievement Certificate in respect of Authority to Proceed shall not operate to transfer any risk that the Services will meet and/or satisfy the Customer's requirements for the Services.

3.2 Consequently, the grant of a Test Certificate and/or Milestone Achievement



- 3.3 Certificate shall not affect the Customer's right subsequently to reject:
- 3.3.1 all or any element of the Deliverables to which a Test Certificate relates; or
  - 3.3.2 any Milestone to which the Milestone Achievement Certificate relates.

#### 4. **TESTING OVERVIEW**

- 4.1 All Tests conducted by the Supplier shall be conducted in accordance with the
- 4.2 Test Strategy, the Test Plans and the Test Specifications.
- 4.3 The Supplier shall not submit any Deliverables for Testing:
  - 4.3.1 unless it is reasonably confident that they will satisfy successfully the relevant Test Success Criteria and until the Customer has issued a Test Certificate in respect of any prior, dependent Deliverables;
  - 4.3.2 until the parties have agreed the overall Test Strategy, supported by the specific Test Plan and the Test Specification relating to those Deliverables; and
  - 4.3.3 unless it has provided the Customer with at least 2 Working Days notice in writing certifying that the relevant Deliverable is ready for Testing.
- 4.4 The Supplier shall use reasonable endeavours to submit a Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Milestone.
- 4.5 Prior to the issue of a Test Certificate, the Customer shall be entitled to review the relevant Test Reports and the Test Issue Management Log.
- 4.6 The provisions of **clause 4** (Testing), **clause 5** (Implementation Delays - General Provisions), **clause 6** (Delays due to Supplier Default), **clause 7** (Delays to Milestones due to Customer Cause) and **clause 8** (Delays not due to one Party) shall apply to Testing.
- 4.7 Any disputes between the Customer and the Supplier regarding this Testing shall be referred to the Dispute Resolution Procedure using the Expedited Dispute Timetable.
- 4.8 The Customer shall issue Test Certificates and grant Milestone Achievement Certificates without unreasonable delay.

#### 5. **TEST STRATEGY**

- 5.1 The Supplier shall develop the final Test Strategy as soon as practicable but in any case no later than 40 Working Days (or such other period as the parties may agree) after the Effective Date.
- 5.2 The final Test Strategy shall include:
  - 5.2.1 an overview of how Testing will be conducted in relation to the Implementation Plan;
  - 5.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;
  - 5.2.3 the method for mapping the expected Test results to the Test Success Criteria;
  - 5.2.4 the procedure to be followed should a Deliverable fail to satisfy the Test Success Criteria or to produce the expected results, including a procedure for the resolution of Test Issues;
  - 5.2.5 the procedure to be followed to sign off each Test;
  - 5.2.6 the process for the production and maintenance of Test Reports and reporting, including templates for the Test Reports and the Test Issue Management Log, and a sample plan to resolve Test Issues;
  - 5.2.7 the names and contact details of the Customer's and the Supplier's Test representatives;
  - 5.2.8 a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and Customer and/or third party involvement in the conduct of the Tests;
  - 5.2.9 a description of the technical environments required to support the Tests; and
  - 5.2.10 the procedure for managing the configuration of the Test environments.

## 6. **TEST PLANS**

- 6.1 The Supplier shall develop Test Plans for the approval of the Customer as soon as practicable but in any case no later than 20 Working Days (or such other period as the parties may agree in the Test Strategy or otherwise) prior to the start date for the relevant Testing as specified in the Implementation Plan.
- 6.2 Each Test Plan shall include as a minimum:

- 6.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested and, for each Test, the specific Test Success Criteria to be met;
- 6.2.2 a detailed procedure for the Tests to be carried out, including:
  - 6.2.2.1 the timetable for the Tests including start and end dates;
  - 6.2.2.2 the Testing mechanism;
  - 6.2.2.3 dates and methods by which the Customer can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;
  - 6.2.2.4 the mechanism for ensuring the quality, completeness and relevance of the Tests;
  - 6.2.2.5 the format and an example of Test progress reports and the process with which the Customer accesses daily Test schedules;
  - 6.2.2.6 the process with which the Customer will review Test Issues and progress on a timely basis;
  - 6.2.2.7 the Test schedule;
  - 6.2.2.8 the re-Test procedure, the timetable and the resources which would be required for re-Testing; and
  - 6.2.2.9 the decision making process for escalation from a re-test situation to specific remedial action to resolve the problem / Test Issue.
- 6.3 The Customer shall not unreasonably withhold or delay its approval of the Test Plans and the Supplier shall implement any reasonable requirements of the Customer in the Test Plans.

## **7. TEST SUCCESS CRITERIA**

The Test Success Criteria for the Milestone Achievement Certificates have been agreed by the parties prior to the Effective Date and are set out in Appendix C.

## **8. TEST SPECIFICATIONS**

- 8.1 Following approval of a Test Plan, the Supplier shall develop the Test Specification for the approval of the Customer for the relevant Deliverables as soon as reasonably practicable and in any event at least 20 Working Days (or such other period as the parties may agree in the Test Strategy or otherwise) prior to the start of the relevant Testing as specified in the Implementation Plan.

- 8.2 Each Test Specification shall include as a minimum:
- 8.2.1 the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Customer and the extent to which it is equivalent to live operational data;
  - 8.2.2 a plan to make the resources available for Testing;
  - 8.2.3 Test scripts;
  - 8.2.4 Test pre-requisites and the mechanism for measuring them; and
  - 8.2.5 expected Test results, including:
    - 8.2.5.1 a mechanism to be used to capture and record Test results; and
    - 8.2.5.2 a method to process the Test results to establish their content;
  - 8.2.6 the Quality Criteria that apply for that Test.
- 8.3 The Customer shall not unreasonably withhold or delay its approval of the Test Specification and the Supplier shall implement any reasonable requirements of the Customer in the Test Specification.
9. **TESTING**
- 9.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.
- 9.2 The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and it shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test witnesses in accordance with **paragraph 10** (Test Witnessing).
- 9.3 The Supplier shall notify the Customer at least 5 Working Days (or such other period as the parties may agree) in advance of the date, time and location of the relevant Tests and the Customer shall ensure that the Test Witnesses attend the Tests, except where the Customer has specified in writing that such attendance is not necessary.
- 9.4 The Customer may raise and close Test Issues during the Test witnessing process.
- 9.5 Not less than 20 Working Days (or such other period as the parties may agree) prior to the date on which any Tests are planned to end the Supplier will provide the Customer with a draft Test Report and on completion of the Testing the Supplier will provide the Customer with the final Test Report. Each Test Report

shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:

- 9.5.1 an overview of the Testing conducted;
  - 9.5.2 identification of the relevant Test Success Criteria that have been satisfied;
  - 9.5.3 identification of the relevant Test Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met;
  - 9.5.4 the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
  - 9.5.5 the Test Success Criteria that passed, failed or which were not tested, and any other relevant categories, in each case grouped by severity level in accordance with **paragraph 9.1** (Test Issues);
  - 9.5.6 the specification for any hardware and software used throughout the Testing and any changes that were applied to that hardware and/or software during the Testing; and
- 9.6 In the event that a Deliverable does not meet the relevant Test Success Criteria the Test Report shall constitute a Non-Conformance Report for the purposes of **clause 6.1** (Delays Due to Supplier Default).

## 10. **TEST ISSUES**

- 10.1 Where a Test Report identifies a Test Issue, the parties shall agree the severity classification of the Test Issue using the following criteria:-
- 10.1.1 Critical Severity Test Issue: the Deliverable being tested is (or is likely to be) unfit for operational use and has (or is likely to have) a significant impact on other Deliverables or Tests (and such issue must be resolved immediately);
  - 10.1.2 Medium Severity Test Issue: the Deliverable is operational however there are likely to be problems in the operational use of the Deliverable and/or Testing during the following stage; and
  - 10.1.3 Low Severity Test Issue: all elements of the Deliverable are operational but there is or is likely to be a minor impact on scope and/or performance of that Deliverable and/or Testing during the following stage.
- 10.2 The Test Issue Management Log shall log Test Issues to reflect the severity classifications allocated to each Test Issue pursuant to **paragraph 9.1**.

10.3 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Customer upon request.

10.4 The Customer Representative shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

## 11. **TEST WITNESSING**

11.1 The Customer may, in its sole discretion, require the attendance at any Test of one or more witnesses. Witnesses will be selected by the Customer, each of whom will have appropriate skills to fulfil the role of a Test Witness.

11.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.

11.3 The Test Witnesses will actively review the Test documentation and will attend and engage in the performance of the Tests on behalf of the Customer so as to enable the Customer to gain an informed view of whether a Test Issue may be closed or whether the relevant component should be re-Tested. However, the Test Witnesses will not be involved in the execution of any Test.

11.4 The Test Witnesses may produce and deliver their own, independent reports on Testing, which may be used by the Customer to assess whether the Tests have been Achieved.

11.5 The Test Witnesses may raise Test Issues on the Test Issue Management Log in respect of any Testing and shall, in any event, inform the Supplier of any Test Issue mentioned in any report they produce and deliver in accordance with paragraph 10.4 as soon as reasonably practicable after having identified that Test Issue.

11.6 The Test Witnesses may raise Test Issues on the Test Issue Management Log in respect of any Testing.

11.7 The Test Witnesses may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

## 12. **TEST QUALITY AUDIT**

12.1 Without prejudice to its rights pursuant to **clause 26** (Audits), the Customer may perform on-going quality audits in respect of any part of the Testing (each a

"Testing Quality Audit") subject to the provisions set out in the agreed Quality Plan.

- 12.2 The focus of the Testing Quality Audits will be on:
  - 12.2.1 adherence to an agreed methodology;
  - 12.2.2 adherence to the agreed Testing process;
  - 12.2.3 adherence to the Quality Plan;
  - 12.2.4 review of status and key development issues; and
  - 12.2.5 identification of key risk areas.
- 12.3 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 12.4 The Customer will give the Supplier at least 10 Working Days' written notice of the Customer's intention to undertake a Testing Quality Audit and the Supplier may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Supplier's reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the Customer will materially and adversely impact the Implementation Plan.
- 12.5 A Testing Quality Audit may involve document reviews, interviews with the Supplier personnel involved in or monitoring the activities being undertaken pursuant to this schedule, the Customer witnessing Tests and demonstrations of the Deliverables to the Customer. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Supplier and the Customer on a case by case basis not to be unreasonably withheld or delayed. The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Customer to enable it to carry out the Testing Quality Audit.
- 12.6 If the Testing Quality Audit gives the Customer concern in respect of the Testing Procedures or any Test, the Customer will discuss the outcome of the Testing Quality Audit with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities, and subsequently prepare a written report for the Supplier detailing the same to which the Supplier shall, within a reasonable timeframe, respond in writing.
- 12.7 In the event of an inadequate response to the written report from the Supplier, the Customer (acting reasonably) may withhold a Test Certificate (and consequently delay the grant of a Milestone Achievement Certificate) until the issues in the report have been addressed to the reasonable satisfaction of the Customer.

### 13. **OUTCOME OF TESTING**

- 13.1 Deliverables will complete Testing and a Test Certificate shall be issued when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
- 13.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then:
- 13.2.1 the Supplier shall rectify the cause of the failure and re-submit the Deliverables (or the relevant part) to Testing, provided that the parties agree that there is sufficient time for that action prior to the relevant Milestone Date; or
  - 13.2.2 the parties shall treat the failure as a Supplier Default or
  - 13.2.3 the Customer, at its sole discretion, may issue a conditional Test Certificate subject to a Correction Plan.
- 13.3 When the Customer has issued Test Certificates and/or conditional Test Certificates in respect of all the Deliverables related to a Milestone it will also grant a Milestone Achievement Certificate. All certificates will be issued by the Customer within 5 Working Days of completion of the relevant testing and/or achievement of a milestone subject to the provision of all associated documentation required under this Schedule 6.2 by the Supplier.
- 13.4 The grant of a Milestone Achievement Certificate will entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of **schedule 7.1** (Charges and Invoicing).



## APPENDIX A

### Test Certificate

To: [SUPPLIER]

FROM: [CUSTOMER]

[Date]

Dear Sirs,

### TEST CERTIFICATE

Deliverables: [*insert description of Deliverables*]

We refer to the agreement ("**Agreement**") relating to the provision of the [ ]  
Services between the [Customer] ("**Customer**") and ("**Supplier**") dated  
[ ].

The definitions for terms capitalised in this certificate are set out in schedule 1  
(Definitions) to the Agreement.

[We confirm that the Deliverables listed above have been tested successfully in  
accordance with the Test Plan relevant to those Deliverables.]

### OR

[This Test Certificate is issued pursuant to clause 6.2.1 of the Agreement (Delays Due to  
Supplier Default) on the condition that any Test Issues are remedied in accordance with  
the Correction Plan attached to this certificate.]\*

*\*delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of [Customer]

## APPENDIX B

### Milestone Achievement Certificate

To: [SUPPLIER]

FROM: [CUSTOMER]

[Date]

Dear Sirs,

#### MILESTONE ACHIEVEMENT CERTIFICATE

Milestone: [*insert description of Milestone*]

We refer to the agreement ("**Agreement**") relating to the provision of the [ ] Services between the [Customer] ("**Customer**") and ("**Supplier**") dated [ ].

The definitions for terms capitalised in this certificate are set out in schedule 1 (Definitions) to the Agreement.

[We confirm that all the Deliverables relating to Milestone Number [ ] have been tested successfully in accordance with the Test Plan relevant to this Milestone [or that a conditional Test Certificate has been issued in respect of those Deliverables that have not satisfied the relevant Test Success Criteria.]]\*

#### OR

[This Milestone Achievement Certificate is granted pursuant to clause 6.2.1 of the Agreement (Delays Due to Supplier Default) on the condition that any Test Issues are remedied in accordance with the Correction Plan attached to this certificate.]\*

[You may now issue an invoice in respect of the sums due are payable in accordance with schedule 7.1 (Charges and Invoicing)]\*

*\*delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of [Customer]

## APPENDIX C

### Test Success Criteria

The table below shows the Test Success Criteria and Pre-conditions for each of the Milestones.

<b>Milestones</b>	<b>Pre-conditions</b>	<b>Test Success Criteria</b>
Implementation Governance Operational and plans agreed	Contract signed, Customer and Supplier Implementation teams mobilised.	Implementation and governance plan which comply with the Quality Criteria and is signed off by the Customer Representative.
Testing and Acceptance into Service (AIS) Strategy signed off	Acceptance criteria defined for all contractual deliverables .	Testing strategy and acceptance criteria for workstream test plans which comply with the Quality Criteria and are signed off by the Customer Representative
High & Low level designs for network, infrastructure and desktop signed off	Current State Analysis complete; confirmed baseline inventory data for infrastructure and applications. High Level Design and Low Level Design documents produced to Supplier standard.	Designs which comply with the Quality Criteria and are signed off by the Customer Representative
SPoC available for testing (Telephone Line, Email Address, Office Logistics)	All Customer and third party resolver group details made available to Supplier; routing of Customer internal dedicated telephone number to Supplier's SPoC telephone number completed and tested.	SPoC tests which comply with the Quality Criteria and are successfully executed and signed off by Customer Representative.  Single Supplier telephone number and email address active and published to Customer user community. Demonstrated by the sending of a test email and a test call to the service desk ,

<b>Milestones</b>	<b>Pre-conditions</b>	<b>Test Success Criteria</b>
Deliver interim applications assessment and support plan	Relevant information relating to all Customer applications provided to Supplier; business owner for each application defined; application roadmap defined and agreed; Monthly Applications Portfolio Management (APMF) report format and structure defined and agreed.	Application support services which comply with the Quality Criteria and are tested and signed off by Customer Representative.  Application Portfolio Management assessment report delivered and signed off by Customer Representative and which comply with the Quality Criteria.
Complete & Agree Procurement and Contract Assessment and ongoing BAU processes	Supply chain for IT products via Supplier's proposed procurement tool agreed and commercial framework established; portfolio of Customer standard IT products defined and agreed.	All procurement and contract management processes, including Service Catalogue and test plans which comply with the Quality Criteria and are approved by Customer Representative.  Supplier's procurement tool and catalogue configured which comply with the Quality Criteria and are successfully tested and formally accepted into service by the Supplier as part of
Deliver interim agreed ISMS for Service Commencement	Relevant information relating to all Customer security process provided to Supplier; business owner for each security component defined; security roadmap defined and agreed; Design for strategic ISMS defined & agreed.	Security baseline and processes which comply with the Quality Criteria and are agreed and approved by Customer Representative, for input into BAU and strategic ISMS

Milestones	Pre-conditions	Test Success Criteria
Infrastructure and desktop support plans delivered, including refresh	High and Low level designs for network, infrastructure and desktop completed; remote access via IP VPN set up; integration of Supplier server and desktop management tools with Supplier service management system; legacy image build documentation provided to Supplier; list of transferees from Supplier and/or incumbent supplier(s) defined and relevant details supplied to Supplier;	<p>Remote infrastructure management and local desktop management services which comply with the Quality Criteria and are tested and signed off by Customer Representative.</p> <p>In-scope Customer and/or incumbent supplier staff have transferred to the Supplier or elected not to transfer as evidenced by a list of transferees</p> <p>A document deliverable of a capacity plan for the Customer server estates to Supplier standards and accepted into service by the Supplier as part of the ORR which complies with the Quality Criteria.</p> <p>Remote monitoring tools set-up via IP VPN and tested to Supplier standards and accepted into service by the Supplier as part of the ORR and which comply with the Quality Criteria.</p> <p>Remote software deployment tools set-up via IP VPN and which comply with the Quality Criteria and are tested to Supplier standards and</p>

Milestones	Pre-conditions	Test Success Criteria
Deliver telecoms support and new network implementation plans	High and Low level designs for network, infrastructure and desktop completed; remote access via IP VPN set up; integration of Supplier service management system with legacy LAN equipment completed; Supplier has contracted with chosen third party provider for new PSN based WAN and fixed telephony services.	<p>Network management services which comply with the Quality Criteria and are tested and signed off by Customer Representative</p> <p>Suppliers network toolset has been configured and successfully tested and formally accepted into service by the Supplier as part of the ORR and complies with the Quality Criteria.</p> <p>Customer-contracted network provider has installed new PSN circuits and terminating equipment, ADSL lines and where required provisioned new PSTN and ISDN circuits in line with Supplier's high level design.</p> <p>These circuits and telephone lines have been tested and formally accepted into service by the Customer Representative as part of the ORR and comply with the Quality Criteria.</p>
Service Management Processes and outputs agreed and testing commenced	Supplier's Service Management Tool has been configured and successfully tested and formally accepted into service by the Supplier as part of the ORR.	<p>All Service Management process and test plans comply with the Quality Criteria and are approved by Customer Representative.</p> <p>Operations Manual has been published to all relevant staff and complies with the Quality Criteria. Establishment to be signed off by the Supplier as part of the ORR.</p> <p>Fomat and structure for monthly service report has been agreed and signed off by the Customer Representative and complies with the Quality</p>

Milestones	Pre-conditions	Test Success Criteria
Service Desk testing signed off	<p>List of transferees from Customer and/or incumbent supplier(s) defined and relevant details supplied to Supplier; content and structure of first release of request catalogue defined and agreed.</p> <p>All Supplier and third party resolver group details made available to Supplier; routing of Supplier internal dedicated telephone number to Supplier's SPoC telephone number completed and tested.</p>	<p>All test plans relating to Service Desk processes comply with the Quality Criteria and are approved by Customer Representative.</p> <p>Supplier's Service Management system has been configured and successfully tested and formally accepted into service by the Supplier as part of the ORR and complies with the Quality Criteria.</p> <p>In-scope Customer and/or incumbent supplier staff have transferred to the Supplier or elected not to transfer as evidenced by a list of transferees agreed by Customer Representative.</p> <p>End-to-end testing of incident and request routing has been completed successfully by means of a single incident ticket and a single request ticket for each resolver group defined in the Operations Manual. A test witnessed by the Customer Representative as part of the ORR.</p>
Cutover/Go-Live (the " <b>Operational Service Commencement Date Milestone</b> ")	<p>Operational Readiness Review completed in full.</p> <p>Transferring staff consultation process completed and transfer plans in place.</p>	<p>Cutover/go-live approved by Customer Representative and accepted into BAU. CGI Services are live and BAU support are primary contacts supported by Project Team.</p>
BAU PMO Operational	<p>Cutover/go-live approved by Customer Representative and accepted into BAU. CGI Services are live and BAU support are primary contacts supported by Project Team.</p>	<p>PMO for BAU Services operational and integrated into Customer organization and comply with the Quality Criteria.</p>

<b>Milestones</b>	<b>Pre-conditions</b>	<b>Test Success Criteria</b>
Complete Final ISMS	Interim ISMS updated and accepted by Customer Supplier Representative	ISMS delivered and approved by Customer Representative and complies with the Quality Criteria.
New Network Go Live	Customer able to issue cease orders on existing network supplier	Go live for replacement network and revised connectivity complies with the Quality Criteria and is accepted into service by the Customer Representative
Complete Phase 1 of Apps rationalisation/consolidation of retirement	To be confirmed as part of Transformation and Strategic Planning	Initial phase of rationalization of Customer's application, and business service estate complies with the Quality Criteria and is approved by Customer Representative
Go live of consolidated/rationalised/refreshed virtual server estate	To be confirmed as part of Transformation and Strategic Planning	Rationalisation of virtual server estate and removal of VMWare and revised infrastructure acceptance into Service by Customer Representative and complies with the Quality Criteria



## **AGREEMENT SCHEDULES**

### **SCHEDULE 7.1**

#### **CHARGING AND INVOICING**

<b>"Baseline Volume"</b>	the volumes set out in "13.Scalability" worksheet of the Financial Model;
<b>"Payment Retention"</b>	Has the meaning given to it in paragraph 3.2 of this Schedule 7.1;

## **PART A - CHARGING**

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

The purpose of this part A of the schedule is to set out the provisions relating to:

- 1.1 the Charges applicable to the Services;
- 1.2 Milestone Payments;
- 1.3 the calculation of the Payment Retention;
- 1.4 Delay Payments;
- 1.5 Charges for Changes; and
- 1.6 Indexation.

### **2. MILESTONE PAYMENTS**

- 2.1 On the issue of a Milestone Achievement Certificate in relation to a Milestone the Supplier will be entitled to deliver an invoice to the Customer in respect of the charges associated with that Milestone as set out in the table below:

<b>Implementation Payment milestone (Service on-boarding and set-up)</b>	<b>Proposed Payment Due</b>	<b>£</b>	<b>Reclaimable (Yes/No)</b>
Implementation and governance operational plans agreed	[redacted]	[redacted]	[redacted]
Testing and Acceptance into Service (AIS) Strategy signed off	[redacted]	[redacted]	[redacted]
High & Low level designs for network, infrastructure and desktop signed off	[redacted]	[redacted]	[redacted]
SPOC available for testing (Telephone Line, Email Address, Office Logistics)	[redacted]	[redacted]	[redacted]
Deliver interim applications assessment and support plan	[redacted]	[redacted]	[redacted]
Complete and agree Procurement and Contract assessment and ongoing BAU processes	[redacted]	[redacted]	[redacted]
Deliver agreed ISMS for Operational Service Commencement Date	[redacted]	[redacted]	[redacted]
Infrastructure and desktop support plans delivered including refresh	[redacted]	[redacted]	[redacted]

Deliver telecoms support and new network implementation plans	[redacted]	[redacted]	[redacted]
Service management processes and outputs agreed and testing commenced	[redacted]	[redacted]	[redacted]
Service desk testing setup	[redacted]	[redacted]	[redacted]
Cutover/Go-Live (the <b>"Operational Service Commencement Date Milestone"</b> )	[redacted]	[redacted]	[redacted]

The Supplier shall be required to repay to the Customer any Reclaimable Milestone Payments under the circumstances set out in **clauses 59.5.2 or 62.6**.

### Implementation Milestones

- 2.2 If the Operational Service Commencement Date Milestone is not achieved by its associated anticipated Milestone Date then Delay Payments will be applied in accordance with **paragraph 7** of this schedule.
- 2.3 In respect of further transformation activities, on the issue of a Milestone Achievement Certificate, the Supplier will be entitled to deliver an invoice to the Customer in respect of the charges associated with that Milestone as set out in the table below:

#### Transformation Milestones

Payment Milestone	Proposed Payment Due	£	Reclaimable Milestone
BAU PMO Operational	[redacted]	[redacted]	[redacted]
Complete Final ISMS	[redacted]	[redacted]	[redacted]
New Network Go-live	[redacted]	[redacted]	[redacted]
Complete Phase 1 of Apps rationalisation/consolidation or retirement	[redacted]	[redacted]	[redacted]
Go-live of consolidated/rationalised virtual server estate (the <b>"VMWare/Virtual Server Milestone"</b> )	[redacted]	[redacted]	[redacted]

Note: The VMWare/Virtual Server Milestone assumes a maximum number of 495 man days, of infrastructure effort. If the Supplier reasonably considers that more than 495 man days are required, it shall demonstrate to the Supplier that such 495 man days have been used properly to date and by experienced and qualified personnel and the reason why additional days are required. If the Parties agree pursuant to this clause that additional man days are required or that the solution should be amended so that fewer man days are required and instead Hardware should be purchased this shall be subject to the Change Control Procedure.

- 2.4 The circumstances in which a Milestone will be considered to have been achieved are set out in **schedule 6.2** (Testing Procedures). Payment will be made to the Supplier in accordance with part B of this schedule.

### 3. SERVICE CHARGES

3.1 Following achievement of the Operational Service Commencement Date Milestone, the Customer will pay the Service Charges to the Supplier for all operations services in each Service Period from the Operational Service Commencement Date Milestone to the end of Term. The Parties agree that all invoices shall be submitted and paid for on a Quarterly basis. The Service Charges shall be made up of the following charges (as applicable):

3.1.1 Fixed Charges in accordance **paragraph 3.3** below;

3.1.2 Volume Charges in accordance **paragraph 3.5** below; and

3.1.3 Time and Materials in accordance **paragraph 8.2** below.

3.2 The Parties agree that, for each Quarter, the Customer shall withhold [redacted] % of the Fixed Charges for that Quarter from the Service Charge (the "Payment Retention") which shall become due and payable by the Customer to the Supplier in the following Quarter pursuant to paragraph 3.2.2 depending upon the level of Services that have been performed by the Supplier.

3.2.1 In relation to the first Quarter, the Supplier shall be entitled to invoice the Customer quarterly in advance at the start of that Quarter for an amount equal to:

3.2.1.1 the Fixed Charges for that Quarter; plus

3.2.1.2 Any agreed Volume Charges; and plus

3.2.1.3 Any agreed Time and Materials Charges.

3.2.2 In relation to the second and each subsequent Quarter, the Supplier shall be entitled to invoice the Customer for:

3.2.2.1 the Fixed Charges for that Quarter which shall be payable in advance; plus

3.2.2.2 Any agreed Volume Charges; plus

3.2.2.3 Any agreed Time and Materials Charges; and plus

3.2.2.4 the Payment Retention for the immediately preceding Quarter minus any Service Credits which are calculated pursuant to schedule 2.2 and this schedule 7.1 and which relate to that previous Quarter.

3.2.3 In relation to the final Quarter or if this Agreement is terminated early in accordance with clauses 59.3 or clause 59.6 , the Supplier shall invoice the Customer for an amount equal to the Payment Retention for the immediately preceding Quarter less any Service Credits which are

calculated pursuant to schedule 2.2 and this schedule 7.1 and which relate to that previous Quarter.

### 3.3 Fixed Charges

The Fixed Charge to be applied is stated in the table below:

Date	Fixed Service Charge	Payment Retention	Total Payable in Quarter
Apr-15	[redacted]	[redacted]	[redacted]
Jul-15	[redacted]	[redacted]	[redacted]
Oct-15	[redacted]	[redacted]	[redacted]
Jan-16	[redacted]	[redacted]	[redacted]
Apr-16	[redacted]	[redacted]	[redacted]
Jul-16	[redacted]	[redacted]	[redacted]
Oct-16	[redacted]	[redacted]	[redacted]
Jan-17	[redacted]	[redacted]	[redacted]
Apr-17	[redacted]	[redacted]	[redacted]
Jul-17	[redacted]	[redacted]	[redacted]
Oct-17	[redacted]	[redacted]	[redacted]
Jan-18	[redacted]	[redacted]	[redacted]
Apr-18	[redacted]	[redacted]	[redacted]
Jul-18	[redacted]	[redacted]	[redacted]
Oct-18	[redacted]	[redacted]	[redacted]
Jan-19	[redacted]	[redacted]	[redacted]
Apr-19	[redacted]	[redacted]	[redacted]
Jul-19	[redacted]	[redacted]	[redacted]
Oct-19	[redacted]	[redacted]	[redacted]
Jan-20	[redacted]	[redacted]	[redacted]
Mar-20	[redacted]	[redacted]	[redacted]
Total	[redacted]	[redacted]	[redacted]

### 3.4 Volume Charges

The Fixed Charges set out in paragraph 3.3 are fixed for changes in service volumes which are within  $\pm 10\%$  of the Baseline Volume. In the event that volumes vary above or below the  $\pm 10\%$  tolerances the Supplier shall complete a full impact assessment and propose the appropriate actions. This may involve a variation to the Charges (increase or decrease), which will be agreed in accordance with the **schedule 8.2** (Change Control procedure). The calculation of any change to the Charges shall be based on the principles set out in the 'Scaleability' worksheet within the Financial Model, provided that in order to allow the most accurate and efficient adjustment to the Volume Charges, the charges set out in the "Scaleability" worksheet within the Financial Model shall be reviewed by the Parties within 90 days following the Operational Service Commencement Date to seek to agree more granular costs than those contained in such worksheet in the Financial Model as at the date of this Contract but whilst keeping within the prices and principals set out in the Financial Model.

The Supplier will be required to provide evidence of any changes **in volumes** to the satisfaction of the Customer.

Any disputes as to the changes in volumes and associated changes to service Charges shall be submitted to the Dispute Resolution Procedure.

4. Not used

5. Not Used

## 6. **SERVICE CREDITS**

6.1 Subject to paragraph 5.2 of Schedule 2.2 (which sets out the Service Points which are to be converted to), the Service Credits to be deducted from the Payment Retention will be based on the number of Service Points accrued in any one Service Period. The basis for the accrual of Service Points is set out in **schedule 2.2** (Service Levels). The level of Service Credits shall be capped at an amount equal to the Payment Retention.

6.2 In each Service Period, Service Points will be converted to a Service Credit in the relevant Service Period as set out in **schedule 2.2** (Service Levels) on the basis of each Service Point resulting in a payment of [redacted] percentage points. The total Service Credit applicable for each Service Period will therefore be calculated in the following way:

SC = [redacted]

Where:

"SC" = Service Credit

"TSP" = Total Service Points for the Service Period

"FCP" = Fixed Charges for the Service Period (being the Fixed Charges for the relevant Quarter divided by three)

6.3 The liability of the Supplier in respect of Service Credits will be limited in accordance with **clause 55.2.5** (Limitations on Liability). However, and for the avoidance of doubt, such financial limitation shall not affect the continued accrual of service points in excess of such financial limit, in accordance with the provisions of **schedule 2.2** (Service Levels).

## 7. **DELAY PAYMENTS**

7.1 If a Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Customer Delay Payments in accordance with the following table for each Working Day of delay from and including the relevant Milestone Date until and including the date on which the relevant Milestone

criteria are actually achieved and the Customer provides the Supplier with a Milestone Achievement Certificate.

Milestone	Delay Payment
[redacted]	[redacted]

- 7.2 The liability of the Supplier in respect of Delay Payments will be limited in accordance with **clause 55.2.6** (Limitations on Liability).

## 8. CHARGES FOR CHANGE CONTROL

- 8.1 Where a Change is requested then the Supplier will prepare a quotation for the cost of the Change which shall:

- 8.1.1 be based on and reflect the principles of the Financial Model;
- 8.1.2 include estimated volumes of each type of resource to be employed and the applicable Day Rate contained in Appendix 1;
- 8.1.3 include full disclosure of any assumptions underlying such quotation; and
- 8.1.4 include evidence of the cost of any assets required for the Change.

- 8.2 A Change may be priced on a fixed price or time and materials basis ("**Time and Materials Charges**") at the Customer's sole discretion. Any Time and Materials Charges shall not be subject to Indexation, however for the avoidance of doubt the day rates contained in Appendix 1 to this Schedule will be subject to Indexation.

- 8.3 The Supplier shall provide a breakdown of any Time and Materials Charge. For the avoidance of doubt, no risks or contingencies shall apply to the provision of Services for which Time and Materials Charges apply. The Supplier shall maintain full and accurate records of the time spent by the Supplier's Personnel in providing the Services and shall produce such records to the Customer for inspection at all reasonable times on request.

- 8.4 In addition to the Time and Materials Charges, the Supplier shall be entitled to be reimbursed by the Customer for reasonable travel and subsistence (eg hotel and food) expenses ("**Reimbursable Expenses**") properly and necessarily incurred in the performance of those Services, other than:

- 8.4.1 travel expenses incurred as a result of Supplier Personnel travelling to and from the Supplier's usual place of work at the Supplier's offices; or
- 8.4.2 subsistence expenses incurred whilst performing the Services at the Supplier's usual place of work at the Supplier's offices.

- 8.5 The Customer shall reimburse the Supplier for Reimbursable Expenses reasonably incurred by the Supplier at the rates and in accordance with the Customer's policy current from time to time. The Customer shall provide a copy of such rates and policy to the Supplier upon request.
- 8.6 If the Change is adopted by the Customer in accordance with **schedule 8.2** (Change Control Procedure) then the Supplier will include this in the annual update the Financial Model in accordance with the provisions of **schedule 7.5** (Financial Model).
- 8.7 At the Customer's request the Supplier may propose alternative payment models for material Changes to meet the Customer's budget availability.
- 8.8 Where the value of labour in approved Changes undertaken on a time and materials basis in any Contract Year in total exceeds [redacted], the discounts set out in Appendix 1 shall be applied by the Supplier to the Supplier Day Rates for subsequent time and materials Changes agreed in that Contract Year.

## 9. INDEXATION

- 9.1 Any amounts or sums in this Agreement which are expressed to be "subject to indexation" shall be adjusted to reflect the effects of inflation after that date in accordance with the provisions of this paragraph. The adjustment shall be measured by changes in the relevant index published for that Contract Year as calculated in accordance with the following formula:

$$\text{Amount or Sum} \times \left( \frac{\text{Index}_o}{\text{Index}_d} \right)$$

Where

"**Index**" means the Retail Prices Index excluding mortgages) ("RPIx");

"**Index<sub>d</sub>**" is the value of Index published or determined with respect for the period immediately preceding the Effective Date; and

"**Index<sub>o</sub>**" is the value of Index published or determined with respect to the period immediately preceding the relevant anniversary in respect of which the amount or sum falls to be adjusted.



## **PART B - INVOICING**

### **10. PURPOSE OF THIS PART OF THE SCHEDULE**

This part B of the schedule sets out the method by which the Supplier shall raise invoices to the Customer for payment, together with the requirements which apply to such invoices, and the payment terms thereof.

### **11. CONTRACTOR INVOICES**

11.1 The Supplier shall prepare and provide to the Customer for approval a draft pro forma invoice within ten (10) Working Days of the Effective Date which shall include, as a minimum, the details set out in **paragraph 11.4** of this schedule together with such other information as the Customer may reasonably require. If the draft pro forma invoice is not approved by the Customer then the Supplier shall make such amendments as may be reasonably required by the Customer.

11.2 The Supplier shall be entitled to raise an invoice in respect of any payment which falls payable to the Supplier pursuant to the Agreement.

11.3 The Supplier shall invoice the Customer 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.

11.4 The Supplier shall ensure that each invoice contains the following information:

11.4.1 the date of the invoice;

11.4.2 a unique invoice number;

11.4.3 the Service Period or other period(s) to which the relevant Charge(s)

11.4.4 or Service Credits (as the case may be) relate;

11.4.5 details of the correct Agreement reference;

11.4.6 the reference number of the purchase order to which it relates (if any);

11.4.7 the dates between which the Services subject of each of the Charges detailed on the invoice were performed;

11.4.8 the methodology applied to calculate the Charges;

11.4.9 any payments due in respect of achievement of a Milestone;

11.4.10 the total Charges gross and net of any applicable deductions and, separately, the amount of any disbursements properly chargeable to the Customer under the terms of the Agreement, and, separately, any

VAT or other sales tax payable in respect of the same;

- 11.4.11 details of any Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;
  - 11.4.12 reference to any reports required by the Customer in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Customer, then to any such reports as are validated by the Customer in respect of the Services);
  - 11.4.13 a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries; and
  - 11.4.14 the banking details for payment to the Supplier via electronic transfer of funds (ie name and address of bank, sort code, account name and number).
- 11.5 Each invoice shall at all times be accompanied by sufficient information ("**Supporting Documentation**") to enable the Customer to reasonably assess whether the Charges detailed thereon are properly payable. Any such assessment by the Customer shall not be conclusive. The Supplier undertakes to provide to the Customer any other documentation reasonably required by the Customer from time to time to substantiate an invoice.
- 11.6 The Supplier shall submit all invoices and Supporting Documentation in such format as the Customer may specify from time to time to:
- NWP Shared Services Facilities Accounts Payable at Police Headquarters, Glan y Don, Colwyn Bay, Colwyn,
- with a copy (again including any Supporting Documentation) to such other person and at such place as the Customer may notify to the Supplier from time to time.
- 11.7 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Customer in writing.
- 11.8 The Customer shall only regard an invoice as valid if it complies with the provisions of this part B of this schedule. Where any invoice does not conform to the Customer's requirements set out in **paragraph 11** of this schedule, the Customer will return the disputed invoice to the Supplier. The Supplier shall promptly issue a replacement invoice which shall comply with the same.

12. **PAYMENT TERMS**

Subject to the provisions of **paragraph 11** of the schedule, the Customer shall make payment to the Supplier within 30 (thirty) days of receipt of a valid invoice by the Customer at its nominated address for invoices.

## **APPENDIX 1**

### **Supplier Day Rates**

[redacted]



**AGREEMENT SCHEDULES**

**SCHEDULE 7.2**

**PAYMENTS ON TERMINATION**

**“Breakage Costs”**

any costs (such as the Supplier’s own redundancy costs, and costs payable for early termination of contracts entered into by the Supplier prior to receipt of the termination notice) incurred by the Supplier directly as a result of the termination of this Agreement which:

- (g) would not have been incurred had this Agreement continued until its natural expiry; and
- (h) relate directly to the termination of the Services; and
- (i) are unavoidable, proven, reasonable, and not capable of recovery; and
- (j) are incurred under arrangements or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and
- (k) do not relate to contracts or subcontracts with Affiliates of the Supplier;

**“Forecast Expenses”**

the expenses incurred by the Supplier as stated in the Whole Life Costs section 3.1.1 of Schedule 4.1;

**“Forecast Profits”**

the profit earned by the Supplier as stated in the Financial Model, cells B58 to L58 of the tab 11. NWP Pricing Template;

**“Forecast Revenue”**

the revenue earned by the Supplier as stated in the Financial Model, cells B28 to L28; of the tab 11. NWP Pricing Template;

**“Transferring Assets”**

such assets as transfer to the Customer on Termination and as specified in the Exit Plan;

**“Unrecovered Costs”**

the costs incurred by the Supplier in the performance of this Agreement and detailed in Financial Model from time to time, to the extent that the same remain to be recovered through the Charges at the rate at which they

fall to be amortised as detailed in the Financial Model. Such costs will exclude internal costs of financing, working capital or overheads associated with these costs and profit earned but not received accruing to these costs.



## PURPOSE OF SCHEDULE

- 1.1 This schedule sets out the calculation of the Termination Payment and the Compensation Payment that may be paid by the Customer to the Supplier pursuant to **clause 62** (Payments Made on Termination).
- 1.2 If the Agreement is terminated for any reason other than pursuant to **clause 59.3** (Termination for Convenience by the Customer) or **clause 59.6** (Termination by the Supplier) such as, without limit, any termination by the Customer pursuant to **clauses 59.1** (Termination for Cause by the Customer), **59.4** (Termination for Change of Control), **59.5** (Partial Termination) or by either party pursuant to **clause 59.7** (Termination for Continuing Force Majeure Event), no compensation shall be due to the Supplier and the remainder of this schedule shall not be applicable.

## 2. TERMINATION PAYMENT

The Termination Payment payable pursuant to **clause 62.2** (Payments made on Termination) shall be calculated as the sum of:

- 2.1 the Unrecovered Costs; and
- 2.2 Breakage Costs,

but subject to the limit set out in **clause 55.3.2** (Limitations of Liability).

## 3. COMPENSATION PAYMENT

- 3.1 The Compensation Payment payable pursuant to **clause 62.3** shall be calculated on the basis of compensation for Forecast Profits for the difference either:

- 3.1.1 where the Customer terminates the Agreement pursuant to **clause 59.3** (Termination for Convenience by the Customer) the period of 12 months and the actual number of months notice given; or
- 3.1.2 where the Supplier terminates the Agreement pursuant to **clause 59.6** (Termination by the Supplier) the difference between the date of the material breach by the Customer and the date on which termination occurs,

("Shortfall Period") but in each case subject to the limit set out in **clause 55.3.2** (Limitations of Liability).

- 3.2 Forecast Profits shall be calculated as the difference between the Forecast Revenue for the Shortfall Period and the Forecast Expenses for the Shortfall Period, as shown in the Financial Model.

4. **FULL AND FINAL SETTLEMENT**

Any Termination Payment and/or Compensation Payment paid in accordance with this schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Customer pursuant to **clause 59.3** (Termination for Convenience by the Customer) or termination by the Supplier pursuant to **clause 59.6** (Termination by the Supplier), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been in respect of any such termination.

5. **MITIGATION OF BREAKAGE AND UNRECOVERED COSTS**

The Supplier agrees to take all reasonable steps to minimise and mitigate Breakage Costs and Unrecovered Costs by:

- 5.1 the appropriation of Assets, employees and resources for other purposes. If such Assets, employees and resources can be used for other purposes then there shall be an equitable reduction in the Breakage Costs and Unrecovered Costs payable by the Customer or a third party to the Supplier; and
- 5.2 in relation to contracts entered into with third parties, termination by the Supplier of those contracts at the earliest possible date without breach or where contractually permitted, and, where required by the Customer, assigning such contracts to the Customer or a third party acting on behalf of the Customer.

6. **INVOICING FOR THE PAYMENTS ON TERMINATION**

All sums due under this schedule shall be payable by the Customer to the Supplier in accordance with the terms set out in **schedule 7.1** (Charges and Invoicing).

7. **SET OFF**

For the avoidance of doubt, the Customer shall be entitled to set off any outstanding liabilities of the Supplier against any amount it pays in compensation pursuant to this schedule and in accordance with its rights set out in this Agreement.

8. **NO DOUBLE RECOVERY**

- 8.1 If any payment pursuant to this schedule relates to or arises in relation from (in whole or in part) any Transferring Asset then to the extent that the Customer

makes any payments pursuant to **schedule 8.5** (Exit Management) in respect of such Transferring Assets then such amounts shall be deducted from the amount of compensation payable pursuant to this schedule.

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

**AGREEMENT SCHEDULES**

**SCHEDULE 7.3**

**VALUE FOR MONEY PROVISIONS**

## **PART A - INTRODUCTION**

### **1. Purpose of schedule**

1.1 The purpose of this schedule is to enable the Customer to ensure that the provision of Services and payment of Charges continues to represent value for money for the Customer throughout the Term. It covers:

- Gain Sharing (Part A); and
- Benchmarking (Part B).

## **PART A - GAIN SHARING**

<b>"Balance Sheet Date"</b>	30 September;
<b>"Earned Expenses"</b>	all amounts recognised as costs in accordance with generally accepted accounting principles within the United Kingdom but excluding taxation, funding and similar costs, amounts payable under schedule 7.3 (Value for Money Provisions), capital expenditures and non-cash items (including but not limited to depreciation, amortisation, impairments and movements in provisions) incurred by the Supplier from the Effective Date and in respect of this Agreement until the Balance Sheet Date as at which the Gain Share Calculation falls to be made;
<b>"Earned Gain"</b>	Earned Revenue less Earned Expenses, divided by Earned Revenue and expressed as a percentage;
<b>"Earned Revenue"</b>	all Charges paid or payable to the Supplier by the Customer under this Agreement from the Effective Date until the Balance Sheet Date as at which the Gain Share Calculation falls to be made;
<b>"Final Reconciliation"</b>	the Reconciliation that is made at termination or expiry of this Agreement;
<b>"Forecast Expenses"</b>	all amounts recognised as costs in accordance with generally accepted accounting principles within the United Kingdom but excluding taxation, funding and similar costs, amounts, payable under schedule 7.3 (Value for Money Provisions), capital expenditure and non-cash items (including but not limited to depreciation, amortisation, impairments and movements in provisions) as forecast by the Supplier in the Financial Model to be incurred over the Term and in respect of the Agreement;
<b>"Forecast Gain"</b>	Forecast Revenue less Forecast Expenses;
<b>"Forecast Gain Margin"</b>	Forecast Gain divided by Forecast Revenue and expressed as a percentage;
<b>"Forecast Revenue"</b>	all Charges forecast to be paid or payable to the Supplier by the Customer in the Financial Model over the Term and in respect of the Agreement;

<b>"Gain Share Amount"</b>	the amount by which the Earned Gain as at a Balance Sheet Date exceeds the Threshold Gain Margin;
<b>"Gain Share Calculation"</b>	the calculation of the Gain Share Amount as prepared from time to time in accordance with Part A of schedule 7.3 (Value for Money Provisions);
<b>"Reconciliation"</b>	a reconciliation of Earned Expenses and Earned Revenue, against the Forecast Expenses and Forecast Revenue set out in the Updated Financial Model compiled from time to time (and in any event upon termination or expiry of this Agreement) in accordance with paragraph 5 of schedule 7.5 (Financial Model);
<b>"Threshold Gain Margin"</b>	the Forecast Gain Margin plus [redacted] By way of example, if the Forecast Gain Margin is [redacted] the Threshold Gain Margin would be [redacted]

## **Purpose of this Part A**

This Part A details the method by which the Customer will share in any Gain Share Amount which are made by the provision of the Services during the Term.

### **2. GAIN Share Calculation**

- 2.1 Within thirty (30) days of the expiry or termination of this Agreement and the end of the then current monthly accounting period, the Supplier shall deliver to the Customer the Gain Share Calculation as at the date of expiry or termination of this Agreement (as relevant).
- 2.2 The Gain Share Calculation shall be prepared in accordance with this schedule and the gain sharing rates set out in the Appendix to this Part A of this schedule.
- 2.3 Each Gain Share Calculation shall:
  - 2.3.1 be constructed using the Final Reconciliation and shall be supplied in both paper and electronic copy;
  - 2.3.2 be certified as correct and accurate by a director of the Supplier;
  - 2.3.3 calculate, in accordance with the methodology used for the calculation of the Financial Model, the Earned Revenue and Earned Expenses from the Effective Date to the latest Balance Sheet Date;
  - 2.3.4 calculate, in accordance with the methodology used in the Financial Model the Earned Gain from the Effective Date to the latest Balance Sheet Date;
  - 2.3.5 show separately the amounts of Earned Gain (falling into Band 1, Band 2, Band 3 and Band 4 as defined in the **Appendix to Part A** of this schedule); and
  - 2.3.6 show separately the Gain Share Amount, the Supplier's Gain Share Amount and the Customer's Gain Share Amount for each of Band 2, Band 3 and Band 4.
- 2.4 Following receipt by the Customer of a Gain Share Calculation, the Supplier shall at its own expense provide to the Customer any such additional information as it may reasonably request so that the Customer can verify the accuracy of the Gain Share Calculation. This shall include the detailed working papers and spreadsheets constructed in accordance with **schedule 7.5** (Financial Model) and shall be supplied in both paper and electronic copy.
- 2.5 Within 30 days of receipt of the Gain Share Calculation and all additional information required pursuant to **paragraph 2.4** of this part A of this schedule, the Customer shall notify the Supplier whether it agrees with or disputes the Gain Share Calculation.



3. **Payment of GAIN Share**

Following agreement or determination of the Gain Share Calculation based on the Final Reconciliation, the Supplier shall pay the Customer the Customer's Gain Share Amount calculated in accordance with the **Appendix** to this **Part A** of this schedule.

### APPENDIX TO PART A Gain Sharing Table

The following table details the manner in which Earned Gain achieved by the Supplier over the Term above the level of the Threshold Gain Margin shall be shared between the Customer and the Supplier:

<b>Band</b>	<b>Where the Earned Gain is</b>	<b>Supplier % share of Gain Share Amount</b>	<b>Customer % share of Gain Share Amount</b>
Band 1	Less than or equal to Threshold Gain Margin	N/A	N/A
Band 2	More than the Threshold Gain Margin and less than or equal to the Threshold Gain Margin plus [redacted]	[redacted]	[redacted]
Band 3	More than the Threshold Gain Margin plus [redacted] and less than or equal to the Threshold Gain Margin plus [redacted]	[redacted]	[redacted]
Band 4	More than the Threshold Gain Margin plus [redacted]	[redacted]	[redacted]

## **PART B – BENCHMARKING**

<b>“Average Price”</b>	in relation to the Comparable Services provided by the Comparison Group, the mean average of prices for those Comparable Services as adjusted to produce Equivalent Services Data over the previous twelve (12) month period, or other period as agreed between the Customer and the Supplier. (For the avoidance of doubt, the “mean average price” shall be calculated by aggregating the prices derived from Equivalent Services Data for each of the services and dividing the same by the number of instances of Comparable Services);
<b>“Benchmarker”</b>	the independent third party appointed under paragraph 3.1 of Part B of schedule 7.3 (Value for Money Provisions);
<b>“Benchmark Report”</b>	means the report produced by the Benchmarker following the Benchmark Review as further described in paragraph 5 of Part B of schedule 7.3 (Value for Money Provisions);
<b>“Benchmark Review”</b>	a review of the Services carried out in accordance with paragraph 4 of Part B of schedule 7.3 (Value for Money Provisions) to determine whether those Services represent Good Value;
<b>“Benchmarked Services”</b>	the Services that the Customer elects to include in a Benchmark Review under paragraph 2.2 of Part B of schedule 7.3 (Value for Money Provisions);
<b>“Comparable Services”</b>	services that are identical or materially similar to the Benchmarked Services (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar services exist in the market, the Benchmarker shall propose an approach for developing a comparable service benchmark;
<b>“Comparison Group”</b>	a sample group of organisations providing Comparable Services identified by the Benchmarker under paragraph 4.8 of schedule 7.3 (Value for Money Provisions) which consists of organisations which are either of similar size to the Supplier or which are similarly structured in

terms of their business and their service offering so as to be (in the Benchmarker's professional opinion) fair comparators with the Supplier or which, in the professional opinion of the Benchmarker, are best practice organisations and that are carrying on at least a significant part of their business within the United Kingdom;

**"Equivalent Services Data"** data derived from an analysis of the Comparable Services provided by the Comparison Group as adjusted in accordance with paragraph 4.8.2 of Part B of schedule 7.3 (Value for Money Provisions);

**"Good Value"** that:

- (a) the Charges attributable to a Benchmarked Service are, having taken into account the Service Levels, less than or equal to the Average Price; and
- (b) any Service Levels attributable to Benchmarked Services are, having taken into account the Charges, equal to or greater than the mean average service levels for Comparable Services as adjusted using Equivalent Services Data;

## 1. **Frequency of Benchmark Review**

- 1.1 The Customer may, by written notice to the Supplier, require a Benchmark Review of any or all of the Services.
- 1.2 The Customer shall not be entitled to carry out a Benchmark Review during the 18 month period from the Effective Date and no more than once per Contract Year.

## 2. **Purpose and Scope of Benchmark Review**

- 2.1 The purpose of a Benchmark Review will be to establish whether a Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.
- 2.2 The Services that are to be the Benchmarked Services will be identified by the Customer in the written request given under **paragraph 1.1**.

## 3. **Appointment of Benchmarker**

- 3.1 The Customer shall appoint the Benchmarker to carry out the Benchmark Review.

3.2 The Customer will, at the written request of the Supplier, require the Benchmarker to enter into an appropriate confidentiality undertaking with the Supplier.

3.3 The costs and expenses of the Benchmarker and the Benchmark Review shall be shared equally between both parties provided that each party shall bear its own internal costs of the Benchmark Review.

#### 4. **Benchmarking Process**

4.1 The Customer shall require the Benchmarker to produce, and to send to each party for approval, a draft plan for the Benchmark Review within ten (10) days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances. The plan must include:

4.1.1 a proposed timetable for the Benchmark Review;

4.1.2 a description of the information that the Benchmarker requires each party to provide;

4.1.3 a description of the benchmarking methodology to be used;

4.1.4 a description that demonstrates objectively and transparently that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives;

4.1.5 an estimate of the resources required from each party to underpin the delivery of the plan;

4.1.6 a description of how the Benchmarker will scope and identify the Comparison Group; and

4.1.7 details of any entities which the Benchmarker proposes to include within the Comparison Group.

4.2 Each party must give notice in writing to the Benchmarker and to the other party within ten (10) days after receiving the draft plan, advising whether it approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan. Neither party may unreasonably withhold or delay its approval of the draft plan, and any suggested amendments must be reasonable.

4.3 Where a party suggests amendments to the draft plan under **paragraph 4.2**, the Benchmarker must, if it believes the amendments are reasonable, produce an amended draft plan. **Paragraph 4.2** shall apply to any amended draft plan.

4.4 Failure by a party to give notice under **paragraph 4.2** will be treated as approval of the draft plan by that party.

- 4.5 Once the plan is approved by both parties, the Benchmarker will carry out the Benchmark Review in accordance with the plan. Each party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Supplier shall fail to provide any information requested from it by the Benchmarker and described in the plan such failure shall constitute a material breach for the purposes of **clause 59.1.5.2** of this Agreement (Termination for Cause by the Customer).
- 4.6 Each party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Services.
- 4.7 Either party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
- 4.8 Once it has received the information it requires, the Benchmarker shall:
- 4.8.1 finalise a sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The selection of the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarker's professional judgment using:
    - 4.8.1.1 information from other service providers to the Customer;
    - 4.8.1.2 survey information;
    - 4.8.1.3 market intelligence;
    - 4.8.1.4 the Benchmarker's own data and experience;
    - 4.8.1.5 relevant published information;
    - 4.8.1.6 information from consultancies and/ or other vendors or purchasers of Comparable Services; and
    - 4.8.1.7 information from 'in-house' providers to the Customer to the extent that Benchmarker considers that they are valid comparators;
  - 4.8.2 by applying the adjustment factors listed in **paragraph 4.9** and from an analysis of the Comparable Services derive the Equivalent Services Data;
  - 4.8.3 using the Equivalent Services Data calculate the Average Price and/or median Service Levels;

- 4.8.4 compare the Charges attributable to the Benchmarked Services (having regard in particular to the Service Levels and Service Credits regime) with the Average Price using the Equivalent Services Data;
  - 4.8.5 compare the Service Levels attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with the mean average service levels using the Equivalent Services Data; and
  - 4.8.6 determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.
- 4.9 In carrying out the benchmarking analysis the Benchmarker shall have regard to the following matters when performing a comparative assessment of the Benchmarked Services and the Comparable Services in order to derive Equivalent Services Data:
- 4.9.1 the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);
  - 4.9.2 any front-end investment and development costs of the Supplier;
  - 4.9.3 the Supplier's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;
  - 4.9.4 the extent of the Supplier's management and contract governance responsibilities; and
  - 4.9.5 any other factors reasonably identified by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive (such as erroneous costing or over-aggressive pricing).

## 5. **Benchmarker's report**

- 5.1 The Benchmarker shall be required to prepare a Benchmarking Report and deliver it simultaneously to both parties, at the time specified in the plan approved under **paragraph 4** of this schedule, setting out its findings. Those findings shall be required to:
- 5.1.1 include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;
  - 5.1.2 include other findings (if any) regarding the quality and competitiveness or otherwise of those Services; and
  - 5.1.3 if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that

would be required to the Charges or Service Levels, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value.

- 5.2 The Benchmarker shall act as an expert and not as an arbitrator.
- 5.3 For the avoidance of doubt, Benchmark Reviews shall not results in any increase to the Charges or any decrease in the performance of any Services or Service Levels.
- 5.4 If the Benchmarking Report states that any Benchmarked Service is not Good Value, or that the Benchmarked Services as a whole are not Good Value then the Supplier shall (subject to **paragraph 5.6** and **5.7**) implement the changes set out in the Benchmarking Report as soon as reasonably practicable within a timescale agreed with the Customer but in any event within no more than one(1) month.
- 5.5 Subject to the Supplier's right to dispute or reject the Benchmarking Report under **paragraph 5.6** or **5.7** of this schedule, if the Benchmarking Report determines that any or all of the Benchmarked Services are not Good Value, any failure by the Supplier to reduce the Charges in accordance with such timescales agreed between the parties under **paragraph 5.4** of this schedule, shall without prejudice to any other rights or remedies of the Customer shall constitute a material breach for the purposes of **clause 59.1.5.2** of this Agreement (Termination for Cause by the Customer).
- 5.6 The Supplier shall be entitled to reject a Benchmarking Report if the Supplier reasonably considers that the Benchmarker has not followed the procedure for the related Benchmark Review as set out in this **schedule 7.3** (Value for Money Provisions) in any material respect.
- 5.7 The Supplier shall not be obliged to implement any Benchmarking Report to the extent this would cause the Supplier to provide the Services at a loss (as determined, by reference to the Financial Model), or to the extent the Supplier cannot technically implement the recommended changes.
- 5.8 In the event of a Dispute or rejection of the Benchmarking Report under **paragraph 5.6** and/or **5.7** of this schedule the matter shall be referred to an Expert for determination in accordance with the procedure detailed in **schedule 8.3** (Dispute Resolution Procedure). For the avoidance of doubt in the event of a Dispute between the parties the Customer shall continue to pay the Charges to the Supplier in accordance with the terms of this Agreement pending the conclusion of the Expert determination process.
- 5.9 On conclusion of the Expert determination process, if the Expert determines that all or any part of the Benchmarking Report recommendations regarding any reduction in the Charges shall be implemented by the Supplier, the Supplier shall immediately repay to the Customer the difference between the Charges



paid by the Customer up to and including the date of the Expert's determination and the date upon which the recommended reduction in Charges should have originally taken effect.

## **AGREEMENT SCHEDULES**

### **SCHEDULE 7.4**

#### **FINANCIAL DISTRESS**

<b>"Credit Rating Thresholds"</b>	the credit rating threshold as set out in Appendix 2 to schedule 7.4 (Financial Distress);
<b>"Financial Distress Event"</b>	the occurrence of one or more of the events listed in paragraphs 3.1 of schedule 7.4 (Financial Distress);
<b>"Financial Distress Service Continuity Plan"</b>	a plan setting out how the Supplier (together with the Guarantor, Key Sub-contractors, where appropriate) will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that the Supplier, Guarantor and/or a Key Sub-contractor suffers a Financial Distress Event;
<b>"Rating Agency"</b>	the rating agency listed in Appendix 1 to schedule 7.4 (Financial Distress);

## 1. **BACKGROUND**

This schedule provides for the assessment of the financial standing of the Supplier, the Guarantor and Key Sub-contractors and the establishment of trigger events relating to changes in such financial standing which if breached will have specified consequences.

## 2. **CREDIT RATING AND DUTY TO NOTIFY**

- 2.1 The Supplier warrants and represents to the Customer for the benefit of the Customer that as at the Effective Date the credit ratings issued for the Supplier, Guarantor and Key Sub-contractors by the Rating Agencies areas set out in Appendix 2.
- 2.2 The Supplier shall and shall procure that the Guarantor and Key Sub-contractors shall maintain the credit ratings as set out in this schedule.
- 2.3 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Customer in writing if it, or the Guarantor or a Key Sub-contractor ceases to have either of its credit ratings (and in any event within twenty (20) Working Days of ceasing to have such credit rating).
- 2.4 The Supplier shall:
  - 2.4.1 regularly monitor the Supplier's, Guarantor's and the Key Sub-contractor's credit ratings with the Rating Agencies; and
  - 2.4.2 promptly notify (or shall procure that its auditors promptly notify) the Customer in writing following the occurrence of a Financial Distress Event, a Guarantor Financial Distress Event or a Key Sub-contractor Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-contractor Financial Distress Event (and in any event, ensure that such notification is made within twenty (20) Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event, the Key Sub-contractor Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-contractor Financial Distress Event).

## 3. **CONSEQUENCES OF A FINANCIAL DISTRESS EVENT**

- 3.1 If the Financial Distress Event consists of:
  - 3.1.1 the Supplier's or the Guarantor's credit ratings dropping below the applicable Credit Rating Threshold;
  - 3.1.2 the Supplier or Guarantor issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;

3.1.3 there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier or Guarantor; or

3.1.4 the Supplier or Guarantor committing a material breach of covenants to its lenders,

then, immediately upon notification of the Financial Distress Event (or if the Customer becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Customer shall have the rights and remedies as set out in **paragraphs 3.2 to 3.5**.

3.2 The Supplier shall and the Supplier shall procure that the Guarantor shall:

3.2.1 at the request of the Customer, meet with the Customer as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Customer may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement; and

3.2.2 where the Customer reasonably believes (taking into account the discussions and any representations made under **paragraph 3.2.1**) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement, submit to the Customer for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Customer may permit and notify to the Supplier in writing).

3.3 The Customer shall not withhold its approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Customer does not approve the draft Financial Distress Service Continuity Plan it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Customer within ten (10) Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the Customer or referred to the Escalation Process under **paragraph 3.4**.

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

- 3.5 Following approval of the Financial Distress Service Continuity Plan by the Customer, the Supplier shall:
- 3.5.1 on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Agreement;
  - 3.5.2 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with **paragraph 3.5.1**, submit an updated Financial Distress Service Continuity Plan to the Customer for its approval, and the provisions of **paragraphs 3.3** and **3.4** shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and
  - 3.5.3 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 3.6 Where the Supplier reasonably believes that the relevant Financial Distress Event under **paragraph 3.1** (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Customer and the parties may agree that the Supplier shall be relieved of its obligations under **paragraph 3.5**.

#### 4. **TERMINATION RIGHTS**

- 4.1 The Customer shall be entitled to terminate this Agreement under **clause 59.1.5.8** (Termination for Cause by the Customer) if:
- 4.1.1 the Supplier fails to notify the Customer of a Financial Distress Event in accordance with **paragraph 2.4**; and/or
  - 4.1.2 the parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with **paragraphs 3.2** to **3.4**; and/or
  - 4.1.3 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with **paragraph 3.5.3**

#### 5. **PRIMACY OF CREDIT RATINGS**

- 5.1 Without prejudice to the Supplier's obligations and the Customer's rights and remedies under **paragraphs 3** and **4**, if, following the occurrence of a Financial Distress Event pursuant to **paragraphs 3.1.2** to **3.1.4**, the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then the Supplier shall be relieved automatically of its obligations under **paragraphs 3.2** to **3.5**.

## **APPENDIX 1**

### **RATING AGENCY**

- Dunn and Bradstreet

## APPENDIX 2

### CREDIT RATING THRESHOLDS

The Credit Rating has two components: a financial strength component and a risk component and therefore the threshold is in two parts. A Financial Distress Event could be triggered by either the financial strength or risk component falling to the levels shown in the table below.

Entity	Rating at Effective Date	Threshold: financial strength	Threshold: risk
Supplier	[redacted]	[redacted]	[redacted]
Guarantor	[redacted]	[redacted]	[redacted]
Computacenter	[redacted]	[redacted]	[redacted]



## **AGREEMENT SCHEDULES**

### **SCHEDULE 7.5**

#### **FINANCIAL MODEL**

## 1. **Introduction**

- 1.1 This schedule details the requirements for the Financial Model that is to be supplied by the Supplier to enable the Customer to identify how the Supplier calculates the Charges. The Charges shall be calculated in accordance with the provisions stated in schedule 7.1 (Charging and Invoicing) and shall be calculated such that all payments made prior to ATP will be exclusive of profit.
- 1.2 The Supplier and the Customer will both retain copies of the Financial Model in hard and soft copy and the Supplier shall provide the Customer with updates to the Financial Model in accordance with the provisions of this schedule.
- 1.3 The Financial Model shall be used together with the rates set out in **schedule 7.1** (Charges and Invoicing) as a basis for considering any changes to the Charges under **schedule 8.2** (Change Control Procedure) and for such other purposes as are specifically indicated in this Agreement.

## 2. **Content and Construction of the Financial Model**

- 2.1 The Financial Model shall:
  - 2.1.1 provide sufficient detail for the Customer to have visibility of all the costs to be incurred by the Supplier and of the Charges to be paid in respect of the provision of the Services;
  - 2.1.2 be constructed:
    - 2.1.2.1 in relation to Milestone Payments on a monthly basis;
    - 2.1.2.2 in relation to Service Charges on an annual basis;
  - 2.1.3 quote all monetary values in pounds Sterling;
  - 2.1.4 quote all costs as exclusive of any VAT;
  - 2.1.5 provide visibility of the input costs for providing the Services throughout the Term, excluding mark-up, which shall include without limitation at least the following:
    - 2.1.5.1 Labour broken down by each job title (e.g. project manager), with the number of days and daily rate shown for each job title. Labour shall also be broken down and sub-totalled by the major phases of the project;
    - 2.1.5.2 Hardware and software costs;

- 2.1.5.3 Depreciation policy applicable to Assets (including software and hardware);
- 2.1.5.4 Licence costs;
- 2.1.5.5 Sub-contractor costs;
- 2.1.5.6 Accommodation costs (if applicable);
- 2.1.5.7 Overheads / mark-ups separately identified and their calculation explained;
- 2.1.5.8 Pricing of risk fully explained and the quantification supported by a risk matrix;
- 2.1.5.9 Financing costs (if applicable) showing the interest rate and calculation and the need to apply financing explained; and
- 2.1.5.10 Other miscellaneous costs;
- 2.1.6 provide a reasonably skilled and experienced individual with a full analysis of the Supplier's capital and operating costs and the assumptions used to develop and modify the Charges set out in **schedule 7.1** (Charges and Invoicing);
- 2.1.7 quote all costs, prices and revenues based on current prices;
- 2.1.8 describe any indexation assumptions relating to input costs;
- 2.1.9 be constructed in a format and using a software tool as specified by the Customer;
- 2.1.10 not have any parts which are hidden, protected, locked or made otherwise inaccessible or obscured to review or alteration;
- 2.1.11 be laid out in a clear and logical manner. The overall flow of information in the Financial Model shall flow from inputs, to calculations, to outputs, with the final output being in tables. Any formulae in the Financial Model shall not contain a mixture of inputs and calculations. Any column labelling in the Financial Model shall be consistent between worksheets;
- 2.1.12 shall include a cash flow statement that shows the timing and relationship between the planned costs and the revenue which the Supplier expects to receive;

- 2.1.13 clearly show the calculation of any financing charges associated with outstanding balances (between costs incurred and revenue received); and
  - 2.1.14 provide visibility of profit (and the calculation of profit) both as a value and as a percentage and show the Project Internal Rate of Return.
- 2.2 The Supplier shall, if requested by the Customer, provide (or procure the provision of) the above level of information in relation to the costs and expenses to be incurred by any of its Sub-contractors or third party suppliers.
- 3. **Visibility through the Financial Model**
  - 3.1 Upon request of the Customer the Supplier shall promptly provide to the Customer details of the elements used to make up any Charges.
  - 3.2 The Supplier shall provide to the Customer the following information in relation to the Charges:
    - 3.2.1 The Supplier's total fixed price for the Services and/or Deliverables;
    - 3.2.2 The margin included in that total fixed price;
    - 3.2.3 A list of the agreed prices against each manpower grade in the Financial Model;
    - 3.2.4 A list of the costs underpinning those prices for each manpower grade in the Financial Model, being the price less the margin;
    - 3.2.5 A summary of the costs broken down against each Service and/or Deliverable;
    - 3.2.6 Details of any other manpower costs, not already included in these rates, for all activities to be undertaken;
    - 3.2.7 Explanation of any underlying assumptions regarding:
      - 3.2.7.1 overtime rates;
      - 3.2.7.2 standard hours;
      - 3.2.7.3 accommodation charges; and
      - 3.2.7.4 discounts applied;
    - 3.2.8 A resource estimating model to support the Charges/Changes if applicable;

- 3.2.9 A breakdown of manpower resources by the number and type of Supplier's staff (including any Sub-contractors) required for each Deliverable and/or Service and free of any contingency. This should also apply to third party costs;
- 3.2.10 The total price of Deliverables broken down by volume, unit cost and margin;
- 3.2.11 Any additional activities, costs and, risks that may impact the Customer and which are not already covered by the Charges;
- 3.2.12 An explanation of the type and value of risk associated with the provision of Services, including the amount of money attributable to each risk;
- 3.2.13 An explanation and supporting details of any financing costs applicable to the Agreement;
- 3.2.14 A statement of the Supplier's anticipated cashflow for the Term;
- 3.2.15 The actual Charges profile for each Service Period; and
- 3.2.16 Any additional information as the Customer reasonably requires.

#### **4. Custody of the financial model**

Immediately after execution of this Agreement and following agreement by both parties of the changes to the Financial Model under **paragraph 5** of this schedule, the Supplier shall deliver two (2) soft copies and two (2) hard copies of the Financial Model to the Customer.

#### **5. Updates to the Financial Model**

- 5.1 Unless otherwise agreed in writing between the parties, any updates to the Financial Model shall reflect, be consistent with and be made only in accordance with the provisions of this Agreement, and shall in all cases be subject to the prior written approval of the Customer (such approval not to be unreasonably withheld or delayed).
- 5.2 All changes to the Financial Model should be auditable and implemented and documented under formal version control.
- 5.3 The Supplier shall, inter-alia, revise the Financial Model in order to reflect any inputs, modifications or other amendments to the Financial Model which are effected pursuant to the Agreement, including but not limited to any amendments made to the Financial Model which arise from:

- 5.3.1 the implementation of a Change which affects the Charges; and
  - 5.3.2 any changes to the Supplier's accounting practices.
- 5.4 Each Financial Model shall be constructed using the same methodology as that used for the then current Financial Model, and shall be consistent with and made in accordance with the provisions of this Agreement.
- 5.5 The Supplier shall adhere to and apply the following principles when preparing an updated Financial Model:
  - 5.5.1 any amendment which is made in order to evaluate the impact of any inputs, modification or other adjustment shall relate only to such inputs, modification or other adjustment; and
  - 5.5.2 no amendment shall affect, in any way whatsoever, the performance of the Services, save as agreed in accordance with the Change Control Procedure.
- 5.6 On the occurrence of any event which requires the Financial Model to be updated, the Supplier shall effect the change on the latest version of the Financial Model and deliver the updated Financial Model, to the Customer for approval. The Supplier shall ensure that each version of the Financial Model delivered to the Customer shall be certified by a director of the Supplier as being accurate and not misleading and in conformity with all generally accepted accounting principles within the United Kingdom.
- 5.7 Unless the Customer wishes to dispute the Financial Model in accordance with **paragraph 6**, the Customer shall approve the updated Financial Model within thirty (30) days of receipt of the same (or such other period as the Customer advises the Supplier in writing).
- 5.8 If the Customer approves the updated Financial Model submitted by the Supplier, it shall advise the Supplier of its decision in writing and the updated and approved Financial Model shall become, with effect from the date of such approval, the updated Financial Model in place for the purposes of the Agreement.
- 6. **Dispute**
  - 6.1 If the Customer disputes any Financial Model, it may request such further information from the Supplier as it requires prior to delivering a decision on whether it accepts or rejects the relevant Financial Model.
  - 6.2 In the event that the Customer and the Supplier are unable to reach agreement on any Financial Model, the matter shall be referred for determination in accordance with the Expedited Dispute Timetable.

**7. Certification of costs**

- 7.1 The Supplier shall, on each anniversary of the Effective Date, provide to the Customer, a certificate of any of the costs incurred under **paragraph 4**. The Certificate should be signed by a Company Director.
- 7.2 Following receipt of the certificate of costs, the Supplier shall provide to the Customer any reasonable additional information to enable the Customer to verify the accuracy of the certificate of costs.
- 7.3 The Supplier shall meet with the Customer upon request during the Term to monitor the key elements of the Financial Model and the Supplier shall highlight directly to the Customer any variances from the Financial Model.

## **APPENDIX**

### **Output from the Financial Model**

[Redacted]



## **AGREEMENT SCHEDULES**

### **SCHEDULE 8.1**

#### **GOVERNANCE**

<b>"Board Member"</b>	the Customer and Supplier Board appointments set out in the <b>Appendix to schedule 8.1</b> (Governance);
<b>"Board(s)"</b>	the Executive Board, Service Delivery Board and Technology and Strategy Board;
<b>"Executive Board"</b>	the management board described in paragraph 4 of schedule 8.1 (Governance);
<b>"Service Delivery Managers"</b>	the individuals appointed as such by the Customer and the Supplier in accordance with <b>paragraph 2.2 of schedule 8.1</b> (Governance);
<b>"Project Plan"</b>	the Implementation Plan, Test Plan;
<b>"Service Delivery Board"</b>	the management board described in <b>paragraph 6 of schedule 8.1</b> (Governance);
<b>"Technology and Strategy Board"</b>	the body described in <b>paragraph 5 of schedule 8.1</b> (Governance).

## 1. INTRODUCTION

- 1.1 This schedule describes the procedures that will be used to manage the relationship between the Customer and the Supplier under the Agreement.

## 2. ESTABLISHMENT OF THE BOARDS

- 2.1 Boards shall be established by the Customer under this Agreement on which both the Supplier and the Customer shall be represented.
- 2.2 The Supplier and the Customer shall each appoint a Service Delivery Manager.
- 2.3 The Service Delivery will be managed at the day to day level through the Supplier Service Delivery Manager and the Customer Service Delivery Manager, in accordance with the Project Plan and the Service Levels.
- 2.4 The Executive Board will be responsible for the executive management of the Project as set out in this Agreement. The role and function of the Service Delivery Board is more particularly set out in **paragraph 4** below.
- 2.5 The Executive Board will:
- 2.5.1 provide senior level guidance, leadership and strategy for the Services;
  - 2.5.2 be the point of escalation from the Technology and Strategy and Service Delivery Board; and
  - 2.5.3 carry out the specific obligations attributed to it in this Agreement.
- 2.6 Both parties will ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Agreement can be fully realised.

## 3. BOARD STRUCTURE & REPRESENTATION

- 3.1 The Appendix to this schedule describes in relation to each Board:
- 3.1.1 the Customer members of that Board;
  - 3.1.2 the Supplier members of that Board;
  - 3.1.3 the frequency that the Board shall meet (unless otherwise agreed between the parties);
  - 3.1.4 the location of the Board's meetings; and
  - 3.1.5 the planned start date by which the Board shall be established.

- 3.2 In the event that either party wishes to replace any Board Member position, that party shall notify the other in writing of the proposed change for agreement by the other party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Customer Board Member has at all times a counterpart Supplier Board Member of equivalent seniority and expertise.
- 3.3 Each party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:
- 3.3.1 a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and
- 3.3.2 that he/she is debriefed by such delegate after the Board Meeting.
- 3.4 A chairperson shall be appointed by the Customer for the Executive Board, Technology and Strategy Board and Service Delivery Board as identified in the Appendix in this schedule. The chairperson shall be responsible for:
- 3.4.1 scheduling Board meetings;
- 3.4.2 setting the agenda for Board meetings and circulating to all attendees in advance of such meeting;
- 3.4.3 chairing the Board meetings;
- 3.4.4 monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;
- 3.4.5 ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within seven (7) Working Days after the Board meeting; and
- 3.4.6 facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.
- 3.5 Board meetings shall be quorate as long as at least two (2) representatives from each party are present.
- 3.6 The parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each party shall use endeavours to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.
- 3.7 Where individual Projects are of significant size or strategic importance to the Customer it may be appropriate to establish individual project boards to monitor

progress. Where it is agreed between the Parties that such project boards are required these will report into the Service Delivery Board or the Technology and Strategy Board (as appropriate and agreed between the Parties.)

#### **4. ROLE OF EXECUTIVE BOARD**

##### **4.1 The Executive Board shall:**

- 4.1.1 review the overall relationship and agree initiatives to ensure its continued success;
- 4.1.2 discuss business priorities, Service transformation roadmap and strategy and the required Future Services or Additional Services to deliver these;
- 4.1.3 consider and resolve Disputes (including Disputes as to the cause of a delay to the Project or the performance of the Services) escalated to the Executive Board;
- 4.1.4 executive review of Supplier performance of the Agreement;

#### **5. ROLE OF TECHNOLOGY AND STRATEGY BOARD**

##### **5.1 The Technology and Strategy Board shall:**

- 5.1.1 ensure that this Agreement is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by the Customer and the commercial benefit derived by the Supplier;
- 5.1.2 receive and review reports from the Service Delivery Board which summarise key aspects of the operation of the Services and review reports on technology, service and other developments that offer potential for improving the benefit either party is receiving, in particular value for money;
- 5.1.3 authorise the commissioning and initiation of new business change projects and shall assess opportunities for Future Services and/or Additional Services;
- 5.1.4 consider and resolve Disputes (including Disputes as to the cause of a delay to the performance of the Services) escalated to the Technology and Strategy Board; and
- 5.1.5 recognise and promote participation in cross-governmental initiatives.

#### **6. ROLE OF THE SERVICE DELIVERY BOARD**

##### **6.1 The Service Delivery Board shall:**

- 6.1.1 be accountable to the Technology and Strategy Board for comprehensive oversight of the Project and for the senior management of the operational relationship between the parties;
- 6.1.2 report to the Technology and Strategy Board on significant issues requiring decision and resolution by the Technology and Strategy Board and on progress against high level Project plans;
- 6.1.3 receive reports from the Service Delivery Managers on matters such as issues relating to delivery of existing Services and performance against Service Levels; progress against the Project Plan, possible future developments;
- 6.1.4 review and report to the Technology and Strategy Board on service management, progress of individual projects and any integration issues;
- 6.1.5 deal with the prioritisation of resources and the appointment of Service Delivery on behalf of the parties;
- 6.1.6 consider and resolve Disputes (including Disputes as to the cause of a delay to the performance of the Services) in the first instance and if necessary escalate the Dispute to the Technology and Strategy Board;
- 6.1.7 develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same; and
- 6.1.8 review proposed Changes and monitor overall progress of planned and agreed Changes.

## **7. CONTRACT MANAGEMENT MECHANISMS**

- 7.1 Both parties will pro-actively manage risks attributed to them under the terms of this Agreement.
- 7.2 The Supplier will develop, operate, maintain and amend, as agreed with the Customer, processes for:
  - 7.2.1 the identification and management of risks. The project risk register will be completed by the Supplier and submitted for review by both parties at the Service Delivery Board;
  - 7.2.2 the identification and management of issues;
  - 7.2.3 monitoring and controlling project plans;
  - 7.2.4 benefit management;
  - 7.2.5 document control and management;

8. **ANNUAL REVIEW**

- 8.1 An annual review meeting shall be held, on a date to be agreed between the parties, throughout the Term.
- 8.2 The meetings will be attended by the Supplier's Client Engagement Director, Service Delivery Manager and Business Unit Head or their nominated delegates and the Customer's Director of Business Services and Head of IT and any other persons considered by the Customer necessary for the review.

## APPENDIX

### Executive Board

Customer members for Executive Board	Director of Business Services (Chairperson)  Head of IT and Procurement  Customer Programme Director (during Implementation and up to one month after OSCD)  Other Customer executives by request.
Supplier members for Executive Board	Supplier Client Engagement Director  Supplier Business Unit Head or delegate  Supplier Transition Director (during Implementation and up to one month after OSCD)  Other Supplier executives by request.
Start date for Executive Board meetings	Effective Date + 1 week
Frequency of Executive Board meetings	Monthly during Implementation.  Quarterly for first 6 months following OSCD.  6-monthly until OSCD + 2 years  To be agreed by the parties thereafter but not less than annually.
Location of Executive Board meetings	Alternating between Customer premises and Supplier premises, or otherwise as agreed by the parties.



## Technology and Strategy Board Representation and Structure

Customer members for Executive Board	<p>Head of IT and Procurement (Chairperson)</p> <p>Customer Programme Director (during Implementation and up to one month after OSCD)</p> <p>Other Customer managers by request.</p>
Supplier members for Executive Board	<p>Supplier Client Engagement Director</p> <p>Supplier Service Delivery Manager</p> <p>Supplier Transition Director (during Implementation and up to one month after OSCD)</p> <p>Other Supplier managers by request.</p>
Start date for Executive Board meetings	Effective Date + 1 week
Frequency of Executive Board meetings	<p>Monthly during Implementation.</p> <p>Quarterly for first 24 months following OSCD.</p> <p>To be agreed by the parties thereafter but not less than 6-monthly.</p>
Location of Executive Board meetings	Alternating between Customer premises and Supplier premises, or otherwise as agreed by the parties.

### Service Delivery Board Representation and Structure

Customer members for Executive Board	<p>Service Delivery Sponsor (Chairperson)</p> <p>Customer assigned Service Delivery Manager (this may be a Supplier employee under the Services Delivery Services scope.)</p> <p>Other Customer managers by request.</p>
Supplier members for Executive Board	<p>Supplier Service Delivery Manager</p> <p>Supplier PMO manager</p> <p>Other Supplier managers by request.</p>
Start date for Executive Board meetings	Effective Date + 1 week
Frequency of Executive Board meetings	<p>Weekly during Implementation.</p> <p>As defined in the relevant Service Initiation Document but not less than monthly.</p>
Location of Executive Board meetings	As defined in the relevant Service Initiation Document.

In addition to the formal governance meetings detailed in this Schedule 8.1, the Supplier Account Director will engage with the Head of ICT and Procurement, the Director of Business Services and other Customer executives as required by the Supplier and agreed with the Customer. Such meeting shall be held in order to maintain and develop the relationship between the parties, to identify and pursue opportunities for wider ICT-enabled transformational initiatives and develop joint business cases for these.

## **AGREEMENT SCHEDULES**

### **SCHEDULE 8.2**

#### **CHANGE CONTROL PROCEDURE**

## 1. DEFINITIONS

<b>"Customer's Change Manager"</b>	the person appointed to that position by the Customer from time to time and notified in writing to the Supplier or if no person is notified, the Customer Representative;
<b>"Customer Mandated Change"</b>	has the meaning given to it in <b>paragraph 8.2</b> ;
<b>"Customer Mandatory Request"</b>	has the meaning given to it in <b>paragraph 8.4</b> ;
<b>"Change Authorisation Note"</b>	the form used by the parties to set out the agreed Contract Change and which shall be substantially in the form of <b>Appendix 3</b> to <b>schedule 8.2</b> (Change Control Procedure);
<b>"Change Request"</b>	a written request for a Contract Change which shall be substantially in the form of <b>Appendix 1</b> to <b>schedule 8.2</b> (Change Control Procedure);
<b>"Contract Change"</b>	any change to this Contract other than an Operational Change;
<b>"Supplier's Change Manager"</b>	the person appointed to that position by the Supplier from time to time and notified in writing to the Customer or if no person is notified, the Supplier's Representative;
<b>"Change Communication"</b>	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to <b>schedule 8.2</b> (Change Control Procedure);
<b>"Fast-track Change"</b>	any Contract Change which the parties agree to expedite in accordance with <b>paragraph 9.2</b> of <b>schedule 8.2</b> (Change Control Procedure);
<b>"Impact Assessment"</b>	An assessment of a Change request substantially in the form of <b>Appendix 2</b> of <b>Schedule 8.2</b> (Change Control Procedure);
<b>"Operational Change"</b>	<p>any change in the Supplier's operational procedures which in all respects, when implemented:</p> <p>(a) will not affect the Charges or the Supplier's costs of performing the Services and will not result in any other costs to the</p>

Customer; and/or

(b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services; and/or

(c) will not adversely affect the interfaces or interoperability of the Services with any of the Customer's IT infrastructure; and/or

(d) will not require a change to the Contract;

**"Receiving Party"**

the party which receives a proposed Contract Change; and

**"Requesting Party"**

the party which requests a Contract Change.

## 2. GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

2.1 This schedule sets out the procedure for dealing with Contract Changes.

2.2 Operational Changes shall be processed in accordance with **paragraph 10** 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 Contract Change.

2.3 Under this Change Control Procedure:

2.3.1 either party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with **paragraph 4**;

2.3.2 the Supplier will assess and document the potential impact of a proposed Contract Change in accordance with **paragraph 5** before the Contract Change can be either approved or implemented;

2.3.3 the Customer shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in **paragraph 6**;

2.3.4 the Supplier shall have the right to reject a Change Request solely in the manner set out in **paragraph 7**;

2.3.5 subject to **paragraph 8.4**, no proposed Contract Change shall be implemented by the Supplier until such time as a Change

Authorisation Note has been signed and issued by the Customer in accordance with **paragraph 6.2**. If the Supplier implements Changes to the Services before they have been agreed under this schedule, or in accordance with **paragraph 8.4**, then it will do so at its own expense; and

- 2.3.6 if the circumstances or nature of a proposed Contract Change mean that it is an Customer Mandated Change then it shall be processed in accordance with **paragraph 8**.
- 2.3.7 if the circumstances or nature of a proposed Contract Change mean that it is a Fast-track Change then it shall be processed in accordance with **paragraph 9**.
- 2.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the parties will follow the procedures set out in **schedule 6.2** (Testing Procedures), and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify a Milestone and Milestone Date in respect of such Contract Changes for the purposes of such procedures.
- 2.5 Until such time as a Change Authorisation Note has been signed and issued by the Customer's Change Manager in accordance with **paragraph 6.2**, then:
  - 2.5.1 unless the Customer expressly agrees otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of the Contract as if the proposed Contract Change did not apply; and
  - 2.5.2 any discussions, negotiations or other communications which may take place between the Customer and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each party's other rights under this Contract.
- 2.6 The time periods set out in this Schedule may be varied by agreement between the parties.

### 3. **COSTS**

- 3.1 Subject to **paragraph 3.3**, each party shall bear its own costs in relation to the preparation and agreement of each Change Request and Impact Assessment.
- 3.2 All Contract Changes shall be calculated and charged in accordance with the principles and day rates set out in **schedule 7.1** (Charges and Invoicing). The Supplier will only be entitled to increase the Charges if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in

the Charges) must be reasonable and strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change. For the avoidance of doubt, the Supplier will not be entitled to increase the Charges where the Contract Change arises from the circumstances specified in **clause 53.1** of the Contract.

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

#### 4. **CHANGE REQUEST**

- 4.1 Either Party may issue a Change Request to the other party at any time during the Term. 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 Contract Change to be a Fast-track Change or Customer Mandated Change.

- 4.2 If the Supplier issued the Change Request, then it shall also provide an Impact Assessment to the Customer as soon as is reasonably practicable but in any event within ten (10) Working Days of the date of issuing the Change Request.

- 4.3 If the Customer issued the Change Request, then the Supplier shall provide an Impact Assessment to the Customer as soon as is reasonably practicable but in any event within ten (10) Working Days of the date of receiving the Change Request from the Customer provided that if the Supplier requires any clarifications in relation to the Change Request before it can deliver the Impact Assessment, then it will promptly notify the Customer and the time period shall be extended by the time taken by the Customer to provide those clarifications. The Customer shall respond to the request for clarifications as soon as is reasonably practicable and the Supplier shall provide the Customer with sufficient information to enable it to understand fully the nature of the request for clarification.

#### 5. **IMPACT ASSESSMENT**

- 5.1 Each Impact Assessment shall be completed in good faith and shall include (without limitation):

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

5.1.2 details of the impact of the proposed Contract Change on the Services, the Additional Services or the New Projects and the Supplier'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:

5.1.2.1 the Services Requirements and the Service Levels;

- 5.1.2.2 the format of Customer Data, as set out in the Assets Register;
  - 5.1.2.3 the Milestones, Implementation Plan and any other timetable previously agreed by the parties;
  - 5.1.2.4 other services provided by third party contractors of the Supplier, other services provided by third party contractors for whom the Supplier is a managing agent, including any changes required by the proposed Contract Change to the Customer's IT infrastructure;
  - 5.1.2.5 details of the cost of implementing the proposed Contract Change;
  - 5.1.2.6 details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either party and any alteration to the working practices of either party;
  - 5.1.2.7 a timetable for the implementation, together with any proposals for the testing of the Contract Change;
  - 5.1.2.8 details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
  - 5.1.2.9 such other information as the Customer may reasonably request in (or in response to) the Change Request.
- 5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to **clauses 43.2.12.2 to 43.2.12.4**.
- 5.3 Subject to the provisions of **paragraph 5.4**, the Customer shall review the Impact Assessment and, within fifteen (15) Working Days of receiving the Impact Assessment, it shall respond to the Supplier in accordance with **paragraph 6**.
- 5.4 If the Customer is the Receiving Party and the Customer reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within five (5) Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Customer within ten (10) Working Days of receiving such notification. At the Customer's discretion, the parties may repeat the process described in this



paragraph until the Customer is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.

## **6. AUTHORITY'S RIGHT OF APPROVAL**

6.1 Within fifteen (15) Working Days of receiving the Impact Assessment from the Supplier or within ten (10) Working Days of receiving the further information that it may request pursuant to **paragraph 5.4**, the Customer shall evaluate the Change Request and the Impact Assessment and shall do one of the following:

6.1.1 approve the proposed Contract Change, in which case the parties shall follow the procedure set out in **paragraph 6.2** below;

6.1.2 in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Customer shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Customer rejects a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection;

6.1.3 in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the document accordingly, in which event the Supplier shall make such modifications within five (5) Working Days of such request. Subject to paragraph 5.4 above, on receiving the modified Change Request and/or Impact Assessment, the Customer shall approve or reject the proposed Contract Change within ten (10) Working Days.

6.2 If the Customer approves the proposed Contract Change pursuant to **paragraph 6.1** and it has not been rejected by the Supplier in accordance with **paragraph 7** below, then it shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Customer for its signature. Following receipt by the Customer of the Change Authorisation Note, the Customer shall sign both copies and return one copy to the Supplier. On the Customer's signature, the Change Authorisation Note shall constitute a binding variation to the Contract provided that the Change Authorisation Note is signed by:

6.2.1 the appropriate person(s) specified in **paragraph 11** of this schedule;  
and

6.2.2 the Customer within ten (10) Working Days of receiving the Supplier's signed copy. If the Customer does not sign the Change Authorisation Note within this time period, then the Supplier shall have the right to notify the Customer and if the Customer does not sign the Change

Authorisation Note within five (5) Working Days of the date of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

## **7. CONTRACTOR'S RIGHT OF APPROVAL**

7.1 Following an Impact Assessment, if the Supplier reasonably believes that any proposed Contract Change which is requested by the Customer:

- 7.1.1 would materially and adversely affect the risks to the health and safety of any person;
- 7.1.2 would require the Services to be performed in a way that infringes any Law or is inconsistent with Good Industry Practice;
- 7.1.3 would cause any consent to be revoked (or a new consent required to implement the relevant Change in service to be unobtainable);
- 7.1.4 would materially and adversely affect the Supplier's ability to deliver the Services;
- 7.1.5 would materially and adversely affect the health and safety of any person;
- 7.1.6 would require the Supplier to implement the Change in Service in an unreasonable period of time;
- 7.1.7 would (if implemented) materially and adversely change the nature of the Services (including the risk profile); and/or
- 7.1.8 would (to implement) require the Customer to possess legal powers or capacity that it does not have.

then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Customer's Change Manager of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment in accordance with **paragraph 4.3**.

## **8. CUSTOMER MANDATED CHANGES**

8.1 Upon the Customer becoming aware of the occurrence of an event requiring an Customer Mandated Change, the Customer may issue a Change Request in respect of such Customer Mandated Change. If the Customer does not issue a Change Request in respect of an Customer Mandated Change, the Supplier shall also be entitled to initiate a Change Request for such Customer Mandated Change.

8.2 The following types of Changes are "**Customer Mandated Changes**":

- 8.2.1 where the Change is necessary to enable the Supplier or the Services to comply with any Change in Law;
  - 8.2.2 where the Change is deemed by the Customer to be necessary to make the Services comply with any ministerial decision; or
  - 8.2.3 where any Change is necessary for the Services to meet the Requirements.
- 8.3 Upon receipt of a Change Request in respect of an Customer Mandated Change, the Supplier shall, within five (5) Working Days of such receipt (or such other reasonable timescale as may be agreed between the parties having due regard to the operational urgency of the Customer Mandated Change and the complexity and scope of the Customer Mandated Change) provide the relevant Impact Assessment to the Customer and the process set out in **paragraphs 3, 4, 5, 6, 7, 11, 12, 13 and 14** shall apply.
- 8.4 At any time after a Change Request has been issued pursuant to paragraph 8.1, the Customer may issue to the Supplier a written request to fully implement an Customer Mandated Change (an "Customer Mandatory Request"), and the Supplier shall comply with the Customer Mandatory Request with immediate effect notwithstanding that the relevant Impact Assessment and/or the processes set out in paragraphs 3, 4, 5, 6, 7, 11, 12, 13 and 14 (as applicable) may not have been completed.
- 8.5 Where the Customer issues an Customer Mandatory Request, the parties agree that any outstanding activities and approvals required to comply with the processes contained in this **schedule 8.2** (Change Control Procedure) shall be determined and resolved in accordance with the Dispute Resolution Procedure.
- 8.6 The Supplier shall only be entitled to reject Customer Mandatory Changes where the Contract Change:
  - 8.6.1 would materially and adversely affect the health and safety of any person;
  - 8.6.2 requires the Services to be performed in a way that infringes any law; or
  - 8.6.3 the Supplier can demonstrate it is impossible to carry out the Customer Mandatory Change technically, provided that the Supplier may not rely on this exception where the Customer's Requirements and/or the Supplier's Solution states or envisages that the Supplier and/or the Supplier's Solution must have the technical capacity and flexibility required by the proposed Contract Change.

## 9. **FAST-TRACK CHANGES**

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

9.2 If both parties agree in relation to a proposed Contract Change that:

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

9.2.2 the total number of Contract Changes in relation to which this fast track procedure has been applied does not exceed four (4) in any twelve (12) month period (or such higher number as the Customer may from time to time specify in writing); and

9.2.3 the value of the proposed Contract Change does not exceed £200,000 the proposed Contract Change is not significant (as determined by the Customer acting reasonably),

then the parties shall confirm to each other in writing that they shall use the process set out in **paragraphs 3, 4, 5, 6 and 7** above but with reduced timescales, such that any period of fifteen (15) Working Days is reduced to five (5) Working Days, any period of ten (10) Working Days is reduced to two (2) Working Days and any period of five (5) Working Days is reduced to one (1) Working Day.

9.3 The parameters set out in **paragraph 9.2** may be revised from time to time by agreement between the parties in writing.

## 10. **OPERATIONAL CHANGE PROCEDURE**

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

10.1.1 have an impact on the Customer;

10.1.2 require a change to the Contract;

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

10.1.4 involve the Customer in paying any additional Charges or other costs.

10.2 The Customer may request an Operational Change by submitting a written Request For Operational Change ("RFOC") to the Supplier's Change Manager.

10.3 The RFOC shall include the following details:

10.3.1 the proposed Operational Change; and

10.3.2 time-scale for completion of the Operational Change.

10.4 The Supplier shall inform the Customer of any impact on the Services that may arise from the proposed Operational Change.

10.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Customer when the Operational Change is completed.

## 11. **CHANGE AUTHORISATION**

Any proposed Contract Change processed in accordance with this schedule will not be authorised and the Supplier shall not implement any proposed Contract Change until the Change Authorisation Note is signed and executed by Head of IT and Procurement in accordance with the Customer's Contract Change authorisation and sign off procedure(s), as notified to the Supplier *in writing* from time to time.

## 12. **COMMUNICATIONS**

For any Change Communication to be valid under this schedule, it must be sent to either the Customer's Change Manager or the Supplier's Change Manager, as applicable, in accordance with the notice provisions in **clause 74** of the Contract.

## 13. **RECORD OF CHANGES**

13.1 The Supplier will, under **schedule 8.4** (Records Provisions), keep an accurate and complete record of:

13.1.1 each Change Request;

13.1.2 each Impact Assessment;

13.1.3 each Change Authorisation Note; and

13.1.4 each Customer Mandatory Request.

13.2 The Supplier will allocate a unique reference number to each of the documents specified above.

13.3 The Supplier will also keep a record that specifies progress made with regard to the Change Authorisation Note and any Customer Mandatory Request (from the date of the Change Request until completion of the Services associated with the applicable Change Authorisation Note and/or Customer Mandatory Request).

13.4 The Supplier will promptly provide the Customer's Change Manager or his Representative with reasonable access to the records referred to in this **paragraph 13** upon request, in accordance with **clause 26** (Audits) of the Contract.

## 14. **PRIORITISATION OF CHANGES**

- 14.1 The Supplier will produce, maintain, update and agree with the Customer's Change Manager a development plan detailing when the services associated with Change Authorisation Notes and Customer Mandatory Requests are to be implemented and tested ("**Development Plan**").
- 14.2 The parties will meet no less than once per month:
- 14.2.1 to review the Development Plan; and
  - 14.2.2 to consider and determine whether the Development Plan should be revised.
- 14.3 Notwithstanding the provisions of **paragraph 14.1** of this **schedule 8.2** (Change Control Procedure), the Customer will be entitled to require the Supplier to prioritise Change Authorisation Notes and any Customer Mandatory Request as the Customer, acting reasonably, may decide and the parties shall make the necessary amendments to the Development Plan.

## 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:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE:		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
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 CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND DETAILS OF ANY RELATED CONTRACT CHANGES:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
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:		
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND DETAILS OF ANY RELATED CONTRACT CHANGES:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
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: _____

**ICT SERVICES AGREEMENT SCHEDULES**

**SCHEDULE 8.3**

**DISPUTE RESOLUTION PROCEDURE**

## 1. DEFINITIONS

<b>"Case Summary"</b>	a concise summary of a party's case in a Dispute subjected to mediation;
<b>"CEDR"</b>	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London EC4Y 1EU;
<b>"Dispute Resolution Timetable"</b>	the Standard Dispute Timetable or the Expedited Dispute Timetable;
<b>"Exception"</b>	a deviation of project tolerances in accordance with PRINCE2 methodology in respect of the Contract or in the supply of the Services;
<b>"Expedited Dispute Timetable"</b>	the reduced timetable for the resolution of Disputes set out in the Appendix to schedule 8.3 (Dispute Resolution Procedure) to be used in accordance with the provisions of <b>paragraph 1.6 of schedule 8.3</b> (Dispute Resolution Timetable);
<b>"Expert"</b>	The person appointed by the Parties in accordance with <b>paragraph 4.2 of schedule 8.3</b> (Dispute Resolution Procedure);
<b>"Mediator"</b>	The independent third party appointed in accordance with <b>paragraph 3.2 of schedule 8.3</b> (Dispute Resolution Procedure);
<b>"Notice of Dispute"</b>	a written notice served by one party on the other stating that the party serving the notice believes that there is a Dispute;
<b>"Standard Dispute Timetable"</b>	the standard timetable for the resolution of Disputes set out in <b>Appendix to schedule 8.3</b> (Dispute Resolution Procedure).

## 2. INTRODUCTION

2.1 The Dispute Resolution Procedure shall start with the service of a Notice of Dispute.

1.2 The Notice of Dispute shall:

2.1.1 set out the material particulars of the Dispute;

2.1.2 set out the reasons why the party serving the Notice of Dispute believes that the Dispute has arisen;

- 2.1.3 elect (subject to the provisions of **paragraph 1.6** below) whether the Dispute should be dealt with under the Standard Dispute Timetable or the Expedited Dispute Timetable; and
- 2.1.4 if the party serving the Notice of Dispute believes that the Dispute should be dealt with under the Expedited Dispute Timetable, explain the reason why.
- 2.2 Unless agreed otherwise, the Parties shall continue to comply with their respective obligations under the Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.
- 2.3 Subject to **paragraph 2.5**, the Parties shall seek to resolve Disputes firstly by commercial negotiation (as prescribed in **paragraph 2**), then by mediation (as prescribed in **paragraph 3** below) and lastly by recourse to arbitration (as prescribed in **paragraph 5**) or litigation (in accordance with clause 75 (Governing Law and Jurisdiction)). Specific issues may be referred to Expert Determination (as prescribed in **paragraph 4** below) where appropriate.
- 2.4 The time periods set out in the Dispute Resolution Timetable shall apply to all Disputes unless the Parties agree that an alternative timetable should apply in respect of a specific Dispute.
- 2.5 The Parties may only agree to use the Expedited Dispute Timetable in exceptional circumstances where the use of the Standard Dispute Timetable would be unreasonable, including (by way of example) where one party would be materially disadvantaged by a delay in resolving the Dispute. If the Parties are unable to reach agreement on the use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Notice of Dispute then the use of this timetable shall be at the sole discretion of the Customer.
- 2.6 If at any point it becomes clear that an applicable deadline set out in the Dispute Resolution Timetable cannot be met or has passed, the Parties may agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying start of the subsequent stages set out in the Dispute Resolution Timetable by the period agreed in the extension.

### 3. **COMMERCIAL NEGOTIATIONS**

- 3.1 Subject to **paragraph 2.5**, the Parties shall use all reasonable endeavours to settle any Dispute between them in good faith and in accordance with the procedure set out in this **paragraph 2**.
- 3.2 In the first instance, the Customer and the Supplier will make reasonable endeavours to resolve all Disputes as soon as possible, at the lowest level in the project structure in which they can best be managed. Where either party considers that a Dispute cannot be resolved within acceptable timescales the

dissatisfied party may escalate the Dispute to the next level in the partnering structure in accordance with the following escalation process ("**Escalation Process**"), provided that the Parties shall not repeat this process in respect of a Dispute relating to an Exception that has been escalated already in accordance with this process:

<b>Escalation Process</b>
Service Delivery Manager; Then
Service Delivery Board; then
Technology and Strategy Board.

- 3.3 The timescale for resolving Disputes by commercial negotiations shall be as set out in the applicable section of the Dispute Resolution Timetable.
- 3.4 If the Parties have not settled the Dispute in accordance with the Escalation Process and the time period provided in **paragraph 2.3** then the Parties shall refer the matter to mediation in accordance with **paragraph 3** of this schedule.
- 3.5 If either party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution or that the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this **paragraph 2**, that party shall serve a written notice to that effect and the Parties shall proceed to mediation in accordance with **paragraph 3**.

#### 4. **MEDIATION**

- 4.1 In the event that a Dispute between the Parties cannot be resolved by commercial negotiation in accordance with **paragraph 2** the Parties shall attempt to resolve it in accordance with CEDR's model mediation procedure.
- 4.2 If the Parties are unable to agree on the joint appointment of a Mediator within the timescale specified in the applicable section of the Dispute Resolution Timetable, they shall make a joint application to CEDR to nominate the Mediator.
- 4.3 The Mediator, after consultation with the Parties where appropriate, will:
  - 4.3.1 attend any meetings with either or both of the Parties preceding the mediation, if requested or if the Mediator decides this is appropriate and the Parties agree;

- 4.3.2 read before the mediation each Case Summary and all the documents sent to him;
  - 4.3.3 chair, and determine the procedure for the mediation;
  - 4.3.4 assist the Parties in drawing up any written settlement agreement; and
  - 4.3.5 abide by the terms of CEDR's model mediation procedure and CEDR's code of conduct for mediators.
- 4.4 The Mediator (and any member of the Mediator's firm or company) will not act for either of the Parties individually in connection with the Dispute in any capacity during the Term. The Parties accept that in relation to the Dispute neither the Mediator nor CEDR is an agent of, or acting in any capacity for, any of the Parties. Furthermore, the Parties and the Mediator accept that the Mediator (unless an employee of CEDR) is acting as an independent contractor and not as an agent or employee of CEDR.

#### **CEDR**

- 4.5 CEDR, in conjunction with the Mediator, will make the necessary arrangements for the mediation including, as necessary:
- 4.5.1 nominating, and obtaining the agreement of the Parties to, the Mediator;
  - 4.5.2 organising a suitable venue and dates;
  - 4.5.3 organising exchange of the Case Summaries and documents;
  - 4.5.4 meeting with either or both of the Parties (and the Mediator if appointed), either together or separately, to discuss any matters or concerns relating to the mediation; and
  - 4.5.5 general administration in relation to the mediation.
- 4.6 If there is any issue about the conduct of the mediation upon which the Parties cannot agree within a reasonable time, CEDR will, at the request of any party, decide the issue for the Parties, having consulted with them.
- 4.7 The Parties agree to notify the Mediator that they wish to observe the relevant timescales agreed in the Dispute Resolution Timetable.

#### **Participants**

- 4.8 Each party will state the names of:
- 4.8.1 the person(s) who will be the lead negotiator(s) for that party, who must have full authority to settle the Dispute; and

- 4.8.2 any other person(s) (such as professional advisers, colleagues or sub-contractors) who will also be present at, and/or participating in, the mediation on that party's behalf.

### **Exchange of Information**

- 4.9 Each party will send to CEDR at least two (2) weeks before the mediation, or such other date as may be agreed between the Parties and CEDR, sufficient copies of:
- 4.9.1 its Case Summary; and
- 4.9.2 all the documents to which the Case Summary refers and any others to which it may want to refer in the mediation.
- 4.10 In addition, each party may send to the Mediator (through CEDR) and/or bring to the mediation further documentation which it wishes to disclose in confidence to the Mediator but not to any other party, clearly stating in writing that such documentation is confidential to the Mediator and CEDR.
- 4.11 The Mediator will be responsible for sending a copy of each party's Case Summary and supporting documents (pursuant to **paragraph 3.9.1**) to the other simultaneously.
- 4.12 The Parties should try to agree:
- 4.12.1 the maximum number of pages of each Case Summary; and
- 4.12.2 a joint set of supporting documents or the maximum length of each set of supporting documents.

### **The Mediation**

- 4.13 The mediation will take place at the time and place arranged by CEDR. The Parties agree to request that CEDR arrange the time and place for the mediation within the timescale specified in the applicable section of the Dispute Resolution Timetable. If the mediation cannot be arranged within the relevant timescale the Parties shall treat the delay as though they had agreed an extension to the Dispute Resolution Timetable in accordance with **paragraph 1.7**.
- 4.14 The Mediator will chair, and determine the procedure at, the mediation.
- 4.15 No recording or transcript of the mediation will be made.
- 4.16 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if all the Parties so request and the Mediator agrees, the Mediator will produce for the Parties a non-binding recommendation on terms of settlement. This will not attempt to anticipate what a court might order but will set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.

- 4.17 The Parties agree to notify CEDR that the maximum duration for the mediation meeting shall be as set out in the applicable section of the Dispute Resolution Timetable.

### **Settlement Agreement**

- 4.18 Any settlement reached in the mediation will not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). In any event any settlement agreement must be finalised within the timescales specified in the Dispute Resolution Timetable unless the Parties agree an extension to the Dispute Resolution Timetable in accordance with paragraph 1.7. The Mediator will assist the Parties in recording the outcome of the mediation.

### **Termination**

- 4.19 The mediation will terminate when:
- 4.19.1 a party withdraws from the mediation;
  - 4.19.2 a written settlement agreement is concluded;
  - 4.19.3 the Mediator decides that continuing the mediation is unlikely to result in a settlement; or
  - 4.19.4 the Mediator decides he should retire for any of the reasons in CEDR's code of conduct.

### **Confidentiality**

- 4.20 Every person involved in the mediation will keep confidential and not use for any collateral or ulterior purpose:
- 4.20.1 information that the mediation is to take place or has taken place, other than to inform a court dealing with any litigation relating to the Dispute of that information; and
  - 4.20.2 all information (whether given orally, in writing or otherwise) arising out of, or in connection with, the mediation including the fact of any settlement and its terms.
- 4.21 All information (whether oral or documentary and on any media) arising out of, or in connection with, the mediation will be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings whatsoever. This does not apply to any information, which would in any event have been admissible or disclosable in any such proceedings.
- 4.22 **Paragraphs 3.21 and 3.22** shall not apply insofar as any such information is necessary to implement and enforce any settlement agreement arising out of the mediation.



- 4.23 None of the Parties to the mediation will call the Mediator or CEDR (or any employee, consultant, officer or representative of CEDR) as a witness, consultant, arbitrator or expert in any litigation or other proceedings whatsoever. The Mediator and CEDR will not voluntarily act in any such capacity without the written agreement of all the Parties.

#### **Mediators fees and expenses**

- 4.24 CEDR's fees (which include the Mediator's fees) and the other expenses of the mediation will be borne equally by the Parties. Payment of these fees and expenses will be made to CEDR in accordance with its fee schedule and terms and conditions of business.
- 4.25 Each party will bear its own costs and expenses of its participation in the mediation.

#### **Exclusion of Liability**

- 4.26 Neither the Mediator nor CEDR shall be liable to the Parties for any act or omission in connection with the services provided by them in, or in relation to, the mediation, unless the act or omission is shown to have been in bad faith.

### **5. EXPERT DETERMINATION**

- 5.1 If the Contract expressly requires a Dispute to be referred to expert determination or the Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to an ICT technical, financial technical or other technical nature as the Parties agree and the dispute has not been resolved using the Escalation Process or mediation pursuant to paragraph 3, then either party may request (which request will not be unreasonably withheld or delayed) by written notice to the other that the Dispute is referred to an Expert for determination.
- 5.2 The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of either the president of the British Computer Society (or any other association that the Parties reasonably understand to have replaced it) in relation to a technical Dispute, or to the president of the Law Society in relation to all other Disputes.
- 5.3 The Expert shall act on the following basis:
- 5.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
  - 5.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;

- 5.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within twenty (20) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- 5.3.4 any amount payable by one party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
- 5.3.5 the process shall be conducted in private and shall be confidential; and
- 5.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

## 6. **ARBITRATION**

- 6.1 The Parties may at any time before court proceedings are commenced agree that the Dispute should be referred to arbitration in accordance with the provisions of **paragraph 5.4**.
- 6.2 Before the Supplier may commence any court proceedings it shall serve written notice on the Customer of its intention and the Customer shall have fifteen (15) Working Days from receipt of the Supplier's notice in which to reply requesting the Dispute to be referred to arbitration in accordance with the provisions in **paragraph 5.4**.
- 6.3 In its notice to the Customer pursuant to **paragraph 5.2**, the Supplier may request that the Dispute is referred to arbitration, to which the Customer may, in its sole discretion consent.
- 6.4 If a Dispute is referred to arbitration the Parties shall comply with the following provisions:
  - 6.4.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the London Court of International Arbitration ("**LCIA**") procedural rules shall be applied and are deemed to be incorporated into this Contract (save that in the event of any conflict between those rules and this Contract, this Contract shall prevail);
  - 6.4.2 the decision of the arbitrator shall be binding on the Parties (in the absence of any material failure by the arbitrator to comply with the LCIA procedural rules);
  - 6.4.3 the tribunal shall consist of a sole arbitrator to be agreed by the Parties and in the event that the Parties fail to agree the appointment of the arbitrator within ten (10) Working Days or, if the person appointed is unable or unwilling to act, as appointed by the LCIA; and

6.4.4 the arbitration proceedings shall take place in London.

7. **URGENT RELIEF**

Nothing in this **schedule 8.3** shall prevent either party from seeking injunctive relief at any time.

8. **SUB-CONTRACTORS**

- 8.1 The Supplier shall procure that any Sub-contractor involved in Services which are the subject of a Dispute shall, at the request of either party, provide any assistance required in order to resolve the relevant Dispute, including the provision of any information, data or documentation and the attendance at any meetings or hearings.
- 8.2 The Customer shall not be responsible for any costs incurred by any Sub-contractor participating in the resolution of any Dispute.

## APPENDIX

### Dispute Resolution Timetable

Disputes will be escalated in accordance with the following timetable:

Stage	Standard Dispute Timetable	Expedited Dispute Timetable
Time permitted for resolution of Dispute by commercial negotiations pursuant to <b>paragraph 2</b> of this schedule from the date of the Notice of Dispute	one (1) month	ten (10) Working Days
Period of time in which Dispute is to be referred to mediation in accordance with <b>paragraph 2.4</b>	ten (10) Working Days	five (5) Working Days
Time permitted in <b>paragraph 3.2</b> to agree the appointment of the Mediator	ten (10) Working Days	five (5) Working Days
Period of time in which Mediator may convene the mediation meeting from the date of appointment in accordance with <b>paragraph 3.13</b>	thirty (30) Working Days	twenty (20) Working Days
Maximum duration of mediation meeting in accordance with <b>paragraph 3.17</b>	three (3) Working Days	one (1) Working Day
Period of time in which the mediation settlement is to be recorded in writing and signed by the Parties in accordance with <b>paragraph 3.18</b>	ten (10) Working Days	five (5) Working Days

## **AGREEMENT SCHEDULES**

### **SCHEDULE 8.4**

#### **RECORDS PROVISIONS**

##### **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 delay reports;
- 2.1.2 Test Reports;
- 2.1.3 Management Information reports;
- 2.1.4 annual report on the Insurances;
- 2.1.5 security reports; and
- 2.1.6 Force Majeure Event reports.

##### **3. RECORDS**

- 3.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in the Appendix 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 Supplier shall make these records available for inspection to the Customer on request subject to the Customer 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 by the Supplier where it is not practicable to retain original records.
- 3.3 The Supplier shall, during the Term and a period of at least seven (7) years following the expiry of termination of this Contract, 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 **Appendix** to this schedule.
- 3.4 Financial records referred to in the Appendix shall be retained and maintained in safe storage by the Supplier for a period of at least six (6) years after the expiry or termination of this Contract.
- 3.5 Without prejudice to the foregoing, the Supplier shall provide the Customer as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than one hundred and thirty (130) Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if appropriate, of the consolidated audited accounts of the Supplier 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.

## **APPENDIX**

### **Records to be kept by the Supplier**

In accordance with the provisions of **paragraph 3** of this **schedule 8.4** the Supplier 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 Supplier 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 Supplier for the purpose of maintaining the provision of the Services and the underlying ICT Environment and Supplier Equipment.
6. Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
7. All formal notices, reports or submissions made by the Supplier to the Customer
8. Representative in connection with the provision of Services.
9. All certificates, licences, registrations or warranties in each case obtained by the
10. Supplier in relation to the provision of the Services.
11. Documents prepared by the Supplier in support of claims for the Charges.
12. Documents submitted by the Supplier pursuant to accordance with the Change Control Procedure.
13. Documents submitted by the Supplier pursuant to invocation by it or the Customer of the Dispute Resolution Procedure.
14. Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor.
15. Invoices and records related to VAT sought to be recovered by the Supplier.
16. Financial records, including audited and un-audited accounts of the Supplier and /or the Guarantor.
17. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.

18. All documents relating to the insurances to be maintained under the Contract and any claims made in respect of them.
19. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Contract.
20. All journals and audit trail data referred to in **schedule 2.5** (Security Management Plan).



## AGREEMENT SCHEDULES

### SCHEDULE 8.5

#### EXIT MANAGEMENT

##### 1. DEFINITIONS

<b>"Assets Register"</b>	the register of Assets, Sub-contracts and other relevant agreements (excluding cloud) to be created and maintained by the Supplier throughout the Term pursuant to <b>paragraph 3.1.1</b> of this <b>schedule 8.5</b> (Exit Management);
<b>"Business Process Manual"</b>	a manual setting out a detailed definition of all the business processes that will be supported by the Services;
<b>"Emergency Exit"</b>	any termination of this Contract which is a (i) termination of the whole or part of this Agreement in accordance with <b>clause 59</b> (Termination Rights), except where the period of notice given under that clause is greater than or equal to six months; (ii) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to <b>clause 59</b> ; or (iii) wrongful termination or repudiation of this Agreement by either party;
<b>"Exclusive Assets"</b>	those Assets which are used exclusively in the provision of the Services;
<b>"Exit Manager"</b>	the person appointed by each party pursuant to <b>paragraph 3.5</b> of <b>schedule 8.5</b> (Exit Management) for managing the parties' respective obligations under <b>schedule 8.5</b> (Exit Management);
<b>"Exit Plan"</b>	the plan produced and updated by the Supplier during the Term in accordance with <b>paragraph 5</b> of <b>schedule 8.5</b> (Exit Management);
<b>"Net Book Value"</b>	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy set out in the Financial Model;

<b>"Non-Exclusive Assets"</b>	those Assets (if any) which are used by the Supplier in the provision of the Services but which are also used by the Supplier for other purposes (excluding cloud);
<b>"Ordinary Exit"</b>	any termination of this Contract which occurs: (i) pursuant to <b>clause 59</b> (Termination Rights) where the period of notice given by the party serving notice to terminate pursuant to such clause is greater than or equal to six (6) months; or (ii) as a result of the expiry of the Initial Term or any Renewal Period;
<b>"Registers"</b>	has the meaning set out in <b>paragraph 3.1</b> of this <b>schedule 8.5</b> (Exit Management);
<b>"Required Termination Services"</b>	has the meaning given to it in paragraph 6.10.1 of this schedule 8.5 (Exit Management);
<b>"Termination Assistance Notice"</b>	has the meaning set out in <b>paragraph 6.10</b> of <b>schedule 8.5</b> (Exit Management);
<b>"Termination Assistance Period"</b>	the period specified in the Termination Assistance Notice in which the Supplier shall provide the Termination Services as may be extended pursuant to <b>paragraph 6.11</b> of <b>schedule 8.5</b> (Exit Management);
<b>"Termination Services"</b>	the services and activities listed in <b>paragraph 6.17</b> of this <b>schedule 8.5</b> (Exit Management) including the Required Termination Services;
<b>"Transferring Contracts"</b>	shall have the meaning set out in <b>paragraph 8.2.2</b> of <b>schedule 8.5</b> (Exit Management).

## 2. OVERVIEW

The Supplier is required to ensure the orderly transition of the Services from the Supplier to the Customer and/or any Replacement Supplier in the event of termination (including partial termination) or expiry of this Agreement. 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 Supplier shall be responsible for the overall management of the exit and service transfer arrangements.

## 3. CONTRACT LIFE OBLIGATIONS

3.1 During the Term the Supplier will:

- 3.1.1 maintain a register of all of the Assets, detailing their ownership and status as either Exclusive Assets or Non-Exclusive Assets and the Net Book Value of such Assets, and detailing all Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
- 3.1.2 maintain a configuration management database detailing the technical infrastructure through which the Supplier provides the Services System. This document should be of sufficient detail to permit the Customer and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption,

(collectively the "**Registers**"). The Supplier shall maintain the Registers in such format as is agreed between the parties and shall update the Registers from time to time and in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.

- 3.2 The Supplier shall ensure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.
- 3.3 The Supplier shall (unless otherwise agreed by the Customer in writing) procure that all Sub-contracts and other agreements with third parties, which are necessary to enable the Customer and/or any Replacement Supplier to perform the Services in accordance with this Agreement or the Replacement Services, shall be assignable and/or capable of novation at the request of the Customer to the Customer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Services (or part of them) without restriction (including any need to obtain any consent or approval) or payment by the Customer.
- 3.4 Where the Supplier is unable to procure that any Sub-contract or other agreement referred to in **paragraph 3.3** above which the Supplier proposes to enter into after the Effective Date is assignable and/or capable of novation to the Customer (and/or its nominee) and/or any Replacement Supplier without restriction or payment, the Supplier shall promptly notify the Customer of this and the parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where the Customer so directs, may include the Supplier seeking an alternative Sub-contractor, to be agreed with the Customer.
- 3.5 Each party will appoint an Exit Manager and provide written notification of such appointment to the other party within six (6) months of the Effective Date. The

Supplier's Exit Manager will be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this schedule. The Supplier will ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this schedule. The parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this schedule and each party's compliance with it.

#### 4. **OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES**

4.1 Subject to **paragraph 4.2** of this schedule, on reasonable notice, the Supplier shall provide to the Customer and/or (subject to the potential Replacement Supplier entering into reasonable written confidentiality undertakings) to its potential Replacement Supplier, the following material and information in order to facilitate the preparation by the Customer of any invitation to tender and/or to facilitate any potential Replacement Supplier undertaking due diligence:

- 4.1.1 details of the Service(s);
- 4.1.2 details of the Assets (including make, model and asset number) and of the Net Book Value of such Assets and details of their condition and physical location;
- 4.1.3 details of and information relating to the use of the Assets (including technical specifications);
- 4.1.4 an inventory of Customer Data in the Supplier's possession or control;
- 4.1.5 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers; and
- 4.1.6 all information relating to Transferring Employees required to be provided by the Supplier under this Agreement.

4.2 The Supplier shall not be required to comply with the provisions of **paragraph 4.1** before service of a notice to terminate this Agreement or in the period which is more than six (6) months before the expiry of the Term.

#### 5. **EXIT PLAN**

5.1 The Supplier will, within eight (8) months after the Effective Date, deliver to the Customer an Exit Plan which sets out the Supplier's proposed methodology for achieving an orderly transition of Services from the Supplier to the Customer and/or its Replacement Supplier on the expiry or termination of this Agreement and which complies with the requirements set out in paragraphs 5.2 and 5.3 below. Within thirty (30) days after the submission of the Exit Plan, the parties will use their respective reasonable endeavours to agree the contents of

the Exit Plan. If the parties are unable to agree the contents of the Exit Plan then such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

5.2 The Exit Plan will contain, as a minimum:

- 5.2.1 separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Customer shall require to enable the Customer or its subcontractors to provide the Services;
- 5.2.2 the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit; and
- 5.2.3 a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit.

5.3 In addition, the Exit Plan shall:

- 5.3.1 document how the Services will transfer to the Replacement Supplier and/or the Customer, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Customer's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
- 5.3.2 specify the charges that would be payable for the provision of such Termination Services (which shall be calculated in accordance with the principles set out in the Costs Breakdown and reasonable day rates for services similar to the Termination Services, and shall be no more than a fair and reasonable proportion of the Charges) and detail how such services would be provided (if required), during the Termination Assistance Period;
- 5.3.3 set out procedures to deal with requests made by the Customer and/or a Replacement Supplier for Staffing Information pursuant to **schedule 9.1** (Staff Transfer);
- 5.3.4 address each of the issues set out in this schedule to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Customer with the aim of ensuring that there is no

disruption to or degradation of the Services during the Termination Assistance Period;

5.3.5 provide a timetable and identify critical issues for providing the Termination Services; and

5.3.6 set out the management structure to be put in place and employed during the Termination Assistance Period.

5.4 The Supplier will review and (if appropriate) update the Exit Plan in the first month of each Contract Year (commencing with the Second Contract Year) to reflect changes in the Services. Following such update the Supplier will submit the revised Exit Plan to the Customer for review. Within thirty (30) days following submission of the revised Exit Plan, the parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan, based on the principles set out in this schedule and the changes that have occurred in the Services since the Exit Plan was last agreed. If the parties are unable to agree the contents of the revised Exit Plan within that thirty (30) day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

## 6. **TERMINATION SERVICES**

### *General*

6.1 During the Termination Assistance Period or such shorter period as the Customer may require, the Supplier will continue to provide the Services (as applicable) and will, at the request of the Customer pursuant to **paragraph 6.12**, provide the Termination Services.

6.2 The costs of providing Termination Services shall be as agreed between the parties not less than six months prior to the end of the Term or within one (1) month of the announcement of contract termination.

6.3 During the Termination Assistance Period, the Supplier will, in addition to providing the Services and the Required Termination Services, provide to the Customer any reasonable assistance requested by the Customer to allow the Services to continue without interruption following the termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Customer and/or its Replacement Supplier. The Supplier will use all reasonable endeavours to reallocate resources to provide these services without additional costs. However if this is not possible any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Required Termination Services or the Exit Plan will be subject to the Change Control Procedure, discussion and agreement (which will not be unreasonably withheld or delayed by either party).

- 6.4 During the Termination Assistance Period, the Services and the Required Termination Services will be provided at no detriment to the Service Levels, save to the extent that the parties agree otherwise in accordance with **paragraph 6.5**.
- 6.5 Where the Supplier demonstrates to the Customer's reasonable satisfaction that transition of the Services and provision of the Required Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet a particular Service Level(s), the parties shall vary the relevant Service Level(s) and/or the applicable Service Credits to take account of such adverse effect.
- 6.6 At the Customer's request and on reasonable notice, the Supplier will deliver up-to-date Registers to the Customer.
- 6.7 The parties acknowledge that the migration of the Services from the Supplier to the Customer and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
- 6.8 Within thirty (30) days after service of notice of termination by either party or no less than] six (6) months prior to the expiry of this Agreement, the Supplier will submit for the Customer's approval the Exit Plan in a final form that could be implemented immediately.
- 6.9 The parties will meet and use their respective reasonable endeavours to agree the contents of the final form Exit Plan. If the parties are unable to agree the contents of the Exit Plan within thirty (30) days following its delivery to the Customer then such dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form Exit Plan, the Supplier will provide the Required Termination Services in accordance with the principles set out in this schedule and the last approved version of the Exit Plan (insofar as this still applies).

#### **Notification of Requirements for Termination Services**

- 6.10 The Customer shall be entitled to require the provision of any and/or all Termination Services by notifying the Supplier in writing ("**Termination Assistance Notice**") at least four (4) months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either party of any notice to terminate. The Termination Assistance Notice shall specify the:
- 6.10.1 the nature of the Termination Services required (the "Required Termination Services"); and
- 6.10.2 the period during which it is anticipated that the Required
- 6.10.3 Termination Services will be required which shall:

6.10.3.1 commence no earlier than twelve (12) months prior to expiry of this Agreement or the date of service by either party of any notice to terminate, as the case may be; and

6.10.3.2 continue no longer than six (6) months after the date that the Supplier ceases to provide the Services.

6.11 The Customer shall have an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Services is otherwise due to expire. The Customer shall have the right to terminate its requirement for Termination Services by serving not less than twenty (20) Working Days written notice upon the Supplier to such effect.

#### *Termination Obligations*

6.12 The Supplier shall comply with all of its obligations contained in the Exit Plan and shall, upon termination or expiry of this Agreement provide to the Customer an up-to-date Business Process Manual.

6.13 At the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Required Termination Services and its compliance with the other provisions of this schedule):

6.13.1 the Supplier will erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period any software containing the Specially Written Software and all Customer Data;

6.13.2 the Supplier will return to the Customer such of the following as is in the Supplier's possession or control:

6.13.3 all copies of the Customer Software and any other software licensed by the Customer to the Supplier under this Agreement;

6.13.4 all materials created by the Supplier under this Agreement, the IPRs in which are owned by the Customer;

6.13.5 any parts of the ICT Environment and any other equipment which belongs to the Customer; and



- 6.13.6 any items that have been on-charged to the Customer, such as consumables;
- 6.14 the Supplier shall vacate any Customer Premises;
- 6.15 each party will 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 or Termination Services.
- 6.16 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Customer to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

*Scope of the Termination Services*

- 6.17 The Termination Services to be provided by the Supplier shall include (without limitation) such of the following services as the Customer may specify:
  - 6.17.1 ceasing all non-critical Software changes (by agreement with the Customer);
  - 6.17.2 notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
  - 6.17.3 providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place;
  - 6.17.4 delivering to the Customer the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports;
  - 6.17.5 providing details of work volumes and staffing requirements over the twelve (12) month period immediately prior to the commencement of the Termination Services;
  - 6.17.6 with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
  - 6.17.7 providing the Customer with any problem logs which have not previously been provided to the Customer;
  - 6.17.8 providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and

re-writing and implementing these during and for a period of twelve (12) months after the Termination Assistance Period;

- 6.17.9 providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
- 6.17.10 reviewing all Software libraries used in connection with the Services and providing details of these to the Customer and/or its Replacement Supplier;
- 6.17.11 making available to the Customer and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Customer (acting reasonably) at the time of termination or expiry. A documented plan is to be separately provided for this activity and agreed with the Customer at the time of termination or expiry;
- 6.17.12 analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- 6.17.13 agreeing with the Customer a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan annexed to **schedule 2.5** (Security Management Plan). The Supplier will co-operate fully in the execution of the agreed plan, providing skills and expertise of a suitable standard;
- 6.17.14 delivering copies of the production databases (with content listings) to the Customer's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Customer;
- 6.17.15 assisting with the loading, testing and implementation of the production databases;
- 6.17.16 assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;
- 6.17.17 in respect of the maintenance and support of the Supplier System, providing historical performance data for the previous twelve (12) month period;
- 6.17.18 assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by the Customer

(provided that these Services end on a date no later than the end of the Termination Assistance Period);

- 6.17.19 the provision of an information pack listing and describing the Services for use by the Customer in the procurement of the Replacement Services;
- 6.17.20 answering all reasonable questions from the Customer and/or its Replacement Supplier regarding the Services;
- 6.17.21 agreeing with the Customer and/or the Replacement Supplier a plan for the migration of the Customer Data to the Customer and/or the Replacement Supplier. The Supplier will fully co-operate in the execution of the agreed plan, providing skills and expertise of a reasonably acceptable standard;
- 6.17.22 the provision of access to the Customer and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding six (6) months afterwards for the purpose of the smooth transfer of the Services to the Customer and/or the Replacement Supplier:
  - 6.17.22.1 to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
  - 6.17.22.2 following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who remain involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors.
  - 6.17.22.3 any other services related to termination which the Customer (acting reasonably) may specify. Disputes Relating to Termination Services
- 6.18 Where there is any dispute between the parties regarding the manner in which the Termination Services are to be performed, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

## **7. KNOWLEDGE TRANSFER**

- 7.1 During the Termination Assistance Period, the Supplier will:

- 7.1.1 transfer all training material and provide appropriate training to those Customer and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;
  - 7.1.2 provide for transfer to the Customer and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
  - 7.1.3 provide the Supplier and/or Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors.
- 7.2 To facilitate the transfer of knowledge from the Supplier to the Customer and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Customer and/or the Replacement Supplier.
- 7.3 The information which the Supplier shall provide to the Customer and/or its Replacement Supplier pursuant to **paragraph 7.1** above will include:
- 7.3.1 copies of up-to-date procedures and operations manuals;
  - 7.3.2 product information;
  - 7.3.3 agreements with third party suppliers of goods and services which are to be transferred to the Customer;
  - 7.3.4 key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Customer pursuant to this schedule;
  - 7.3.5 information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
  - 7.3.6 details of physical and logical security processes and tools which will be available to the Customer; and
  - 7.3.7 any relevant interface information.
- 7.4 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and contractors) of the Replacement Supplier and/or the Customer access, during business hours and upon

reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:

- 7.4.1 any such agent or personnel (including employees, consultants and contractors) having access to any Sites under this paragraph shall sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
- 7.4.2 the Customer and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

## 8. **ASSETS, SUB-CONTRACTS AND SOFTWARE**

8.1 Following notice of termination of this Agreement and during the Termination Assistance Period, the Supplier will not, without the Customer's prior written consent:

- 8.1.1 terminate, enter into or vary any Sub-contract;
- 8.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
- 8.1.3 terminate, enter into or vary any licence for software in connection with the Services.

8.2 Within thirty (30) days of receipt of the up-to-date Registers provided by the Supplier pursuant to **paragraph 6.6** above, the Customer will provide written notice to the Supplier setting out:

- 8.2.1 which Assets the Customer requires to be transferred to the Customer and/or its Replacement Supplier; and
- 8.2.2 which Sub-contracts and other agreements specified in **paragraph 3.3** above the Customer requires to be assigned or novated to the Customer and/or its Replacement Supplier (the "Transferring Contracts"),

in order for the Customer and/or its Replacement Supplier to provide the Services at the expiry of the Termination Assistance Period. Where requested by the Customer and/or its Replacement Supplier, the Supplier will provide all reasonable assistance to the Customer and/or its Replacement Supplier to enable it to determine which Assets and Transferring Contracts the Customer and/or its Replacement Supplier requires in order to provide the Services.

8.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall assign to the Customer (and/or its nominated Replacement Supplier), free from all liens, charges, options, encumbrances and third party rights, title to

and all rights and interests in those Exclusive Assets identified by the Customer pursuant to **paragraph 8.2** above. Such Exclusive Assets will be acquired by the Customer for a consideration equal to their Net Book Value.

8.4 In respect of those Non-Exclusive Assets that the Customer has identified pursuant to paragraph 8.2, the Supplier will either (at the Customer's option, acting reasonably):

8.4.1 sell such Assets to the Customer and/or its Replacement Supplier at an agreed price; or

8.4.2 offer or procure for the Customer and/or its Replacement Supplier the use, rental or licensing of such assets (as appropriate) in each case for such period of time and on such commercial and other terms as may be agreed between the parties, acting reasonably.

8.5 The Supplier shall assign or procure the novation to the Customer of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Customer reasonably requires to effect this novation or assignment.

8.6 The Customer shall:

8.6.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract;

8.6.2 once a Transferring Contract is novated or assigned to the Customer and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that a Replacement Supplier does the same.

8.7 The Supplier shall hold any Transferring Contracts on trust for the Customer until such time as the transfer of the contract to the Customer and/or the Replacement Supplier has been effected.

8.8 The Supplier shall indemnify the Customer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Sub-contract which is assigned or novated to the Customer (and/or Replacement Supplier) pursuant to **paragraph 8.5** above in relation to any matters arising prior to the date of assignment or novation of such Sub-contract.

## 9. **CONTRACTOR PERSONNEL**

9.1 The Customer and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, **schedule 9.1** (Staff Transfer) will apply.

- 9.2 The Supplier will not take any step (expressly or implicitly and directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Customer and/or its Replacement Supplier.
- 9.3 During the Termination Assistance Period, the Supplier will give the Customer and/or its Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Customer and/or its Replacement Supplier.
- 9.4 The Supplier will immediately notify the Customer or, at the direction of the Customer, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 9.5 The Supplier will not re-employ or re-engage or entice any employees, contractors or Sub-contractors whose employment or engagement is transferred to the Customer and/or its Replacement Supplier for a period of twelve (12) months from the date of transfer.

## 10. CHARGES AND APPORTIONMENTS

- 10.1 During the Termination Assistance Period (or for such shorter period as the Customer may require the Supplier to provide the Termination Services), the Customer shall pay the Charges to the Supplier in respect of the Termination Services, such Charges to be calculated in accordance with **schedule 7.1** (Charges).
- 10.2 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Assets and Sub-contracts transferred to the Customer and/or the Replacement Supplier pursuant to **paragraph 8** above shall be apportioned between the Customer and the Supplier and/or the Replacement Supplier and the Supplier, as applicable.
- 10.3 This apportionment will be carried out as follows:
- 10.3.1 the payments will be annualised and divided by 365 to reach a daily rate;
  - 10.3.2 the Customer shall be responsible for or shall procure that the Replacement Supplier shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
  - 10.3.3 the Supplier will be responsible for or entitled to (as the case may be) the rest of the invoice.

- 10.4 Each party shall pay and/or the Customer shall procure that the Replacement Supplier shall pay any monies due under **paragraph 10.3** as soon as reasonably practicable.



**AGREEMENT SCHEDULES**

**SCHEDULE 8.6**

**BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN**

<b>"Business Continuity Plan"</b>	has the meaning set out in <b>paragraph 1.2.2</b> of <b>schedule 8.6</b> (Disaster Recovery and Business Continuity Plan);
<b>"Disaster"</b>	the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of it will be unavailable or which is reasonably anticipated will mean that the Services or a material part will be unavailable for that period and Gold Commander or Silver Cadre or Customer ICT Management escalation process has requested invocation of the BCDR Plan;
<b>"Disaster Recover"</b>	the process of restoration of the Service by the provision of the Disaster Recovery Services;
<b>"Disaster Recovery Plan"</b>	has the meaning set out in <b>paragraph 1.2.3</b> of <b>schedule 8.6</b> (Disaster Recovery and Business Continuity Plan);
<b>"Disaster Recovery Services"</b>	the disaster recovery and/or business continuity services (as the context may require) to be provided by the Supplier pursuant to schedule 8.6 (Disaster Recovery and Business Continuity Plan);
<b>"Disaster Recovery System"</b>	the system identified by the Supplier in the Supplier's Solution which shall be used for the purpose of delivering the Disaster Recovery Service;
<b>"General Principles"</b>	has the meaning set out in <b>paragraph 1.2.1</b> of <b>schedule 8.6</b> (Business Continuity and Disaster Recovery Plan);
<b>"Related Service Provider"</b>	any person who provides services to the Customer in relation to the Project from time to time which persons include without limit as set at the Effective Date;

## PURPOSE OF THIS SCHEDULE

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

## 2. DEVELOPMENT OF BCDR PLAN

- 2.1 The BCDR Plan shall unless otherwise required by the Customer in writing, be based upon and be consistent with the provisions of **paragraphs 3 and 5** of this schedule 8.6 (Business Continuity and Disaster Recovery Plan).
- 2.2 The Supplier shall ensure that its Sub-contractors' disaster recovery and business continuity plans are integrated with the BCDR Plan.

## 3. PART A - GENERAL PRINCIPLES AND REQUIREMENTS

- 3.1 The BCDR Plan shall:
  - 3.1.1 set out how the business continuity and disaster recovery elements of the Plan link to each other;
  - 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the Services and any services provided to the Customer by a Related Service Provider;

- 3.1.3 contain an obligation upon the Supplier to liaise with the Customer and (at the Customer's request) any Related Service Provider with respect to issues concerning business continuity and disaster recovery where applicable;
- 3.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Customer and any of its other Related Service Providers as notified to the Supplier by the Customer from time to time;
- 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Customer;
- 3.1.6 contain a risk analysis, including:
  - 3.1.6.1 failure or disruption scenarios and assessments and estimates of frequency of occurrence;
  - 3.1.6.2 identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
  - 3.1.6.3 identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider; and
  - 3.1.6.4 a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- 3.1.7 provide for documentation of processes, including business processes, and procedures;
- 3.1.8 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-Suppliers) and for the Customer;
- 3.1.9 identify the procedures for reverting to "normal service";
- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that the Service Requirements for data loss are met;

- 3.1.11 identify the responsibilities (if any) that the Customer has agreed it will assume in the event of the invocation of the BCDR Plan; and
  - 3.1.12 provide for the provision of technical advice and assistance to key contacts at the Customer as notified by the Customer from time to time to inform decisions in support of the Customer's business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
  - 3.2.1 the Services are provided in accordance with the Agreement at all times during and after the invocation of the BCDR Plan;
  - 3.2.2 the adverse impact of any Disaster, service failure, or disruption on the operations of the Customer is minimal as far as reasonably possible;
  - 3.2.3 it complies with the relevant provisions of ISO/IEC17799:2000, BS15000 (as amended) and all other industry standards from time to time in force; and
  - 3.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 3.3 The BCDR Plan must be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Service Levels or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Agreement.
- 4. **PART B - BUSINESS CONTINUITY ELEMENT - PRINCIPLES AND CONTENTS**
  - 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including but not limited to and unless the Customer expressly states otherwise in writing:
    - 4.1.1 the alternative processes, (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and

- 4.1.2 the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 4.2 The Business Continuity Plan shall address the various possible levels of failures of or disruptions to the Services and the services to be provided and the steps to be taken to remedy to the different levels of failure and disruption. The Business Continuity Plan shall also clearly set out the conditions and/or circumstances under which the Disaster Recovery Plan is invoked.
- 5. **PART C - DISASTER RECOVERY ELEMENT - PRINCIPLES AND CONTENTS**
  - 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Customer supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
  - 5.2 The Disaster Recovery Plan shall only be invoked upon the occurrence of a Disaster.
  - 5.3 The Disaster Recovery Plan shall include the following:
    - 5.3.1 the technical design and build specification of the Disaster Recovery System;
    - 5.3.2 details of the procedures and processes to be put in place by the Supplier and any Sub-contractor in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
      - 5.3.2.1 data centre and disaster recovery site audits;
      - 5.3.2.2 backup methodology and details of the Supplier's approach to data back-up and data verification;
      - 5.3.2.3 identification of all potential disaster scenarios;
      - 5.3.2.4 risk analysis;
      - 5.3.2.5 documentation of processes and procedures;
      - 5.3.2.6 hardware configuration details;
      - 5.3.2.7 network planning including details of all relevant data networks and communication links;

- 5.3.2.8 invocation rules;
- 5.3.2.9 Service recovery procedures;
- 5.3.2.10 steps to be taken upon Service resumption to address any prevailing effect of the Service failure or disruption;
- 5.3.3 any applicable service levels with respect to the provision of Disaster Recovery Services and details of any agreed relaxation upon the Service Levels during any period of invocation of the Disaster Recovery Plan;
- 5.3.4 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 5.3.5 access controls (to any disaster recovery sites used by the Supplier or any Sub-contractor in relation to its obligations pursuant to this schedule); and
- 5.3.6 testing and management arrangements.

## 6. REVIEW AND AMENDMENT OF THE BCDR PLAN

- 6.1 The Supplier shall review part or all of the BCDR Plan (and the risk analysis on which it is based):
  - 6.1.1 on a regular basis and as a minimum once every six (6) calendar months;
  - 6.1.2 within three calendar month of the BCDR Plan (or any part) having been invoked pursuant to **paragraph 8** of this schedule; and
  - 6.1.3 where the Customer requests any additional reviews (over and above those provided for in **paragraphs 6.1.1** and **6.1.2** of this schedule) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Customer's written requirements. The costs of both parties for any such additional reviews will be met by the Customer.
- 6.2 Each review pursuant to **paragraph 6.1** of the BCDR Plan shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence

of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or if no such period is required within such period as the Customer shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Customer a report ("**Review Report**") setting out:

6.2.1 the findings of the review;

6.2.2 any changes in the risk profile associated with the Services; and

6.2.3 the Supplier's proposals ("**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

6.3 The Supplier shall as soon as is reasonably practicable after receiving the Customer's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the contractor's expense unless it can be reasonably shown that the changes are required because of a material change to the project's risk profile.

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

7.1 The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to **paragraph 7.2**, the Customer may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Customer considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.

7.2 If the Customer requires an additional test of the BCDR Plan it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Customer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Customer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.



- 7.3 Following each test, the Supplier shall send to the Customer a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Customer considers to be necessary as a result of those tests.
- 7.4 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Customer and shall liaise with the Customer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Customer in this regard. Each test shall be carried out under the supervision of the Customer or its nominee.
- 7.5 The Supplier shall ensure that any use by it or any Sub-contractor of "*live*" data in such testing is first approved with the Customer. Copies of live test data used in any such testing shall be (if so required by the Customer) destroyed or returned to the Customer on completion of the test.
- 7.6 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Customer a report setting out:
- 7.6.1 the outcome of the test;
  - 7.6.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
  - 7.6.3 the Supplier's proposals for remedying any such failures.
- 7.7 Following each test, the Supplier shall take all measures requested by the Customer, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Customer, by the date reasonably required by the Customer and set out in such notice.
- 7.8 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Supplier of any of its obligations under this schedule 8.6 or otherwise.
- 7.9 The Supplier shall also perform a test of the BCDR Plan as part of the commissioning of any new project.

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

In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Customer

promptly of such invocation). In all other instances the Supplier shall only invoke or test the BCDR Plan with the prior consent of the Customer.

## AGREEMENT SCHEDULES

### SCHEDULE 9.1

#### STAFF TRANSFER

*In this schedule 9.1 (Staff Transfer), unless the context otherwise requires, in addition to the definitions in the Agreement, the following expressions shall have the meanings given to them below.*

<b>"Acquired Rights Directive"</b>	the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended;
<b>"Effective Transfer Date"</b>	means the date on which the Supplier commences provision of all or part of the Services pursuant to this Contract;
<b>"Existing Services Employees"</b>	means the employees of the Outgoing Service Providers listed in Appendix 1 to this Schedule 9.1 engaged in or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Effective Transfer Date;
<b>"Losses"</b>	(without limitation) any damages, liabilities, claims, demands, proceedings, actions, costs, charges, losses and/or expenses;
<b>"Outgoing Service Providers"</b>	means (1) Intergraph Public Safety (UK) Limited and (2) Microcomputer Workshops Ltd which previously carried out activities for or on behalf of the Customer that on and following the Effective Transfer Date will comprise all of part of the Services;
<b>"Relevant Transfer"</b>	as defined in <b>paragraph 3</b> ;
<b>"Staffing Information"</b>	in relation to all person's on the Supplier's Provisional Staff List, such information as the Customer may reasonably request (subject to Data Protection Legislation), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they be employed, self-employed contractors or consultants, agency, workers or otherwise;
- (c) the identity of the employer or relevant contracting party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them;
- (f) details of other employment related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence; and
- (i) details of the amount of time spent by such individuals engaged in the Services and other activities, together with any other relevant information requested by the Customer to determine whether such individuals are assigned to the Services within the meaning of the Employment

Regulations;

- (j) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (k) any other "employee liability information" as such term is defined in Regulation 11 of the Employment Regulations;

**"Service Transfer"**

has the meaning given to it in **paragraph 3** of this **Schedule 9.1** (Staff Transfer);

**"Service Transfer Date"**

the date of a Service Transfer;

**"Supplier's Final Staff List"**

the relevant list of all Supplier Personnel engaged in or wholly or mainly assigned to, the provision of the Services or any part of the services at the date of the Service Transfer;

**"Supplier Party"**

the Supplier's agents and contractors, including each Sub-contractor;

**"Supplier Personnel"**

all employees, agents, consultants and contractors of the Supplier and/or any Supplier Party;

**"Supplier's Provisional Staff List"**

an anonymised list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any part of the Services as at the date of such list;

**"Transferring Employees"**

any of the Supplier Personnel whose contract of employment becomes, by virtue of the application of Employment Regulations where subsequent to the commencement of the provision of the Services the identity of the provider of the Services (or any part of the Services) changes (whether as a result of termination of this Agreement, or part, or otherwise) resulting in the Services or related

services being undertaken by the Customer or a Replacement Supplier, a contract of employment with the Customer or the Replacement Supplier, but excluding any such Supplier Personnel who are not named on the Supplier's Final Staff List as Transferring Employees (subject to **paragraph 5.3.6**);

**"Unexpected Customer Employee"** has the meaning given to it in **paragraph 2.3**;

**"Unexpected Supplier Employee"** has the meaning given to it in **paragraph 5.3**.

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

This schedule sets out the parties' respective rights and obligations in relation to the application of the Employment Regulations to this Agreement.

## **2. APPLICATION OF THE EMPLOYMENT REGULATIONS ON THE COMMENCEMENT OF THE AGREEMENT**

2.1 The parties acknowledge and agree that by reason of the Employment Regulations the contracts of employment of the Existing Services Employees shall have effect on and following the Effective Transfer Date as if originally made between the Supplier and those Existing Services Employees. For the avoidance of doubt, neither the Acquired Rights Directive nor the Employment Regulations will have the effect of transferring any contracts of employment of any Existing Services Employees to the Customer upon the Effective Transfer Date, nor will the contracts of employment of any employee of the Customer transfer to the Supplier or any Supplier Party upon the Effective Transfer Date.

2.2 The Supplier will fully indemnify the Customer and/or the Outgoing Service Providers against all damages, losses, costs, awards, liabilities and expenses which the Customer and/or the Outgoing Service Providers incur or suffer arising directly or indirectly in connection with:

2.2.1 the employment or termination of the employment of any of the Existing Services Employees at any time on or after the Effective Transfer Date;

2.2.2 any act or omission by the Supplier and/or any Supplier Party whether before, on or after the Effective Transfer Date in respect of the Existing Services Employees;

2.2.3 any claim by or on behalf of any of the Existing Services Employees arising from a failure by the Supplier and/or any Supplier Party to

comply with its obligations under Regulation 13(4) of the Employment Regulations in relation to the transfer referred to at paragraph 2.1; and

2.2.4 any claim by any Existing Services Employees arising from any proposed change to working conditions by the Supplier and/or any Supplier Party which is alleged to be to their material detriment.

2.3 If any person who is an employee of the Customer claims or it is determined that his/her contract of employment has been transferred from the Customer to the Supplier or a Supplier Party pursuant to the Employment Regulations and/or the Acquired Rights Directive, or claims that his employment would have so transferred had he not resigned ("**Unexpected Customer Employee**"), then:

2.3.1 the Supplier will, within seven (7) Working Days of becoming aware of that fact, give notice in writing to the Customer;

2.3.2 the Customer may, if it wishes, offer employment or settle the claims of the Unexpected Customer Employee within twenty one (21) Working Days of the notification by the Supplier in accordance with **paragraph 2.3.1**;

2.3.3 if such offer of employment or settlement of claims is accepted, the Supplier or the relevant Supplier Party shall immediately release the person from his/her employment;

2.3.4 if the period specified in **paragraph 2.3.2** has elapsed and no such offer of employment or settlement of claims has been made or such offer has been made but not accepted, the Supplier or the relevant Supplier Party may within seven (7) Working Days give notice to terminate the employment of the Unexpected Customer Employee.

2.4 Subject to the Supplier and each relevant Supplier Party acting in the way set out in **paragraph 2.3** or in such other way as may be agreed between the Supplier and the Customer, the Customer will indemnify the Supplier and/or any Supplier Party against:

2.4.1 all Employee Liabilities arising out of such termination or otherwise arising out of the employment of such person by the Supplier or the relevant Supplier Party; and/or

2.4.2 any direct employment costs (if any) associated with the employment of such person by the Supplier or the relevant Supplier Party up to the date of termination of such person's employment in accordance with **paragraph 2.3.4**.

2.5 The indemnity in **paragraph 2.4** will not apply:

- 2.5.1 to any claim by any person in respect of whom the notification given to the Customer under **paragraph 2.3.1** is received by the Customer more than six (6) calendar months after the Effective Date;
- 2.5.2 if such person is neither re-employed by the Customer nor dismissed by the Supplier or the relevant Supplier Party within the time scales set out in **paragraph 2.3**, in which case such person will be treated as having transferred to the Supplier or the relevant Supplier Party who shall be responsible for all liabilities arising in respect of any such person; and
- 2.5.3 in respect of any claims where they arise directly from the discriminatory act or omission of the Supplier and/or any Supplier Party or whether the Supplier and/or any Supplier Party has terminated the employment of an Unexpected Customer Employee not in accordance with **paragraph 2.3** (including within the time periods specified).

### 3. **APPLICATION OF THE EMPLOYMENT REGULATIONS ON TERMINATION OR AT THE END OF THE TERM**

The Agreement envisages that, subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Agreement, or part, or otherwise) resulting in the Services or related services being undertaken by the Customer or a Replacement Supplier. Such change in the identity of the supplier of such Services shall be a "**Service Transfer**". The parties acknowledge that a Service Transfer will be a relevant transfer for the purposes of the Employment Regulations ("**Relevant Transfer**") and in such event, the Customer, or a Replacement Supplier, would inherit liabilities in respect of the Transferring Employees. Accordingly, the Employment Regulations and/or the Acquired Rights Directive will apply.

### 4. **PRE-SERVICE TRANSFER OBLIGATIONS**

- 4.1 The Supplier agrees, subject to compliance with the Data Protection Legislation that within twenty eight (28) Working Days of the earliest of:
  - 4.1.1 receipt of a notification from the Customer of a Service Transfer or intended Service Transfer; or
  - 4.1.2 receipt of the giving of notice of early termination of this Agreement or any part thereof; or
  - 4.1.3 the date which is twelve (12) months before the end of the Term; or



- 4.1.4 receipt of a written request of the Customer at any time (provided that the Customer shall only be entitled to make one such request in any six (6) month period),

it will provide, or as appropriate procure that the Supplier Party shall provide, the Supplier's Provisional Staff List and the Staffing Information to the Customer or, at the direction of the Customer, to a Replacement Supplier and it will provide an updated Supplier's Provisional Staff List at such intervals as are reasonably requested by the Customer and/or any Replacement Supplier.

- 4.2 At least twenty eight (28) working days prior to the Service Transfer Date, the Supplier shall prepare (subject to compliance with Data Protection Legislation) and provide, or as appropriate procure that the Supplier Party shall prepare and provide, to the Customer or, at the direction of the Customer to the Replacement Supplier, the Supplier's Final Staff List, which shall be complete and accurate in all material respects. The Supplier's Final Staff List shall identify which of the Supplier Personnel named are Transferring Employees.
- 4.3 Subject to compliance with the Data Protection Legislation, the Customer shall be permitted to use and disclose the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Supplier for any services which are substantially the same type of services (or any part thereof) as the Services, provided that the Customer imposes on such third party obligations of confidence that are no less onerous than the Customer has to the Supplier in relation to that information.
- 4.4 Upon reasonable request by the Customer and subject to compliance with the Data Protection Legislation, the Supplier shall provide, and shall procure that each Supplier Party shall provide, the Customer or at the request of the Customer, the Replacement Supplier, with access (on reasonable notice and during normal working hours) to such employment records as the Customer reasonably requests and will allow the Customer or the Replacement Supplier to have copies of any such documents.
- 4.5 The Supplier warrants that the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information will be true and accurate in all material respects.

- 4.6 From the date of the earliest event referred to in **paragraphs 4.1.1 to 4.1.3** above, the Supplier agrees that it will not, and agrees to procure that any Supplier Party will not, without the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed):
- 4.6.1 assign any person to the provision of the Services (or the relevant part) which is the subject of a Service Transfer who is not listed in the Supplier's Provisional Staff List;
  - 4.6.2 increase the total number of employees listed on the Supplier's Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed;
  - 4.6.3 make, propose or permit any material changes to the terms and conditions of employment of any employees listed on the Supplier's Provisional Staff List;
  - 4.6.4 increase the proportion of working time spent on the Services (or the relevant part) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
  - 4.6.5 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Staff List;
  - 4.6.6 replace any Supplier Personnel listed on the Supplier's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Staff List save for:
    - 4.6.6.1 the execution of assigned operations as detailed in **paragraphs 4.6.2 and 4.6.4**; and/or
    - 4.6.6.2 replacing voluntary resignations or staff terminated by due disciplinary process to satisfy the fulfilment of previously agreed work streams provided that any replacement is employed on the same terms and conditions of employment as the person he/she replaces; and
  - 4.6.7 the Supplier will promptly notify or as appropriate will procure that the Supplier Party will promptly notify the Customer or, at the direction of the Customer, the Replacement Supplier of any notice

to terminate employment given by the Supplier or any Supplier Party or received from any persons listed on the Supplier's Provisional Staff List regardless of when such notice takes effect.

4.7 Within seven (7) Working Days following the Service Transfer Date, the Supplier will provide to the Customer or any Replacement Supplier, in respect of each person on the Supplier's Final Staff List who is a Transferring Employee:

- 4.7.1 the most recent month's copy pay slip data;
- 4.7.2 details of cumulative pay for tax and pension purposes;
- 4.7.3 details of cumulative tax paid;
- 4.7.4 tax code;
- 4.7.5 details of any voluntary deductions from pay; and
- 4.7.6 bank/building society account details for payroll purposes.

## 5. THE SUPPLIER'S INDEMNITY

5.1 In connection with a Relevant Transfer under **paragraph 3** of this schedule, the parties agree that:

5.1.1 the Supplier will, and shall procure that any Supplier Party will, perform and discharge all its obligations in respect of all the Transferring Employees and their representatives for its own account up to and including the Service Transfer Date. The Supplier will indemnify the Customer and any Replacement Supplier against all Employee Liabilities arising from the Supplier's, or any Supplier Party's, failure to perform and discharge any such obligation and against any Employee Liabilities in respect of the Transferring Employees arising from or as a result of:

5.1.1.1 any act or omission by the Supplier or any Supplier Party occurring on or before the Service Transfer Date or any other matter, event or circumstance occurring or having its origin before the Service Transfer Date save simply for accrual of service before that date;

5.1.1.2 all and any Employee Liabilities in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, national insurance contributions, pension contributions and otherwise) payable in respect of any period before the Service Transfer Date;

- 5.1.1.3 any claim arising out of the provision of, or proposal by the Supplier or any Supplier Party to offer any change to any benefit, term or condition or working condition of any Transferring Employee arising on or before the Service Transfer Date;
    - 5.1.1.4 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Supplier Party other than a Transferring Employee for which it is alleged the Customer or any Replacement Supplier may be liable by virtue of this Agreement and/or the Employment Regulations;
  - 5.1.2 the Supplier will indemnify the Customer and any Replacement Supplier against all Employee Liabilities arising from:
    - 5.1.2.1 any act or omission of the Supplier or any Supplier Party in relation to its obligations under Regulation 13 or 14 of the Employment Regulations, or in respect of an award of compensation under Regulation 15 of the Employment Regulations except to the extent that the liability arises from the Customer or a Replacement Supplier's failure to comply with Regulation 13(4) of the Employment Regulations; and
    - 5.1.2.2 any statement communicated to or action done by the Supplier or any Supplier Party to, or in respect of, any Transferring Employee on or before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the Customer in writing subject to the timely availability of the Customer, the Supplier or Supplier Party to verify, amend or negotiate the content of such statements.
- 5.2 The Supplier will indemnify the Customer and any Replacement Supplier in respect of any Employee Liabilities arising from any act or omission of the Supplier or any Supplier Party in relation to any other Supplier Personnel who is not a Transferring Employee during any period whether before, on or after the Service Transfer Date.
- 5.3 If any person who is not named on the Supplier's Final Staff List as a Transferring Employee claims or it is determined that his contract of employment has been transferred from the Supplier or any Supplier Party to the Customer, or a Replacement Supplier pursuant to a Relevant Transfer, or claims

that his employment would have so transferred had he not resigned ("**Unexpected Supplier Employee**"), then:

- 5.3.1 the Customer or the Replacement Supplier will, within seven (7) Working Days of becoming aware of that fact, give notice in writing to the Supplier;
- 5.3.2 the Supplier may offer (or may procure that a Supplier Party may offer) employment to or settle the claims of the Unexpected Supplier Employee within twenty one (21) Working Days of the notification by the Customer or the Replacement Supplier;
- 5.3.3 if such offer of employment or settlement of claims is accepted, the Customer or the Replacement Supplier shall immediately release the person from his employment;
- 5.3.4 if the period specified in **paragraph 5.3.2** has elapsed and no such offer of employment or settlement of claims has been made or such offer has been made but not accepted, the Customer or the Replacement Supplier may within seven (7) Working Days give notice to terminate the employment of the Unexpected Supplier Employee;
- 5.3.5 subject to the Customer or the Replacement Supplier acting in this way or in such other way as may be agreed between the Supplier and the Customer or the Replacement Supplier, the Supplier will indemnify the Customer and the Replacement Supplier against:
  - 5.3.5.1 all Employee Liabilities arising out of such termination or otherwise arising out of the employment of the Unexpected Supplier Employee by the Customer or a Replacement Supplier; and/or
  - 5.3.5.2 any direct employment costs (if any) associated with the employment of the Unexpected Supplier Employee by the Customer or the Replacement Supplier up to the date of termination of such persons employment.
- 5.3.6 If such person is neither re-employed by the Supplier or any Supplier Party nor dismissed by the Customer or the Replacement Supplier within the time scales set out in this **paragraph 5.3**, such person will be treated as a Transferring Employee.

## **6. THE CUSTOMER'S INDEMNITIES**

- 6.1 The Customer shall indemnify the Supplier and/or any Supplier Party against all Employee Liabilities arising from the Customer's or the Replacement Supplier's failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Transferring Employee arising from or as a result of:
- 6.1.1 any act or omission by the Customer or the Replacement Supplier relating to a Transferring Employee occurring on or after the Service Transfer Date;
  - 6.1.2 all and any Employee Liabilities in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, national insurance contributions, pension contribution and otherwise) payable on or after the Service Transfer Date;
  - 6.1.3 any claim arising out of the provision of, or proposal by the Customer or any Replacement Supplier to offer any change to any benefit, term or condition or working condition of any Transferring Employee arising after the Service Transfer Date;
  - 6.1.4 any failure by the Customer or any Replacement Supplier to comply with the obligations imposed on a transferee by Regulation 13(4) of the Employment Regulations in respect of the transfer of any Transferring Employees on the Service Transfer Date except to the extent such failure is caused by or related to an act or omission of the Supplier or any Supplier Party.

## **7. MUTUAL OBLIGATIONS**

- 7.1 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to a Relevant Transfer will be fulfilled.
- 7.2 The Customer will assume (or will procure that the Replacement Supplier, as the case may be, will assume) the outstanding obligations of the Supplier and any Supplier Party in relation to the Transferring Employees in respect of accrued holiday entitlements and accrued holiday remuneration to the Service Transfer Date. In consideration, the Supplier will or will procure that any Supplier Party will pay to the Customer (or the Replacement Supplier as the case may be) within fourteen (14) days of the Service Transfer Date the full amount necessary to enable the Customer or the Replacement Supplier to meet the cost of providing any such untaken holiday entitlements and remuneration as at the Service Transfer Date. The Customer or the Replacement Supplier, as the case may be, will reimburse the Supplier and any Supplier Party any amount paid by

the Supplier or the Supplier Party before the Service Transfer Date in respect of holidays taken in excess of any Transferring Employee's entitlement to paid holiday in respect of the period ending on the Service Transfer Date.

## 8. **THIRD PARTY RIGHTS**

The parties agree that the Contracts (Right of Third Parties) Act 1999 ("CRiTPA") shall apply to **paragraphs 5, 6, 7 and 10** of this schedule to the extent necessary that any Replacement Supplier and Supplier Party shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by the Supplier or the Customer to the Supplier Party under those **paragraphs 5, 6, 7 and 10** in its own right pursuant to clause 1(1) of CRiTPA.

## 9. **PROVISIONS WHERE TRANSFER REGULATIONS DO NOT APPLY**

9.1 The following provisions shall apply in the event of a Service Transfer to which the Employment Regulations or the Acquired Rights Directive do not apply:

9.1.1 the Customer or the Replacement Supplier can, in its discretion, make to any of the employees listed on the Supplier's Provisional Staff List or any Supplier Personnel assigned to the Services an offer, in writing, to employ that employee under a new contract of employment to take effect on the day after the termination referred to in **paragraph 9.1.2** below of this schedule or at the earliest reasonable opportunity;

9.1.2 when the offer has been made by the Customer or Replacement Supplier and accepted by any employee or worker, the Supplier shall, and shall procure that any Supplier Party shall, permit the employee or worker to leave its employment, as soon as practicable depending on the business needs of the Supplier, which could be without the employee or worker having worked his full notice period, if the employee so requests and where operational obligations allow;

9.1.3 if the employee does not accept an offer of employment made by the Customer or Replacement Supplier, the employee shall remain employed by the Supplier (or the Supplier Party, as the case may be) and all Employee Liabilities in relation to the employee shall remain with the Supplier or the relevant Supplier Party;

9.1.4 if the Customer or the Replacement Supplier does not make an offer to any employee on the Supplier's Provisional Staff List or any Supplier Personnel, then that employee and all Employee Liabilities in relation to that employee remains with the Supplier or relevant Supplier Party.

10. **CONDUCT OF CLAIMS**

- 10.1 This **paragraph 10** shall apply to the conduct, by a party from whom an indemnity is sought under this schedule, of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity. The party having, or claiming to have, the benefit of the indemnity is referred to as the "**Beneficiary**" and the party giving the indemnity is referred to as the "**Indemnifier**".
- 10.2 If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this schedule ("**Claim**"), the Beneficiary shall give notice to the Indemnifier as soon as reasonably practicable and in any event within ten (10) Working Days of receipt of the same.
- 10.3 Subject to **paragraphs 10.4** and **10.5**, on the giving of a notice by the Beneficiary pursuant to **paragraph 10.2** above, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable co-operation, access and assistance for the purposes of such Claim and, subject to **paragraph 10.5** below, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 10.4 With respect to any Claim conducted by the Indemnifier pursuant to **paragraph 10.3** above:
- 10.4.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
  - 10.4.2 the Indemnifier shall not bring the name of the Beneficiary into disrepute;
  - 10.4.3 the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
  - 10.4.4 the Indemnifier shall conduct the Claim with all due diligence.



10.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:

10.5.1 the Indemnifier is not entitled to take conduct of the Claim in accordance with **paragraph 10.3** above;

10.5.2 the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant Claim within ten (10) Working Days of the notice from the Beneficiary under **paragraph 10.2** above or if the Indemnifier notifies the Beneficiary that it does not intend to take conduct of the Claim; or

10.5.3 the Indemnifier fails to comply in any material respect with the provisions of **paragraph 10.4** above.

#### **Sensitive claims**

10.6 With respect to any Claim for which the Customer or the Supplier or the Supplier Party are the Beneficiary and the conduct of which the Customer or Supplier acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Customer or the Supplier or the Supplier Party ("**Sensitive Claim**"), the Indemnifier shall only be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if any failure to do so results in an increase in the amount recoverable by the Beneficiary in respect of an indemnity under this Agreement, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.

10.7 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which **paragraph 10.3** above applies notwithstanding that it does not have the right to do so pursuant to **paragraph 10.3** if, in the reasonable opinion of the Beneficiary the Claim is, or has become, a Sensitive Claim. In such cases, the provisions of **paragraph 10.6** above shall apply.

#### **Recovery of sums**

10.8 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly

referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:

- 10.8.1 an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
- 10.8.2 the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue such recovery and that the Indemnifier is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnifier exceeds any loss sustained by the Beneficiary (including for this purpose any indirect Losses sustained by the Beneficiary which may be excluded by this Agreement from being recovered from the Indemnifier).

#### **Insurance**

- 10.9 Any person taking any of the steps contemplated by **paragraphs 10.2 to 10.6** shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement.

#### **Mitigation**

- 10.10 Each of the Customer and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this schedule.

#### **Taxation**

- 10.11 If any payment by one party under an indemnity in this Agreement is subject to income tax or corporation tax (or any tax replacing either or both of them) in the hands of the recipient (or a withholding made by the paying party in respect of tax), the recipient may demand in writing to the party making the payment that the payment shall be increased by such amount as would ensure that, after taking into account any such tax payable in respect of such additional amount, the recipient receives and retains a net sum equal to the amount it would have otherwise received had the payment not been subject to such tax or withholding.

## APPENDIX 1

[redacted]

## **AGREEMENT SCHEDULES**

### **SCHEDULE 9.3**

#### **KEY PERSONNEL**

### Key Personnel

Name	Role	Responsibilities and Authorities	Phase of the project during which they will be a Key Person
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]

**SCHEDULE 9.4**

**EQUALITY AND DIVERSITY**

## 1. COMPLIANCE WITH SCHEDULE

1.1 Within six (6) months of the Effective Date, the Supplier shall submit:

1.1.1 a draft diversity and equality delivery plan consistent with the principles set out in paragraph 2 below ("**Diversity and Equality Delivery Plan**") to the Customer for its approval (such approval not to be unreasonably withheld or delayed); and

1.1.2 the workforce monitoring data ("**Workforce Data**") set out at paragraph 3 below.

1.2 Where the Customer withholds approval of the Diversity and Equality Delivery Plan pursuant to paragraph 1.1 above, it shall identify the changes it reasonably requires to be made to the Diversity and Equality Delivery Plan together with the reasons for such changes. The Supplier shall amend the draft Diversity and Equality Delivery Plan so as to incorporate the changes reasonably required by the Customer and shall promptly re-submit the draft Diversity and Equality Delivery Plan to the Customer for approval.

1.3 Once approved by the Customer, the Supplier shall adopt and follow the agreed Diversity and Equality Delivery Plan, unless specified otherwise by the Customer.

1.4 Annually on 1<sup>st</sup> March, the Supplier will:

1.4.1 formally review, revise and resubmit the Diversity and Equality Delivery Plan for approval by the Customer; and

1.4.2 provide an updated set of Workforce Data.

1.5 Diversity and equality issues will be discussed jointly by the Customer and the Supplier at meetings of the Executive Board described in the Appendix to schedule 8.1 (Governance).

## 2. DIVERSITY AND EQUALITY DELIVERY PLAN

2.1 The Diversity and Equality Delivery Plan shall as a minimum include:

2.1.1 an overview of the Supplier's policies and procedures for preventing unlawful discrimination and promoting equality of opportunity in respect of:

2.1.1.1 age;

2.1.1.2 disability;

- 2.1.1.3 gender;
- 2.1.1.4 gender reassignment;
- 2.1.1.5 sexual orientation;
- 2.1.1.6 race; and
- 2.1.1.7 religion/belief.

Full policy documents shall be made available to the Customer on request.

2.1.2 An overview of Supplier's policies and procedures covering:

- 2.1.2.1 bullying;
- 2.1.2.2 harassment;
- 2.1.2.3 recruitment procedures;
- 2.1.2.4 staff training and development; and
- 2.1.2.5 victimisation.

Full policy documents shall be made available to the Customer on request.

2.1.3 Details of the way in which the policies and procedures referred to in paragraphs 2.1.1 and 2.1.2 above are, or will be, communicated within the Supplier's organisation (including relevant timescales and dates).

2.1.4 Details of diversity and equality related training delivered or to be delivered to Supplier Personnel (including relevant timescales and dates).

2.1.5 Details of the structures that are in place, or to be implemented, together with associated resources that are in each case to be directed towards ensuring diversity and equality within the Supplier's organisation (including relevant timescales and dates).

2.1.6 Details of any diversity and equality cases and tribunals (including volumes and outcomes).

2.2 Where the Supplier is delivering Services to customers on behalf of the Customer or to the Customer's staff, the Supplier must additionally provide evidence in the Diversity and Equality Delivery Plan that:

2.2.1 Equality Impact Assessments have been carried out prior to the Services being delivered and will be carried out in the event of any



changes to the Services, in accordance with Equality Legislation. Equality Impact Assessments should be carried out in conjunction with the Customer so the Supplier must consult with the Customer prior to completion.

- 2.2.2 The Supplier is making reasonable adjustments, as required by the Disability Discrimination Act 1995, to make the Services accessible to disabled people. All Supplier Personnel involved in delivery of the Services have had appropriate training so that they understand the duties required by Equality Legislation, and where services are being delivered on behalf of the Customer, the Supplier shall provide evidence that its employees understand the duties not to discriminate and to promote equality, in accordance with Equality Legislation.

### 3. **MONITORING AND REPORTING**

- 3.1 The Supplier shall supply the Workforce Data set out in paragraph 3.2 in relation to all Supplier Personnel involved in delivery of the Services. The Supplier is also encouraged (but not required) to supply equivalent Workforce Data relating to its wider workforce. All Workforce Data should be supplied using the data template agreed between the Parties and completed templates shall be incorporated into the Diversity and Equality Delivery Plan, together with the additional information required pursuant to paragraphs 3.3 and 3.4 in each case together with appropriate supporting evidence.

- 3.2 The Supplier will provide information detailing (in percentage terms):

- 3.2.1 the proportion of its employees who:

3.2.1.1 are female;

3.2.1.2 are disabled; and/or

3.2.1.3 prefer not to state gender and/or disability.

- 3.2.2 the proportion of its employees who in terms of ethnicity are:

#### **White**

3.2.2.1 white British;

3.2.2.2 white Irish;

3.2.2.3 of any other white background

#### **Mixed**

3.2.2.4 white and black Caribbean;

3.2.2.5 white and black African;

- 3.2.2.6 white and Asian;
- 3.2.2.7 of any other mixed background

**Asian or Asian British**

- 3.2.2.8 Indian;
- 3.2.2.9 Pakistani;
- 3.2.2.10 Bangladeshi;
- 3.2.2.11 of any other Asian background

**Black or Black British**

- 3.2.2.12 Caribbean;
- 3.2.2.13 African;
- 3.2.2.14 of any other Black background

**Chinese or other ethnic group**

- 3.2.2.15 Chinese;
- 3.2.2.16 of any other ethnic group

**Prefer not to state**

- 3.2.2.17 Prefer not to state ethnicity

For the avoidance of doubt, the seventeen (17) percentage figures to be submitted in relation to the categories listed in paragraphs 3.2.2.1 to 3.2.2.17 above (in each case in respect of the Supplier's employees) should total one hundred percent (100%).

- 3.2.3 the proportion of its Sub-contractors that are:
  - 3.2.3.1 small to medium sized enterprises (meaning enterprises with less than two hundred and fifty (250) employees and a maximum annual turnover of forty (40) million pounds);
- 3.3 The Supplier will review the Workforce Data in relation to each of the categories listed in paragraphs 3.2.1, 3.2.2 above and provide (where possible) comparisons against any official national/regional statistics that are publicly available.
- 3.4 The Supplier will provide evidence of the activities it is undertaking, including any plans it intends to undertake, in order to try to improve (where possible and appropriate) its diversity profile in each of the categories detailed in paragraphs 3.2.1, 3.2.

- 3.5 The Supplier will ensure at all times that it complies with the requirements of the Data Protection Legislation in the collection and reporting of Workforce Data.

## **Appendix A**

### **Equality Legislation**

Civil Partnerships Act 2004

Disability Discrimination Act 1995

Disability Discrimination Amendment Act 2005

Employment Equality (Age) Regulations 2006

Employment Equality (Religion or Belief) Regulations 2003

The Employment Equality (Sex Discrimination) Regulations 2005

Employment Equality (Sexual Orientation) Regulations 2003

Equal Pay Act 1970 (Amended) Equality Act 2006

Gender Recognition Act 2004

Race Relations Act 1976

Race Relations Amendment Act 2000

Race Relations Act 1976 (Amendment) Regulations 2003

Racial and Religious Hatred Act 2006

Sex Discrimination Act 1975

The Sex Discrimination (Gender Reassignment) Regulations 1999

Welsh Language (Wales) Measure 2011

## **AGREEMENT SCHEDULES**

### **SCHEDULE 10**

#### **GUARANTEE**

***[Redacted]***

**- and -**

***[Insert the name of the Beneficiary]***

## **DEED OF GUARANTEE**

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**THIS DEED OF GUARANTEE** is made the                      day of                      2014

**BETWEEN:**

- (1)     [redacted] ("**Guarantor**"); in favour of
- (2)     [*Insert the name of the public sector party to the Guaranteed Agreement*]  
         whose principal office is at [                      ] ("**Beneficiary**")

**WHEREAS:**

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

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

**1.       DEFINITIONS AND INTERPRETATION**

In this Deed of Guarantee:

- 1.1       unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.2       the words and phrases below shall have the following meanings:
  - 1.2.1       "**Guaranteed Agreement**" means the [                      ] made between the Beneficiary and the Supplier dated       ; and
  - 1.2.2       "**Guaranteed Obligations**" means all obligations of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are

expressly supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement.

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

## **2. GUARANTEE AND INDEMNITY**

- 2.1 The Guarantor guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.



- 2.2 The Guarantor undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under the Guaranteed Agreement or in respect of the Guaranteed Obligations.
- 2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
- 2.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
- 2.3.2 indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements) of whatever nature which may result or which such Beneficiary may reasonably suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.
- 2.4 , The Guarantor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.
- 2.5 The Guarantor shall be entitled to all rights, privileges, and defences available to the Supplier under the Guaranteed Agreement or otherwise. Any liability of the Guarantor under this Agreement Guarantee shall be coextensive with, but not in excess of, any liability of the Supplier to the Customer under the Guaranteed Agreement. The Guarantor's obligations and liability under this Deed of Guarantee (whether in the aggregate or individually) shall under no circumstances exceed those of the Supplier under the Guaranteed Agreement or otherwise.

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

3.1 If the Guaranteed Agreement is terminated for any reason other than:

3.1.1 termination for convenience by the Beneficiary pursuant to clause xx (Termination for Convenience by the [Beneficiary]);

3.1.2 termination by the Supplier pursuant to clause xx (Termination by the Supplier);

3.1.3 termination by the Beneficiary for a continuing Force Majeure Event pursuant to clause xx;

3.1.4 termination by agreement in writing by both the Beneficiary and the Supplier; or

3.1.5 expiry of the Term of the Guaranteed Agreement,

whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a

liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will (or procure that one of its Affiliates will), at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor (or Affiliate) under such substitute agreement shall be the same as if the Guarantor (or Affiliate) had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

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

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

4.1.1 [redacted]

4.1.2 [redacted]

4.1.3 For the Attention of [redacted]

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

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

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

- 4.2.2 if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or
- 4.2.3 if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.
- 4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.
- 4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.
5. **BENEFICIARY'S PROTECTIONS**
- 5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- 5.2.1 it shall not be discharged by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
- 5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
- 5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in

respect thereof; and

5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary provided the Beneficiary shall not be entitled to recover sums payable under this Deed of Guarantee more than once in relation to the same claim .

1.1 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance constituting breach by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation. For the avoidance of doubt, but without prejudice to the requirement to perform the Guaranteed Obligations, the Guarantor shall not be required to perform a Guaranteed Obligation to the extent that it has been satisfactorily performed by the Supplier.

5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.

5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.

5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become

due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary acting reasonably, may determine and notify to the Guarantor. At the end of the said period the Beneficiary shall return this Deed of Guarantee to the Guarantor.

5.8 This Deed of Guarantee shall remain in full force and effect until the earlier of:

5.8.1 the Beneficiary provides written confirmation that all Guaranteed Obligations have been duly and completely performed by the Supplier (including, for the avoidance of doubt, any Guaranteed Obligations stated in the Guaranteed Agreement to survive the expiry or termination of the Guaranteed Agreement); or

5.8.2 the Supplier shall have ceased to be under any actual or contingent liability to the Beneficiary in respect of the Guaranteed Obligations (including any such liabilities which may arise after the expiry or termination of the Guaranteed Agreement), in each case whether such liabilities arise after the termination or expiry of the Guaranteed Agreement.

## **6. RIGHTS OF SUBROGATION**

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

6.1 of subrogation and indemnity;

6.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and

6.3 to prove in the liquidation or insolvency of the Supplier,

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

For the avoidance of doubt, the provisions of this clause 6 shall not apply to cross indemnities or other security taken in the normal course of financial arrangements between the Guarantor and its affiliated companies generally and which do not relate to liabilities arising under the Guaranteed Agreement.

## **7. REPRESENTATIONS AND WARRANTIES**

The Guarantor hereby represents and warrants to the Beneficiary that:

- 7.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- 7.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
- 7.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to clause 3 have been duly authorised by all necessary corporate action and do not contravene or conflict with:
  - 7.3.1 the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
  - 7.3.2 any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
  - 7.3.3 the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets;
- 7.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 7.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

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

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

calculated from day to day at a rate per annum equal to [4%] above the base rate of the Bank of England from time to time in force provided that the obligation on the Guarantor to pay interest in accordance with this clause 8.2 shall be discharged to the extent that any interest has been paid by the Supplier to the Beneficiary in respect of the relevant Guaranteed Obligations.

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

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

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

## 10. **ASSIGNMENT**

The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person to whom the Guaranteed Agreement has been assigned or transferred in accordance with clause [ ] of the Guaranteed Agreement without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee subject to any such assignment or transfer not increasing the burden of the Guarantor.

## 11. **SEVERANCE**

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

## 12. **THIRD PARTY RIGHTS**

A person who is not a party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## 13. **GOVERNING LAW**

- 13.1 This Deed of Guarantee shall be governed by and construed in all respects in

accordance with English law.

- 13.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 13.3 Nothing contained in this clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 13.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- 13.5 The Guarantor hereby irrevocably designates, appoints and empowers the Supplier at its registered office (marked for the attention of the VP Commercial and Contracts from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.

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

EXECUTED as a DEED by )

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

Director

Director/Secretary



**NORTH WALES POLICE**

**SCHEDULE 11**

**NEW PROJECTS SCHEDULE**

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## Definitions

In this Schedule, unless the context otherwise requires, the following words shall have the following meanings:

- "FBC"** a detailed full business case proposal in relation to a New Project as described in **paragraph 5**;
- "Feasibility Cases"** the written feasibility cases produced by the Supplier pursuant to this Schedule 11 setting out in outline the nature and objectives of the proposed New Project;
- "OBC"** an outline business case proposal in relation to a New Project, as described in **paragraph 4**;
- "Open Book Accounting"** means:
- (a) maintenance of separate records of the following:
    - (i) full particulars of the costs of performing the Services, including those related to finance, investment and maintenance of the Supplier System;
    - (ii) a summary of any of the costs referred to above, including details of any funds held by the Supplier specifically to cover such costs, in such form and detail as the Customer may reasonably require to enable the Customer to monitor the performance by the Supplier of its obligations under this Agreement;
    - (iii) such other records as the Customer may reasonably require having regard to the cost to the Supplier of maintaining and providing such records;
  - (b) the keeping of books of account in accordance with best accountancy practice with respect to this Agreement showing in detail:

- (i) administrative costs
  - (ii) payments made to sub-contractors
  - (iii) capital and revenue expenditure, and
  - (iv) such other items as the Customer may reasonably require in order to conduct cost audits for verification of cost expenditure or estimate expenditure, for the purposes of this Agreement;
- (c) the making available of books of account for inspection by the Customer which shall only be requested by the Customer acting in good faith, and if reasonably requested a report of these;

**"New Project Materials"** in respect of any New Project, the SBC, Feasibility Case, the OBC, the FBC and all work-in-progress to which they relate and any ancillary or related documentation, information and Know-How prepared or generated by the Supplier in developing the SBC, Feasibility Case, OBC or FBC and/or in preparation for implementation by the Supplier of the New Project in question;

**"SBC"** a small business case for a proposed New Project which is valued at not more than £50,000 (fifty thousand pounds) or such amount as the Parties shall agree in writing from time to time;

**"CSI"** Continuous Service Improvement related change initiated by Feasibility Case which can result in a Change Request (CR) or an SBC. These are small scale enhancements and for the purpose of this schedule only SBC New Projects fall within scope of this Schedule.

## 1. OVERVIEW

- 1.1 For the avoidance of doubt, the Parties may agree in writing to vary any of the timescales set out in this Schedule 11, depending upon the circumstances, such agreement not to be unreasonably withheld or delayed.
- 1.2 This schedule 11 shall not apply to the development of Change Requests, unless otherwise express agreed by the Customer (at its sole discretion) in writing.

## 2. **NEW PROJECTS**

- 2.1 The Parties acknowledge the importance of developing individual New Projects in order to facilitate and achieve the Customer Objectives and to continually enhance and transform the Services.
- 2.2 The Supplier shall devote sufficient personnel, skill, know-how and other resource to generating Feasibility Cases for New Projects and developing SBCs, OBCs and FBCs (as relevant). Any New Projects will be developed in accordance with the provisions set out in this Schedule. The Customer will support such development via the provision of information, access to staff and joint working as appropriate and where agreed.
- 2.3 The Supplier, and/or the Customer may propose ideas for New Projects via a Feasibility Case.
- 2.4 The Supplier shall, and the Customer may, propose a range of types of New Projects, including New Projects which result in savings to the Customer and New Projects which have other service improvement benefits.
- 2.5 The Supplier shall be pro-active in proposing ideas for New Projects using the following mechanisms:
  - 2.5.1 Twice during the term of the Agreement, in Contract Year 1 and Contract Year 4 the parties will undertake a business and ICT “future state” and “gap” assessment that will inform the development of a portfolio of transformation New Projects. This will include representatives from the Customer’s business and ICT functions and representatives from the Supplier (to include the Client Engagement Director and the Technical Design Authority including any matter experts) and cover both ICT infrastructure, services and application projects and appropriate corresponding ICT enabled business transformation. Such New Projects will form the basis for a programme of enhancement activities over the Term.
  - 2.5.2 Regular reviews shall be taken in line with meetings of the Technology and Strategy Board to ensure that the programme of enhancements remains current and appropriate and that Feasibility Cases are being submitted for consideration.
- 2.6 In proposing ideas for New Projects and in producing an SBC or Feasibility Case and OBC in relation to a New Project, the Supplier shall consider and where appropriate take due account of:
  - 2.6.1 the need to continually improve the Services in accordance with the continuous improvement obligations;

- 2.6.2 the Customer's financial and strategic plans as revised from year to year by the Customer;
  - 2.6.3 statutory and other duties imposed upon the Customer from time to time in connection with improving or assessing performance of the police forces;
  - 2.6.4 the need to address national government agendas such as the Efficiency Programme and the improvement of the level of technology deployed by the Customer;
  - 2.6.5 the opportunities for joint working with other police forces and other public and private bodies and the ability of the Supplier to share development and implementation works across a number or all of its applicable contracts;
  - 2.6.6 the affordability, funding potential and deliverability of individual New Projects. The Customer and the Supplier shall discuss the affordability of specific New Projects and the programme of New Projects at meetings of the appropriate governance board;
  - 2.6.7 any time constraints expressed by the Customer or the timescales for preparation and presentation of the SBC, OBC and FBC and overall delivery of the New Project including the operation of the time scale for the Customer and Supplier approval process;
  - 2.6.8 any areas identified for improvement of the Services identified pursuant to this Agreement; and
  - 2.6.9 relevant Laws, regulations, guidance and best practice from time to time (including policies of the United Kingdom e-government and any best practice developed in other local authorities, including "pathfinder" or equivalent authorities).
- 2.7 The Customer and the Supplier shall agree the basis of intended funding for the specific New Projects. Where the Customer requests the Supplier to consider alternative funding arrangements, the Supplier shall use reasonable endeavours to identify sources for such funding to facilitate the implementation and operation of New Projects and present these to the Customer for consideration.
- 2.8 The Supplier shall propose New Projects within the affordability criteria which may be communicated by the Customer from time to time.
- 2.9 The Supplier shall not propose New Projects which, if implemented, would place the Customer in a position where it fails to comply with EU public procurement rules and regulations. The provisions of **paragraph 6** shall apply accordingly.

- 2.10 The Parties shall establish by agreement in writing the proposed timescale within which the Supplier shall complete the SBC, OBC and FBC (as applicable) or, if no timescale is proposed, within a reasonable time as the idea for the New Project is proposed.
- 2.11 The Customer shall provide reasonable access to information and assistance to the Supplier where necessary to enable the Supplier to develop the SBCs, Feasibility Cases, OBCs and FBCs.
- 2.12 The SBCs, Feasibility Cases, OBCs and FBCs shall identify any additional Customer Responsibilities for approval at the relevant governance board in which case such Customer Responsibilities shall be reasonable, time-bound and specific.

### 3. **SMALL BUSINESS CASE**

- 3.1 Where a New Project qualifies as an SBC, the Supplier shall not (subject to **paragraph 3.3**) be required to provide an OBC and FBC but instead shall prepare an SBC.
- 3.2 The Supplier shall ensure that each SBC shall (unless otherwise agreed by the Parties in writing) include the following information:
  - 3.2.1 sufficient information regarding the proposed New Project to enable the Customer to approve or reject the New Project;
  - 3.2.2 the objectives of the New Project including the target timetable for achieving those objectives;
  - 3.2.3 an options appraisal in relation to the New Project and consequences of proceeding and not proceeding in relation to the New Project;
  - 3.2.4 the scope of the New Project and assumptions and exclusions, deliverables of the New Project, time scales and outcomes in terms of improvements to services, cost reductions or otherwise;
  - 3.2.5 The financial consequences of implementing the New Project, in accordance with the principles set out in **paragraph 8**, and demonstration that the New Project represents value for money for the Customer including by:
    - 3.2.5.1 providing comprehensive pricing details on an Open Book Accounting, auditable and justifiable basis, such pricing to include (where requested by the Customer) an option of capital payment and an option of a variation to the Charges;

- 3.2.5.2 reasonably assisting the Customer should it wish to undertake any benchmarking or market testing of the prices against those payable in comparable situations; and
    - 3.2.5.3 providing any assumptions upon which the price is based which are not otherwise explicitly stated;
  - 3.2.6 any other information as maybe relevant in the circumstances including any of the information referred to in **paragraphs 5.5.1 to 5.5.21** as is relevant to the New Project.
- 3.3 The Supplier shall present the SBC to the Customer and the Customer shall determine whether or not the Supplier should proceed with the New Project, or, whether further detail is required and it should be developed into an FBC.
- 4. **OUTLINE BUSINESS CASE**
  - 4.1 The Technology and Strategy Board shall determine at its absolute discretion whether it requires the Supplier to produce any OBCs over the Term.
  - 4.2 The Supplier shall ensure that each OBC shall (unless otherwise agreed by the Parties in writing) include the following information:
    - 4.2.1 sufficient information regarding the proposed New Project to enable the Customer to approve or reject the New Project in principle and to enable it to decide whether to proceed to FBC;
    - 4.2.2 a New Project overview with objectives of the New Project demonstrating (where appropriate) alignment with the Customer's corporate and strategic objectives;
    - 4.2.3 the broad scope of the New Project and assumptions and exclusions;
    - 4.2.4 the broad deliverables, anticipated time scales, anticipated success criteria and likely outcomes in terms of improvements to services, cost reductions or otherwise;
    - 4.2.5 the Supplier's outline approach to the New Project, including details of organisation of the New Project and roles and responsibilities, working under the auspices of the Technology and Strategy Board;
    - 4.2.6 an outline identification of costs to be incurred and resources required from the Customer, Supplier and Third Parties;
    - 4.2.7 the funding and pricing options for the New Project, including options of:



- 4.2.7.1 funding and payment on a risk reward basis;
- 4.2.7.2 opportunities for securing external public funding where relevant;
- 4.2.7.3 funding on an alternative basis to a risk reward basis (such as fixed price or day rates); and
- 4.2.7.4 payments to the Supplier by an increase in the Charges or such other payment mechanism as envisaged for the New Project where agreed;
- 4.2.8 a consideration of dependencies, risks and assumptions (including a sensitivity analysis on the areas within the Suppliers cost base which are subject to a caveat);
- 4.2.9 any implications for existing Services or services within the Customer;
- 4.2.10 any implications for the Customer, Supplier and identifiable third parties and their respective personnel;
- 4.2.11 a reasoned proposal as to whether a competitive procurement is required or desirable in relation to a New Project (acknowledging that it will ultimately be the Customer's decision as to whether a competitive procurement is required), a statement as to whether the Supplier wishes to and should be entitled to bid in such procurement process and an outline of the potential impact on the Supplier's delivery of the Services if the Customer were to implement the New Project through a third party;
- 4.2.12 whether there are any national agreements in the market which might be available for the Customer to use;
- 4.2.13 the deliverables to be provided by way of a completed OBC (which shall include a New Project proposal which is in line with the other deliverables set out in this **paragraph 4** and the price and funding options set out in **paragraph 2.8**);
- 4.2.14 Service Levels which can be used to measure the success of the New Project in accordance with **paragraph 9**; and
- 4.2.15 any information in relation to the issues set out in **Appendix 1**.
- 4.3 The OBC will be submitted to the Technology and Strategy Board for its consideration.

- 4.4 The Technology and Strategy Board shall consider and discuss the OBC and may recommend that the Supplier amends or clarifies any aspect of the OBC. The Supplier shall take account of such recommendations in revising the OBC for re-submission to the Technology and Strategy Board. Where the Technology and Strategy Board accepts an OBC, it may also refer the OBC to the Executive Board for approval.
- 4.5 If a governance board requires clarification or amendment of any aspect of the OBC, the Supplier shall provide such clarification or amendment within 10 (ten) Working Days (or such period as is otherwise agreed) of receipt by the Supplier of a request by the Customer in writing for the same.
- 4.6 The Customer may accept or reject any OBC at its sole discretion. Within 10 (ten) Business Days (or such period as is otherwise agreed) of receipt of the OBC (modified if applicable pursuant to **paragraph 4.5** and complying in all respects with the requirements of **paragraph 4.1**) or within such longer period as is dictated by the Customer's decision making procedures, the Customer shall give notice to the Supplier as to whether to proceed to prepare (or at the request of the Customer, commission a third party to prepare) an FBC. If the Customer is prepared to proceed to an FBC, the provisions of **paragraph 5** shall apply.
- 4.7 Notwithstanding **paragraphs 4.1** to **4.6**, the Customer may decide at its sole discretion to produce an OBC or a FBC in respect of a New Project itself or commission a third party to do so.

5. **FULL BUSINESS CASE**

- 5.1 No OBC shall proceed to an FBC without the prior written approval of the Customer.
- 5.2 Where the OBC is approved (as amended, if applicable, by the Customer) the Supplier shall, in consultation with the Customer, prepare a FBC in respect of a New Project in accordance with the OBC, within 20 (twenty ) Business Days of a request by the Customer (or where this period is unreasonable in the context of the New Project involved, such different period as the Parties may agree in writing when the OBC is approved).
- 5.3 If the Customer decides following approval of the OBC that:
- 5.3.1 it will open the New Project to a competitive procurement process after the FBC stage and the Supplier does not wish to be considered as part of that process; or
  - 5.3.2 it is likely to commission a third party to implement the New Project after FBC stage;

then the Customer may request the Supplier to prepare an FBC containing only the information stated in **paragraphs 5.5.1 to 5.5.13** inclusive (or such part of that information as the Customer may specify). This is without prejudice to the Customer's rights after submission of the FBC pursuant to **paragraph 6.1**.

- 5.4 If the Customer decides following approval of the OBC that it will open the New Project to a competitive procurement process after the FBC stage and the Supplier wishes to be considered as part of the competitive procurement process, then the Customer may request the Supplier to prepare an FBC containing only the information stated in **paragraph 5.5.3**, further details of any likely impact on the Supplier's delivery of the Services of the Customer implementing the New Project through a third party building upon the detail provided pursuant to **paragraph 4.2.11** and such other information contained in **paragraphs 5.5.1 to 5.5.13** inclusive as the Supplier can reasonably deliver without prejudicing the competitive procurement process.
- 5.5 The Supplier shall ensure that the FBC sets out a more comprehensive and detailed analysis of the matters required for the OBC (as stated in **paragraph 4.1**) and the following information:
- 5.5.1 sufficient information regarding the proposed New Project to enable the Customer to approve or reject the New Project;
  - 5.5.2 the objectives of the New Project including the target timetable for achieving those objectives;
  - 5.5.3 a detailed options appraisal, including consequences of not proceeding with the New Project and consequences of following other options for achieving the objectives and financial consequences of the various options;
  - 5.5.4 an assessment and proposed allocation of the risks associated with the New Project and ways in which the risks will be managed and minimised;
  - 5.5.5 the quantum and type of resources which the Customer will need to make available (including staff time in implementing the changes);
  - 5.5.6 an identification of improvements, cost savings and other benefits which the Customer should enjoy following implementation of the New Project and specific, measurable targets for such improvements, cost savings and other benefits;
  - 5.5.7 any potential adverse impact or disruption to the Customer and any consequent adverse impact on the ability of the Customer to own, access and/or use the assets used in the deployment of the Services

on expiry or termination of the Agreement or on the proper operation of the business continuity and exit transition arrangements under the Agreement;

- 5.5.8 the New Project timetable, milestones and success criteria;
- 5.5.9 any ICT or other assets which would need to be procured or deployed and such information in relation to these assets as is reasonably required by the Customer in order to enable the Customer to obtain independent advice on these if necessary;
- 5.5.10 any changes required to the IT as part of implementation of the New Project;
- 5.5.11 the training which would be required to Customer employees as part of the New Project;
- 5.5.12 such evidence as the Customer may reasonably require to demonstrate that the Supplier (or where it is proposed that a third party, as the Sub-contractor, will implement the New Project, the third party) has the required skills, expertise, experience and resources to implement the New Project;
- 5.5.13 without prejudice to **paragraph 5.6**, an assessment of proposed changes to the Services and/or the Agreement as a consequence of the New Project including any proposed adjustment to the caps on liability under **clause 55** (Limitations on Liability) of the Agreement;
- 5.5.14 the financial consequences of implementing the New Project, in accordance with the principles set out in **paragraph 8**, and demonstration that the New Project represents value for money for the Customer including by:
  - 5.5.14.1 providing comprehensive pricing details on an Open Book Accounting, auditable and justifiable basis, such pricing to include an option of a capital payment and an option of a variation to the Charges;
  - 5.5.14.2 assisting the Customer should it wish to undertake any benchmarking or market testing of the prices against those payable in comparable situations; and
  - 5.5.14.3 providing any assumptions upon which the price is based which are not otherwise explicitly stated;
- 5.5.15 the Supplier's proposal as to the ownership of Intellectual Property Rights and Know-How likely to be generated by the development and

implementation of the New Project (expanding upon the information set out in the OBC and FBC), if different from the arrangements envisaged by this Agreement, including a reasoned justification for the proposed departure from such arrangements;

- 5.5.16 where appropriate given the nature of the implementation of the proposed New Project, service level agreements for the services under the proposed New Project, such service level agreements to follow broadly the format and content of this Agreement in relation to the Services and to contain, as a minimum, full outcome and output based service descriptions response times and minimum availability for those Services as appropriate together with key performance standards;
- 5.5.17 any employees of the Customer, the employment of which the Supplier considers will transfer to the Supplier or be seconded to the Supplier if the Supplier were to carry out the implementation of the New Project, together with full employee details and terms and conditions, baseline costs and the proposed date of such transfer or secondment;
- 5.5.18 any employees of the Supplier, which the Supplier considers would transfer to the Customer or third party if the Supplier were to implement the New Project together with full employee details and terms and conditions, baseline costs and the proposed date of such transfer and where applicable Schedule 9.1 (Staff Transfer) shall apply to the proposed transfer;
- 5.5.19 any IT or other assets of the Customer and any contracts or licences which the Customer may have with third parties which the Supplier would wish to have available to it in order to carry out the New Project and in relation to the contracts or licences which need to be assigned or novated identification as to which party will bear any charges imposed by the third party to those contract or licences;
- 5.5.20 any assets of the Supplier and any contracts or licences which the Supplier may have with third parties which the Supplier considers would transfer back to the Customer as part of the implementation of the New Project (and Schedule 8.5 (Exit Management) shall, to the extent applicable apply to the proposed transfer);
- 5.5.21 the Financial Model shall be used unless the Supplier can demonstrate to the Customer's reasonable satisfaction that the Financial Model is not an appropriate model to use and the Supplier shall provide the Customer with such appropriate alternative which shall be approved or rejected by the Customer, at its absolute discretion;

- 5.5.22 Service Levels which can be used to measure the success of the New Project; and
- 5.5.23 any other information as may be relevant in the circumstances, including the information which would be provided as part of an Impact Assessment pursuant to Schedule 8.2 (Change Control Procedure), any information in relation to the issues set out in **Appendix 1** and any other information requested by the Customer.
- 5.6 The Supplier undertakes that the proposals set out in the FBC shall be effective in ensuring the successful implementation and operation of the New Project, shall be reasonable in all the circumstances and shall keep to a minimum any adverse practical and operational implications of the New Project to the Customer. During the implementation by the Supplier of the New Project and beyond, the Supplier will continue to be obliged to perform the Services in accordance with this Agreement. No FBC shall assume or require any deterioration in the Service Levels, or other diminution in service delivery during such implementation or thereafter.
- 5.7 The FBC will be submitted to the Technology and Strategy Board for review and discussion. If the Technology and Strategy Board approves an FBC, it may, at its absolute discretion refer the FBC to the Executive Board for its consideration.
- 5.8 Where the FBC is placed before the Executive Board pursuant to **paragraph 5.7**, the Executive Board shall consider and discuss the FBC and may recommend that the Supplier amends or clarifies any aspect of the FBC. The Supplier shall take account of such recommendations in revising the FBC for re-submission to the Executive Board..
- 5.9 If the Customer requires clarification or amendment of any aspect of the FBC, the Supplier shall provide such clarification or amendment within 10 (ten) Business Days (or such period as is otherwise agreed) of receipt by the Supplier of a request by the Customer in writing for the same.
- 5.10 If the Customer is not satisfied (acting reasonably) with the proposals set out in any FBC, the Parties shall negotiate in good faith to reach an accommodation and the Supplier will comply promptly with all reasonable requests of the Customer for information and for amendments to be made to the FBC.
- 5.11 The Customer may accept or reject any FBC at its sole discretion. Within 10 (ten) Business Days of receipt of any FBC, (modified, if applicable pursuant to **paragraphs 5.9 and 5.10** and complying in all respects with the foregoing requirements of this **paragraph 5**) or within such longer period as is dictated by the Customer's decision making procedures, the Customer shall give written notice to the Supplier as to whether the proposals set out in the FBC are accepted.

- 5.12 If the Customer gives written notice to the Supplier that the FBC is approved the following provisions shall apply:
- 5.12.1 the New Project shall be implemented and delivered by the Supplier and the Customer in accordance with the terms of the FBC;
  - 5.12.2 this Agreement and any agreements made pursuant to it shall be deemed to have been modified to the extent made necessary by the proposed implementation of the New Project (on the basis accepted by the Customer pursuant to **paragraph 5.11**) so that this Agreement so modified shall apply in full to the implementation of the New Project and the performance of the Services (incorporating the New Project) thereafter; and
  - 5.12.3 the Supplier shall forthwith provide to the Customer a proposed revised copy in writing of the Documentation for review and agreement by the Customer, which incorporates the changes made necessary as a result of the New Project.
- 5.13 If the Executive Board or the Customer rejects any OBC or FBC, as soon as reasonably possible, but in any event within 10 (ten) Business Days following any Customer's payment due for the relevant FBC, the Supplier shall provide the New Project Materials to the Customer or to such third party as the Customer may nominate and the Supplier shall provide such information, documentation and assistance as is reasonable in the circumstances, together with all relevant information in relation to staff deployed, records, data and any contracts between the Supplier and third party contracts in order to enable the Customer or the third party to achieve the development and implementation of the New Project (or a similar New Project) for the Customer within the New Project timescale in question (including such information, documentation and assistance as is necessary in order to enable the Customer to advertise and/or invite tenders for the work involved and/or award a contract for the work to a third party).

## 6. **COMPETITIVE PROCUREMENT**

- 6.1 The Supplier acknowledges that the Customer may decide in relation to individual New Projects to carry out the work otherwise than through the Supplier or go through a competitive tender process in relation to a New Project (whether or not it is required to do so by Law). The Customer may notify the Supplier of its intention to do this following:
- 6.1.1 any notification by the Supplier to the Customer of an idea for a New Project;
  - 6.1.2 the provision to the Customer of the OBC; or

6.1.3 the provision to the Customer of the FBC.

If such notice is served the provisions of **paragraph 5.13** shall apply in relation to all New Project Materials in connection with the proposed New Project.

6.2 Where the Customer uses a competitive procurement in relation to a New Project which is directly related to the Services the Supplier shall be entitled to tender for such New Project, subject to **paragraph 6.2.1** and provided that:

6.2.1 the Supplier has not previously submitted an OBC, FBC or Impact Assessment for such New Project which the Customer has rejected; and

6.2.2 provided that the Supplier has the appropriate skills and continues to pre-qualify.

6.3 The Supplier shall not be entitled to any preferential treatment by the Customer if it chooses to participate in any tender process operated by or on behalf of the Customer in relation to the development and implementation of New Projects. The Supplier recognises that, any tendering process operated by the Customer shall be subject to compliance with Laws, best value for money and the Supplier will have to qualify on its own merits according to the Customer's then current tendering procedures and requirements.

6.4 If the Customer wishes to conduct a competitive procurement process in respect of a New Project and the Supplier is not to be a bidder in that procurement the Customer may request the Supplier to conduct the procurement on behalf of the Customer or (at the Customer's option) provide assistance to the Customer in connection with the procurement.

6.5 The Supplier's decision to withdraw from the competitive procurement process shall be final and the Supplier shall co-operate with the Customer in the procurement by providing all relevant baseline and other information to the interested third parties.

## 7. **PAYMENT**

7.1 Subject to paragraph 7.2, the portofolio development referred to in paragraph 2.5.1, all Feasibility Studies, all SBCs and all OBCs shall be carried out by the Supplier at no cost to the Customer. Where the Customer jointly develops these with the Supplier, the Customer's costs shall be borne by the Customer.

7.2 The Parties agree that there may be exceptional circumstances where the Supplier may be entitled to some payment from the Customer for the development of SBCs and OBCs. The Parties agree that this shall be in exceptional circumstances only and shall only apply where the Customer has



requested the Supplier to produce an SBC and/or OBC in relation to which the Supplier will have no involvement in the future delivery of the products or services referred to in that SBC/OBC and there shall be no resulting benefit to the Supplier. In these circumstances the Parties shall use reasonable endeavours to agree whether it is appropriate for the Supplier to develop such SBCs/OBCs and if so whether the Supplier should be paid for the production of SBCs/OBCs in the circumstances and if so shall agree an appropriate amount to be paid to the Supplier.

- 7.3 As at the date of this Agreement, the Supplier shall provide to the Customer free of charge 100 man days of effort ("FBC Man Days") for the production of FBCs during the Term of this Agreement. The Parties agree that such FBC Man Days are provided free of charge by the Supplier and are not included as a cost within the Financial Model.
- 7.4 Within 20 (twenty) Working Days following the development of the portfolio in accordance with paragraph 2.5, the Supplier shall provide to the Customer a proposal (the "FBC Development Proposal") as to how the FBC Man Days should be used in the development of the FBCs in order to gain the maximum benefit for the Customer out of such FBC Man Days. Following submission of the FBC Development Proposal, the Parties shall seek to agree how such FBC Man Days shall be used and shall make any necessary adjustments to the FBC Development Proposal.
- 7.5 Following agreement of the FBC Development Proposal in accordance with paragraph 7.4, the Supplier shall provide such FBC Man Days to the Customer in accordance with the FBC Development Proposal which may be adjusted from time to time depending on the circumstances by agreement between the Parties. The Supplier shall ensure that such FBC Man Days are provided by properly qualified and experienced individuals. If any FBC Man Days are not provided by suitably qualified and experienced individuals and the Customer can demonstrate that this has resulted the quality of the FBCs being inadequate, the Customer shall be entitled to a credit in relation to such FBC Man Days.
- 7.6 The Supplier shall monitor utilisation of the provision of the FBC Man Days and shall notify the Customer when 80% of this provision has been used. Following such notification by the Supplier, the Supplier shall discuss with the Customer and shall put forward a further proposal to the Customer as to how the Supplier might be able to provide further man days free of charge to the Customer for the future for the development of FBCs. The Parties acknowledge that this will depend upon the success of the use of the FBC Man Days and it being acknowledged that the Customer may be required to pay for some additional man days at some point in time depending on the circumstances and agreement reached between the Parties.

- 7.7 The Customer reserves the right to abort the development of an FBC at any time and shall be required to pay any abortive costs of the Supplier.

## 8. **NEW PROJECT PAYMENT MECHANISM**

- 8.1 The financial implications of the New Project, as set out in any OBC and FBC must be reasonable and proportionate in all the circumstances and any proposed capital payment or increase in the Charges must be reasonable, taking into account the Charges payable prior to such capital payment or increase, but in the light of the level of additional activity and investment that would have to be undertaken by the Supplier in order to implement the New Project. Where these financial implications involve an increase in the Charges, without prejudice to the foregoing provisions of this **paragraph 8.1**, such increase must be based on Open Book Accounting and any applicable pricing assumptions set out in the Financial Model. The Supplier's set profit margin resulting from the New Project shall be [redacted] unless either the Supplier or the Customer can properly justify that the profit margin should be higher or lower than this depending on the nature of the New Project and its associated risk profile.
- 8.2 The New Project payment mechanism shall include a provision which incorporates a benefits realisation plan which sets out the benefits to be realised from that New Project. Where the outcome of the New Project is the achievement of efficiency savings the Supplier will identify in the OBC and FBC the expected level of savings and produce a plan which sets out how the Customer and Supplier will work together to ensure the realisation of such benefits including provisions as to how those benefits will be monitored and accounted for.
- 8.3 Where the New Project will result in a net financial benefit, the Parties shall agree how the benefit of this shall be shared between the Parties depending on the nature of the FBC and its associated risk profile. Where a New Project produces efficiency savings, the Customer shall have full autonomy to determine the utilisation and application of any realised savings subject to the payment of the Supplier's share of the benefits under this paragraph 8.3.
- 8.4 The Supplier's costs and profit margin related to the implementation of New Projects shall be excluded from any gain share calculation required under schedule 7.3 (Value for Money Provisions) but the Parties shall agree an appropriate gain share calculation in relation to each New Project (if applicable.)

## 9. **IMPLEMENTATION**

- 9.1 The Supplier shall implement and manage the New Project and the Customer shall assist the Supplier in implementation of the New Project in each case in accordance with the agreed terms pursuant to **paragraph 5.12** and the other provisions of this Agreement.

- 9.2 The New Project shall be implemented in accordance with Schedule 8.2 (Change Control Procedure).
- 9.3 Each OBC and FBC shall contain Service Levels (including those measuring customer satisfaction) that shall be used to measure the successful implementation of the New Project as well as the ongoing performance standards the Customer can expect. Following the implementation of each New Project, the Supplier shall carry out a detailed, and objective evaluation of the impact of the implementation including a consultation with a representative cross-section of Customer staff or others (as appropriate given the nature of the New Project) in order to obtain feedback on and to assess whether the implementation of the New Project has achieved its objective (as those objectives were stated in the OBC and FBC). The timing of this evaluation and consultation shall be such as is appropriate given the target timetable for achieving the New Project objectives.
- 9.4 Within 10 (ten) Business Days (or such period as is otherwise agreed) of completion of the evaluation the Supplier shall provide to the Customer a detailed and comprehensive written summary of the outcome of the evaluation pursuant to **paragraph 9.3** and of the action it proposes to take as a result. The Supplier shall implement (with assistance from the Customer as required) as soon as reasonably possible any improvements or other changes which the evaluation identifies are necessary in order to achieve the New Project deliverables, provided that this shall neither require the Supplier to make improvements beyond the original deliverables of the New Project as indicated nor the Customer to provide assistance beyond that originally anticipated in delivering the New Project.

## APPENDIX 1

### ISSUES TO BE CONSIDERED IN A NEW PROJECT

In preparing New Projects, where relevant, the following issues ought to be considered and where necessary incorporated in to the FBC (and, for the avoidance of doubt, where such issues pertain to issues covered by this Agreement, such issues shall be dealt with in accordance with the agreed principles set out in this Agreement in relation to such issues):

1. Information required pursuant to **paragraph 5.5**.
2. Identify how any assets proposed for use in the New Project shall be utilised by the Supplier in delivering the New Project and how such assets will be dealt with on termination and whether any continuing use of such assets is necessary for business continuity.
3. Test Plan, including the timescales for developing the plan.
4. Insurance requirements over and above those in the Agreement. Review of term and type of insurance in the Agreement. Insurance implications where assets are transferring between the Parties. Responsibility for this insurance. How such assets will be insured.
5. Implementation Plan for the New Project, including the identity, work address, qualifications and experience of:
  - 5.1 the programme manager; and
  - 5.2 the programme team.
6. Terms for the design, procurement, provision, installation and implementation of IT required as part of the New Project.
7. TUPE/Pensions issues. Appropriate Schedule containing supporting detail.
8. Source Code/Escrow arrangements.
9. Adjustments required to the Schedules 2.2 (Service Levels) and 7.1 (Charges and Invoicing).
10. Applicability of liquidated damages to the New Project..
11. Review of the indemnity provisions and liability caps set out in clause 55 (Limitations on Liability).

12. Treatment of all payments to the Supplier in the event of Step-In in accordance with clause 64 (Step-In Rights) on a New Project.
- 12.1 Identification, where applicable, of any benefits and savings.
13. Requirements for publicity or advertising which are different to these provisions in the Agreement.
14. Adjustments to governance arrangements required and/or specific governance arrangements.
15. Impact on current Customer Responsibilities and the assumptions upon which the Supplier is basing the New Projects.
16. Output requirements for the New Project.
17. Details of any benchmarking/market testing exercises that are required in accordance with Schedule 7.3 (Benchmarking).
18. Provisions in relation to the provision of hardware that are required under the New Project.
19. Additional warranties.
20. Adjustment to the compensation on termination provisions in Schedule 7.2 (Consequences of Expiry or Termination).
21. Adjustment to the BCDR Plan.
22. Such other matters as the Parties may consider from time to time.

**NORTH WALES POLICE**

**SCHEDULE 12**

**RISK LOG SCHEDULE**

## Completed Risk Matrix

Risk	Description	Ownership	Risk Mitigation
<b>Performance Management</b>			
Failure to achieve the specified service levels or KPIs and PIs	The risk that the Service Provider (and/or sub-contractor) does not achieve the specified performance levels	Supplier	The Supplier has based its solution on the SLAs and KPIs set out in Schedule 2.2 Service Levels. The Supplier has extensive experience of managing third parties via its governance arrangements to ensure they achieve SLAs when contracted directly with the Supplier or under ICT Managed Service Partner type arrangements.
Technical adequacy of the design of service delivery	The risk that the Service Provider does not have the technical skills to achieve the specified performance levels	Supplier	The Supplier shall ensure it has identified sufficient resource and skills to deliver the design, either within its own 68,000 strong global organisation or via third parties with associated knowledge transfer.
Inputs	The risk of costs exceeding the Service Provider's expectations	Supplier	The Supplier has undertaken a complete full risk assessment of the solution, and necessary due diligence to validate input costs. The Supplier has extensive experience of cost estimation to meet fixed price arrangements over many thousands of contracts. This is the Supplier's normal commercial model.
Maintenance and refurbishment of assets	The risk that assets that are owned/controlled by the Service Provider require more maintenance, refurbishment or replacement than expected	Supplier	The Supplier shall base maintenance and refurbishment plans upon previous experiences and manufacturer recommendations. The Supplier will agree a refresh strategy with the Customer. The use of readily available commercial off the shelf equipment, for which maintenance needs are well established, mitigates this risk further.
Change of output specifications	The risk of changes (pre- or post-commissioning) that are	Joint	The contract contains flexibility to accommodate foreseeable changes either within existing scope or at pre-agreed cost. Built into the contract is the flexibility to adjust volume of

<b>Risk</b>	<b>Description</b>	<b>Ownership</b>	<b>Risk Mitigation</b>
	reasonably foreseeable		services within certain parameters, via the flexibility model. This provides certainty regarding the impact of material changes on the costs of the service.
Technical innovation	The risk of adopting innovations that do not deliver the expected benefits	Joint	The Supplier shall undertake trials/proof of concepts or seek examples of deployment to validate benefits, together with due diligence to ensure benefits are deliverable and realistic. For innovation projects, the Supplier shall develop business cases for consideration by the Customer that include assessments of costs, risks and benefits, and the Supplier shall consider risk / reward pricing for such innovations to ensure focus on realisation of benefits.
Technical obsolescence	The risk of (i) equipment and technology being unable to deliver the specified services and (ii) upgrades or new releases of software	Joint	The Supplier shall use industry standard products wherever appropriate, and review providers' product roadmaps for the technology. The Supplier will procure support on behalf of the Customer to ensure products are updated with the latest features in order to stay within support, and test new releases and/or upgrades prior to their deployment. The use of readily available commercial off the shelf equipment mitigates this risk further. The Supplier's technical and service management processes will inform the Customer of the potential impact of technical obsolescence of Customer assets and recommend replacement or refresh actions for the Customer to take.
Industrial relations	The risk of events that adversely affect the delivery of the services or the costs incurred by the Service Provider	Joint	Both parties will ensure engagement with any recognised trade unions and utilise any employee forums to identify and address any issues that may threaten delivery of the services. Appropriate business continuity plans should be put in place to ensure the risks are further minimised.



<b>Risk</b>	<b>Description</b>	<b>Ownership</b>	<b>Risk Mitigation</b>
Business continuity	The risk of events that interrupt the delivery of the services (whether these are related to business processing or ICT services)	Joint	The Supplier has comprehensive business continuity in place to ensure interruptions to its business are minimised. In addition the Supplier shall work with the Customer to develop a business continuity plan specific to the Services.
Benefits realisation/savings	The risk that the Service Provider fails to achieve the benefits expected from implementation of a Project or fails to identify or achieve guaranteed savings	Supplier	The Supplier shall conduct due diligence, to ensure savings are identified and are within the Supplier's remit to deliver, with any dependencies on the Customer agreed and time bound before they are guaranteed. The Supplier shall also identify benefits via the business cases prepared for innovative investment projects and will consider risk/reward pricing for such innovations to ensure focus on realisation of benefits.
Change of ownership of Service Provider	The risk that such a change results in weaker financial standing or support for the venture	Customer	The Supplier's shareholder structure makes change of ownership unlikely. The Supplier's shareholders are unlikely to agree to any changes that weaken the financial standing of the company.
<b>Financial</b>			
Price inflation	The risk of rising prices affecting the Service Provider's expected profits, except to the extent that changes are covered by the indexation of the Contract Price.	Supplier	The Supplier has considerable experience of undertaking long term contracts, modelling movements in costs and mitigating risks associated with rising prices and will use this experience to include appropriate provision (if any) to mitigate this risk, and will contract with third parties on a back-to-back basis. The Supplier is very comfortable contracting on a fixed price basis for its services.
Interest rates	The risk of interest rates affecting profitability	Supplier	The Supplier has agreed a payment profile that, as far as possible, minimises working capital requirements for the Supplier, so that cost of capital risk is minimised. The Supplier is using internal funds for this project, not third party funding, so that sensitivity to changes in interest rates is limited.

<b>Risk</b>	<b>Description</b>	<b>Ownership</b>	<b>Risk Mitigation</b>
Capital investment	The risk of planned capital funding being available and affordable	Joint	Ensure budgeting is undertaken as a rolling forecast of future needs, which will allow identification of any issues early, so that if necessary, options can be considered in good time. The Supplier shall work with the Customer to ensure the required investments can be appropriately budgeted.
Pensions	The risk of increases in the employer's contribution for a defined benefit pension scheme for certain staff	Joint	Value of defined benefit scheme (if any) will be assessed at the start of the contract and the current employer of the person affected will fund any shortfall identified. The employer contribution is unlikely to change during the term of the contract. The same process will apply upon exit in reverse.
Insurable risks	For instance, employer and public liability, losses through fire, theft, flood, fraud	Supplier	The Supplier maintains a corporate insurance programme that covers certain risks, where it does not carry insurance the financial standing is sufficient to carry any loss.
Third party funding	The risk that expected grant funding is provided by government, EU or other funder	Customer	The Supplier is not expecting to utilise any such funding but will work with the Customer to identify the availability of any such funding.
Payments in error	The risk that the Service Provider makes erroneous payments to third parties	Supplier	The Supplier has proven administrative procedures to prevent this. In the unlikely event that this occurs will endeavour to include set off provisions in contracts to recover any erroneous payments.
Achievement of profit targets	The risk that the Service Provider's profits are affected by the real terms price reductions included in the Contract	Supplier	Based upon previous experience, the Supplier has included achievable efficiencies within its pricing and is entirely comfortable contracting on a fixed price basis.
Financial sustainability and solvency	The risk of the Service Provider (or any sub-	Joint	The Supplier expects that funds generated will be adequate to meet business needs in the foreseeable

<b>Risk</b>	<b>Description</b>	<b>Ownership</b>	<b>Risk Mitigation</b>
	contractor) becoming insolvent		future while maintaining adequate levels of liquidity. With respect to Sub-contractors, the Supplier undertakes appropriate due diligence checks prior to contract, and monitoring post contract. The Supplier's procurement organisation monitors all suppliers credit rating on an on-going basis to identify issues early.
<b>Legislation/ Regulation</b>			
Changes of law or external regulations	The risk of changes of law that affect NWP's powers, functions and/or duties with consequential changes being made to the contract	Customer	The Supplier is not aware of any current areas of consultation that are likely to impact the contract. Post contract, both parties will seek to identify future changes and discuss options to address them will continue within the regular governance meetings.
General Change in Law	The risk of general changes in law that affect the cost of service delivery by the Service Provider	Supplier	The Supplier has reviewed current areas of consultation to identify potential changes and included provision in the pricing for any identified risks.
Changes in tax regime	The risk of changes that affect the profitability of the Service Provider	Supplier	The Supplier has reviewed current areas of consultation to identify potential changes and included provision in the pricing for any identified risks.
Changes of control and/or policy of NWP	The risk that NWP chooses to make changes to the contracts which are not the result of changes imposed on NWP from government	Customer	Neither party has identified any potential changes that require mitigation in the contract.
Approvals	The risk that the Service Provider is unable to obtain (or is	Supplier	The Supplier shall seek earliest possible approvals, ensure sufficient time in plans to obtain such approvals, and develop mitigation plans should these

<b>Risk</b>	<b>Description</b>	<b>Ownership</b>	<b>Risk Mitigation</b>
	delayed in obtaining) desired approvals from third parties.		approvals not be received when required. An example of where this planning will be applied could be security accreditation.
<b>Management of Contract</b>			
Effective handover/ transition from current contract	The risk that event or omissions in the handover period affect the performance of the Service Provider for part or all of the contract term	Joint	The Supplier shall develop a comprehensive Implementation plan and risk log for approval by the Customer. The Supplier will work together to identify any risks, events and omissions that may impact execution of the plan or the services going forward so that their impact can be mitigated.
Force Majeure	The risk of an event that triggers the <i>Force Majeure</i> clause and causes losses	Joint	Ensure appropriate business continuity plans are in place to mitigate the impact of any Force Majeure event, both for the services and also internally within each organisation.
<b>External Risks</b>			
Economic changes	The risk that changes in the economy reduce or increase the demand for services	Customer	The contract includes the flexibility to adjust volume of services within certain parameters, via the flexibility model. This provides certainty regarding the impact of material changes on the costs of the service.
Demographic changes	The risk that changes increase or decrease the level of demand for services	Customer	The contract includes the flexibility to adjust volume of services within certain parameters via the flexibility model. This provides certainty regarding the impact of material changes on the costs of the service.

## Additional risk areas considered

The Supplier has identified the following additional significant risks.

Risk	Description	Ownership	Risk Mitigation
Due Diligence	The risk that the information available for due diligence is not sufficient for the Service Provider to scope the Services	Joint	The Parties have worked together to identify information required and agree reasonable assumptions where the information is not available that balance risk between the Parties.
Business Change	The risk that the business needs to change processes to deliver the full benefit of the contracted services	Customer	The Customer will identify areas that require change and commission a programme to implement such change.
TUPE	The risk that staff who have the legal right to transfer to the Service Provider, but who are not included on the lists supplied by the Customer to the Supplier, choose to exercise their right.	Joint	Parties to work together to identify staff in-scope for TUPE transfer. The contract includes a process that deals with Customer or their Sub-contractor's staff who subsequently claim they should have transferred to the Supplier.
System safety	The risk that certain critical applications non availability will have safety implications (threat to public safety or NWP staff safety)	Customer	The Customer retains responsibility for completion of safety assessments and the management of associated risks.
Late Contract Award	The risk that delay of formal Contract Award affects the ability of the Supplier to meet Implementation deadlines. This includes the risk that the Supplier shall be unable to commit to migration to the new PSN network before expiry of the Customer's existing KCOM contract.	Customer	<p>If it becomes apparent that any delay may affect the PSN implementation, the Supplier and the Customer will discuss and agree which of the possible mitigation actions is most appropriate. These options include:</p> <ol style="list-style-type: none"> <li>1) The Customer budgets for potential short-period extension of the KCOM service and allows for the premium price uplift which reflects the commercial leverage that KCOM could exert</li> <li>2) The Customer plans to novate the KCOM contract to the Supplier, for the Supplier to extend the KCOM service and allow for the premium price uplift reflecting the commercial leverage that</li> </ol>

Risk	Description	Ownership	Risk Mitigation
			<p>KCOM could exert. This action would be taken under Change Control</p> <p>3) The Supplier works closely with the Customer pre-contract to identify where advance orders for new circuits can be placed to reduce risk of delay, this action to be taken under commercial terms to be defined which would provide commercial protection for the Supplier.</p>
Site Survey	<p>The risk that the Supplier's Sub-contractor is unable to install new network circuits in line with the Implementation Plan due to issues with access to land, wayleaves or other factors beyond the control of Supplier or its Sub-contractor. Such issues cannot be identified until site surveys are completed by Sub-contractor post-contract.</p>	Joint (50/50 share proposed)	<p>The Supplier has requested the selected replacement network provider undertake site surveys in advance of contract at key sites to identify any issues early so that this risk can be mitigated to the fullest extent possible.</p>

**NORTH WALES POLICE**

**SCHEDULE 13**

**DATA PROCESSING STATEMENT**



## DATA PROCESSING AGREEMENT

This Schedule contains further contractual provisions to ensure the protection and security of data passed from the Data Controller to the Data Processor for processing. In the event of any conflict between this Schedule and the Agreement the terms of the Agreement shall take precedence.

'Processing' means any operation, or set of operations which can be performed on personal data. The definition is very broad but includes collecting, viewing, recording, storing, retrieving, adapting or altering, disclosing, transmitting, disseminating, erasing or destroying; in essence almost anything that can be done with the data.

This schedule is intended to ensure that there are sufficient security measures in place and the processing complies with the 7<sup>th</sup> Principle of the Data Protection Act 1998, requiring that information must be kept securely.

The Data Protection Act 1998 was brought into force on 1st March 2000 and works in two ways. It gives individuals certain rights. It also says those who record and use personal information must be open about how the information is used and must follow the eight principles of good information handling. Personal data is any information that relates to a living individual.

### The Principles

- We must process personal data fairly and lawfully
- That information is processed for specific purposes
- The information held is adequate, relevant and not excessive
- The data should be accurate
- This information should not be kept for longer than necessary
- It should be processed in accordance with individual's rights
- It is kept securely
- It is not transferred to countries without adequate protection

### **1. The Parties**

For the purposes of this Schedule the Customer is herein after called the "Data Controller" and the Supplier is hereinafter called the "Data Processor".

1.2 The purpose of this Schedule is to define the requirements placed upon the Data Processor by the Data Controller in relation to the processing of data owned or held by the Data Controller on his behalf by the Data Processor arising out of the objective set out in Clause 2 below. The obligations of the Data Controller under the Data Protection Act 1998 must be met, particularly those arising from Principle 7.

1.3 All parties who will have access to The Data agree to sign an Undertaking of Confidentiality Appendix A where this is not already included within employee's contract of employment.

### **2. Purpose**

2.1 The Data Controller has contracted with the Data Processor for the latter to provide the following services: -

2.1.1 Project Management Services



- 2.1.2 Service and Service Desk Management
- 2.1.3 Managed Desktop Services
- 2.1.4 Remote/Mobile/Home User Support Services
- 2.1.5 Incident and Problem Management
- 2.1.6 Configuration, Change and Release management
- 2.1.7 Licence Management
- 2.1.8 ICT Procurement Service
- 2.1.9 Applications Management Development and Support Services
- 2.1.10 Hosting Services
- 2.1.11 Network Management
- 2.1.12 Email Management
- 2.1.13 Systems Administration
- 2.1.14 Database Administration
- 2.1.15 Infrastructure Operations Services
- 2.1.16 Capacity Planning/Performance monitoring
- 2.1.17 Scheduled Maintenance Services
- 2.1.18 Security Management Service
- 2.1.19 Firewall & Antivirus
- 2.1.20 Authentication Services
- 2.1.21 Backup Services
- 2.1.22 Business Continuity Management and Disaster Recovery Services
- 2.1.23 ICT Service Reporting and Service Review

To the extent specified within the Contract

2.2 Data processing incorporates all or any of the following;

- 2.2.1 Computer records and printouts
- 2.2.2 CCTV tape recordings
- 2.2.3 Audio tape recordings
- 2.2.4 Manual filing systems
- 2.2.5 Anything that can identify a living individual

Further information can be found at [www.ico.gov.uk](http://www.ico.gov.uk)

### **3. Definitions**

- 3.1 In this Agreement, the expressions "Data Controller", "Data Processor", "Personal Data", "Sensitive Personal Data", "Processing", "Information Commissioner", "Subject Access" have the same meaning as in Sections 1, 2, and 6 of The Data Protection Act 1998, as amended by The Freedom of Information Act 2000.
- 3.2 The "Data" is defined as the personal data of North Wales Police staff which will be provided by the Data Controller or by the staff themselves to the Data Processor in line with item 2.1 above.
- 3.3 Security Incident: A **Security Incident** is any suspected failure in information security, namely:
  - Accidental or deliberate unauthorised destruction of information
  - Accidental or deliberate unauthorised modification of information
  - Accidental or deliberate unauthorised disclosure of information
  - Deliberate and unauthorised non-availability of the system
  - Unauthorised access to the system
  - Misuse of data
  - Theft of assets (including loss or suspected loss of a document or other media classified as RESTRICTED or above)
  - Any other event that affects data security, including the physical security of buildings or failures in procedures.

### **4. Information provision**

- 4.1 The Data being provided to the Supplier is vast, including but not limited to: employee numbers vehicle numbers and occasions personal information of Officers/Staff of the Customer this is in addition to any other information which may be required by the Supplier to be able to deliver the required Services. This data is extracted within the Customer from various systems and departments, such as the finance system, payroll and fleet system. All information owned or held by the Customer is subject to the Force Protective Marking Scheme as set out in the Protective Marking Procedure and should be marked by the Customer in accordance with the guidelines laid down in the Procedure. Where no marking is visible on the data, a minimum protective marking of RESTRICTED will be assumed.
- 4.2 All Data will be handled, transported and stored in accordance with its protective marking.
- 4.3 Where applicable, The Data Processor will extract any data from the Customer's computer systems using reasonable skill and care and will ensure that no loss, damage, modification or corruption is caused to any Customer data in any system accessed during the course of providing the Services.
- 4.2 The Data Processor will process all data from or intended for the Customer in accordance with the terms of this Schedule.
- 4.3 Ownership of all Data provided by or to the Customer shall at all times remain with the Data Controller.

## **5. Use, Disclosure and Publication**

- 5.1 The Data will be used solely for the Purpose as defined above. The use of depersonalised data for statistical purposes is also permitted.
- 5.2 The Data Controller will retain ownership of all data. No Customer Data may be copied, published, broadcast or otherwise disseminated to any third party without his consent in writing. Where Data relates to a data subject (an identifiable living individual) and can be clearly linked to that individual, their consent must also be sought for the dissemination of such data to any third party.
- 5.3 Access to the Data will be restricted to the personnel who have the appropriate level of vetting and who are the employees or agents of the Data Processor. In the event that the Data Processor should assign or appoint any other employees or agents to work on the purpose, they will also be subject to the terms of this Schedule.
- 5.4 All data processing will be undertaken in accordance with any relevant legislation or Force policies e.g. the Force Information Standards Policy (FISP), Force Protective Marking Procedure etc which have been provided in advance to the Data Processor in writing.
- 5.5 The Data Processor will not copy any data or hold it within any other system without the written permission of the Data Controller.

## **6. Data Protection and Human Rights**

- 6.1 The parties agree and declare that the Data will be used and processed with regard to the rights and freedoms enshrined within the European Convention on Human Rights.
- 6.2 All data processing will be undertaken in accordance with any relevant legislation e.g. Data Protection Act 1998, Freedom of Information Act 2000. The Data Processor (to include employees and agents employed on behalf of the Data Processor) must undertake to comply with the provisions of the Data Protection Act 1998.
- 6.3 The Data Processor will notify any particulars as may be required to the Information Commissioner.
- 6.4 Any Data Protection and Information Security issues will be referred to the Customer Information Standards & Compliance Section.

- 6.5 The Customer Head of Information Standards & Compliance or Representative may undertake monitoring or audit to ensure compliance with the terms of this Agreement.

## **7. Confidentiality**

- 7.1 The Data Processor will treat all Data owned by the Customer as private and confidential and will take all reasonable and appropriate measures to safeguard such data accordingly.
- 7.2 All employees and suppliers/subcontractors of the Data Processor who have access to the Customer's data will be made aware of the terms of this Agreement.
- 7.3 The obligations imposed upon the Data Processor and their employees and suppliers/subcontractors under this Schedule will continue in full force after the expiry or termination of the Agreement.
- 7.4 Respect for the privacy of individuals should be guaranteed in any processing of the Data supplied to the Data Processor.
- 7.5 No use of the Data will be made by any data matching or other exercise by the Data Processor.

## **8. Retention, Review and Weeding.**

- 8.1 The Data Processor will have access to the Customer's data for the Term of the Agreement. After this period, the data will be returned to the Data Controller or securely destroyed in line with the instructions of the Data Controller. If the data has been destroyed, the Data Processor must confirm this action in writing
- 8.2 All Customer Data obtained by the Data Processor shall be destroyed or deleted securely when no longer required.

## **9. Security**

- 9.1 The Data Processor recognises that the Data Controller has obligations relating to the security of data in his control under the Data Protection Act 1998 and ISO270001. The Data Processor will apply those relevant obligations as detailed below on behalf of the Data Controller during the Term of the Agreement.
- 9.2 The Data Processor agrees to apply appropriate security measures, commensurate with the requirements of principle 7 of the Data Protection Act 1998 to the Data e.g. make accidental compromise, loss or damage unlikely during storage, handling, use, processing, transmission or transport; deter deliberate compromise or opportunist attack, and promote discretion in order to avoid unauthorised access.
- 9.3 All individuals involved in the purpose must be aware of and adhere to the security principles contained in this document.
- 9.4 The Data Processor will ensure that all employees, agents & subcontractors/suppliers with access to Customer data have been vetted to a level deemed satisfactory by the Data Controller.
- 9.5 The Data Processor will ensure that all employees, agents & subcontractors/suppliers with access to Customer data receive adequate data protection & information security awareness training.
- 9.6 The Data Processor will ensure that any perceived security incidents or vulnerabilities regarding the Data identified by its employees, agents & subcontractors/suppliers are reported to the representatives of the Data Controller at the earliest opportunity. The Data Processor will extend full cooperation to the representatives of the Data Controller

in relation to the investigation of any such incident or mitigation of any damage arising from such incident.

- 9.7 All Data transfer shall take all technical security measures, including secure means data of transfer, storage, system access as described in the contract, and as a minimum will comply with the Customer's Protective Marking Policy at Appendix B
- 9.8 Both parties agree to comply with reasonable requirements concerning storage, access or use.
- 9.9 The Data Processor will ensure that the Data will be secured against accidental or intentional loss or damage by means of regular backups. They will agree disaster recovery procedures with the Data Controller.
- 9.10 Access to Customer data will be confined to authorised employees, agents & subcontractors/suppliers of the Data Processor as necessary to achieve the purpose. In the event that an authorised individual ceases to be involved with the purpose, access rights to the Customer web server will be withdrawn.
- 9.11 The Data Processor will ensure that no unauthorised personnel have access to Customer data.
- 9.12 There will be no use of sub-contractors to process Customer data without the prior written approval of the Data Controller. Approved Sub-Contractors are listed in Schedule 4.3.
- 9.13 The Data Controller may wish to review the security measures implemented by the Data Processor. Checks may be carried out by the Data Controller or his representatives to ensure that the above arrangements are in place.
- 9.14 The Data Processor will ensure that the personal data accessed is not used other than as identified within this Schedule, and that the Schedule is complied with. Checks will be carried out by the Data Controller or his representatives to ensure that the above arrangements are in place.

## **10. Subject Access Requests**

- 10.1 The Data Protection Act 1998, s.7 provides individuals with a right to have access to data, which is held about them, by a Data Controller, on computer or manual files – unless an exemption applies where information can be withheld under certain circumstances.
- 10.2 The Data Processor shall give all reasonable assistance as is necessary to the Data Controller in order to enable him to:
  - Comply with request for subject access from the data subjects;
  - Respond to Information Notices (as defined by the Data Protection Act 1998 served upon him by the Information Commissioner;
  - Respond to complaints from data subjects;
  - Investigate any breach or alleged breach of the Act.

in accordance with his statutory obligations under the Data Protection Act 1998.

- 10.3 The receipt by the Data Processor of any subject access requests, to the Data covered by this Agreement must be reported and any relevant information be forwarded, at the earliest opportunity to the Data Protection and Information Security Section who will arrange the relevant response to that request.
- 10.4 This Agreement also acts in fulfilment of part of the responsibilities of the Data Controller as required by paragraphs 11 and 12 of Schedule 1, Part II of the Data Protection Act 1998.

## **11. Complaints & Breaches**

- 11.1 Any complaints in respect of the Data and the processing thereof, will be brought to the attention of the designated manager of the Customer and will be dealt with in accordance with the Customer's internal complaints procedure.
- 11.2 The parties agree that any breach of this Data Processor Agreement will seriously undermine and affect the credibility of the Purpose, and may render parties liable for breach of the law.

## **12. Limitation of Liability and Indemnity**

- 12.1 In consideration of the provision of the Data for the Purpose, the Data Processor undertakes to indemnify and keep indemnified the Data Controller against all damage, damages, losses, expenses, liabilities, costs, claims, proceedings and demands whatsoever, which may be incurred by the Data Controller as a result of the Data Processor's breach of this Schedule provided that this indemnity shall not apply:
- where the liability arises from information supplied by the Data Controller which is shown to have been incomplete or incorrect, unless the Data Controller establishes that the error did not result from any wilful wrongdoing or negligence on his part
  - unless the Data Controller notifies the Data Processor as soon as possible of any action, claim or demand to which this indemnity applies, commits the Data Processor to deal with the action, claim or demand by settlement or otherwise and renders the Data Processor all reasonable assistance in so dealing;
  - To the extent that the Data Controller makes any admission which may be prejudicial to the defence of the action, claim or demand.
  - Any liabilities under this clause 12 will be capped in accordance with levels set out in clause 55 of the Agreement.

## **13. Disputes**

- 13.1 Any disputes between the parties arising out of the conditions or breach of this Agreement will be decided in accordance with Schedule 8.3.

## **14. Variation**

- 14.1 This Schedule will continue throughout the Term of the Agreement and for as long as the Data is held by the Data Processor unless superseded or replaced by the agreement of both parties
- 14.2 To ensure the terms of this Schedule are being adhered to, the Data Controller and Data Processor will each delegate a named individual to oversee this function. In the event that the individual(s) cease to continue in their roles, replacements must be identified.
- 14.3



**HEDDLU GOGLEDD CYMRU**  
Gogledd Cymru diogelach

**NORTH WALES POLICE**  
A safer North Wales

### **Appendix A - Undertaking of Confidentiality**

I, ....., as an employee of .....involved in the purpose as defined in the Data Processing Agreement between North Wales Police and (company or organisation) .....hereby acknowledge the responsibilities arising from this Agreement. I understand that my activities in relation to this purpose mean that I may have access to North Wales Police data and that such access shall include:

- a) The processing of information held on computer or displayed by some other electronic means, or
- b) The processing of manually held information in written, printed or photographic form.

I undertake that; -

1. I shall not communicate to nor discuss with any other person the contents of the data except to those members involved in the purpose.
2. I shall not retain, extract, copy or in any way use any of the North Wales Police data to which I have been afforded access during the course of my duties for any other purpose.
3. I shall not place any North Wales Police data onto any other computer or computer system.
4. I will only operate computer applications or manual systems that I have been trained to use. This training will include the requirements of the Data Protection Act 1998 (which prescribes the way in which personal data may be obtained, stored and processed).
5. I will comply with the appropriate physical and system security procedures made known to me by the (person acting on behalf of the Data Processor to ensure compliance with the agreement).
6. I will act only under instruction from the Contract Owner (person acting on behalf of the Data Controller) or other relevant official in the processing of any North Wales Police Data.
7. I will not publicise or make public any document produced using North Wales Police data without the prior consent of the Data Controller.

I understand that the North Wales Police data is subject to the provisions of the Data Protection Act 1998 and that by knowingly or recklessly acting outside the scope of this Agreement I may incur criminal and/or civil liabilities.

I undertake to seek advice and guidance from the named individual acting on behalf of the Data Controller in the event that I have any doubts or concerns about my responsibilities or the authorised use of the data and/or aggregate data defined in the Agreement

I have read, understood and accept the above.

Name.....Signed.....Date.....

## **Appendix B – Protective Marking Policy**



Protective Marking  
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