

SERVICES AGREEMENT

DATED 17 December 2018

(1) National Grid UK Limited

and

(2) IBM United Kingdom Limited

FRAMEWORK AGREEMENT

relating to
Applications Development and Applications Maintenance Services

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THIS AGREEMENT is made on

17 December

2018

BETWEEN:

- (1) **National Grid UK Limited**, a company registered in England and Wales under company number 04508773 whose registered office is at 1-3 Strand, London, WC2N 5EH (the Customer); and
- (2) **IBM United Kingdom Limited**, a company registered in England and Wales under company number 741598 whose registered office is at PO Box 41, North Harbour, Portsmouth, Hants. PO6 3AU (the Supplier)

(each a Party and together the Parties).

INTRODUCTION

- A The Customer wishes to create a framework for providers of various applications development, applications maintenance and other related services.
- B The Customer invited prospective suppliers to respond to the pre-qualification AQ/DAQ using the Utilities Vendor Database (UVDB) operated by Achilles Group Ltd under the following codes on 20 March 2018:
 - (i) "2.1.2 Software Development Services (Part of Software Maintenance)"; and
 - (ii) "2.1.3 Software Support Services";for application development and application maintenance.
- C The Supplier was selected to become a Supplier under this Agreement on the basis of its response to the RfP for Application Development and Application Maintenance (ID WS1311977678) published on 21 June 2018, and responded to on 20 August 2018 via Ariba.
- D The Supplier is a leading provider of applications development, applications maintenance and other related services.
- E On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Customer selected the Supplier as its preferred supplier.
- F Following negotiations, the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

IT IS AGREED as follows:

SECTION A – PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.

1.2 In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) reference to a gender includes the other gender and the neuter;
- (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
- (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (e) the words 'including,' 'other,' 'in particular,' 'for example' and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words 'without limitation';
- (f) references to 'writing' include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- (g) the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- (h) unless otherwise provided and except for references in Annexes 1 to 2 of Schedule 5.1 (*Software*), references to clauses and Schedules are references to the clauses and Schedules of this Agreement and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and
- (i) references to this Agreement are references to this Agreement as amended from time to time.

1.3 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Customer and the Parties shall update this Agreement with a reference to the replacement hyperlink.

1.4 If there is any conflict between the clauses and the Schedules or any Annexes to the Schedules or any Call-Off Agreement, the conflict shall be resolved in accordance with the following order of precedence:

- (a) in respect of any Call-Off Agreement, the 'special conditions' set out in such Call-Off Agreement; then
- (b) the clauses and Schedule 1 (*Definitions*); then
- (c) in respect of any Call-Off Agreement, the terms of such Call-Off Agreement other than the 'special conditions' set out in such Call-Off Agreement; then

- (d) Schedules 2.1 (*Services Description*) and 2.2 (*Performance Levels*) and their Annexes; then

any other Schedules and their Annexes.

1.5 The Schedules and their Annexes form part of this Agreement.

2. DUE DILIGENCE

2.1 The Supplier acknowledges that, subject to the Allowable Assumptions:

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

and such actions, timetable and costs are fully reflected in this Agreement, including the Services Description or Customer Responsibilities as applicable.

2.2 The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor, subject to clause 2.3, shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

- (a) any unsuitable aspects of the Operating Environment;
- (b) any misinterpretation of the Customer Requirements; or
- (c) any failure by the Supplier to satisfy itself as to the accuracy or adequacy of the Due Diligence Information.

2.3 The Parties shall comply with the provisions of Paragraph 9 of Part C of Schedule 7.1 (*Charges and Invoicing*) in relation to the verification of any Allowable Assumptions.

3. WARRANTIES

3.1 The Customer represents and warrants that:

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

3.2 The Supplier represents and warrants that:

- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b) it has full capacity and authority to enter into and to perform this Agreement;
- (c) this Agreement is executed by its duly authorised representative;
- (d) it has all necessary consents and regulatory approvals to enter into this Agreement;
- (e) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its

knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;

- (f) its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- (g) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- (h) all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the AQ, DAQ and RfP (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Customer in writing prior to the date of this Agreement;
- (i) it has notified the Customer in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- (j) it has all necessary rights in and to the Licensed Software, the Third Party IPR, the Supplier Background IPR and any other materials made available by the Supplier (or any Sub-contractor) to the Customer that are necessary for the performance of the Supplier's obligations under this Agreement or the receipt of the Services by the Customer;
- (k) the Contract Inception Report is a true and accurate reflection of the Costs and pre-tax income forecast by the Supplier;
- (l) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- (m) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- (n) neither the Supplier nor any of its officers, agents, employees or Sub-contractors has:
 - (i) committed an offence under the Modern Slavery Act 2015 (a '**MSA Offence**'); or

- (ii) been notified that it is subject to an investigation relating to an alleged MSA Offence; or
 - (iii) is aware of any circumstances in its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015.
- 3.3 The representations and warranties set out in clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing.
- 3.4 Each of the representations and warranties set out in clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
- 3.5 If at any time a Party becomes aware that a representation or warranty given by it under clauses 3.1 and 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.6 The fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination that the Customer may have in respect of breach of that provision by the Supplier.
- 3.7 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

SECTION B – THE SERVICES

4. TERM

- 4.1 This Agreement shall come into force on the Effective Date.
- 4.2 This Agreement shall continue in force for a period of three (3) years from the Effective Date (**‘Initial Term’**) unless it is:
- (a) terminated at an earlier date by operation of Law or in accordance with clause 33 (*Termination Rights*); or
 - (b) extended by the Customer in accordance with clause 4.3.
- 4.3 The Customer may extend the Initial Term of this Agreement for one (1) or more periods, each of which shall be at least one (1) year in duration (**‘Extension Period’**), by giving at least ninety (90) days’ written notice to the Supplier before the end of the Initial Term (as it may have been extended).
- 4.4 The aggregate length of extensions to the Initial Term pursuant to clause 4.3 shall not exceed two (2) years.

5. SERVICES

Standard of Services

- 5.1 The Supplier shall provide:
- (a) the Implementation Services from (and including) the Implementation Services Commencement Date; and
 - (b) the Operational Services in each case from (and including) the relevant Operational Service Commencement Date.
- 5.2 The Supplier shall ensure that the Services:
- (a) comply in all respects with the Services Description; and
 - (b) are supplied in accordance with the Supplier Solution and the provisions of this Agreement.
- 5.3 The Supplier shall ensure that where:
- (a) the Operational Services to be provided from any Operational Service Commencement Date are similar to services that the Customer was receiving immediately prior to that Operational Service Commencement Date (such similar services being **‘Preceding Services’**); and
 - (b) the standard and level of service received by the Customer in respect of any of the Preceding Services in the twelve (12) month period immediately prior to that Operational Service Commencement Date have been disclosed to the Supplier in the Due Diligence Information (such preceding services being **‘Relevant Preceding Services’**),

the Operational Services to be provided from the relevant Operational Service Commencement Date that are similar to the Relevant Preceding Services are in each case provided to a standard and level of service that is at least as good as the standard and level of service received by the Customer in respect of the Relevant Preceding Services in the twelve (12) month period immediately prior to the relevant Operational Service Commencement Date.

5.4 The Supplier shall:

- (a) perform its obligations under this Agreement, including in relation to the supply of the Services and any Goods in accordance with:
 - (i) all applicable Law;
 - (ii) without limiting the generality of paragraph 5.4(a)(i), in compliance with the Modern Slavery Act 2015 and the Modern Slavery Policy;
 - (iii) Best Industry Practice;
 - (iv) the Standards;
 - (v) the Baseline Security Requirements;
 - (vi) the Quality Plans;
 - (vii) the Customer IT Strategy; and
 - (viii) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of paragraphs 5.4(a)(i) to 5.4(a)(vii); and
- (b) deliver the Services using efficient business processes and ways of working having regard to the Customer's obligation to ensure value for money.

5.5 In the event that the Supplier becomes aware of any inconsistency between the requirements of paragraphs 5.4(a)(i) to 5.4(a)(vii), the Supplier shall immediately notify the Customer Representative in writing of such inconsistency and the Customer Representative shall, as soon as practicable, notify the Supplier with which requirement the Supplier shall comply.

No exclusivity

5.6 The Supplier is not the exclusive or sole supplier of services of the same or similar nature to the Services (including any future additions to or expansions of the Service) to the Customer or any Service Recipient.

5.7 The Customer may at any time obtain from a third party or perform itself services of the same or similar nature as the Services and there is no obligation whatsoever on the Customer to invite or select the Supplier to provide any Services and/or to purchase any Services under this Agreement.

Work Packs

- 5.8 The Customer hereby appoints the Supplier as a potential provider of the Services and the Supplier shall be eligible to be considered for the award of Work Packs by the Customer during the Term. The Supplier may from time to time be invited to provide certain services via the mechanism for agreeing and implementing Work Packs set out in Schedule 2.1 (*Services Description*). The services provided under any Work Pack form part of the Services under this Agreement.

Provision of Services

- 5.9 This Agreement governs the overall relationship of the Parties in relation to the Services provided by the Supplier to the Customer, and sets out at Annex 1 to Schedule 2.1 (*Services Description*):
- (a) the procedure for the Customer to request the provision of Services from the Supplier under a separate Call-Off Agreement; and
 - (b) the Template Call-Off Terms, which sets out the applicable 'call-off' terms, to be entered into by the Supplier and the Customer.
- 5.10 The Customer enters into this Agreement for its own benefit and for the benefit of the other Service Recipients.
- 5.11 Notwithstanding anything to the contrary in this Agreement, in no circumstances shall any member of the Customer Group or other Service Recipient:
- (a) underwrite or act as a guarantor or surety of the Customer's liabilities or obligations; or
 - (b) be liable for any charges or other sums owed by the Customer under this Agreement.
- 5.12 Subject to clauses 25 (*Limitations on Liability*) and 43 (*Third Party Rights*), the Supplier agrees that the Customer may recover all costs (including legal costs and costs of enforcement), expenses, liabilities (including tax liability), injuries, losses, damages, claims, demands, proceedings and judgments arising out of or in connection with this Agreement whether incurred by the Customer or any other Service Recipient in respect of the Services as if the same were incurred by the Customer itself. The Customer shall not be entitled so to seek recovery if and to the extent that recovery would result in 'double recovery' by more than one member of the Customer Group for the same loss.
- 5.13 The Customer shall, in relation to this Agreement, be liable for the acts and omissions of the members of the National Grid Group as though those acts and omissions were made by the Customer itself.
- 5.14 The Customer may at any time remove from the scope of the Services (i) any Service Recipient; (ii) any member of the Customer Group or (iii) any business or operations carried on by any member of the Customer Group, by providing the Supplier forty five (45) days' notice. If the Customer so notifies the Supplier then the Charges shall be reduced by a reasonable amount, such variation to be

determined in accordance with the Change Control Procedure to reflect any reduction in the provision or volume of Services.

Divested Businesses

- 5.15 If a Divested Business requires, following divestment, services identical to or similar to the Services it was receiving before divestment, the Supplier shall upon the Customer's written request provide those services (or a portion of them, as directed by the Customer) for the remainder of the term of this Agreement, including any renewals, or such other shorter period as the Customer may direct.
- 5.16 The terms of a supply of services to a Divested Business pursuant to clause 5.15 shall be the same as the terms under which the Services were provided to the Divested Business immediately prior to divestment, including in relation to Charges; but that Divested Business shall (unless otherwise expressly agreed in writing) be entirely responsible for any and all charges and other amounts due in relation to those Services, and the Supplier shall not look to the Customer for payment for any charges associated with those Services.
- 5.17 If the Supplier incurs additional, incremental costs in relation to the provision of services to a Divested Business, where those costs are a direct consequence of the divestiture, the Supplier may charge the Divested Business for those costs.
- 5.18 The Customer may direct which Assets and Customer Assets may or may not be used in connection with the services that are provided to a Divested Business.

Supplier covenants

- 5.19 The Supplier shall, at its own expense:
 - (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Agreement;
 - (b) except to the extent that obtaining and maintaining the same are Customer Responsibilities and subject to clause 13 (*Change*), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
 - (c) ensure that:
 - (i) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPR, the Supplier Background IPR and any other materials made available by the Supplier (or any Sub-contractor) to the Customer that are necessary for the performance of the Supplier's obligations under this Agreement or the receipt of the Services by the Customer;
 - (ii) the release of any new Software or upgrade to any Software complies with the interface requirements in the Services Description and (except in relation to new Software or upgrades that are released to address Malicious Software or to comply with the

requirements of Schedule 2.4 (*Security Management*)) shall notify the Customer three (3) months before the release of any new Software or Upgrade;

- (iii) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
- (iv) any products or services recommended or otherwise specified by the Supplier for use by the Customer in conjunction with the Deliverables or the Services shall enable the Deliverables or Services to meet the Customer Requirements; and
- (v) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Customer) and will be Euro Compliant;
- (d) minimise any disruption to the Services, the IT Environment and the Customer's operations when carrying out its obligations under this Agreement;
- (e) ensure that any Documentation and training provided by the Supplier to the Customer are comprehensive, accurate and prepared in accordance with Best Industry Practice;
- (f) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and reasonable assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to the Customer or to any Replacement Supplier;
- (g) to the extent it is legally able to do so, hold on trust for the sole benefit of the Customer, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Customer may notify from time to time to the Supplier;
- (h) unless it is unable to do so, assign to the Customer on the Customer's written request and at the cost of the Supplier any such warranties or indemnities as are referred to in paragraph 5.19(g);
- (i) provide the Customer with such assistance as the Customer may require during the Term in respect of the supply of the Services;
- (j) gather, collate and provide such information and co-operation as the Customer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;

- (k) notify the Customer in writing as soon as reasonably possible and in any event within one(1) month of any change of Control taking place;
 - (l) notify the Customer in writing within ten (10) Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
 - (m) ensure that neither it, nor any of its Affiliates, embarrasses the Customer or otherwise brings the Customer into disrepute by engaging in any act or omission that is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Supplier's obligations under this Agreement; and
 - (n) manage closure or termination of Services and end of life of Goods to take account of the Customer's disposal requirements, including recycling and scope for re-use, and all applicable Standards.
- 5.20 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 5.21 Without prejudice to clauses 19.2 and 19.3 (*IPR Indemnity*) and any other rights and remedies of the Customer howsoever arising, the Supplier shall:
- (a) remedy any breach of its obligations in paragraphs 5.19(b) to 5.19(d) inclusive within three (3) Working Days of becoming aware of the breach or being notified of the breach by the Customer where practicable or within such other time period as may be agreed with the Customer (taking into account the nature of the breach that has occurred);
 - (b) remedy any breach of its obligations in paragraph 5.19(a) and paragraphs 5.19(e) to 5.19(j) inclusive within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by the Customer; and
 - (c) meet all the costs of, and incidental to, the performance of such remedial work, including those incurred by the Customer and by Other Suppliers,

and any failure of the Supplier to comply with its obligations under paragraph 5.21(a) or paragraph 5.21(b) within the specified or agreed timeframe shall constitute a Notifiable Default.

Specially Written Software warranty

- 5.22 Without prejudice to clauses 5.19 and 5.21 and any other rights and remedies of the Customer howsoever arising, the Supplier warrants to the Customer for the Warranty Period that all components of the Specially Written Software shall:
- (a) be free from material design and programming errors;

- (b) perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution and Documentation; and
- (c) not infringe any Intellectual Property Rights.

Continuing obligation to provide the Services

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

- (a) any withholding of the Service Charges by the Customer pursuant to paragraph 7.2(d)(ii) (*Performance Failures*);
- (b) the existence of an unresolved Dispute; or
- (c) any failure by the Customer to pay any Charges,

unless the Supplier is entitled to terminate this Agreement under clause 33.5 (*Termination by the Supplier*) for failure to pay undisputed Charges.

Optional Services

5.24 The Customer may require the Supplier to provide any or all of the Optional Services at any time by giving notice to the Supplier in writing. The Supplier acknowledges that the Customer is not obliged to take any Optional Services from the Supplier and that nothing shall prevent the Customer from receiving services that are the same as or similar to the Optional Services from any third party.

5.25 If a Change Request is submitted, the Supplier shall, as part of the Impact Assessment provided by the Supplier in relation to such Change Request, provide details of the impact (if any) that the proposed Change will have on the relevant Optional Services.

5.26 Following receipt of the Customer's notice pursuant to clause 5.24:

- (a) the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Change Control Procedure, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Optional Services have already been agreed;
- (b) the Supplier shall implement and Test the relevant Optional Services in accordance with the Optional Services Implementation Plan;
- (c) any additional charges for the Optional Services shall be incorporated in the Charges as specified in Paragraph 3 of Part B of Schedule 7.1 (*Charges and Invoicing*); and
- (d) the Supplier shall, from the date agreed in the Optional Services Implementation Plan (or, if later, the date of Achievement of any Milestones associated with the commencement of the relevant Optional Services (if any)), provide the relevant Optional Services to meet or exceed the applicable Target Performance Level in respect of all Performance

Indicators applicable to the Optional Services as set out in Annex 1 of Schedule 2.2 (*Performance Levels*).

Customer Responsibilities

- 5.27 The Customer shall comply with its responsibilities set out in Schedule 3 (*Customer Responsibility*).

Location of Sites

- 5.28 The Supplier shall ensure that all Sites are located in places that have been expressly approved in advance by the Customer in writing.

6. IMPLEMENTATION

Quality Plans

- 6.1 The Supplier shall develop, within twenty (20) Working Days of the Effective Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard that is generally recognised as having replaced it (**'Quality Plans'**).
- 6.2 The Supplier shall obtain the Customer Representative's written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the 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 Agreement.
- 6.3 Following the approval by the Customer of the Quality Plans:
- (a) the Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and
 - (b) any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.
- 6.4 The Supplier shall throughout the Term ensure that all aspects of the Services are the subject of and are compliant with up-to-date Quality Plans.

Implementation Plan and Delays

- 6.5 The Parties shall comply with the provisions of Schedule 6.1 (*Implementation*) in relation to the agreement and maintenance of the Detailed Implementation Plan.
- 6.6 The Supplier shall:
- (a) comply with the Implementation Plan; and
 - (b) ensure that each Milestone is Achieved on or before its Milestone Date.

- 6.7 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:
- (a) it shall:
 - (i) notify the Customer in accordance with clause 27.1 (*Rectification Plan Process*); and
 - (ii) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
 - (iii) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
 - (b) if the Delay or anticipated Delay relates to a Key Milestone, the provisions of clause 28 (*Delay Payments*) shall apply.

Testing and Achievement of Milestones

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

7. PERFORMANCE INDICATORS

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

Performance Failures

- 7.2 If in any Service Period:
- (a) a KPI Failure occurs, Service Credits shall be deducted from the Service Charges in accordance with Paragraph 3 of Part C of Schedule 7.1 (*Charges and Invoicing*);
 - (b) a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with paragraph 7.2(a));
 - (c) a PI Failure occurs, the Supplier shall notify the Customer of the action (if any) it will take to rectify the PI Failure and to prevent the PI Failure from recurring; or

- (d) a Material PI Failure occurs:
 - (i) the Supplier shall comply with the Rectification Plan Process; and
 - (ii) the Customer may withhold a proportionate amount of the Service Charges in accordance with the process set out in clause 10.8 (*Set Off and Withholding*) until the relevant Material PI Failure is rectified to the reasonable satisfaction of the Customer, at which point the Customer shall pay the amount withheld.

7.3 Service Credits shall be the Customer's exclusive financial remedy for a KPI Failure except where:

- (a) the Supplier has over the previous twelve (12) month period accrued Service Credits in excess of the Service Credit Cap; or
- (b) the KPI Failure:
 - (i) breaches the relevant KPI Service Threshold;
 - (ii) has arisen due to Wilful Default by the Supplier or any Supplier Personnel; or
 - (iii) results in:
 - (A) the corruption or loss of any Customer Data (in which case the remedies under clause 20.7 (*Customer Data and Security Requirements*) shall also be available); or
 - (B) the Customer being required to make a compensation payment to one or more third parties;
- (c) the Supplier has fraudulently misreported its performance against any Performance Indicator; or
- (d) the Customer is otherwise entitled to or does terminate the relevant Services or this Agreement pursuant to paragraphs 33.1(c) (*Termination by the Customer*).

Unacceptable KPI Failure

7.4 If in any Service Period an Unacceptable KPI Failure occurs:

- (a) the Customer shall (subject to the Service Credit Cap set out in paragraphs 25.4(b) (*Financial and other limits*)) be entitled to withhold and retain as compensation for the Unacceptable KPI Failure a sum equal to any Service Charges which would otherwise have been due to the Supplier in respect of that Service Period (such sum being '**Compensation for Unacceptable KPI Failure**'); and
- (b) if the Customer withholds and retains such Compensation for Unacceptable KPI Failure, any Service Points and Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue,

provided that the operation of this clause 7.4 shall be without prejudice to any right that the Customer may have to terminate this Agreement or to claim damages from the Supplier as a result of such Unacceptable KPI Failure.

7.5 The Supplier:

- (a) agrees that the application of clause 7.4 is commercially justifiable where an Unacceptable KPI Failure occurs; and
- (b) acknowledges that it has taken legal advice on the application of clause 7.4 and has had the opportunity to price for that risk when calculating the Service Charges.

Critical Performance Failure

7.6 If a Critical Performance Failure occurs, the Customer may exercise its rights to terminate this Agreement in whole or in part pursuant to clause 33.1 or clause 33.2 (*Termination by the Customer*).

Changes to Performance Indicators and Service Credits

7.7 Not more than once in each Contract Year the Customer may, on giving the Supplier at least three (3) months' notice:

- (a) change the weighting that applies in respect of one or more specific Key Performance Indicators; or
- (b) convert one or more:
 - (i) Key Performance Indicators into a Subsidiary Performance Indicator; or
 - (ii) Subsidiary Performance Indicators into a Key Performance Indicator (in which event the Customer shall also set out in the notice details of what will constitute a Minor KPI Failure, a Serious KPI Failure and a Severe KPI Failure for the new Key Performance Indicator); or
- (c) do the things set out in both of paragraphs 7.7(a) and 7.7(b), such changes to be recorded in an appropriate Change Authorisation Note (but, for the avoidance of doubt, such changes shall not be subject to the Change Control Procedure and the Supplier shall not be entitled to reject such change).

7.8 The Supplier shall not be entitled to object to any changes made by the Customer under clause 7.7, or increase the Service Charges as a result of such changes provided that:

- (a) the principal purpose of the change is to reflect changes in the Customer's business requirements or priorities or to reflect changing industry standards; and
- (b) there is no change to the Service Credit Cap.

8. SERVICES IMPROVEMENT

- 8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this clause 8. As part of this obligation the Supplier shall identify and report in writing to the Programme Board once every three (3) months on:
- (a) the emergence of new and evolving relevant technologies that could improve the IT Environment or the Services, and those technological advances potentially available to the Supplier and the Customer that the Parties may wish to adopt;
 - (b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods (in respect of the Rate Card only), likely performance mechanisms and customer support services in relation to the Services;
 - (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Customer that might result in efficiency or productivity gains or in reduction of operational risk;
 - (d) changes in business processes and ways of working that would enable the Services to be delivered at lower cost or with greater benefits to the Customer, or both those things; and
 - (e) changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.
- 8.2 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 requests.
- 8.3 If the Customer wishes to incorporate any improvement identified by the Supplier the Customer shall send the Supplier a Change Request in accordance with the Change Control Procedure.

9. EQUIPMENT AND MAINTENANCE

Supplier Equipment

- 9.1 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 associated costs. Likewise on termination or expiry of this Agreement the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Customer Premises, including the cost of packing, carriage and making good the Sites and the Customer Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.

- 9.2 All the Supplier's property, 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 that is due to the negligent act or omission of the Customer, to the extent that compensation for that loss cannot be recovered under any insurance policy held by the Supplier.
- 9.3 Subject to any express provision of the BCDR Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Agreement, including the Target Performance Levels.

Maintenance

- 9.4 The Supplier shall create and maintain a rolling schedule of planned maintenance to the IT Environment (the '**Maintenance Schedule**'), which shall be agreed with the Customer. Once the Maintenance Schedule has been agreed with the Customer Representative, the Supplier shall only undertake such planned maintenance (which shall be known as '**Permitted Maintenance**') in accordance with the Maintenance Schedule.
- 9.5 The Supplier shall give as much notice as is reasonably practicable to the Customer Representative prior to carrying out any Emergency Maintenance.
- 9.6 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the IT Environment or 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 IT Environment and the Services.

Supply of Goods

- 9.7 Where, as part of the Services, the Supplier is to sell goods or equipment ('**Goods**') to the Customer:
- (a) the relevant Goods and their prices shall be agreed in the relevant Call-Off Agreement;
 - (b) the Supplier shall supply and, where relevant, install the Goods in accordance with the relevant specification;
 - (c) the Supplier shall ensure that the Goods are free from material defects in design, materials and workmanship and remain so for twelve (12) months after delivery;
 - (d) if following inspection or testing the Customer considers that the Goods do not conform with the relevant specification, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance;

- (e) without prejudice to any other rights or remedies of the Customer:
 - (i) risk in the Goods shall pass to the Customer at the time of delivery; and
 - (ii) ownership of the Goods shall pass to the Customer at the time of delivery; and
- (f) notwithstanding the default allocation of risk and title set out in paragraph 9.7(e), the Parties may by agreement vary the allocation of risk and title in relation to specific goods or equipment, or classes of goods or equipment.

SECTION C - PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

10. FINANCIAL AND TAXATION MATTERS

Charges and Invoicing

- 10.1 The Customer shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*).
- 10.2 Where the Supplier agrees to the maximum amount of Charges in relation to a Work Pack, the Supplier may only invoice the Customer for that maximum amount unless the parties otherwise agree in writing.
- 10.3 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under clause 6.8 (*Testing and Achievement of Milestones*) and clauses 12 (*Records, Reports, Audits and Open Book Data*), 22 (*Transparency and Freedom of Information*), 23 (*Protection of Personal Data and Customer Data*) and, to the extent specified in those clauses, clause 29 (*Remedial Adviser*) and clause 30 (*Step-In Rights*).
- 10.4 If the Customer fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier may charge interest on the overdue amount at an annual interest rate of one per cent (1%) above the base rate of the Bank of England from time to time, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

VAT

- 10.5 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.
- 10.6 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, that 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 Agreement. Any amounts due under this clause 10.6 shall be paid in cleared funds by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

Set-off and Withholding

- 10.7 The Customer may set off any undisputed amount owed by the Supplier to any member of the Customer Group (including the Customer) against any undisputed amount due to the Supplier under this Agreement.
- 10.8 If the Customer wishes to:
- (a) set off any amount which is not the subject of a good faith dispute by the Supplier and which is owed by the Supplier to any member of the Customer Group (including the Customer) against any amount due to the Supplier pursuant to clause 10.7; or

- (b) exercise its right pursuant to paragraph 7.2(d)(ii) (*Performance Failures*) to withhold payment of a proportion of the Service Charges,

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

Benchmarking

- 10.9 The Parties shall comply with the provisions of Schedule 7.3 (*Benchmarking*) in relation to the benchmarking of the Rate Card.

Financial Distress

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

Promoting Tax Compliance

- 10.11 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- (a) notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and
 - (b) promptly provide to the Customer:
 - (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.

Anti-facilitation of Tax Evasion

- 10.12 The Supplier shall, and shall procure that persons associated with it in connection with this Agreement shall:
- (a) not, when acting in the capacity of a person associated with the Customer, engage in any act or omission that would constitute a UK tax evasion facilitation offence or foreign tax evasion facilitation offence as those terms are defined in Part 3 of the Crime Finances Act 2017;
 - (b) not cause, facilitate or contribute to the commission by the Customer of an offence of failing to prevent the facilitation of tax evasion under section 45 or 46 of the Crime Finances Act 2017 or any other legal or regulatory requirements;

- (c) have and maintain in place throughout the Term such policies and procedures as are reasonable to prevent the commission or facilitation of tax evasion and to ensure compliance with this clause 10.12;
- (d) promptly return to the Customer any request or demand from a third party;
- (e) to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017 or otherwise breach the requirements referred to in paragraph 10.12(b);
- (f) keep accurate records, invoices and accompanying documentation available for inspection by the Customer, auditors and investigating authorities in relation to the requirements, policies and procedures referred to in paragraphs 10.12(b) and 10.12(c); and
- (g) provide to the Customer, upon the Customer's request, certification signed by an officer of the Supplier that it is compliant with the requirements of this clause 10.12.

SECTION D – CONTRACT GOVERNANCE

11. GOVERNANCE

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

Representatives

- 11.2 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.
- 11.3 The initial Supplier Representative shall be the person named as such in Schedule 9.2 (*key personnel*). Any change to the Supplier Representative shall be agreed in accordance with clause 14 (*Supplier Personnel*).
- 11.4 The Customer shall notify the Supplier of the identity of the initial Customer Representative within five (5) Working Days of the Effective Date. The Customer may, by written notice to the Supplier, revoke or amend the authority of the Customer Representative or appoint a new Customer Representative.
- 11.5 Each Party shall appoint a person (an ‘**Assignment Manager**’) to manage the performance of its obligations pursuant to each Work Pack. Each Party shall include the name of its Assignment Manager in each Work Pack, and agrees that the Assignment Manager shall have the authority to act on its behalf in relation to the Services to be provided under that Work Pack.

12. RECORDS, REPORTS, AUDITS & OPEN BOOK DATA

- 12.1 The Supplier shall comply with the provisions of:
- (a) Schedule 8.4 (*Reports and Records Provisions*) in relation to the maintenance and retention of Records; and
 - (b) Part A of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the maintenance of Open Book Data.
- 12.2 The Parties shall comply with the provisions of:
- (a) Part B of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and
 - (b) Part C of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by the Customer or any Audit Agents.

13. CHANGE

Change Control Procedure

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

Change in Law

- 13.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of:
- (a) a General Change in Law; or
 - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.
- 13.3 If a Specific Change in Law or a General Change in Law occurs or will occur during the Term (other than as referred to in paragraph 13.2(b)) and is discovered by the Supplier in the course of providing Services (without actively having to look for such change), the Supplier shall:
- (a) notify the Customer as soon as reasonably practicable of the likely effects of that change, including:
 - (i) whether any Change is required to the Services, the Charges or this Agreement; and
 - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone or to meet the Target Performance Levels (or both); and
 - (b) provide the Customer with evidence:
 - (i) 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;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of clause 8 (*Services Improvement*), has been taken into account in amending the Charges.
- 13.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in paragraph 13.2(b)) shall be implemented in accordance with the Change Control Procedure, save that paragraph 7 of Schedule 8.2 (*Change Control Procedure*) shall not apply to any such Change.

SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN

14. SUPPLIER PERSONNEL

14.1 The Supplier shall:

- (a) provide in advance of any admission to Customer Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Customer may reasonably require;
- (b) ensure that all Supplier Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with the Background Check Procedure set out in Schedule 4.5 (*Background Check Procedure*) and, where applicable, the security requirements set out in Schedule 2.1 (*Services Description*) and Schedule 2.4 (*Security Management*); and
 - (iii) comply with all reasonable requirements of the Customer concerning conduct at the Customer Premises, including the security requirements as set out in Schedule 2.4 (*Security Management*);
- (c) subject to Schedule 9.1 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Customer;
- (d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel that results in a Default under this Agreement shall be a Default by the Supplier;
- (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- (f) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- (g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel;
- (h) procure that the Supplier Personnel shall upon the termination or expiry of this Agreement vacate the Customer Premises immediately; and
- (i) upon termination or expiry of this Agreement immediately revoke all Supplier Personnel access rights to the Customer Systems and Customer Data;
- (j) comply with the obligations set out in Schedule 9.1 (*Staff Transfer*).

- 14.2 If the Customer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Agreement, it may:
- (a) refuse admission to the relevant person(s) to the Customer Premises; or
 - (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); or
 - (c) do the things set out in both paragraphs 14.2(a) and 14.2(b).

Key Personnel

- 14.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 9.2 (*Key Personnel*) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.
- 14.4 The Customer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 14.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- (a) requested to do so by the Customer;
 - (b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - (c) the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
 - (d) the Supplier obtains the Customer's prior written consent (such consent not to be unreasonably withheld or delayed).
- 14.6 If in any period of twelve (12) consecutive calendar months twenty percent (20%) or more of the Key Personnel are removed or changed from their roles for any reason (whether or not permitted pursuant to clause 14.5), the Supplier shall:
- (a) provide the Customer with a full written explanation as to the reasons for such removals or changes including, where applicable, full notes from any exit interview conducted by the Supplier or any Key Sub-contractor with any departing member of Key Personnel; and
 - (b) if such removal or change to Key Personnel has had any adverse impact on the Supplier's provision of the Services undertake, at its own cost, such remediation activity as the Customer may reasonably require in order to improve the retention of Key Personnel including (but not limited to) making reasonable changes to the human resources policies and procedures applicable to Key Personnel (including those relating to remuneration) of the Supplier or, where applicable, use its best endeavours to ensure that any Key Sub-contractor takes such remedial action as may be necessary to

ensure that such policies and procedures comply with Best Industry Practice.

14.7 The Supplier shall:

- (a) notify the Customer promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
- (b) ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
- (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Working Days' notice;
- (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services;
- (e) create and implement appropriate knowledge transfer plans to effect its obligation set out in paragraph 14.7(d), and share those plans with the Customer upon the Customer's request; and
- (f) ensure that any replacement for a Key Role:
 - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

Employment Indemnity

14.8 The Parties agree that:

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

Income Tax and National Insurance Contributions

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

Staff Transfer

- 14.10 The Parties agree that:
- (a) where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 9.1 (*Staff Transfer*) shall apply; and
 - (b) Schedule 9.1 (*Staff Transfer*) shall apply on the expiry or termination of the Services or any part of the Services.

15. SUPPLY CHAIN RIGHTS AND PROTECTIONS

Appointment of Sub-contractors

- 15.1 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
- (a) manage any Sub-contractors in accordance with Best Industry Practice;
 - (b) comply with its obligations under this Agreement in the delivery of the Services; and
 - (c) assign, novate or otherwise transfer to the Customer or any Replacement Supplier any of its rights and obligations under each Sub-contract that relates exclusively to this Agreement.
- 15.2 Prior to sub-contracting any of its obligations under this Agreement to an Affiliate, the Supplier shall provide to the Customer evidence that demonstrates to the reasonable satisfaction of the Customer that the proposed Sub-contract has been agreed on “arm’s-length” terms. If the Customer is not reasonably satisfied, then the remainder of this clause 15 shall apply.

- 15.3 Prior to sub-contracting any of its obligations under this Agreement to any entity other than an Affiliate (save where the Customer is not reasonably satisfied pursuant to clause 15.2), the Supplier shall notify the Customer in writing of:
- (a) the proposed Sub-contractor's name, registered office and company registration number;
 - (b) the scope of any Services to be provided by the proposed Sub-contractor; and
 - (c) where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Customer that the proposed Sub-contract has been agreed on "arm's-length" terms.
- 15.4 If requested by the Customer within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to clause 15.2, the Supplier shall also provide:
- (a) a copy of the proposed Sub-contract (except that Commercially Sensitive Information may be redacted to the extent necessary to comply with the terms of the Sub-contract); and
 - (b) any further information reasonably requested by the Customer.
- 15.5 The Customer may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to clause 15.2 (or, if later, receipt of any further information requested pursuant to clause 15.4), object to the appointment of the relevant Sub-contractor at its sole and unfettered discretion. The matters that the Customer may (but is not required to) consider in the exercise of that discretion may include the Customer's determination that:
- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Customer;
 - (b) the proposed Sub-contractor is unreliable or has not provided reasonable services to its other customers;
 - (c) the proposed Sub-contractor employs unfit persons; or
 - (d) the proposed Sub-contractor should be excluded in accordance with clause 15.21;
- in which case, the Supplier shall not proceed with the proposed appointment.
- 15.6 If:
- (a) the Customer has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of thirty (30) Working Days of receipt of:
 - (i) the Supplier's notice issued pursuant to clause 15.1; and
 - (ii) any further information requested by the Customer pursuant to clause 15.4; and

- (b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Customer in accordance with clause 15.9 (*Appointment of Key Sub-contractors*),

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

- 15.7 Notwithstanding the foregoing, the Customer confirms its consent to the subcontracting by the Supplier to the Sub-contractors and for the scope of any Services listed in Schedule 10 (*Approved sub-contractors*).
- 15.8 For the avoidance of doubt, the approval by the Customer of the appointment of a Sub-Contractor shall not relieve the Supplier of its obligation under clause 23.23 to obtain the Customer's written consent in respect of any sub-processing of Personal Data.

Appointment of Key Sub-contractors

- 15.9 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Customer, such consent to be granted by the Customer at its sole and unfettered discretion. The matters that the Customer may (but is not required to) consider in the exercise of that discretion may include the Customer's determination that:
 - (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Customer; or
 - (b) the proposed Key Sub-contractor is unreliable or has not provided reasonable services to its other customers; or
 - (c) the proposed Key Sub-contractor employs unfit persons; or
 - (d) the proposed Key Sub-contractor should be excluded in accordance with clause 15.21.
- 15.10 The Customer consents to the appointment of the Key Sub-contractors listed in Schedule 4.3 (*Notified Key Sub-Contractors*).
- 15.11 Except where the Customer has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:
 - (a) provisions that will enable the Supplier to discharge its obligations under this Agreement;
 - (b) a right under CRTPA for the Customer to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Customer;
 - (c) a provision enabling the Customer to enforce the Key Sub-contract as if it were the Supplier;

- (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights or obligations under the Key Sub-contract to the Customer or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Customer;
- (e) obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
 - (i) data protection and security requirements set out in clauses 20 (*Customer Data and Security Requirements*) and 23 (*Protection of Personal Data*);
 - (ii) confidentiality requirements set out in clause 21 (*Confidentiality*);
 - (iii) obligations relating to compliance with Law as set out in this Agreement;
 - (iv) FOIA requirements set out in clause 22 (*Transparency and Freedom of Information*);
 - (v) the obligation not to embarrass the Customer or otherwise bring the Customer into disrepute set out in paragraph 5.19(m) (*Services*);
 - (vi) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
 - (vii) the conduct of Audits set out in Part C of Schedule 7.5 (*Financial Reports and Audit Rights*);
- (f) provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Customer under paragraph 33.1(a) (*Termination by the Customer*) and clause 34.3 (*Payments by the Customer*) of this Agreement;
- (g) a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Customer;
- (h) a provision enabling the Supplier or the Customer to appoint a Remedial Adviser on substantially the same terms as are set out in clause 29 (*Remedial Adviser*);
- (i) 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 30 (*Step-in Rights*);
- (j) a provision requiring the Key Sub-contractor to participate in, and if required by the Customer in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure;

- (k) a provision requiring the Key Sub-contractor to:
 - (i) promptly notify the Supplier and the Customer in writing of any of the following of which it is, or ought to be, aware:
 - (A) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
 - (B) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,

and in any event, provide such notification within ten (10) Working Days of the date on which the Key Sub-contractor first becomes aware of such); and
 - (ii) 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 Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Service Continuity Plan;
- (l) a provision requiring the Key Sub-contractor to notify the Supplier of the jurisdictions in which it performs or proposes to perform services related to the Supplier's provision of the Services (and the Supplier shall disclose that information promptly to the Customer); and
- (m) in cases where the Customer disapproves of any jurisdiction in which a Key Sub-contractor proposes to provide services related to the Supplier's provision of the Services, a provision prohibiting the Key Sub-contractor from relocating that service provision.

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

Supply chain protection

- 15.13 The Supplier shall ensure that all Sub-contracts (which in this clause 15.13 includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:
- (a) giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;
 - (b) requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;

- (c) that if the Supplier or other party fails to consider and verify an invoice in accordance with paragraph 15.13(b), the invoice shall be regarded as valid and undisputed for the purpose of paragraph 15.13(d) (after a reasonable time has passed;
- (d) requiring the Supplier or other party to pay any undisputed sums that are due from it to the Sub-contractor in accordance with the terms of the Sub-contract and in any event within a timely manner of verifying that the invoice is valid and undisputed;
- (e) giving the Customer a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period;
- (f) contain substantially the same obligations as set out in this Agreement in relation to compliance with the Modern Slavery Act 2015 and the Modern Slavery Policy;
- (g) requiring the Sub-contractor to include a clause to the same effect as this clause 15.13 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.

15.14 The Supplier shall:

- (a) pay any undisputed sums that are due from it to a Sub-contractor in accordance with the terms of the Sub-contract and in any event within a timely manner of verifying that the invoice is valid and undisputed; and
- (b) include within the Balanced Scorecard Report produced by it pursuant to Schedule 2.2 (*Performance Levels*) a summary of its compliance with paragraph 15.14(a), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

15.15 Notwithstanding any provision of clauses 21 (*Confidentiality*) and 24 (*Publicity and Branding*), if the Supplier notifies the Customer (whether in a Balanced Scorecard Report or otherwise) that the Supplier has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt, or the Customer otherwise discovers the same, the Customer shall be entitled to publish the details of the late or non-payment (including on its own websites and government websites and in the press).

Termination of Sub-contracts

15.16 The Customer may require the Supplier to terminate:

- (a) a Sub-contract where:
 - (i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Customer's right of termination pursuant to paragraph 33.1(c) (*Termination by the Customer*);
 - (ii) the relevant Sub-contractor or any of its Affiliates have embarrassed the Customer or otherwise brought the Customer into disrepute by

- engaging in any act or omission that is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
- (iii) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; or
- (iv) the Customer has found grounds for exclusion of the Sub-contractor in accordance with clause 15.21; and
- (b) a Key Sub-contract where there is a Change of Control of the relevant Key Sub-contractor, unless:
 - (i) the Customer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Customer has not served its notice of objection within six (6) 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.

Competitive Terms

- 15.17 If the Customer is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Customer may:
- (a) require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Customer in respect of the relevant item; or
 - (b) subject to clause 15.16, enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.
- 15.18 If the Customer exercises either of its options pursuant to clause 15.17, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.
- 15.19 The Customer's right to enter into a direct agreement for the supply of the relevant items is subject to:
- (a) the Customer making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
 - (b) any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

Retention of Legal Obligations

- 15.20 Notwithstanding the Supplier's right to sub-contract pursuant to this clause 15, 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.

Exclusion of Sub-contractors

- 15.21 Where the Customer considers whether there are grounds for the exclusion of a Subcontractor under Regulation 57 of the Public Contracts Regulations 2015, then:
- (a) if the Customer finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;
 - (b) if the Customer finds there are non-compulsory grounds for exclusion, the Customer may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

SECTION F – INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

16. INTELLECTUAL PROPERTY RIGHTS

16.1 Except as expressly set out in this Agreement:

- (a) the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
 - (i) the Supplier Software;
 - (ii) the Supplier Background IPR;
 - (iii) the Supplier Third Party Software; and
 - (iv) the Supplier Third Party IPR.

16.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including:

- (a) the Customer Software;
- (b) the Customer Background IPR;
- (c) the Customer Third Party Software;
- (d) the Customer Third Party Contracts;
- (e) the Customer Hardware; and
- (f) the Customer Data.

16.3 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 16.1, 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).

16.4 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.

17. TRANSFER AND LICENCES GRANTED BY THE SUPPLIER

Specially Written Software and Project Specific IPR

17.1 Subject to clause 17.4 (*Patents*) or as otherwise agreed in a Call-Off Agreement, the Supplier hereby agrees to transfer to the Customer, or shall procure the transfer to the Customer of, all rights in the Specially Written Software and the Project Specific IPR including):

- (a) the Documentation, Source Code and the Object Code of the Specially Written Software;

- (b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the '**Software Supporting Materials**'); and
- (c) the Project Specific IPR.

17.2 The Supplier:

- (a) shall inform the Customer of all Specially Written Software that constitutes a modification or enhancement to Supplier Software or Third Party Software; and
- (b) shall deliver to the Customer the Specially Written Software in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Customer; and
- (c) acknowledges and agrees that the ownership of the media referred to in paragraph 17.2(b) shall vest in the Customer upon their receipt by the Customer; and
- (d) shall execute all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPR are properly transferred to the Customer.

Supplier Software and Supplier Background IPR

17.3 The Supplier hereby grants to the Customer and each member of the Customer Group:

- (a) subject to the provisions of clause 17.13 (*Patents*), or as otherwise agreed in a Call-Off Agreement, a perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):
 - (i) the Supplier Non-COTS Software for any purpose relating to the Services or for any purpose relating to the exercise of the Customer's (or any other member of the Customer Group's) business or function;
 - (ii) the Supplier Non-COTS Background IPR for any purpose relating to the Services or for any purpose relating to the exercise of the Customer's (or any other member of the Customer Group's) business or function; and
- (b) a licence to use the Supplier COTS Software and Supplier COTS Background IPR on the licence terms identified in a letter in or substantially in the form

set out in Annex 1 to Schedule 5.1 (*Software*) and signed by or on behalf of the Parties on or before the Effective Date; provided always that the Customer shall remain entitled to sub-license and to assign and novate the Supplier COTS Software and Supplier COTS Background IPR on equivalent terms to those set out in clauses 17.5 and 17.6 in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPR; and

- (c) a perpetual royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving and backing-up, loading, execution, storage, transmission or display) the Supplier Background Software embedded in the Project Specific IPR or the Specially Written IPR, only in conjunction with such Project Specific IPR or Specially Written Software. Notwithstanding anything to the contrary contained in the Agreement, under no event shall the Supplier be required to share the source code of any Supplier Software or Third Party Software.

Customer's right to sub-license

17.4 Subject to clause 17.13 (*Patents*) the Customer may sub-license:

- (a) the rights granted under clause 17.3 (*Supplier Software and Supplier Background IPR*) to a third party (including any Replacement Supplier) provided that:
 - (i) the sub-licence is on terms no broader than those granted to the Customer;
 - (ii) the sub-licence authorises the third party to use the rights licensed in clause 17.3 (*Supplier Software and Supplier Background IPR*) only for purposes relating to the Services; and
 - (iii) the sub- licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Annex 2 to Schedule 5.1 (*Software*).

Customer's right to assign and novate licences

17.5 The Customer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to clause 17.3 (*Supplier Software and Supplier Background IPR*) to or any other member of the Customer Group. The rights in relation to those licences acquired on that assignment, novation or transfer shall not extend beyond those previously enjoyed by the Customer.

17.6 Each Divested Business shall still be entitled to the benefit of the licences granted in clause 17.3 (*Supplier Software and Supplier Background IPR*). The rights of such a Divested Business in relation to those licences shall not extend beyond those previously enjoyed by the Customer.

Third Party Software and Third Party IPR

- 17.7 The Supplier shall not use in the provision of the Services any Third Party Non-COTS Software or Third Party Non-COTS IPR unless in each case it has:
- (a) first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPR or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Customer on a royalty-free basis to the Customer and on terms no less favourable to the Customer than those set out in paragraph 17.3(a) and clauses 17.5 and 17.6 (*Customer's right to assign and novate licences*); or
 - (b) complied with the provisions of Clause 17.8.
- 17.8 If the Supplier cannot obtain for the Customer a licence in respect of any Third Party Non-COTS Software or Third Party Non-COTS IPR in accordance with the licence terms set out in paragraph 17.7(a), the Supplier shall:
- (a) notify the Customer in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
 - (b) use the relevant Third Party Non-COTS Software or Third Party Non-COTS IPR (or both) only if the Customer has first approved in writing the terms of the licence from the relevant third party.
- 17.9 The Supplier shall:
- (a) notify the Customer in writing of all Third Party COTS Software and Third Party COTS IPR that it uses and the terms on which it uses them; and
 - (b) unless instructed otherwise in writing by the Customer in any case within twenty (20) Working Days of notification pursuant to paragraph 17.9(a), use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPR grants a direct licence to the Customer on terms no less favourable (including as to indemnification against IPR Claims) than those on which such software is usually made commercially available by the relevant third party.
- 17.10 Should the Supplier become aware at any time, including after termination, that the Specially Written Software or the Project Specific IPR contain any Intellectual Property Rights for which the Customer does not have a licence, then the Supplier must notify the Customer within ten (10) days of what those rights are and in which parts of the Specially Written Software and the Project Specific IPR they are to be found.

Termination and Replacement Suppliers

- 17.11 The termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this clause 17.

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

- (a) grant (or procure the grant) to any Replacement Supplier of:
 - (i) a licence to use any Supplier Non-COTS Software, Supplier Non-COTS Background IPR, Third Party Non-COTS IPR or Third Party Non-COTS Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to the Customer in respect of the relevant Software and/or IPR pursuant to or as contemplated by this clause 17 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5.1 (*Software*) duly executed by the Replacement Supplier;
 - (ii) a licence to use any Supplier COTS Software or Supplier COTS Background IPR, on terms no less favourable (including as to indemnification against IPR Claims) than those on which such software is usually made commercially available by the Supplier; or
- (b) use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software or Third Party COTS IPR on terms no less favourable (including as to indemnification against IPR Claims) than those on which such software is usually made commercially available by the relevant third party; or
- (c) do the things set out in both of paragraphs 17.12(a) and 17.12(b).

Patents

17.13 Where a patent owned by the Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPR by the Customer or any Replacement Supplier, the Supplier hereby grants to the Customer and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Agreement.

18. LICENCES GRANTED BY THE CUSTOMER

Customer Software, Customer Background IPR, Customer Data, Specially Written Software and Project Specific IPR

18.1 The Customer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Customer Software, the Customer Background IPR, the Customer Data, the Specially Written Software and the Project Specific IPR solely to the extent necessary for performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:

- (a) any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in clause 21 (*Confidentiality*); and

- (b) the Supplier shall not, without the Customer's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Customer.
- 18.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to clause 18.1 and any sub-licence granted by the Supplier in accordance with clause 18.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:
 - (a) immediately cease all use of the Customer Software, the Customer Background IPR and the Customer Data (as the case may be);
 - (b) at the discretion of the Customer, return or destroy documents and other tangible materials that contain any of the Customer Software, the Customer Background IPR and the Customer Data, provided that if the Customer has not made an election within six (6) months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Customer Software, the Customer Background IPR and the Customer Data (as the case may be); and
 - (c) ensure, so far as reasonably practicable, that any Customer Software, Customer Background IPR and Customer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Customer Software, Customer Background IPR or Customer Data.

Customer Third Party Software

- 18.3 The arrangements for Customer Third Party Software are set out in Schedule 5.2 (*Customer Third Party Software*).

Customer Third Party Contracts

- 18.4 The arrangements for Customer Third Party Contracts are set out in Schedule 5.3 (*Customer Third Party Contracts*).

Customer Hardware

- 18.5 The arrangements for Customer Hardware are set out in Schedule 5.4 (*Customer Hardware*).

19. IPR INDEMNITY

- 19.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Customer and each other Indemnified Person, and keep the Customer and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPR Claim, provided that the Customer notifies the Supplier promptly in the event that an IPR Claim arises, and makes no admissions which might adversely prejudice the settlement of the IPR Claim.

- 19.2 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:
- (a) procure for the Customer or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPR Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
 - (iii) there is no additional cost to the Customer or relevant Indemnified Person (as the case may be); and
 - (iv) the terms and conditions of this Agreement shall apply to the replaced or modified Services.
- 19.3 If the Supplier elects to procure a licence in accordance with paragraph 19.2(a) or to modify or replace an item pursuant to paragraph 19.2(b), but this has not avoided or resolved the IPR Claim, then:
- (a) the Customer may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
 - (b) without prejudice to the indemnity set out in clause 19.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items or services, or both, including the additional costs of procuring, implementing and maintaining the substitute items.
- 19.4 The Supplier's liability under clause 19.1 shall be reduced to the extent that a claim or any liability is based upon:
- (a) any modifications to any materials or software delivered as part of the Service or of any of the Deliverables ("**Indemnified Item**") (other than by, or pursuant to the direction of, the Supplier);
 - (b) any combination of an Indemnified Item with equipment, software or materials that the Supplier has not provided to the Customer under this Agreement or notified to the Customer in writing cannot be combined with any Indemnified Item at the time the Indemnified Item was provided to the Customer;
 - (c) failure to use any corrections or enhancements of the Indemnified Item provided that any such corrections or enhancements are provided free of charge and provide the same functionality or in no event no less functionality than the original Indemnified Item; and

- (d) is based upon Customer Background IPR provided or supplied by the Customer to the Supplier when used by the Customer to provide the Services.

20. CUSTOMER DATA AND SECURITY REQUIREMENTS

- 20.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 20.2 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Customer.
- 20.3 To the extent that Customer Data is held 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 Description*).
- 20.4 The Supplier shall preserve the integrity of Customer Data and prevent the corruption or loss of Customer Data at all times that the relevant Customer Data is under its control or the control of any Sub-contractor.
- 20.5 The Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the BCDR Plan. The Supplier shall ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) at all times upon request and are delivered to the Customer at no less than six (6) monthly intervals (or such other intervals as may be agreed in writing between the Parties in a Call-Off Agreement).
- 20.6 The Supplier shall ensure that any system on which the Supplier or any Sub-contractor holds any Customer Data, including back-up data, is a secure system that complies with the Security Requirements.
- 20.7 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Customer may:
 - (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in Schedule 8.6 (*Business Continuity and Disaster Recovery*) and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Customer's notice; or
 - (b) itself restore or procure the restoration of 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 Schedule 8.6 (*Business Continuity and Disaster Recovery*).
- 20.8 If at any time the Supplier suspects or has reason to believe that Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.

- 20.9 The Supplier shall comply with the requirements of Schedule 2.4 (*Security Management*).
- 20.10 The Customer shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- 20.11 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.
- 20.12 Until or unless a change to the Charges is agreed by the Customer pursuant to clause 20.11 the Supplier shall continue to perform the Services in accordance with its existing obligations.
- 20.13 The Supplier shall comply, and shall procure that each of the Supplier Personnel shall comply, with the requirements of the NIS Directive to the extent applicable to the provision of the Services. The Supplier acknowledges that the full scope of the NIS Directive (and other relevant and agreed compliance and regulatory controls) do form part of the scope of the Security Services to be provided under this Agreement.

Malicious Software

- 20.14 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software in the IT Environment (or as otherwise agreed by the Parties).
- 20.15 Notwithstanding clause 20.14, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.
- 20.16 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause 20.15 shall be borne by the Parties as follows:
- (a) by 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 20.14) 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
 - (b) otherwise by the Customer.

21. CONFIDENTIALITY

- 21.1 For the purposes of this clause 21, the term '**Disclosing Party**' shall mean a Party that discloses or makes available directly or indirectly its Confidential Information and '**Recipient**' shall mean the Party that receives or obtains directly or indirectly Confidential Information.
- 21.2 Except to the extent set out in this clause 21 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody that is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials;
 - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
 - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
 - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 21.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- (a) the Recipient is required to disclose the Confidential Information by Law, provided that clause 22 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
 - (b) the need for such disclosure arises out of or in connection with any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Agreement; or
 - (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 21.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law or regulatory body (or both) requiring such disclosure and the Confidential Information to which such disclosure would apply.

- 21.5 The Supplier may disclose the Confidential Information of the Customer on a confidential basis only to:
- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;
 - (b) its auditors; and
 - (c) its professional advisers for the purposes of obtaining advice in relation to this Agreement.
- 21.6 Where the Supplier discloses Confidential Information of the Customer pursuant to clause 21.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.
- 21.7 The Customer may disclose the Confidential Information of the Supplier:
- (a) on a confidential basis to any Central Government Body for any proper purpose of the Customer or of the relevant Central Government Body;
 - (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in paragraph 21.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
 - (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to clause 30 (*Step-In Rights*), its rights to appoint a Remedial Adviser pursuant to clause 29 (*Remedial Adviser*) and Exit Management rights; or
 - (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,
- and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 21.
- 21.8 Nothing in this clause 21 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

22. TRANSPARENCY AND FREEDOM OF INFORMATION

22.1 The Parties acknowledge that:

- (a) the Transparency Reports; and
- (b) the content of this Agreement, including any changes to this Agreement agreed from time to time,

(together the '**Transparency Information**') are not Confidential Information save where information is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Customer; and Commercially Sensitive Information which shall remain at all times Confidential Information.

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

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

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

22.5 The Customer may publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.

22.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Customer on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Customer may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to paragraph 21.7(c)) and Open Book Data) publish such Information. The Supplier shall provide to the Customer within five (5) working days (or such other period as the Customer may reasonably specify) any such Information requested by the Customer.

- 22.7 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
 - (c) provide the Customer with a copy of all Information held on behalf of the Customer which is requested in a Request For Information and which is in its possession or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
 - (d) not respond directly to a Request For Information addressed to the Customer unless authorised in writing to do so by the Customer.
- 22.8 The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Customer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

23. PROTECTION OF PERSONAL DATA AND CUSTOMER DATA

Data Controller

- 23.1 The Customer shall be the Data Controller and the Supplier shall be the Data Processor when processing Personal Data in the course of the Supplier providing Services to the Customer under this Agreement.
- 23.2 The Supplier acknowledges that the Customer shall solely be responsible for the following decisions and determinations:
- (a) the purpose(s) for which and the manner in which the Personal Data will be Processed or used;
 - (b) what Personal Data to collect and the legal basis for doing so;
 - (c) which items (or content) of Personal Data to collect;
 - (d) which individuals to collect Personal Data about;
 - (e) whether to disclose the Personal Data, and if so, to whom;

- (f) whether subject access and other individuals' rights apply including the application of any exemptions;
- (g) how long to retain the Personal Data; and
- (h) whether to make non-routine amendments to the Personal Data.

Security, technical & organisational measures

- 23.3 The Supplier shall, having regard to the state of technological development, take all appropriate technical, security, and organisational measures necessary or desirable in relation to the processing of Personal Data under this Agreement, which shall as a minimum include the following measures to:
- (a) prevent unauthorized persons from gaining access to data processing systems in relation to which Personal Data are processed or used;
 - (b) prevent the Supplier's systems from being used without authorisation;
 - (c) ensure that persons entitled to use a data processing system have access only to the Personal Data to which they have a right of access, and to ensure that Personal Data cannot be read, copied, modified or removed without authorization during processing or use and after storage;
 - (d) ensure that Personal Data cannot be read, copied, modified or removed without authorization during electronic transmission or transport;
 - (e) ensure that it is possible to check and establish whether and by whom Personal Data has been input into data processing systems, modified or removed; and
 - (f) ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the Personal Data to be protected which shall include, as a minimum the measures set out in Schedule 2.4 (*Security Management*).
- 23.4 The Supplier must obtain the Customer's prior written consent to material changes to the security, technical and organisational measures used by the Supplier.
- 23.5 The Supplier agrees and warrants that the security measures referred to in clause 23.3 are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the Personal Data to be protected having regard to the state of the art.
- 23.6 The Supplier further agrees and warrants that the processing of the Personal Data has been and will continue to be carried out in accordance with the Data Privacy Laws.

Processing obligations

23.7 The Supplier shall:

- (a) comply with the security requirements set out in Schedule 2.4 (*Security Management*) to ensure that Personal Data is protected against loss, destruction and damage, and against unauthorised access, use, modification, disclosure or other misuse;
- (b) use the Personal Data obtained as a result of this Agreement only for the purposes of fulfilling its obligations under this Agreement;
- (c) keep the Personal Data separate from any data it processes on behalf of any other third party (including but not limited to business continuity measures and processes for regularly testing, assessing and evaluating the effectiveness of such security measures);
- (d) comply with the express instructions or directions of the Customer from time to time in connection with the use of such Personal Data and the requirements of any Data Protection Laws and such Personal Data shall be treated as Confidential Information of the Customer for the purposes of this Agreement;
- (e) not disclose Personal Data without the written consent of the Customer;
- (f) at the request of the Customer, promptly provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data;
- (g) unless otherwise required by Data Privacy Laws, return or delete, at the Customer's sole discretion, all Personal Data upon the termination of the processing activities carried out under this Agreement, and promptly provide the Customer with a confirmation in writing that it has done so;
- (h) at the request of the Customer or any relevant regulator, promptly make available to the Customer or any relevant regulator (or both of them) all information necessary to demonstrate compliance with Supplier's obligations and the Data Privacy Laws;
- (i) maintain a record of all categories of processing activities it undertakes pursuant to this Agreement and a record of each Data Breach and provide a copy of such record(s) to the Customer for inspection on demand;
- (j) provide the Customer with a copy of all Personal Data processed under this Agreement quarterly and on demand;
- (k) make all reasonable efforts to ensure that the Personal Data is accurate and up-to-date at all times;
- (l) if so requested provide a copy of a Data Subject's Personal Data in a machine-readable portable format; and

- (m) not keep Personal Data for longer than is necessary for the performance of its obligations under this Agreement, so as to comply with the principle of data minimisation.

23.8 If at any time the Supplier believes that the Customer's instructions conflict with the requirements of Data Privacy Laws, the Supplier must immediately inform the Customer of that state of affairs.

Supplier Personnel

23.9 In respect of the Supplier Personnel, the Supplier shall:

- (a) take all steps to ensure the reliability and trustworthiness of Supplier Personnel who will have access to any Personal Data;
- (b) ensure that any Supplier Personnel requiring access to any Personal Data are aware of the confidential nature of the Personal Data and give a written confidentiality undertaking not to access, use, disclose or retain Personal Data except in performing their duties of employment and in accordance with this Agreement and is informed that failure to comply with this undertaking may be a criminal offence and may also lead the Supplier to take disciplinary action against them;
- (c) ensure the Supplier Personnel receive training with respect to the handling of Personal Data; and
- (d) ensure that only Supplier Personnel authorised by the Customer to have access to Personal Data do have access to Personal Data and that no other personnel shall have access to the Personal Data except those who are required to in order to perform the Services.

Compliance with Data Privacy Laws

23.10 The Supplier shall comply with the Data Privacy Laws and without prejudice to the generality of the foregoing shall:

- (a) not cause the Customer to be in breach of the Data Privacy Laws and shall use all reasonable endeavours to assist the Customer to comply with any obligations imposed on the Customer by the Data Privacy Laws;
- (b) provide the Customer with reasonable assistance in complying with any requests by Data Subjects exercising their rights under the Data Privacy Laws (for example the exercise of the right to rectification (Article 16 of the Regulation), right to erasure ('**right to be forgotten**') (Article 17 of the Regulation), right of access by the Data Subject (Article 15 of the Regulation (each a '**Data Subject Request**') or communicating with the Information Commissioner's Office ('**ICO**') in relation to the Processing of Personal Data ('**ICO Correspondence**'));
- (c) promptly, and in any event within forty-eight (48) hours of receipt of any request or correspondence, inform the Customer about the receipt of any Data Subject Request or ICO Correspondence;

- (d) not disclose any Personal Data in response to any Data Subject Request or ICO Correspondence, or respond in any way to such a request without first consulting with, and obtaining the consent of, the Customer; and
 - (e) assist the Customer should the Customer need to carry out a privacy impact assessment.
- 23.11 The Supplier will (and shall ensure that its Supplier Personnel and subprocessors will) promptly (but in all cases within twenty-four (24) hours) notify the Customer, if the Supplier (or Supplier Personnel or subprocessors as the case may be):
 - (a) becomes aware that a disclosure of Personal Data may be required under Data Privacy Laws;
 - (b) receives a complaint relating to the Customer's obligations under the Data Privacy Laws or a request from an individual to access their Personal Data or to cease or not begin processing, or to rectify, block, erase or destroy Personal Data or to ensure that the Personal Data is deleted or corrected if it is incorrect (or, the Customer does not agree that it is incorrect, to have recorded the fact that the relevant person considers the Personal Data to be incorrect);
 - (c) becomes aware of a breach of clauses 23.1 to 23.23 (inclusive) or a breach of any Data Privacy Law.
- 23.12 The Supplier shall cooperate with the Customer (at no additional cost to the Customer) in promptly investigating and dealing with any complaint or request under clauses 23.10 and 23.11 in order to ensure that the relevant individual's rights under the Data Privacy Laws are satisfied.

Transfers of Personal Data outside of the EEA

- 23.13 The Supplier shall not transfer Personal Data which has been obtained by or made available to the Supplier to any country outside the European Economic Area ('EEA') without the prior written consent of the Customer, such consent subject to and given on such terms as the Customer may in its absolute discretion prescribe.
- 23.14 If the Customer consents to the transfer of Personal Data from the Supplier to a country outside of the EEA the Supplier shall comply with the additional provisions set out in clauses 23.15 and 23.16.
- 23.15 The Supplier shall document in writing:
 - (a) the Personal Data that are to be transferred to or Processed outside of the EEA (or both);
 - (b) any subprocessors or other third parties that are to process or receive Personal Data outside of the EEA (or both); and
 - (c) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that are to be processed in or transferred outside of the EEA (or both) so as to ensure the Customer's compliance with the Data Privacy Laws.

23.16 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 or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Privacy Laws) into this Agreement or a separate data processing agreement between the Parties; and
- (b) procuring that any subprocessor or other third party that is to process or receive or access the Personal Data outside of the EEA (or any combination of those things) either enters into:
 - (i) a direct data processing agreement with the Customer on such terms as may be required by the Customer; or
 - (ii) a data processing agreement with the Supplier on terms that are equivalent to those agreed between the Customer and the subprocessor relating to the relevant Personal Data transfer, and

in each case which the Supplier acknowledges may include the incorporation of model contract provisions (that are approved by the European Commission as offering adequate safeguards under the Data Privacy Laws) and technical and organisation measures that the Customer deems necessary for the purpose of protecting Personal Data.

Data Breaches

23.17 In the case of an unauthorised loss, disclosure, corruption, damage, destruction, corruption, alteration, disclosure or access to any Personal Data, any unauthorised or unlawful processing of Personal Data or Customer Data any breach of the Data Privacy Laws (each a '**Data Breach**'), or any action that causes or could reasonably be deemed to cause a Data Breach, the Supplier shall:

- (a) at the earliest opportunity notify the Customer and, in any event, no later than twenty-four (24) hours after the Supplier becoming aware of the Data Breach; and
- (b) promptly provide sufficient information, co-operation, support and analysis to the Customer to ensure the Customer meets its notification and breach reporting obligations to regulators within the required time limits; and
- (c) provide the Customer with such co-operation (the cost of that co-operation to be borne by the Supplier to the extent to which it, its subprocessor(s) or Supplier Personnel (or any combination of them) were responsible for the Data Breach's occurrence; but otherwise by the Customer) in relation to the Customer notifying the individual or the Information Commissioner (or relevant regulator) of the Data Breach, including by providing the Customer with a detailed description of the nature of the Data Breach and the identity of the affected person(s);

23.18 In addition to the obligations set out in clause 23.17 the Supplier shall provide full cooperation and assistance to the Customer in respect of the Customer efforts to

investigate, remediate, and mitigate the effects of any Data Breach and shall comply with its own notification obligations to individuals or regulatory authorities.

- 23.19 In the case of a Data Breach, to the extent to which the Supplier, its subprocessor(s) or Supplier Personnel (or any combination of them) were responsible for the Data Breach's occurrence, the Supplier shall provide credit monitoring and identity theft protection for a period of minimum two (2) years and at its own cost.

Audits

- 23.20 The Supplier shall, during the term of this Agreement:

- (a) promptly complete and return to the Customer on request from time to time any questionnaire designed to evaluate the Supplier's compliance with the Supplier's obligations in respect of Personal Data;
- (b) permit without charge, on an annual basis, or at any time when the Customer becomes aware of a Data Breach or alleged breach of Data Privacy Laws by the Supplier, reasonable access by the Customer to all records, files, tapes, computer systems, or any other information howsoever held by the Supplier in respect of the Supplier's activities pursuant to this Agreement, for the purposes of reviewing compliance with the Data Privacy Laws; and
- (c) provide without charge all reasonable assistance to the Customer in complying with any direction, requirement or request made by any regulator to do or not to do any act, or to provide any information in respect of any obligation of the Supplier under this Agreement, including, where necessary, giving the regulator (including its representatives or appointees) reasonable access to any records, files, tapes, computer systems, or any other information howsoever held.

- 23.21 For the purpose of clause 23.20, 'reasonable access' shall mean as a minimum, access on not less than forty-eight (48) hours' notice and during normal working hours and access to all information held by the Supplier.

- 23.22 The Supplier agrees that the Customer may appoint a third party independent auditor to audit the Supplier's compliance with this Agreement and the Data Privacy Laws and to determine the accuracy and completeness of the statements and records submitted by the Supplier under this Agreement.

Appointment of subprocessors

- 23.23 Any appointment of a subprocessor by the Supplier under this Agreement is subject to the Customer's prior written consent and the fulfilment of the following conditions:

- (a) the Supplier having provided the Customer with full details of the subprocessor (including the results of the due diligence undertaken before its appointment and having procured the Customer's prior written consent to such appointment;

- (b) the Supplier having undertaken thorough due diligence on the proposed subprocessor, including a risk assessment of the information governance related practices and processes of the subprocessor, and the Supplier having paid due regard to the results of that due diligence in reaching its decision to appoint the proposed subprocessor;
- (c) the Supplier having duly executed an agreement with the relevant subprocessor which includes terms which are substantially the same as the terms set out in this clause 23 and to which the Company is named as a third party beneficiary; and
- (d) the Supplier shall not disclose Personal Data to a third party in any circumstances other than to a subprocessor appointed in accordance with this clause 23.23 or as expressly authorised in advance in writing by the Customer.

Liability and indemnity

- 23.24 The Supplier acknowledges that any unauthorised access, destruction, alteration, addition or impediment to access or use of that Personal Data when stored in any computer, or the publication or communication of any fact or document by a person which has come to his knowledge or into his possession or custody by virtue of the performance of this Agreement (other than to a person to whom the Supplier is authorised to publish or disclose the fact or document) may be a criminal offence or be likely to cause significant loss or damage to the Customer, or both.
- 23.25 The Supplier shall indemnify, defend and hold harmless the Customer and their respective directors, officers, agents, successors and assigns from any and all losses, liabilities (including provision for contingent liabilities), fines, compensation, damages, costs and expenses including legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties arising from or in connection with any breach by the Supplier, its subprocessor(s) or Supplier Personnel (or any combination of them) of the obligations set out in this clause 23.
- 23.26 Nothing in this clause shall relieve the Supplier of any liability for the acts or omissions of its Supplier Personnel, employees, or subprocessors in relation to the Personal Data.

24. PUBLICITY AND BRANDING

- 24.1 The Supplier shall not:
- (a) make any press announcements or publicise this Agreement or its contents in any way; or
 - (b) use the Customer's name or brand in any promotion or marketing or announcement of orders;
 - (c) without the prior written consent of the Customer, which shall not be unreasonably withheld or delayed.

- 24.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the 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.

SECTION G – LIABILITY, INDEMNITIES AND INSURANCE

25. LIMITATIONS ON LIABILITY

Unlimited liability

25.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
- (b) fraud or fraudulent misrepresentation by it or its employees;
- (c) 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
- (d) any liability to the extent it cannot be limited or excluded by Law.

25.2 The Supplier's liability shall be unlimited:

- (a) in respect of the indemnities in clause 10.6 (VAT), clause 14.8 (*Employment Indemnity*), clause 14.9 (*Income Tax and National Insurance Contributions*), clause 19 (*IPR Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*); and
- (b) in relation to any breach by the Supplier of clause 20 (*Customer Data and Security Requirements*) or clause 21 (*Confidentiality*), save that where a breach of these clauses involves a breach of clause 23 (*Protection of Personal Data and Customer Data*) the limit in clause 25.4(b) shall apply to the Supplier's liability for a breach of clause 23 (*Protection of Personal Data*).

25.3 The Customer's liability in respect of the indemnities in clause 14.8 (*Employment Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*) shall be unlimited.

Financial and other limits

25.4 Subject to clauses 25.1 and 25.2 (*Unlimited Liability*) and clauses 25.7 and 25.8 (*Consequential losses*):

- (a) the Supplier's aggregate liability in respect of loss of or damage to the Customer Premises or other property or assets of the Customer (including technical infrastructure, assets or equipment but excluding any loss or damage to the Customer's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed ten million pounds (£10,000,000);
- (b) the Supplier's aggregate liability to the Customer as a result of any breaches of clause 23 (*Protection of Personal Data*) shall in no event exceed fifty million pounds (£50,000,000);

- (c) the Supplier's aggregate liability in respect of all:
 - (i) Service Credits; and
 - (ii) Compensation for Unacceptable KPI Failure;
 shall be subject to the Service Credit Cap; and
- (d) the Supplier's aggregate liability in respect of all other Losses incurred by the Customer under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed:
 - (i) in relation to Defaults occurring in the first Contract Year, an amount equal to the greater of fifteen million pounds (£15m) or two hundred percent (200%) of the sum of the Charges paid and due to be paid to the Supplier in the first Contract Year;
 - (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the greater of fifteen million pounds (£15m) or two hundred percent (200%) of the sum of the Charges paid and due to be paid to the Supplier under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and
 - (iii) in relation to Defaults occurring after the end of the Term, an amount equal to the greater of fifteen million pounds (£15m) or two hundred percent (200%) of the sum of the Charges paid and due to be paid to the Supplier in the twelve (12) month period immediately prior to the last day of the Term,

provided that where any Losses referred to in paragraph 25.4(d) have been incurred by the Customer as a result of the Supplier's Wilful Abandonment of this Agreement or the Supplier's Wilful Default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement, the references in that paragraph to two hundred percent (200%) shall be deemed to be references to three hundred percent (300%).

- 25.5 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under paragraph 25.4(d).
- 25.6 Subject to clauses 25.1 and 25.3 (*Unlimited Liability*) and clause 25.7 (*Consequential Losses*) and without prejudice to the Customer's obligation to pay the Charges as and when they fall due for payment:
 - (a) the Customer's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of early termination of this Agreement by the Customer pursuant to paragraph 33.1(a) (*Termination by the Customer*) or by the Supplier pursuant to clause 33.5 (*Termination by the Supplier*) shall in no event exceed the amount determined pursuant to clause 34.3; and

- (b) the Customer's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of the Customer shall in no event exceed:
 - (i) in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Charges;
 - (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the sum of the total Charges paid and due to be paid under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and
 - (iii) in relation to Defaults occurring after the end of the Term, an amount equal to the sum of the total Charges paid and due to be paid to the Supplier in the twelve (12) month period immediately prior to the last day of the Term.

Consequential Losses

25.7 Subject to clauses 25.1, 25.2 and 25.3 (*Unlimited Liability*) and clause 25.8, neither Party shall be liable to the other Party for:

- (a) any indirect, special or consequential Loss; or
- (b) any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

25.8 Notwithstanding clause 25.7 but subject to clause 25.4, the Supplier agrees that the following listed Losses constitute deemed direct losses and the Supplier further acknowledges that the Customer may, amongst other things, recover such Losses from the Supplier to the extent incurred by the Customer or any other member of the Customer Group or a Divested Business to the extent that they arise as a result of or in connection with a Default by the Supplier:

- (a) any additional operational and administrative costs and expenses incurred by the Customer or any other member of the Customer Group, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional cost of procuring Replacement Services for the remainder of the Term and any replacement Deliverables, which shall include any incremental costs associated with such Replacement Services or replacement Deliverables above those that would have been payable under this Agreement;
- (d) any compensation or interest paid to a third party by the Customer;
- (e) any fine or penalty incurred by the Customer or any other member of the Customer Group or any Divested Business pursuant to Law and any costs incurred by the Customer or any other member of the Customer Group in defending any proceedings that result in such fine or penalty;

- (f) any anticipated savings identified in Schedule 7.6 (*Anticipated Savings*). Conduct of indemnity claims;
- (g) any Losses incurred by any other member of the Customer Group or by a Divested Business or by any of their customers that would have been direct Losses if incurred by the Customer;
- (h) loss of revenue directly attributable to the Customer's or any other member of the Customer Group's, or by a Divested Business's:
 - (i) inability to process payments from, in each case, its customers or third parties according to, in each case, its standard invoicing practices or payment processes or both;
 - (ii) delay in invoicing or processing payments from, in each case, its customers or third parties according to, in each case, its standard invoicing practices or payment processes or both;
 - (iii) inability to carry out its standard operational processes thereby causing or contributing to the losses set out in paragraph 25.8(h)(i) or paragraph 25.8(h)(ii),

in each case where the loss of revenue cannot be reasonably recovered or mitigated, including without limitation the issue or subsequent invoices or the invocation of internal contingency procedures;
- (i) the Customer's costs of taking emergency measures, including changing over to other information networks, computer and information systems or engaging third parties; and
- (j) costs or expenses of replacing lost, stolen or damaged goods or tangible materials, including equipment.

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

Mitigation

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

26. INSURANCE

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

SECTION H – REMEDIES AND RELIEF

27. RECTIFICATION PLAN PROCESS

27.1 In the event that:

- (a) there is, or is reasonably likely to be, a Delay; or
- (b) in any Service Period there has been, or there is reasonably likely to be:
 - (i) a Material KPI Failure; or
 - (ii) a Material PI Failure; or
 - (iii) both a Material KPI Failure and a Material PI Failure; or
- (c) the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) that taken together constitute a material Default),

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

Notification

27.2 If:

- (a) the Supplier notifies the Customer pursuant to clause 27.1 that a Notifiable Default has occurred; or
- (b) the Customer notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

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

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

Submission of the draft Rectification Plan

27.4 The Supplier shall submit a draft Rectification Plan to the Customer for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after the original notification

pursuant to clause 27.2 (*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

27.5 The draft Rectification Plan shall set out:

- (a) full details of the Notifiable Default that has occurred, including a root cause analysis;
- (b) the actual or anticipated effect of the Notifiable Default; and
- (c) the steps that the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).

27.6 The Supplier shall promptly provide to the Customer any further documentation that the Customer reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 8.3 (*Dispute Resolution Procedure*).

Agreement of the Rectification Plan

27.7 The Customer may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:

- (a) is insufficiently detailed to be capable of proper evaluation;
- (b) will take too long to complete;
- (c) will not prevent reoccurrence of the Notifiable Default; or
- (d) will rectify the Notifiable Default but in a manner that is unacceptable to the Customer.

27.8 The Customer shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Customer rejects the draft Rectification Plan, the Customer shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Customer for review within five (5) Working Days (or such other period as agreed between the Parties) of the Customer's notice rejecting the first draft.

27.9 If the Customer consents to the Rectification Plan:

- (a) the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
- (b) the Customer may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Event.

28. DELAY PAYMENTS

- 28.1 If a Key Milestone has not been Achieved by its relevant Milestone Date, the provisions of Paragraph 1 of Part C of Schedule 7.1 (*Charges and Invoicing*) shall apply in relation to the payment of Delay Payments.
- 28.2 Delay Payments shall be the Customer's exclusive financial remedy for the Supplier's failure to Achieve a Key Milestone by its Milestone Date except where:
- (a) the Customer is entitled to or does terminate this Agreement pursuant to paragraph 33.1(c) (*Termination by the Customer*); or
 - (b) the Delay exceeds the Delay Deduction Period.

29. REMEDIAL ADVISER

- 29.1 If:
- (a) any of the Intervention Trigger Events occur; or
 - (b) the Customer reasonably believes that any of the Intervention Trigger Events are likely to occur,
- (each an '**Intervention Cause**'), the Customer may give notice to the Supplier (an '**Intervention Notice**') giving reasonable details of the Intervention Cause and requiring:
- (c) a meeting between the Customer Representative and the Supplier Representative to discuss the Intervention Cause; or
 - (d) the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this clause 29; or
 - (e) both the things set out in paragraphs 29.1(c) and 29.1(d).

If the Intervention Cause is also a Supplier Termination Event, the Customer has no obligation to exercise its rights under this clause 29.1 prior to or instead of exercising its right to terminate this Agreement.

- 29.2 If the Customer gives notice that it requires the appointment of a Remedial Adviser:
- (a) the Remedial Adviser shall be:
 - (i) a person selected by the Supplier and approved by the Customer; or
 - (ii) if none of the persons selected by the Supplier have been approved by the Customer (or no person has been selected by the Supplier) within ten (10) Working Days following the date on which the Intervention Notice is given, a person identified by the Customer;
 - (b) the terms of engagement and start date agreed with the Remedial Adviser must be approved by the Customer; and

- (c) any right of the Customer to terminate this Agreement pursuant to paragraph 33.1(c) (*Termination by the Customer*) for the occurrence of that Intervention Cause shall be suspended for sixty (60) Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties) (the '**Intervention Period**').
- 29.3 The Remedial Adviser's overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Supplier's responsibilities under this Agreement), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:
 - (a) observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
 - (b) gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
 - (c) write reports and provide information to the Customer in connection with the steps being taken by the Supplier to remedy the Intervention Cause;
 - (d) make recommendations to the Customer or the Supplier (or both) as to how the Intervention Cause might be mitigated or avoided in the future; and
 - (e) take any other steps that the Customer or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.
- 29.4 The Supplier shall:
 - (a) work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
 - (b) ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
 - (c) submit to such monitoring as the Customer or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
 - (d) implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Customer within the timescales given by the Remedial Adviser; and
 - (e) not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Customer (such consent not to be unreasonably withheld).

- 29.5 The Supplier shall be responsible for:
- (a) the costs of appointing, and the fees charged by, the Remedial Adviser; and
 - (b) its own costs in connection with any action required by the Customer or the Remedial Adviser pursuant to this clause 29.
- 29.6 If:
- (a) the Supplier:
 - (i) fails to perform any of the steps required by the Customer in an Intervention Notice; or
 - (ii) is in Default of any of its obligations under clause 29.4; or
 - (b) the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,
- (each a '**Remedial Adviser Failure**'), the Customer shall be entitled to terminate this Agreement pursuant to paragraph 33.1(c) (*Termination by the Customer*).

30. STEP-IN RIGHTS

- 30.1 On the occurrence of a Step-In Trigger Event, the Customer may serve notice on the Supplier (a '**Step-In Notice**') that it will be taking action under this clause 30 (*Step-in Rights*), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to clause 21 (*Confidentiality*)). The Step-In Notice shall set out the following:
- (a) the action the Customer wishes to take and in particular the Services that it wishes to control (the '**Required Action**');;
 - (b) the Step-In Trigger Event that has occurred and whether the Customer believes that the Required Action is due to the Supplier's Default;
 - (c) the date on which it wishes to commence the Required Action;
 - (d) the time period that it believes will be necessary for the Required Action;
 - (e) whether the Customer will require access to the Supplier's premises or the Sites, or both (provided that the Customer shall comply with any reasonable policies or procedures of the Supplier applicable when accessing such premises and/or Sites); and
 - (f) to the extent practicable, the impact that the Customer anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.

- 30.2 Following service of a Step-In Notice, the Customer shall:
- (a) take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
 - (b) keep records of the Required Action taken and provide information about the Required Action to the Supplier;
 - (c) co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Customer is not assuming control; and
 - (d) 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 30.
- 30.3 For so long as and to the extent that the Required Action is continuing, then:
- (a) the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
 - (b) no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of clause 30.4 shall apply to Deductions from Charges in respect of other Services; and
 - (c) the Customer shall not be obliged to pay to the Supplier the Charges in respect of the Services that are the subject of the Required Action.
- 30.4 If the Supplier demonstrates to the reasonable satisfaction of the Customer that the Required Action has resulted in:
- (a) the degradation of any Services not subject to the Required Action; or
 - (b) the non-Achievement of a Milestone,
 - (c) 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.
- 30.5 Before ceasing to exercise its step in rights under this clause 30 the Customer shall deliver a written notice to the Supplier (a '**Step-Out Notice**'), specifying:
- (a) the Required Action it has actually taken; and
 - (b) the date on which the Customer plans to end the Required Action (the '**Step-Out Date**') subject to the Customer being satisfied (acting reasonably) with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with clause 30.6.
- 30.6 The Supplier shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the Step-Out Date, develop for the Customer's approval a draft plan (a '**Step-Out Plan**') relating to the resumption by the Supplier of the

Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.

- 30.7 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.
- 30.8 The Supplier shall bear its own costs in connection with any step-in by the Customer under this clause 30.
- 30.9 If the Customer's reasonable costs in taking the Required Action exceed the value of the Charges that would otherwise have been payable for the Services but for paragraph 30.3(c) that are the subject of the Required Action (the difference being the "Excess"), then the Supplier shall be liable to the Customer for an amount equal to the Excess, except where the Step-In action was taken by the Customer under:
- (a) limb (c), (d) or (g) of the definition of a Step-In Trigger Event; or
 - (b) limbs (e) or (f) a of the definition of a Step-in Trigger Event (insofar as the primary cause of the Customer serving the Step-In Notice is identified as not being the result of the Supplier's Default).
- 30.10 Where the Services in respect of which the Customer has exercised its rights under this clause 30 are otherwise provided from locations or environments from which the Supplier services other clients, the exercise by the Customer of its right under this clause 30 shall not oblige the Supplier to provide: (i) any access or assistance which would involve the Customer gaining access to the data of any of the Supplier's other customers; or (ii) access to locations used to provide services to other Supplier customers or to environments where such access would interfere with the provision of services to other Supplier's customers provided that in such case the Supplier will provide controlled access to such locations or environments as the case may be to the extent that it is reasonably practicable to do so.
- 30.11 The Customer shall limit the duration of any Required Action to six (6) months.

31. CUSTOMER CAUSE

- 31.1 Subject to clause 31.2, if the Supplier has failed to:
- (a) Achieve a Milestone by its Milestone Date;
 - (b) provide the Operational Services in accordance with the Target Performance Levels; or
 - (c) comply with its obligations under this Agreement, (each a '**Supplier Non-Performance**'),

and can demonstrate that the Supplier Non-Performance would not have occurred but for an Customer Cause, then (subject to the Supplier fulfilling its obligations in this clause 31):

- (i) the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Customer Cause;
- (ii) the Customer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:
 - (A) to terminate this Agreement pursuant to paragraph 33.1(c) (*Termination by the Customer*); or
 - (B) to take action pursuant clause 29 (*Remedial Adviser*) or clause 30 (*Step-In*);
- (iii) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (A) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Customer Cause;
 - (B) if the Customer, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Customer Cause;
 - (C) if the Milestone is a Key Milestone, the Supplier shall have no liability to pay any Delay Payments associated with the Key Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Customer Cause; and
 - (D) the Supplier shall be entitled to claim compensation subject to and in accordance with the principles set out in Paragraph 2 of Part C of Schedule 7.1 (*Charges and Invoicing*); and
- (iv) where the Supplier Non-Performance constitutes a Performance Failure:
 - (A) the Supplier shall not be liable to accrue Service Credits;
 - (B) the Customer shall not be entitled to withhold any of the Service Charges pursuant to paragraph 7.2(d)(ii) (*Performance Failures*);
 - (C) the Customer shall not be entitled to withhold and retain any Compensation for Unacceptable KPI Failure pursuant to paragraph 7.4(a) (*Unacceptable KPI Failure*); and

- (D) the Supplier shall be entitled to invoice for the Service Charges for the relevant Operational Services affected by the Customer Cause,

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

- 31.2 In order to claim any of the rights or relief referred to in clause 31.1, the Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that an Customer Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Customer notice (a '**Relief Notice**') setting out details of:
- (a) the Supplier Non-Performance;
 - (b) the Customer Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Agreement;
 - (c) any steps that the Customer can take to eliminate or mitigate the consequences and impact of such Customer Cause; and
 - (d) the relief or compensation, or both, claimed by the Supplier.
- 31.3 If the Supplier fails to provide a Relief Notice within the time period set out in clause 31.2 then no Customer Cause shall be deemed to have occurred, and the Supplier shall accordingly not be entitled to any relief set out in this clause 31.
- 31.4 Following the receipt of a Relief Notice, the Customer shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Customer Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Customer Cause and its entitlement to relief or compensation, or both, consulting with the Supplier where necessary.
- 31.5 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Customer Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.
- 31.6 Without prejudice to clause 5.23 (*Continuing obligation to provide the Services*), if a Dispute arises as to:
- (a) whether a Supplier Non-Performance would not have occurred but for an Customer Cause; or
 - (b) the nature or extent of the relief or compensation claimed by the Supplier,
- either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.
- 31.7 Any Change that is required to the Implementation Plan or to the Charges pursuant to this clause 31 shall be implemented in accordance with the Change Control Procedure.

32. FORCE MAJEURE

- 32.1 Subject to the remaining provisions of this clause 32 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (*Business Continuity and Disaster Recovery*)), a Party may claim relief under this clause 32 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 32.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 32.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this clause 32 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated by any of the Services including the BCDR Services, but the Supplier has failed to do so; or
 - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement; or
 - (c) both of paragraphs 32.3(b) and 32.3(a) apply.
- 32.4 Subject to clause 32.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 32.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Best Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 32.6 Where, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
 - (i) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to paragraph 33.1(d) (*Termination by the Customer*); and

- (ii) neither Party shall be liable for any Default arising as a result of such failure;
 - (b) the Supplier fails to perform its obligations in accordance with this Agreement:
 - (i) the Customer shall not be entitled:
 - (A) to receive Delay Payments pursuant to clause 28 (*Delay Payments*) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
 - (B) to receive Service Credits, to withhold any of the Service Charges pursuant to paragraph 7.2(d)(ii) (*Performance Failures*) or withhold and retain any of the Service Charges as compensation pursuant to paragraph 7.4(a) (*Unacceptable KPI Failure*) to the extent that a Performance Failure has been caused by the Force Majeure Event; and
 - (ii) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.
- 32.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.
- 32.8 Relief from liability for the Affected Party under this clause 32 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under clause 32.7.

SECTION I – TERMINATION AND EXIT MANAGEMENT

33. TERMINATION RIGHTS

Termination by the Customer

33.1 The Customer may terminate this Agreement or any Call-Off Agreement by issuing a Termination Notice to the Supplier:

- (a) for convenience at any time where the Agreement or Call-Off Agreement should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU;
- (b) for convenience, otherwise than as set out in paragraph 33.1(a), on the date set out in the Termination Notice, which shall be no less than ninety (90) days from the date of issue of the Termination Notice;
- (c) if a Supplier Termination Event occurs;
- (d) if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or
- (e) if the Agreement has been substantially amended to the extent that the Utilities Contracts Regulations 2016 require a new procurement procedure,

and this Agreement or the relevant Call-Off Agreement shall terminate on the date specified in the Termination Notice.

33.2 Where the Customer:

- (a) is terminating this Agreement or a Call-Off Agreement under paragraph 33.1(c) due to the occurrence of either limb (b) or (g) of the definition of ‘Supplier Termination Event’, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) that taken together constitute a material Default; or
- (b) has the right to terminate this Agreement or a Call-Off Agreement under paragraph 33.1(c) or paragraph 33.1(d), it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

33.3 Where the Customer terminates this Agreement, or this Agreement expires, such termination or expiry shall not automatically terminate all Call-Off Agreements entered into under this Agreement, unless the Termination Notice specifies that a Call-Off Agreement is intended to terminate or expire contemporaneously with the Agreement. Notwithstanding the termination or expiry of this Agreement, the relevant terms of this Agreement shall survive to give full force and effect to the surviving Call-Off Agreement(s).

- 33.4 Where the Customer terminates a specific Call-Off Agreement, or a Call-Off Agreement expires, such termination or expiry will not affect the continued existence of this Agreement or other, unaffected Call-Off Agreements, unless the Parties agree otherwise.

Termination by the Supplier

- 33.5 The Supplier may, by issuing a Termination Notice to the Customer, terminate this Agreement if the Customer fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds an amount equivalent to three (3) month's average Charges and such amount remains outstanding forty (40) Working Days after the receipt by the Customer of a notice of non-payment from the Supplier and this Agreement shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice).

Partial Termination

- 33.6 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:
- (a) the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event; and
 - (b) the Supplier shall not be entitled to reject the Change.

34. CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

- 34.1 The provisions of clauses 5.22 (*Specially Written Software warranty*), 10.5 and 10.6 (VAT), 10.7 and 10.8 (*Set-off and Withholding*), clause 12 (*Records, Reports, Audits and Open Book Data*), clause 14.8 (*Employment Indemnity*), clause 14.9 (*Income Tax and National Insurance Contributions*), clause 16 (*Intellectual Property Rights*), clause 17 (*Transfer and Licences Granted by the Supplier*), clause 19.1 (*IPR Indemnity*), clause 21 (*Confidentiality*), clause 22 (*Transparency and Freedom of Information*), clause 23 (*Protection of Personal Data and Customer Data*), clause 25 (*Limitations on Liability*), clause 34 (*Consequences of Expiry or Termination*), 40 (*Severance*), 42 (*Entire Agreement*), 43 (*Third Party Rights*), 45 (*Disputes*) and clause 46 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 7.1 (*Charges and Invoicing*), 7.5 (*Financial Reports and Audit Rights*), 8.3 (*Dispute Resolution Procedure*), 8.4 (*Reports and Records Provisions*), 8.5 (*Exit Management*), and 9.1 (*Staff Transfer*), shall survive the termination or expiry of this Agreement.

Exit Management

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

Payments by the Customer

- 34.3 If this Agreement is terminated (in part or in whole) by the Customer pursuant to clause 33.1 (*Termination by the Customer*), by the Supplier pursuant to clause 33.5 (*Termination by the Supplier*), or the Term expires, then, (save as otherwise agreed in a Call-Off Agreement) the only payments that the Customer shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:
- (a) payments in respect of any Assets or apportionments in accordance with Schedule 8.5 (*Exit Management*); and
 - (b) payments in respect of unpaid Charges for Services received up until the Termination Date.

Payments by the Supplier

- 34.4 In the event of termination or expiry of this Agreement, the Supplier shall 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.

SECTION J – MISCELLANEOUS AND GOVERNING LAW

35. COMPLIANCE

Health and Safety

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

Equality and Diversity

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

Export Compliance

- 35.4 In connection with the provision or receipt of the Services, each Party will comply with all applicable export and import laws and associated embargo and economic sanction regulations, including those of the United States, that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to specific countries, or for specific end uses, to the extent that each is bound by them.

- 35.5 Without prejudice to any other provision of this Agreement, the Customer acknowledges that the Supplier may use global resources (non-permanent residents used locally and personnel in locations worldwide). The Customer shall not provide any material to the Supplier that is export controlled or requires an export license by the Supplier.

36. ASSIGNMENT AND NOVATION

- 36.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Customer. The Customer agrees that it shall not unreasonably withhold its consent to the Supplier assigning its right to receive payment under the Agreement to a third party, provided such third party gives a written undertaking to comply with confidentiality obligations which are equivalent to those set out in clause 21.
- 36.2 The Customer may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement or any associated licences to any member of the Customer Group and the Supplier shall, at the Customer's request, enter into a novation agreement in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this clause 36.2.
- 36.3 The Supplier hereby consents that, by giving the Supplier prior written notice, the Customer may assign, novate, sub-contract or otherwise dispose of, and be released from any or all of its rights and/or obligations under this Agreement to any successor to the Customer following a reorganisation within the Customer to any body (including any private sector body). Any change to the legal status of the Customer such that it ceases to be a contracting authority shall not affect the validity of this Agreement. In such circumstances this Agreement shall be binding on any successor body to the Customer.

37. WAIVER AND CUMULATIVE REMEDIES

- 37.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. Except as expressly set out in this Agreement, a failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 37.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

38. RELATIONSHIP OF THE PARTIES

Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

39. PREVENTION OF FRAUD AND BRIBERY

39.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

39.2 The Supplier shall not during the term of this Agreement:

- (a) commit a Prohibited Act; or
- (b) do or suffer anything to be done that would cause the Customer or any member of the Customer Group, or any of the Customer's employees, consultants, contractors, sub-contractors or agents, or any member of the Customer Group's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

39.3 The Supplier shall during the term of this Agreement:

- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under paragraph 39.3(a) and make such records available to the Customer on request.

39.4 The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of clause 39.1 or clause 39.2, or has reason to believe that it has or any of the Supplier Personnel have:

- (a) been subject to an investigation or prosecution that relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible

for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; or

- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

39.5 If the Supplier makes a notification to the Customer pursuant to clause 39.4, the Supplier shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to Audit any books, Records and/or any other relevant documentation in accordance with clause 12 (*Records, Reports, Audits and Open Book Data*).

39.6 If the Supplier is in Default under clause 39.1 or clause 39.2, the Customer may by notice:

- (a) require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
- (b) immediately terminate this Agreement.

39.7 Any notice served by the Customer under clause 39.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Customer believes has committed the Prohibited Act and the action that the Customer has elected to take (including, where relevant, the date on which this Agreement shall terminate).

40. SEVERANCE

40.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and enforceability of the remaining provisions of this Agreement shall not be affected.

40.2 In the event that any deemed deletion under clause 40.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.

40.3 If the Parties are unable to agree on the revisions to this Agreement within five (5) Working Days of the date of the notice given pursuant to clause 40.2, the matter shall be dealt with in accordance with Paragraph 4 (*Commercial Negotiation*) of Schedule 8.3 (*Dispute Resolution Procedure*) except that if the representatives are unable to resolve the dispute within thirty (30) Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this clause 40.3.

41. 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 that may be reasonably necessary to give effect to the meaning of this Agreement.

42. ENTIRE AGREEMENT

42.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

42.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.

42.3 Nothing in this clause 42 shall exclude any liability in respect of misrepresentations made fraudulently.

43. THIRD PARTY RIGHTS

43.1 Subject to clause 43.5, the parties do not intend any third party to have the right to enforce any provision of this Agreement under the CRTPA or otherwise except:

(a) any member of the Customer Group, which shall have the right to enforce this Agreement to the extent to which this Agreement relates directly or indirectly to the provision of the Services to it or otherwise creates any obligation upon the Supplier that is capable of affecting it (including any right, benefit or privilege associated with that provision of Services); and

(b) any other Authorised User, who shall have the right to enforce this Agreement to the extent to which this Agreement relates directly or indirectly to the provision of the Services to it or otherwise creates any obligation upon the Supplier that is capable of affecting it (including any right, benefit or privilege associated with that provision of Services).

43.2 The Customer shall use its reasonable endeavours to bring any claim that a Service Recipient (other than the Customer) may have against the Supplier in its own name.

43.3 If a Service Recipient (including the Customer) (a '**Second Claimant**') brings a claim against the Supplier which includes Losses incurred by any other Service Recipient ("**First Claimant**"), where such the First Claimant has already recovered such Losses from the Supplier, the claim brought by the Second Claimant will be reduced by the amount of those Losses recovered and paid to the relevant First Claimant.

43.4 Subject to clause 43.1, a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.

- 43.5 No third party may enforce, or take any step to enforce, any provision of this Agreement without the prior written consent of the Customer, which may, if given, be given on and subject to such terms as the Customer may determine.
- 43.6 Notwithstanding that any term of this Agreement may be or become enforceable by a person who is not a party to it:
- (a) the terms of this Agreement, or any of them, may be varied, amended, or modified; or
 - (b) this Agreement may be suspended, cancelled or terminated in accordance with its terms; or
 - (c) this Agreement may be rescinded,
- in each case without the consent of the third party.

44. NOTICES

- 44.1 Any notices sent under this Agreement must be in writing.
- 44.2 Subject to clause 44.4, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

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

- 44.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

	Supplier	Customer
Contact	Gillian Wiggins, Vice President and Executive Partner Keith Wishart, Executive Partner	Daniel Wood, Commercial Manager, Global IS With a copy to: UK General Counsel
Address	IBM United Kingdom 76/78 Upper Ground Lambeth London SE1 9PZ	Attn: Daniel Wood, Commercial Manager, Global IS Telent Building Point 3 Opus 40 Business Park Haywood Road Warwick United Kingdom CV34 5AH With a copy to - National Gas UK Limited Address: 1-3 Strand, London, WC2N 5EH Attention: UK General Counsel
Email	gillwiggins@uk.ibm.com keith.wishart@uk.ibm.com	

- 44.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in clause 44.2:

- (a) Step-In Notices;
- (b) Force Majeure Notices;

- (c) notices issued by the Supplier pursuant to clause 33.5 (*Termination by the Supplier*);
 - (d) Termination Notices; and
 - (e) Dispute Notices.
- 44.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with clause 44.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For 1st Class delivery (as set out in the table in clause 44.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 44.6 This clause 44 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.3 (*Dispute Resolution Procedure*)).
- 45. DISPUTES**
- 45.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.
- 45.2 The Supplier shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.
- 46. GOVERNING LAW AND JURISDICTION**
- 46.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 46.2 Subject to clause 45 (*Disputes*) and Schedule 8.3 (*Dispute Resolution Procedure*) (including the Customer's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.
- 47. COUNTERPARTS**
- 47.1 The Agreement may be executed in any number of counterparts, and by the parties as separate counterparts, but will not be effective until each party has executed at least one counterpart.
- 47.2 Each counterpart shall constitute an original of the Agreement, but all the counterparts shall together constitute one and the same Agreement.
- 47.3 An electronic copy of a signature received in 'Portable Document Format' (PDF) or other agreed format shall be deemed to be of the same force and effect as an original signature on an original executed document. If such method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party

shall provide the other with the original of such counterpart as soon as reasonably possible thereafter.

IN WITNESS of which this Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.

SIGNED for and on behalf of IBM United Kingdom Limited

Signature:

Name (block capitals): GILLIAN WIGGINS

Position: Vice President and Executive Partner

Date:

SIGNED for and on behalf of NATIONAL GRID UK LIMITED

Signature:



Name (block capitals): STEPHEN PAUL SAMWAYS

Position: DIRECTOR

Date: 17TH DECEMBER 2018

IN WITNESS of which this Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.

SIGNED for and on behalf of IBM United Kingdom Limited

Signature:

A handwritten signature in black ink, appearing to read "Gill Wiggins", written over a horizontal line.

Name (block capitals): GILLIAN WIGGINS

Position: Vice President and Executive Partner

Date: 17th December 2018.

SIGNED for and on behalf of NATIONAL GRID UK LIMITED

Signature:

Name (block capitals):

Position:

Date:

SCHEDULE 1: DEFINITIONS

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

Achieve	<p>(a) in respect of a Test, to successfully pass a Test without any Test Issues; and</p> <p>(b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule 6.2 (<i>Testing Procedures</i>),</p> <p>and ‘Achieved’ and ‘Achievement’ shall be construed accordingly.</p>
Acquired Entity	any entity that becomes a member of the Customer Group during the Term; and any undertakings, divisions of businesses or other assets acquired by any member of the Customer Group during the Term.
Acquired Rights Directive	the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time.
Affected Party	the Party seeking to claim relief in respect of a Force Majeure Event.
Affiliate	in relation to a body corporate, any other entity that directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.
Allowable Assumptions	the assumptions set out in Annex 5 of Schedule 7.1 (<i>Charges and Invoicing</i>).
Annual Contract Report	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>).
Assets	all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Customer Assets.
Assignment Manager	has the meaning given in clause 11.5 (<i>Governance</i>).
ATP Milestone	the Milestone linked to Customer to Proceed for the relevant Operational Services set out in the Implementation Plan.
Audit	any exercise by the Customer of its Audit Rights pursuant to clause 12 (<i>Records, Reports, Audit and Open Book Data</i>) and Schedule 7.5 (<i>Financial Reports and Audit Rights</i>).

Audit Agents	<ul style="list-style-type: none"> (a) the Customer's internal and external auditors; (b) the Customer's statutory or regulatory auditors; (c) any party formally appointed by the Customer to carry out audit or similar review functions; and (d) successors or assigns of any of the above.
Audit Rights	the audit and access rights referred to in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>).
Authorised Users	<p>means the persons authorised by National Grid as may be amended or added to by National Grid at any time under this Agreement to use or receive the Services. Authorised Users shall be limited to:</p> <ul style="list-style-type: none"> (a) those members who comprise the National Grid Group and their personnel (including any agents and temporary personnel engaged or employed); (b) authorised contractors, service providers and suppliers and their personnel (including any agents and temporary personnel engaged or employed) that provide any goods or services to any member of the National Grid Group; or (c) members of the public where it is necessary for use of any part of the Services.
Authority to Proceed or ATP	the authorisation to the Supplier to commence the provision of the relevant Operational Services to the Customer, provided by the Customer in the form of a Milestone Achievement Certificate in respect of the ATP Milestone.
Background Check Procedure	the procedure relating to background checking of personnel set out in Schedule 4.5 (<i>Background Check Procedure</i>).
Balanced Scorecard Report	has the meaning given in Paragraph 1.1(b) of Part B of Schedule 2.2 (<i>Performance Levels</i>).
Baseline Security Requirements	the Customer's baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 2.4 (<i>Security Management</i>), as updated from time to time by the Customer and notified to the Supplier.
BCDR Plan	any plan prepared pursuant to Paragraph 2 of Schedule 8.6 (<i>Business Continuity and Disaster Recovery</i>), as may be amended from time to time.
BCDR Services	the business continuity and disaster recovery services set out in Schedule 8.6 (<i>Business Continuity and Disaster Recovery</i>).

Best Industry Practice	at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness that would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Customer, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws.
Call-Off Agreement	an agreement for the provision of Services by the Supplier to the Customer or any Service Recipient agreed in accordance with the process set out in Annex 1 to Schedule 2.1 (<i>Services Description</i>).
Central Government Body	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency.
Certificate of Costs	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>).
Change	any change to this Agreement.
Change Authorisation Note	a form setting out an agreed Contract Change, which shall be substantially in the form of Annex 2 of Schedule 8.2 (<i>Change Control Procedure</i>).
Change Control Procedure	the procedure for changing this Agreement set out in Schedule 8.2 (<i>Change Control Procedure</i>).
Change in Law	any change in Law that affects the performance of the Services that comes into force after the Effective Date.
Change Request	a written request for a Contract Change substantially in the form of Annex 1 of Schedule 8.2 (<i>Change Control Procedure</i>).
Charges	the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>), including any Milestone Payment or Service Charge.
Commercially Sensitive Information	<p>the information listed in Schedule 4.2 (<i>Commercially Sensitive Information</i>) comprising the information of a commercially sensitive nature relating to:</p> <ul style="list-style-type: none"> (a) the pricing of the Services;

- (b) details of the Supplier's IPR; and
- (c) the Supplier's business and investment plans,

that the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss.

Comparable Supply the supply of services to another customer of the Supplier that are the same or similar to any of the Services.

Compensation for Unacceptable KPI Failure has the meaning given in paragraph 7.4(a) (*Unacceptable KPI Failure*).

Confidential Information

- (a) Information, including all Personal Data, that (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:
 - (i) the Disclosing Party Group; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how or personnel of the Disclosing Party Group;
- (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;
- (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
- (d) Information derived from any of the above,
- (d) but not including any Information that:
 - (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;

- (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
- (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;
- (iv) was independently developed without access to the Confidential Information; or
- (v) relates to the Supplier's:
 - (A) performance under this Agreement; or
 - (B) failure to pay any Sub-contractor as required pursuant to paragraph 15.14(a) (*Supply Chain Protection*).

Contract Change	any change to this Agreement other than an Operational Change.
Contract Inception Report	the initial financial model in a form agreed by the Supplier and the Customer in writing on or before the Effective Date.
Contract Year	<ul style="list-style-type: none"> (a) a period of twelve (12) months commencing on the Effective Date; or (b) thereafter a period of twelve (12) months commencing on each anniversary of the Effective Date; <p>provided that the final Contract Year shall end on the expiry or termination of the Term.</p>
Control	in relation to an entity, means the power (whether by means of holding shares, possessing voting power or exercising contractual powers in or over that or any other person) to ensure that its affairs are conducted in accordance with the wishes of the person holding the power.
Costs	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>).

CPP Milestone	a contract performance point as set out in the Implementation Plan, being the Milestone at which the Supplier has demonstrated that the relevant Service is working satisfactorily in its operating environment in accordance with Schedule 6.2 (<i>Testing Procedures</i>).
Critical Performance Failure	<p>(a) the Supplier accruing in aggregate [the number to be agreed in the relevant Call-Off Agreement] or more Service Points (in terms of the number of points allocated) in any period of [the number to be agreed in the relevant Call-Off Agreement] months; or</p> <p>(b) the Supplier accruing Service Credits or Compensation for Unacceptable KPI Failure that meet or exceed the Service Credit Cap.</p>
Customer Assets	the Customer Materials, the Customer infrastructure and any other data, software, assets, equipment or other property owned by or licensed or leased to the Customer and that is or may be used in connection with the provision or receipt of the Services.
Customer Background IPR	<p>(a) IPR owned by the Customer before the Effective Date, including IPR contained in any of the Customer's Know-How, documentation, processes and procedures;</p> <p>(b) IPR created by the Customer independently of this Agreement; and</p> <p>(c) Crown Copyright that is not available to the Supplier otherwise than under this Agreement;</p> <p>but excluding IPR owned by the Customer subsisting in the Customer Software.</p>
Customer Cause	<p>any material breach by the Customer of any of the Customer Responsibilities, except to the extent that such breach is:</p> <p>(a) the result of any act or omission by the Customer to which the Supplier has given its prior consent; or</p> <p>(b) caused by the Supplier, any Sub-contractor or any Supplier Personnel.</p>

Customer Data	<p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) that are embodied in any electronic, magnetic, optical or tangible media; and</p> <p>which are:</p> <p>(i) supplied to the Supplier by or on behalf of the Customer; or</p> <p>(ii) that the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or</p> <p>(b) any Personal Data for which the Customer is the Data Controller.</p>
Customer Group	Customer and any member of the Customer's Group.
Customer Hardware	the computer hardware and peripherals to be made available by the Customer to the Supplier, as specified in Schedule 5.4.
Customer IT Strategy	the Customer's IT policy in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Change Control Procedure.
Customer Materials	<p>the Customer Data together with any materials, documentation, information, programs and codes supplied by the Customer to the Supplier, the IPR in which:</p> <p>(a) are owned or used by or on behalf of the Customer; and</p> <p>(b) are or may be used in connection with the provision or receipt of the Services,</p> <p>but excluding any Project Specific IPR, Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third Party Software;</p>
Customer Premises	premises owned, controlled or occupied by the Customer that are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them).
Customer Representative	the representative appointed by the Customer pursuant to clause 11.4 (<i>Representatives</i>).
Customer Requirements	the requirements of the Customer set out in Schedules 2.1 (<i>Services Description</i>), 2.2 (<i>Performance Levels</i>), 2.3 (<i>Standards</i>), 2.4 (<i>Security Management</i>), 2.5 (<i>Insurance Requirements</i>), 6.1 (<i>Implementation Plan</i>), 8.4 (<i>Reports and Records Provisions</i>), 8.5 (<i>Exit Management</i>) and 8.6 (<i>Business Continuity and Disaster Recovery</i>).

Customer Responsibilities	the responsibilities of the Customer specified in Schedule 3(<i>Customer Responsibilities</i>).
Customer Software	software that is owned by or licensed to the Customer (other than under or pursuant to this Agreement) and which is or will be used by the Supplier for the purposes of providing the Services.
Customer System	the Customer's computing environment (consisting of hardware, software and telecommunications networks or equipment) used by the Customer or the Supplier in connection with this Agreement which is owned by the Customer or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for the Customer to receive the Services.
Customer Third Party Contracts	the rental, supply, services and maintenance agreements to be made available by the Customer to the Supplier, as set out in Schedule 5.3.
Customer Third Party Software	the Object Code versions of the third party software to be made available by the Customer to the Supplier, as set out in Schedule 5.2.
CRTPA	the Contracts (Rights of Third Parties) Act 1999.
Data Breach	has the meaning given in clause 23.17.
Data Controller	until 24 May 2018, the meaning prescribed under the Data Protection Directive; and from 25 May 2018, the meaning given under the Data Protection Regulation.
Data Privacy Laws	means all laws that relate to data protection, privacy, the use of information relating to individuals, and or the information rights of individuals including, without limitation, the Data Protection Act 1998, the Privacy and Electronic Communication (EC Directive) Regulations 2003, the Regulation of Investigatory Powers Act 2000, the Telecommunications (lawful Business Practice) (Interception of Communications) Regulations 2000, Privacy and Electronic Communications (EC Directive) Regulations 2003, the Consumer Protection from Unfair Trading Regulations 2008, the General Data Protection Regulation ((EU) 2016/679)) and any relevant national laws implementing Directives 95/46/EC, 2002/58/EC, 97/66/EC and (EU) 2016/679 all as amended or replaced from time to time.
Data Processor	until 24 May 2018, the meaning prescribed under the Data Protection Directive; and from 25 May 2018, the meaning given under the Data Protection Regulation
Data Protection Directive	European Commission Directive 95/46/EC with respect to the processing of personal data.
Data Protection Regulation	General Data Protection Regulation (EU) 2016/679.

Data Subject	until 24 May 2018, the meaning prescribed under the Data Protection Directive; and from 25 May 2018, the meaning given under the Data Protection Regulation.
Data Subject Request	has the meaning given in paragraph 23.10(b).
Deductions	all Service Credits, Compensation for Unacceptable KPI Failure, Delay Payments or any other deduction that is paid or payable to the Customer under this Agreement.
Default	<p>any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:</p> <ul style="list-style-type: none"> (a) in the case of the Customer, of its employees, servants, agents; or (b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel, <p>in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other.</p>
Defect	<ul style="list-style-type: none"> (a) any error, damage or defect in the manufacturing of a Deliverable; or (b) any error or failure of code within the Software that causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or (c) any failure of any Deliverable to provide the performance, features and functionality specified in the Customer Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria; or (d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the Customer Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria.
Delay	<ul style="list-style-type: none"> (a) a delay in the Achievement of a Milestone by its Milestone Date; or

	(b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan.
Delay Deduction Period	the period of one hundred (100) days commencing on the relevant Milestone Date.
Delay Payments	the amounts payable by the Supplier to the Customer in respect of a Delay in Achieving a Key Milestone as specified in Schedule 7.1 (<i>Charges and Invoicing</i>).
Deliverable	an item or feature delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Agreement.
Detailed Implementation Plan	the plan developed and revised from time to time in accordance with Paragraphs 3 and 4 of Schedule 6.1 (<i>Implementation Plan</i>).
Disclosing Party	has the meaning given in clause 21.1 (<i>Confidentiality</i>).
Disclosing Party Group	<p>(a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and</p> <p>(b) where the Disclosing Party is the Customer, the Customer and other members of the Customer Group.</p>
Dispute	any dispute, difference or question of interpretation arising out of or in connection with this Agreement, 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 Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure.
Dispute Notice	a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute.
Dispute Resolution Procedure	the dispute resolution procedure set out in Schedule 8.3 (<i>Dispute Resolution Procedure</i>).
Divested Business	<p>(a) a member of the National Grid Group that during the term of this Agreement ceases to be a member of that group; or</p> <p>(b) a business or undertaking that at any time during the term of this Agreement is owned in whole or in part by any member of the National Grid Group, which then ceases to be owned by that member; or</p> <p>(c) a member of the National Grid Group that ceases to be an entity over which any other member of the National Grid Group has Control.</p>

Documentation	<p>descriptions of the Services and Performance Indicators, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:</p> <ul style="list-style-type: none"> (a) is required to be supplied by the Supplier to the Customer under this Agreement; (b) would reasonably be required by a competent third party capable of Best Industry Practice contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services; (c) is required by the Supplier in order to provide the Services; and (d) has been or shall be generated for the purpose of providing the Services.
DOTAS	<p>the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992.</p>
Due Diligence Information	<p>any information supplied to the Supplier by or on behalf of the Customer prior to the Effective Date.</p>
Effective Date	<p>the date on which this Agreement is signed by both Parties.</p>
EIRs	<p>the Environmental Information Regulations 2004, together with any guidance and codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations.</p>

Emergency Maintenance	<p>ad hoc and unplanned maintenance provided by the Supplier where:</p> <ul style="list-style-type: none"> (a) the Customer reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or (b) the Supplier reasonably suspects that the IT Environment or the Services, or any part the IT Environment or the Services, has or may have developed a fault.
Employee Liabilities	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:</p> <ul style="list-style-type: none"> (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; (b) unfair, wrongful or constructive dismissal compensation; (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; (d) compensation for less favourable treatment of part-time workers or fixed term employees; (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions; (f) employment claims whether in tort, contract or statute or otherwise; (g) any investigation relating to employment matters 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.
Employment Regulations	<p>the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive.</p>

Estimated Year 1 Charges	the estimated Charges payable by the Customer during the first Contract Year.
Estimated Initial Service Charges	the estimated Service Charges payable by the Customer during the period of twelve (12) months from the first Operational Service Commencement Date.
Euro Compliant	<p>means that: (i) the introduction of the euro within any part(s) 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):</p> <ul style="list-style-type: none"> (a) be able to perform all such functions in any number of currencies and in euros; (b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) 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 relevant part(s) of the UK and 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 the national currency of the relevant part(s) of the UK.
Excess	has the meaning given to it in 30.9 (<i>Step-in Rights</i>);
Exit Management	services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Customer or a Replacement Supplier, as set out or referred to in Schedule 8.5 (<i>Exit Management</i>).

Exit Plan	the plan produced and updated by the Supplier during the Term in accordance with Paragraph 4 of Schedule 8.5 (<i>Exit Management</i>).
Expedited Dispute Timetable	the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>).
Expert	has the meaning given in Schedule 8.3 (<i>Dispute Resolution Procedure</i>).
Expert Determination	the process described in Paragraph 6 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>).
Extension Period	means an extension period pursuant to clause 4.3 (<i>Term</i>).
Financial Distress Event	the occurrence of one or more of the events listed in Paragraph 3 of Schedule 7.4 (<i>Financial Distress</i>).
Financial Distress Service Continuity Plan	a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that a Financial Distress Event occurs.
Financial Reports	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>).
Financial Transparency Objectives	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>).
FOIA	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act.
Force Majeure Event	any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, 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 or the Supplier Personnel or any other failure in the Supplier's or a Sub-contractor's supply chain.
Force Majeure Notice	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event.
Former Supplier	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>).

General Anti-Abuse Rule	<p>(a) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.</p>
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 in its capacity as an information technology services provider) or that affects or relates to a Comparable Supply.
Goods	has the meaning given in clause 9.7 (<i>Supply of Goods</i>).
Group	in respect of a person: any of that person's parent or subsidiary undertakings together with any subsidiary undertakings of any such parent undertakings from time to time. The expressions ' subsidiary undertaking ' and ' parent undertaking ' shall have the meanings give to them by section 1162 of the Companies Act 2006, except that references in that section to 'majority' shall be replaced by reference to 'twenty-five percent (25%) or more.' A company shall be treated, for the purposes only of the membership requirement contained in section 1162 of the Companies Act 2006, as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) by way of security or in connection with the taking of security, or (b) its nominee.
Halifax Abuse Principle	the principle explained in the CJEU Case C-255/02 Halifax and others.
Health and Safety Policy	the health and safety policy of the Customer as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.
HMRC	HM Revenue & Customs.
ICO and ICO Correspondence	have the meaning given in paragraph 23.10(b).
Impact Assessment	has the meaning given in Schedule 8.2 (<i>Change Control Procedure</i>).
Implementation Plan	the Outline Implementation Plan or (if and when approved by the Customer pursuant to Paragraph 3 of Schedule 6.1 (<i>Implementation Plan</i>)) the Detailed Implementation Plan as updated in accordance with Paragraph 4 of Schedule 6.1 (<i>Implementation Plan</i>) from time to time.

Implementation Services	the implementation services described as such in the Services Description.
Implementation Services Commencement Date	the date on which the Supplier is to commence provision of the first of the Services, as set out in Schedule 6.1 (<i>Implementation Plan</i>).
Indemnified Person	the Customer and each and every person to whom the Customer (or any direct or indirect sub-licensee of the Customer) sub-licenses, assigns or novates any Relevant IPR or rights in Relevant IPR in accordance with this Agreement.
Information	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form).
Initial Term	has the meaning given in clause 4.2 (<i>Term</i>).
Insolvency Event	<ul style="list-style-type: none"> (a) the other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or: <ul style="list-style-type: none"> (i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986; (b) the other Party commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party; (c) a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;

- (d) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within fourteen (14) days;
- (e) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) where the other Party is a company, a LLP or a partnership:
 - (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
 - (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over the other Party;
 - (iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver; or
 - (iv) (being a partnership) the holder of an agricultural floating charge over the assets of that other Party has become entitled to appoint or has appointed an agricultural receiver; or
- (g) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

Intellectual Property Rights or IPR

- (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;

	<ul style="list-style-type: none"> (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.
Internal Business Purpose	means (a) in connection with the business of the Customer or any member of the Customer Group; or (b) the provision of goods or services to the customers of the Customer or member of the Customer Group in accordance with the business of Customer or member of the Customer Group; or (c) the reasonable and natural evolution of those businesses.
Intervention Cause	has the meaning given in clause 29.1 (<i>Remedial Adviser</i>).
Intervention Notice	has the meaning given in clause 29.1 (<i>Remedial Adviser</i>).
Intervention Period	has the meaning given in paragraph 29.2(c) (<i>Remedial Adviser</i>).
Intervention Trigger Event	<ul style="list-style-type: none"> (a) any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a ‘Supplier Termination Event;’ (b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services; (c) the Supplier accruing in aggregate [<i>insert number of points that is 75% of the points that would constitute a “Critical Performance Failure”</i>] or more Service Points (in terms of the number of points allocated) in any period of [<i>insert number of months agreed in the relevant Call-Off Agreement</i>] months; (d) the Supplier accruing Service Credits which meet or exceed seventy-five percent (75%) of the Service Credit Cap; or (e) the Supplier not Achieving a Key Milestone within seventy-five (75) days of its relevant Milestone Date;
IPR Claim	any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPR except for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPR, or the use of the Customer Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Agreement or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Agreement.

IT	information and communications technology.
IT Environment	the Customer System and the Supplier System.
Key Milestone	the Milestones identified in the Implementation Plan as key milestones and in respect of which Delay Payments may be payable in accordance with Paragraph 1 of Part C of Schedule 7.1 (<i>Charges and Invoicing</i>) if the Supplier fails to Achieve the Milestone Date in respect of such Milestone.
Key Performance Indicator	the key performance indicators set out in Part I of Annex 1 of Schedule 2.2 (<i>Performance Levels</i>).
Key Personnel	those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 9.2 (<i>Key Personnel</i>) against each Key Role as at the Effective Date or as amended from time to time in accordance with clauses 14.5 and 14.7 (<i>Key Personnel</i>).
Key Roles	a role described as a Key Role in Schedule 9.2 (<i>Key Personnel</i>) and any additional roles added from time to time in accordance with clause 14.4 (<i>Key Personnel</i>).
KPI Failure	a failure to meet the Target Performance Level in respect of a Key Performance Indicator.
KPI Service Threshold	shall be as set out against the relevant Key Performance Indicator.
Key Sub-contract	each Sub-contract with a Key Sub-contractor.
Key Sub-contractor	any Sub-contractor: <ul style="list-style-type: none"> (a) that, in the opinion of the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; or (b) with a Sub-contract with a contract value that at the time of appointment exceeds (or would exceed if appointed) ten percent (10%) of the aggregate Charges forecast to be payable under this Agreement.
Know-How	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 other Party's possession before this Agreement.

Law	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body that governs the business and activities of the Customer or with which the Supplier is bound to comply.
Licensed Software	all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to the Customer for the purposes of or pursuant to this Agreement, including any Supplier Software, Third Party Software and any Specially Written Software.
Losses	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise.
Maintenance Schedule	shall have the meaning set out in clause 9.4 (<i>Maintenance</i>).
Malicious Software	any software program or code intended to destroy, interfere with, corrupt, or cause 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.
Management Information	the management information specified in Schedule 2.2 (<i>Performance Levels</i>), Schedule 7.1 (<i>Charges and Invoicing</i>) and Schedule 8.1 (<i>Governance</i>) to be provided by the Supplier to the Customer.
Material KPI Failure	<ul style="list-style-type: none"> (a) a Serious KPI Failure; (b) a Severe KPI Failure; or (c) a failure by the Supplier to meet a KPI Service Threshold.
Material PI Failure	<ul style="list-style-type: none"> (a) a failure by the Supplier to meet the PI Service Threshold in respect of twenty-five percent (25%) or more of the Subsidiary Performance Indicators that are measured in that Service Period; or (b) a failure by the Supplier to meet the Target Performance Level in respect of fifty percent (50%) or more of the Subsidiary Performance Indicators that are measured in that Service Period.

Measurement Period	in relation to a Key Performance Indicator or Subsidiary Performance Indicator, the period over which the Supplier's performance is measured (for example, a Service Period if measured monthly or a twelve (12) month period if measured annually).
Milestone	an event or task described in the Implementation Plan that, if applicable, shall be completed by the relevant Milestone Date.
Milestone Achievement Certificate	the certificate to be granted by the Customer when the Supplier has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 3 of Schedule 6.2 (<i>Testing Procedures</i>).
Milestone Date	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved.
Milestone Payment	a payment identified in Schedule 7.1 (<i>Charges and Invoicing</i>) to be made following the issue of a Milestone Achievement Certificate.
Milestone Retention	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>).
Minor KPI Failure	shall be as set out against the relevant Key Performance Indicator.
Modern Slavery Policy	the Customer's anti-slavery and human trafficking policy, as set out in the Customer's 'Supplier Code of Conduct' document (generally available on the Customer's website) as updated by the Customer from time to time.
month	a calendar month and 'monthly' shall be interpreted accordingly.
MSA Offence	has the meaning given in paragraph 3.2(n)(i).
Multi-Party Dispute Resolution Procedure	has the meaning given in Paragraph 7.1 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>).
Multi-Party Procedure Initiation Notice	has the meaning given in Paragraph 7.2 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>).
National Grid Group	National Grid and any member of National Grid's Group from time to time.
New Releases	an item produced primarily to extend, alter or improve the Software or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software or Deliverable are also corrected) while still retaining the original designated purpose of that item.

NIS Directive	means Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union and any implementing legislation or equivalent legislation adopted.
Non-trivial Customer Base	a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor.
Notifiable Default	shall have the meaning given in clause 27.1 (<i>Rectification Plan Process</i>).
Object Code	software or data (or both) in machine-readable, compiled object code form.
Occasion of Tax Non-Compliance	<p>(a) any tax return of the Supplier submitted to a Relevant Tax Customer on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <ul style="list-style-type: none"> (i) a Relevant Tax Customer successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Customer under the DOTAS or any equivalent or similar regime; or <p>(b) any tax return of the Supplier submitted to a Relevant Tax Customer on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion.</p>
Open Book Data	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>)
Open Source	computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source.
Operating Environment	the Customer System and the Sites.

Operational Change	any change in the Supplier's operational procedures that in all respects, when implemented: <ul style="list-style-type: none"> (c) will not affect the Charges and will not result in any other costs to the Customer; (d) 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; (e) will not adversely affect the interfaces or interoperability of the Services with any of the Customer's IT infrastructure; and (f) will not require a change to this Agreement.
Operational Service Commencement Date	<ul style="list-style-type: none"> (d) in relation to an Operational Service, the later of: <ul style="list-style-type: none"> (a) the date identified in the Operational Services Implementation Plan upon which the Operational Service is to commence; and (b) where the Implementation Plan states that the Supplier must have Achieved the relevant ATP Milestone before it can commence the provision of that Operational Service, the date upon which the Supplier Achieves the relevant ATP Milestone.
Operational Services	the operational services described as such in the Services Description.
Optional Services	the services described as such in Schedule 2.1 (<i>Services Description</i>) which are to be provided by the Supplier if required by the Customer in accordance with clause 5.24 (<i>Optional Services</i>).
Optional Services Implementation Plan	the implementation plan to effect the Operational Services agreed between the Parties prior to the Effective Date and, if not agreed prior to the Effective Date, to be developed by the Supplier and approved by the Customer.
Other Supplier	any supplier to the Customer (other than the Supplier) which is notified to the Supplier from time to time or of which the Supplier should have been aware.
Outline Implementation Plan	the outline plan set out at Annex 1 of Schedule 6.1 (<i>Implementation Plan</i>).
Partial Termination	the partial termination of this Agreement to the extent that it relates to the provision of any part of the Services as further provided for in paragraph 33.2(b) (<i>Termination by the Customer</i>).

Parties and Party	have the meanings respectively given on page 1 of this Agreement.
Performance Failure	a KPI Failure or a PI Failure.
Performance Indicators	the Key Performance Indicators and the Subsidiary Performance Indicators.
Permitted Maintenance	has the meaning given in clause 9.4 (<i>Maintenance</i>).
Performance Monitoring Report	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>).
Personal Data	personal data (as defined in the DPA) that is Processed by the Supplier or any Sub-contractor on behalf of the Customer or a Central Government Body pursuant to or in connection with this Agreement.
PI Failure	a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator.
PI Service Threshold	shall be as set out against the relevant Subsidiary Performance Indicator.
Preceding Services	has the meaning given in clause 5.3 (<i>Standard of Services</i>).
Process	until 24 May 2018, the meaning prescribed under the Data Protection Directive; and from 25 May 2018, the meaning given under the Data Protection Regulation. 'Processed' and 'Processing' shall be construed accordingly.
Programme Board	the body described in Paragraph 5 of Schedule 8.1 (<i>Governance</i>).
Prohibited Act	<ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer a financial or other advantage to: <ul style="list-style-type: none"> (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 Agreement;

	<p>(c) an offence:</p> <ul style="list-style-type: none"> (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); (ii) under legislation or common law concerning fraudulent acts; or (iii) defrauding, attempting to defraud or conspiring to defraud the Customer; or <p>(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.</p>
Project Specific IPR	<p>(a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and</p> <p>(b) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Agreement,</p> <p>but shall not include the Supplier Background IPR, Supplier Software or the Specially Written Software.</p>
Quality Plans	has the meaning given in clause 6.1 (<i>Quality Plans</i>).
Quarter	the first three Service Periods and each subsequent three Service Periods (except that the final Quarter shall end on the date of termination or expiry of this Agreement).
Rate Card	means the Supplier's rate card as set out in Annex 1 to Schedule 7.1 (<i>Charges and Invoicing</i>).
Recipient	has the meaning given in clause 21.1 (<i>Confidentiality</i>).
Records	has the meaning given in Schedule 8.4 (<i>Records Provisions</i>).
Rectification Plan	a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default.
Rectification Plan Failure	<p>(a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Customer within the timescales specified in clauses 27.4 (<i>Submission of the draft Rectification Plan</i>) or 27.8 (<i>Agreement of the Rectification Plan</i>);</p>

- (b) the Customer, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to clause 27.7 (*Agreement of the Rectification Plan*);
- (c) the Supplier failing to rectify a material Default within the later of:
 - (i) thirty (30) Working Days of a notification made pursuant to clause 27.2 (*Notification*); and
 - (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default;
- (d) a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the three (3) Measurement Periods subsequent to the Measurement Period in which the initial Material KPI Failure occurred;
- (e) the Supplier not Achieving a Key Milestone by the expiry of the Delay Deduction Period; or
- (f) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of six (6) months for the same (or substantially the same) root cause as that of the original Notifiable Default.

Rectification Plan Process	the process set out in clauses 27.4 (<i>Submission of the Rectification Plan</i>) to 27.9 (<i>Agreement of the Rectification Plan</i>).
Registers	has the meaning given in Schedule 8.5 (<i>Exit Management</i>).
Reimbursable Expenses	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>).
Relevant IPR	IPR used to provide the Services or as otherwise provided or licensed by the Supplier (or to which the Supplier has provided access) to the Customer or a third party in the fulfilment of the Supplier's obligations under this Agreement including IPR in the Specially Written Software, the Supplier Non-COTS Software, the Supplier Non-COTS Background IPR, the Third Party COTS Software, the Third Party COTS IPR, the Third Party Non-COTS Software and the Third Party Non-COTS IPR but excluding any IPR in the Customer Software, the Customer Background IPR and the Customer Third Party Software.

Relevant Preceding Services	has the meaning given in clause 5.3 (<i>Standard of Services</i>).
Relevant Requirements	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.
Relevant Tax Customer	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established.
Relevant Transfer	a transfer of employment to which the Employment Regulations applies.
Relief Notice	has the meaning given in clause 31.2 (<i>Customer Cause</i>).
Remedial Adviser	the person appointed pursuant to clause 29.2 (<i>Remedial Adviser</i>).
Remedial Adviser Failure	has the meaning given in clause 29.6 (<i>Remedial Adviser</i>).
Replacement Services	any services that are the same as or 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 Agreement, whether those services are provided by the Customer internally or by any third party, or both.
Replacement Supplier	any third party service provider of Replacement Services appointed by the Customer from time to time (or where the Customer is providing replacement Services for its own account, the Customer).
Request For Information	a Request for Information under the FOIA or the EIRs.
Required Action	has the meaning given in paragraph 30.1(a) (<i>Step-In Rights</i>).
Restricted Country	<p>(a) any country outside the European Economic Area, and</p> <p>(b) any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC.</p>
Risk Register	the register of risks and contingencies that have been factored into any Costs due under this Agreement, a copy of which is set out in Annex 4 of Schedule 7.1 (<i>Charges and Invoicing</i>).
Serious KPI Failure	shall be as set out against the relevant Key Performance Indicator.

Service Charges	the periodic payments made in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>) in respect of the supply of the Operational Services.
Service Commencement	has the meaning given in Schedule 6.1 (<i>Implementation Plan</i>).
Service Commencement Date	in relation to each component of the Services, the date on which Service Commencement occurs in accordance with Schedule 6.1 (<i>Implementation Plan</i>).
Service Credit Cap	fifteen percent (15%) of the sum of the Service Charges paid and due to be paid to the Supplier under this Agreement in the month immediately preceding the Service Period in respect of which Service Credits are accrued.
Service Credits	credits payable by the Supplier due to the occurrence of one or more KPI Failures, calculated in accordance with Paragraph 3 of Part C of Schedule 7.1 (<i>Charges and Invoicing</i>).
Service Period	a calendar month, except that: <ul style="list-style-type: none"> (a) the first service period shall begin on the first Operational Service Commencement Date and shall expire at the end of the calendar month in which the first Operational Service Commencement Date falls; and (b) the final service period shall 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	in relation to a KPI Failure, the points that are set out against the relevant Key Performance Indicator.
Services	any and all of the services to be provided by the Supplier under this Agreement, including those set out in Schedule 2.1 (<i>Services Description</i>).
Service Recipient	(i) the Customer; (ii) each member of the Customer Group from time to time; (iii) agents, contractors, subcontractors, vendors, partners and consultants of the Customer or a member of the Customer Group (including Other Suppliers but excluding the Supplier and any member of the Supplier Group) in each case solely to the extent that the Customer or member of the Customer Group indicates that entity or person requires receipt of the Services for Internal Business Purposes; (iv) any other entity or person agreed by the Parties; and (v) the personnel of any entity listed above, whether employed or engaged by that entity.
Service Transfer Date	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>).

Services Description	the services description set out in Schedule 2.1 (<i>Services Description</i>).
Severe KPI Failure	shall be as set out against the relevant Key Performance Indicator.
Sites	<p>any premises (including the Customer Premises, the Supplier's premises or third party premises):</p> <ul style="list-style-type: none"> (a) from, to or at which: <ul style="list-style-type: none"> (i) the Services are (or are to be) provided; or (ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or (b) where: <ul style="list-style-type: none"> (i) any part of the Supplier System is situated; or (ii) any physical interface with the Customer System takes place.
Software	Specially Written Software, Supplier Software and Supplier Third Party Software.
Software Supporting Materials	has the meaning given in paragraph 17.1(b) (<i>Specially Written Software and Project Specific IPR</i>).
Source Code	computer programs or data, or both, in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software.
Specially Written Software	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-contractor or other third party on behalf of the Supplier) specifically for the purposes of this Agreement, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Agreement.
Specific Change in Law	a Change in Law that relates specifically to the business of the Customer and which would affect a Comparable Supply.
Staffing Information	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>).
Standards	the standards, policies and/or procedures identified in Schedule 2.3 (<i>Standards</i>).

Step-In Notice	has the meaning given in clause 30.1 (<i>Step-In Rights</i>).
Step-In Trigger Event	<ul style="list-style-type: none"> (a) any event falling within the definition of a Supplier Termination Event; (b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services; (c) the Customer reasonably considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Agreement; (d) the Customer being advised by a regulatory body that the exercise by the Customer of its rights under clause 30 (<i>Step-In Rights</i>) is necessary; (e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; (f) a need by the Customer to take action to discharge a statutory duty; or (g) the occurrence of a Force Majeure Event that affects the Supplier's ability to provide the Services or a material part of the Services for longer than five (5) Working Days.
Step-Out Date	has the meaning given in paragraph 30.5(b) (<i>Step-In Rights</i>).
Step-Out Notice	has the meaning given in clause 30.5 (<i>Step-In Rights</i>).
Step-Out Plan	has the meaning given in clause 30.6 (<i>Step-In Rights</i>).
Sub-contract	any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part of them or necessary for the management, direction or control of the Services or any part of them.
Sub-contractor	<p>any third party (which is not an Affiliate of the Supplier) with whom:</p> <ul style="list-style-type: none"> (a) the Supplier enters into a Sub-contract; or (b) a third party under (a) above enters into a Sub-contract, or the servants or agents of that third party.

Subsidiary Performance Indicator	the performance indicators set out in Part I of Annex 1 of Schedule 2.2 (Performance Levels).
Successor Body	has the meaning given in clause 36 (<i>Assignment and Novation</i>).
Supplier Background IPR	<p>(a) Intellectual Property Rights 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; or</p> <p>(b) Intellectual Property Rights created by the Supplier independently of this Agreement,</p> <p>that in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software.</p>
Supplier COTS Background IPR	<p>Supplier Background IPR that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>(b) has a Non-trivial Customer Base.</p>
Supplier COTS Software	<p>Supplier Software (including open source software) that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>(b) has a Non-trivial Customer Base.</p>
Supplier Equipment	the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from the Customer) for the provision of the Services.
Supplier Non-COTS Background IPR	any embodiments of Supplier Background IPR that have been delivered by the Supplier to the Customer and that are not Supplier COTS Background IPR.
Supplier Non-COTS Software	Supplier Software that is not Supplier COTS Software.

Supplier Non-Performance	has the meaning given in clause 31.1 (<i>Customer Cause</i>).
Supplier Personnel	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier's obligations under this Agreement.
Supplier Representative	the representative appointed by the Supplier pursuant to clause 11.3 (<i>Representatives</i>).
Supplier Software	software that is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5.1 (<i>Software</i>).
Supplier Solution	The Supplier's response to the RfP for Application Development and Application Maintenance (ID WS1311977678) published by the Customer on 21 June 2018, and responded to on 20 August 2018.
Supplier System	the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Customer System).
Supplier Termination Event	<ul style="list-style-type: none"> (a) the Supplier's level of performance constituting a Critical Performance Failure; (b) the Supplier committing a material Default that is irremediable; (c) as a result of the Supplier's Default, the Customer incurring Losses in any Contract Year that exceed eighty percent (80%) of the value of the aggregate annual liability cap for that Contract Year as set out in paragraphs 25.6(a) (<i>Financial Limits</i>); (d) a Remedial Adviser Failure; (e) a Rectification Plan Failure; (f) where a right of termination is expressly reserved in this Agreement, including pursuant to: <ul style="list-style-type: none"> (i) clause 19 (<i>IPR Indemnity</i>); (ii) paragraph 39.6(b) (<i>Prevention of Fraud and Bribery</i>); or (iii) Paragraph 4 of Schedule 7.4 (<i>Financial Distress</i>);

- (g) the representation and warranty given by the Supplier pursuant to paragraphs 3.2(h) (*Warranties*) being materially untrue or misleading;
- (h) the Supplier committing a material Default under clause 10.11 (*Promoting Tax Compliance*) or failing to provide details of steps being taken and mitigating factors pursuant to clause 10.11 (*Promoting Tax Compliance*) which in the reasonable opinion of the Customer are acceptable;
- (i) the Supplier committing a material Default under any of the following clauses:
 - (i) paragraph 5.19(j) (*Services*);
 - (ii) clause 23 (*Protection of Personal Data*);
 - (iii) clause 22 (*Transparency and Freedom of Information*);
 - (iv) clause 21 (*Confidentiality*);
 - (v) clause 35 (*Compliance*);
 - (vi) in respect of any security requirements set out in Schedule 2.1 (*Services Description*), Schedule 2.4 (*Security Management*) or the Baseline Security Requirements; or
 - (vii) in respect of any requirements set out in Schedule 9.1 (*Staff Transfer*);
- (j) an Insolvency Event occurring in respect of the Supplier (other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party);
- (k) a change of Control of the Supplier unless:
 - (i) the Customer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Customer has not served its notice of objection within six (6) months of the later of the date on which the Change of Control took place or the date on which the Customer was given notice of the Change of Control;

- (l) a change of Control of a Key Sub-contractor unless, within six (6) months of being notified by the Customer that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Customer pursuant to clause 15.9 (*Appointment of Key Sub-contractors*);
- (m) any failure by the Supplier to enter into or to comply with an Admission Agreement;
- (n) the Customer has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Agreement; or
- (o) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law.

Target Performance Level	the minimum level of performance for a Performance Indicator that is required by the Customer, as set out against the relevant Performance Indicator in Annex 1 of Schedule 2.2 (<i>Performance Levels</i>).
Template Call-Off Terms	the template Call-Off Agreement, set out at Annex 1 to Schedule 2.1 (<i>Services Description</i>).
Term	the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement.
Termination Assistance Notice	has the meaning given in Paragraph 5.1 of Schedule 8.5 (<i>Exit Management</i>).
Termination Assistance Period	in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 5.2 of Schedule 8.5 (<i>Exit Management</i>).
Termination Date	the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate.
Termination Notice	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination.

Termination Services	the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 8.5 (<i>Exit Management</i>), and any other services required pursuant to the Termination Assistance Notice.
Test Issues	has the meaning given in Schedule 6.2 (<i>Testing Procedures</i>).
Tests and Testing	any tests required to be carried out under this Agreement, as further described in Schedule 6.2 (<i>Testing Procedure</i>) and 'Tested' shall be construed accordingly.
Test Success Criteria	has the meaning given in Schedule 6.2 (<i>Testing Procedures</i>).
Third Party COTS IPR	Third Party IPR that: <ul style="list-style-type: none"> (a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and (b) has a Non-trivial Customer Base.
Third Party COTS Software	Third Party Software (including open source software) that: <ul style="list-style-type: none"> (a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and (b) has a Non-trivial Customer base.
Third Party IPR	Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software.
Third Party Non-COTS IPR	Third Party IPR that are not Third Party COTS IPR.
Third Party Non-COTS Software	Third Party Software that is not Third Party COTS Software.
Third Party Software	software that is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5.1 (<i>Software</i>).
Transferring Assets	has the meaning given in Paragraph 6.2(a) of Schedule 8.5 (<i>Exit Management</i>).

Transferring Former Supplier Employees	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>).
Transferring Supplier Employees	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>).
Transparency Information	has the meaning given in clause 22.1.
Transparency Reports	the reports relating to the Supplier's supply chain required pursuant to clause 22 and Schedule 8.4 (<i>Reports and Records Provisions</i>).
UK	the United Kingdom.
Unacceptable KPI Failure	the Supplier failing to achieve the KPI Service Threshold in respect of more than fifty percent (50%) of the Key Performance Indicators that are measured in that Service Period.
Updates	in relation to any Software or any Deliverable means any or all Minor Updates or Major Updates (as the context requires).
Upgrades	any patch, New Release or upgrade of Software or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update that the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term.
VAT	value added tax as provided for in the Value Added Tax Act 1994.
Warranty Period	twelve (12) months from the date on which the relevant Test has been Achieved (unless otherwise agreed in a Call-Off Agreement).
Wilful Abandonment	the intentional cessation and termination by the Supplier of all or substantially all of the Services in material breach or in circumstances where it has no right to do so.
Wilful Default	conduct by the Supplier where it intentionally commits a breach of this Agreement, with either an intent to cause harm or with a complete disregard for the consequences.
Working Day	any day other than a Saturday, Sunday or public holiday in England and Wales.
Work Pack	a set of documented Services for which the Supplier has been engaged.

SCHEDULE 2.1: SERVICES DESCRIPTION

1. DEFINITIONS

In this Schedule and (as appropriate) in the relevant Call-Off Agreement, the following definitions shall apply:

AD Tests	the tests to be performed to assess whether a software based Deliverable meets the Test Success Criteria (as defined in Schedule 6.2 (<i>Testing Procedures</i>)) including to ensure in a verifiable form that the AD Services and all their component parts meet the full range of acceptance criteria in terms of compliance, function and performance. AD Testing and AD Testing Services shall be construed accordingly;
AD Vendor	a third party, not the Supplier, which has undertaken application development services in relation to the Software;
Application	the applications being developed or maintained as the case may be as agreed in Call-Off Agreements;
Application Development Services or AD Services	the Services to be provided pursuant to Schedule 2.1 (<i>Services Description</i>) as may be supplemented and described in the relevant Call-Off Agreement entered into;
Application Inventory	the list of applications and associated components;
Application Maintenance Services or AM Services	the Services to be provided pursuant to Schedule 2.1 (<i>Services Description</i>) as may be supplemented and described in the relevant Call-Off Agreement entered into;
Application Monitoring	has the meaning set out in paragraph 6.39 of Schedule 2.1 (<i>Services Description</i>);
Award Criteria	the criteria described in 5.1 and 5.5 of Annex 1 to this Schedule 2.1 (<i>Services Description</i>);
Corrective Maintenance	the Services described in paragraph 6.3, 6.4 and 6.5 of this Schedule 2.1 (<i>Services Description</i>);
Framework Supplier	a Supplier who is a party to the Agreement;
Further Competition	a competition between the Framework Suppliers for the provision of Services if no direct award is made;

Incident	any event that causes, or may cause, a failure of or an interruption to, or a reduction in, the functionality or performance of the Software;
Knowledge Management Repository	a shared repository for the storage of documentation which is provided by one Party to another which is updated and maintained by the Supplier;
Major Update	in relation to any Software: any new major release of any of the Software incorporating new functionality which is made available by the Supplier (or the relevant third party licensor) in the normal course of its business from time to time, which new major release is usually denoted by a change in the first digit of the software version number (or such other method of identification of a major release used by the relevant licensor). For example, the number "x" if the format x.y is adopted;
Minor Update	<p>in relation to any Software:</p> <ul style="list-style-type: none"> (a) any fix, patch, enhancement, update (excluding Major Updates) to any of the Software provided by Supplier (or the relevant third party licensor) to the Customer in connection with the relevant Call-Off Agreement in order to resolve an Incident or Problem in the relevant Software or otherwise; and (b) any new minor release of any of the Software incorporating new functionality which is made available by the Supplier (or the relevant third party licensor) in the normal course of its business from time to time, which new minor release is usually denoted by a change in the first number following the decimal place of the software version number (or such other method of identification of a minor release used by the relevant licensor). For example, the number "y" if the format x.y is adopted;
Other Services	the Services to be provided pursuant to paragraph 7 of Schedule 2.1 (<i>Services Description</i>), as may be supplemented and described in the relevant Call-Off Agreement entered into;
Problem	the root cause of an unresolved Incident;
Project	the specific details of AD Services in a Work Package;

Requirements	<p>(a) in relation to Software: the Customer's non-functional, functional, data and performance requirements, technical guidelines, IT security standards and the requirements of this Agreement, the relevant Call-Off Agreement and the Customer Requirements; and</p> <p>(b) non-software based Deliverables: the requirements as set out in this Agreement, the relevant Call-Off Agreement and the Customer Requirements;</p>
Service Requirements	the Services required to be developed by the Supplier, either under a direct award or a Further Competition;
Severity Level	in respect of an Incident, the levels of severity allocated using the Severity Level Criteria;
Severity Level Criteria	means the relevant criteria agreed in a Call-Off Agreement for Incident classification;
Software Documentation	the documentation relating to the specification, structure, operation or use of the Software (or any part), which includes the operational and user reference manuals which explain the operation and use of the Software, and all instruction manuals, tutorial materials and other ancillary materials;
Source Materials	the human-readable version of the applicable software, held using industry recognised version control practices in an appropriate configuration management repository, in such form that it can be compiled or interpreted into equivalent object code together with all technical information and documentation necessary to enable a reasonably skilled computer programmer to use, reproduce, modify, enhance and support such Software without recourse to any other document, materials or person;
Specification	the specification for the Project, as set out in the relevant Call-Off Agreement;
Systems Information Document (SID)	the information pertaining to the system including for example support documentation and installation instructions;
Statement of Requirements	a document setting out the Customer's requirements for Services to be provided in line with services description in this Schedule 2.1 or under a relevant Call-Off Agreement;
Template Call-Off Agreement	a pro forma Call-Off Agreement as set out in Annex 2 which will be used as the basis for future Call-Off Agreements entered into with a Supplier;

Warranty Period	in respect of a Deliverable, a period of not less than ninety (90) days commencing on the date the Test Success Criteria for a Deliverable is Achieved or put into productive use, unless otherwise specified in the relevant Call-Off Agreement;
Work Package	has the same meaning given to the term Call-Off Agreement and the terms may be used interchangeably; and
Work Request Management	means the process described in paragraph 2.9

2. INTRODUCTION AND OVERVIEW

- 2.1 This Schedule 2.1 (*Services Description*) sets out a description of the Services that shall be provided by the Supplier to the Customer in accordance with this Agreement.
- 2.2 This Schedule 2.1 (*Services Description*) comprises:
- (a) this introduction section and context for the Customer's requirements and Work Request Management;
 - (b) the Customer's AD Services and AM Services strategic priorities (set out in paragraph 3);
 - (c) a description of the Supplier's obligations to cooperate with the Customer's third-party suppliers (set out in paragraph 4);
 - (d) a description of the AD Services (set out in paragraph 5);
 - (e) a description of the AM Services (set out in paragraph 6); and
 - (f) a description of the Other Services (set out in paragraph 7).
- 2.3 The Supplier accepts that the Customer is building a roadmap of change across the ADAM lifecycle that will enhance existing processes and introduce new tools.
- 2.4 With respect to AD Services, the Supplier acknowledges that the Customer operates a global process to manage and control the development of applications, called the Solution Delivery Framework ('SDF'). The Supplier shall follow the processes contained in the SDF. The Supplier shall also contribute to the development of SDF in order to drive continuous improvement and alignment with industry standards.
- 2.5 With respect to AM Services, the Supplier acknowledges that the Customer operates in accordance with the ITIL V3 processes which cover all of the ITIL practices. The Supplier shall follow Customer's defined version of ITIL V3. The Supplier shall also contribute to the development of these processes in order to drive continuous improvement and alignment with the industry standard.
- 2.6 The Supplier's responsibilities in providing AD Services and AM Services include but are not limited to the activities set out in this Schedule 2.1 (*Services Description*).

- 2.7 Where the Supplier is providing AD Services and AM Services for an item of Software, the Supplier shall provide the AM Services with effect from the date of the Test Certificate (provided always that there shall be no Charges payable in respect of such AM Services during the Warranty Period).
- 2.8 Where the Supplier has not provided the AD Services in respect of certain Software, the Supplier shall provide the AM Services from the date specified in the Call-Off Agreement. During any warranty period provided by the AD Vendor, the Supplier shall refer any defects or issues to Customer. Customer, at its discretion, may require the Supplier to engage with the AD Vendor to resolve any such defects or issues.

Work Request Management

- 2.9 Work Requests may be generated from a number of sources.
- 2.10 The Supplier's responsibilities as they relate to Work Requests of specific Applications, for which they are selected to provide service, are noted below but not limited to the analysis of work requests and provision of estimates (number of days, rate card applied and other costs) which shall be captured using the proforma Call-Off Template
- 2.11 The Supplier shall perform Work Requests in accordance to the following restrictions:
- (a) Work Requests that will be completed with a maximum effort of hours of total effort (to be proposed by the Supplier), or that are costed using other, agreed commercial constructs, are included in the Charges for the AM Services, and prioritised through the demand management process.
 - (b) Work Requests that will take more than the to-be-agreed hours of effort shall be agreed as Projects and shall be charged by the Supplier in accordance with the Rate Card.
- 2.12 The Supplier shall participate in business area delivery reviews and overall demand management process to help prioritise the Work Requests.

3. CUSTOMER'S AD SERVICES AND AM SERVICES STRATEGIC PRIORITIES

- 3.1 The Supplier shall ensure that in providing the Services, the Supplier's delivery meets the Customer's strategic priorities for AD Services and AM Services, including:
- (a) ensuring that investment projects will be delivered with higher quality, greater speed and greater value;
 - (b) operating on a 'design-to-operate, design-to-control' and 'design to be secure' model;
 - (c) using consistent and standard methodology, toolsets and processes;
 - (d) reducing complexity and reliance on legacy technologies for strategic applications;

- (e) improving coordination across multiple vendors;
- (f) improving service levels in the Customer's business critical applications;
- (g) enhancing the Supplier's digital capabilities and drives transformation;
- (h) building and executing the Customer's application rationalisation roadmap in place from time to time;
- (i) staying current in adopting innovation and market trends;
- (j) leveraging emerging technologies in automation, artificial intelligence and digital to drive step change improvement in Service Levels and reduction in cost of service;
- (k) delivering an end-to-end operationally efficient service delivery model, leveraging automation, analytics and optimal onshore/offshore support model to drive efficiencies; and
- (l) supporting the Customer's journey towards a stronger relationship with its business through better service and improved customer experience with a focus on business outcomes.

3.2 The Supplier accepts that the above strategic priorities are baseline mandatory requirements for the Customer.

4. COOPERATION WITH THE CUSTOMER'S THIRD-PARTY SUPPLIERS

Development Environment

- 4.1 The Supplier shall be responsible for ensuring that the constituent components of the development environment (both hardware and software) are compatible, reliable, adequate and appropriate in all respects and for liaising with any third-party supplier of the Customer to provide maintenance and support in respect of the same.
- 4.2 For certain Projects or Applications, or both, one supplier of the Customer may perform applications development services and another supplier of the Customer may be responsible for application testing services.
- 4.3 Accordingly, the Supplier shall:
 - (a) participate and contribute to the Customer's partnering environment as is necessary to deliver the Services;
 - (b) collaborate and manage interactions with the Customer's third-party suppliers within the context of the AD Services and AM Services; and
 - (c) work proactively with the Customer's third-party suppliers of application development services regarding service transition into business-as-usual operations and to embrace modern DevOps methods where necessary and relevant to do so.

- 4.4 The Supplier shall, where required by the Customer, provide 'light-touch' support for third parties used in the operation of the Customer's application maintenance services. This support may include but shall not be limited to:
- (a) ensuring that Incident tickets are routed to the Supplier and continuously updated until their closure, where incidents to be resolved by the Supplier but have arisen from a third party. The Supplier shall co-ordinate the actual incident resolution work with the third party; and
 - (b) the management, communication and co-ordination of outages, changes and fixes done by a third party on the Customer environment or on external environments that affect the Customer.

5. AD SERVICES

Pre Startup

- 5.1 The Supplier shall, where specified in a Work Package:
- (a) identify the Project constraints, dependencies, identify risks and mitigation plans, and key assumptions for success;
 - (b) define the best approach to use to deliver the Project (whether that be test drive, agile, waterfall or other);
 - (c) architect artefacts from the Customer's central repository;
 - (d) set out the relevant testing to be applied;
 - (e) set out the Project cost and resource estimates and benefits; and
 - (f) identify and leverage any lessons learnt from earlier Projects.

Project Startup

- 5.2 The Supplier shall, where specified in a Work Package:
- (a) identify pre-requisites, assumptions and dependencies;
 - (b) carry out Project resource planning;
 - (c) perform early service definition and articulation of requirements;
 - (d) carry out options analysis;
 - (e) set out the relevant testing to be applied;
 - (f) adopt the relevant artefacts from the Customer's central repository; and
 - (g) provide cost estimation.

Requirements gathering

5.3 The Supplier shall, where specified in a Work Package:

- (a) carry out business requirements gathering, documentation, development and management;
- (b) set out the functional and non-functional specifications, including use stories and use cases;
- (c) develop the Project Initiation Document;
- (d) develop the relevant testing to be applied;
- (e) develop the relevant artefacts from the Customer's central repository;
- (f) develop conceptual technical model and data model;
- (g) define service and non-technical requirements; and
- (h) develop wireframes, high and low resolution user experience for Applications.

Design and specification

5.4 The Supplier shall, where specified in a Work Package:

- (a) manage end-to-end integrity of design;
- (b) create the detailed solution design (functional and non-functional), including high level solution design, options analysis, estimation and indicative costing;
- (c) create detailed functional design documents;
- (d) use the relevant artefacts from the Customer's central repository;
- (e) sponsor a Project through technical approval boards;
- (f) create integrated system design;
- (g) prepare the security landscape model;
- (h) prepare logical data models;
- (i) create physical technical models;
- (j) review investment proposal and total cost of ownership;
- (k) conduct an SLAs impact review;
- (l) conduct the relevant testing;

- (m) develop user interface wireframes, high and low resolution;
- (n) develop User Experience designs for the application (creative design); and
- (o) comply with the Customer's security requirements and cyber security policy.

Development

- 5.5 The Supplier shall, where specified in a Work Package, build, development and configure the Application in accordance with the Specification, the Requirements and the Call-Off Agreement, using the relevant artefacts from the Customer's central repository where specified.
- 5.6 The Supplier shall adopt new processes and tooling as they are deployed by the Customer at its own cost and shall support delivery of any Customer change projects by providing resources as required to deliver the change.

AD Testing

- 5.7 In delivering the AD Testing, the Supplier shall adhere to the Standards, the ITIL standards and all other relevant industry standards.
- 5.8 The Supplier shall, where specified in a Work Package:
 - (a) comply with the provisions relating to Testing in Schedule 6.2 (*Testing Procedures*) for all Deliverables, Documentation or anything else developed by the Supplier under this Agreement and the relevant Call-Off Agreement;
 - (b) conduct a formal review of all Deliverables in accordance with the Test Strategy and Test Plans to ensure that all relevant Test Success Criteria are met, including a review of all compliance, function and performance aspects of the AD Services;
 - (c) ensure the Test Report sets out, in addition to the requirements in Schedule 6.2 (*Testing Procedures*):
 - (i) the date, time and personnel who carried out the Tests;
 - (ii) the Test environment in which the Tests were conducted;
 - (iii) the Defects that were identified during each Test; and
 - (iv) any Defects identified which have not been fixed since being identified in a previous Test.
- 5.9 The Supplier shall, where specified in a Work Package:
 - (a) carry out environment provisioning and testing;
 - (b) manage integration points;
 - (c) comply with quality standards and assurance during each phase;

- (d) carry out the Test Strategy, planning, and management using appropriate tools and techniques;
- (e) set out the processes and procedures for all types of testing including templates;
- (f) carry out Defect management, audit trails and documentation;
- (g) carry out:
 - (i) unit and functional testing, including code spot checks;
 - (ii) system testing;
 - (iii) integration / end to end testing;
 - (iv) user acceptance testing;
 - (v) business readiness testing;
 - (vi) regression testing;
 - (vii) disaster recovery testing;
 - (viii) performance, volume and stress testing;
 - (ix) automated testing;
 - (x) data migration testing;
 - (xi) non-functional testing;
 - (xii) security testing;
 - (xiii) operational Acceptance Testing (OAT);
 - (xiv) model office testing; and
 - (xv) build infrastructure / network testing.

5.10 The Supplier shall, where specified in a Work Package, provide certified copies of any test data compiled by the Supplier and the results of tests carried out by the Supplier on all parts of the Software which show that the Software meets the full range of applicable Test Success Criteria as further described in Schedule 6.2 (*Testing Procedures*).

5.11 If any inconsistency is found between the Specification and the Customer Requirements which has not been identified by the Supplier prior to Achievement of the Test Success Criteria for the associated Deliverable or Documentation, the Party that identifies the inconsistency shall promptly notify the other Party of the nature of such inconsistency. If required by Customer, the Supplier shall rectify such inconsistency in the Specification immediately upon request (and at no

additional charge) notwithstanding any prior approval by Customer of the Specification.

- 5.12 For any Software code developed by the Supplier, a full and formal code review shall be completed by a person with the correct level of technical and business knowledge to perform that review, and such reviews should be documented for reference purposes. The Supplier shall ensure any code complies with the standards defined by Customer, as may be updated from time to time, and its own internal controls and standards, to the extent the latter do not conflict with the Customer's standards.
- 5.13 Where AD Testing is to be undertaken by the Customer, the Supplier shall provide all relevant information (including test data, installation scripts and other relevant instructions) to allow the Customer to perform the AD Testing.
- 5.14 Any rework to a Deliverable due to any Defects that are a result of any act or omission of the Supplier shall be completed at the Supplier's own expense within the timescales as reasonably specified by Customer. The Supplier shall provide monthly reports to Customer showing the number of Defects corrected.
- 5.15 In the event that, following any of the series of Tests applied to any Deliverable, there remain Defects in relation to such Deliverable that the Customer does not believe need prevent it from putting the relevant Deliverable into productive use, the Customer may elect to put such Deliverable into productive use, provided that:
 - (a) paragraph 12.2 of Schedule 6.2 (*Testing Procedures*) shall apply; and
 - (b) the Warranty Period shall not begin to run until the last such Defect has in fact been corrected to the Customer's reasonable satisfaction.

Software documentation

- 5.16 The Supplier shall deliver a copy of the Software Documentation to the Customer a format approved by the Customer together with additional copies (if required) at no additional charge to the Customer.
- 5.17 The Customer may make as many copies of the Software Documentation as are reasonably necessary for its business purposes and for its users of the Software.

Implementation

- 5.18 The Supplier shall, where specified in a Work Package, deliver to the Customer Premises specified by Customer during normal business hours on such date as is agreed by the Parties, or if specified in the Call-Off Agreement, in accordance with the Call-Off Agreement:
 - (a) the Software in machine executable form on such medium or format specified by Customer;
 - (b) Source Materials sufficient to enable a reasonably skilled programmer to understand, amend, maintain and enhance the Software;

- (c) the Software Documentation in legible eye readable printed form and/or on such magnetic media or other format as Customer may reasonably request.

5.19 The Supplier shall, where specified in a Work Package:

- (a) develop a high-level implementation plan for each Project;
- (b) carry out technical cut-over requirements gathering;
- (c) develop detailed cutover plan;
- (d) perform simulation go-live;
- (e) develop and execute training;
- (f) develop a communication strategy and carry out its execution;
- (g) develop Go-live governance;
- (h) integrate with Help Desk, including new scripts;
- (i) migrate data;
- (j) perform deployment, release management, version control and audit trails and provide all OAT scripts developed as part of the Project so that they can be transferred to the testing repository for use by the provider of AM Services;
- (k) provide a post implementation support process;
- (l) provide a handover to the Customer's post go-live support team;
- (m) provide Project closure and decommissioning;
- (n) provide Solution enhancements and upgrades; and
- (o) provide Application development and integration with other third party systems.

Closure

5.20 The Supplier shall, where specified in a Work Package:

- (a) agree with the Customer the Service Transition requirements and planning;
- (b) provide service design inputs;
- (c) complete Design package;
- (d) carry out new demand capacity management;
- (e) handover outstanding materials and artefacts of service delivery;

- (f) provide transition support;
- (g) develop the Application Support Definition/Model;
- (h) application Support Transition;
- (i) provide quality assurance;
- (j) transfer intellectual property rights;
- (k) provide post implementation services;
- (l) service model integration;
- (m) conduct appropriate knowledge transfer activities;
- (n) provide commissioning services.

General project management

5.21 The Supplier shall, where specified in a Work Package:

- (a) provide Project Management and Financial control services;
- (b) carry out quality assurance checks of Deliverables against solution design;
- (c) provide Solution delivery oversight;
- (d) provide Milestone / delivery sign-offs and quality assurance;
- (e) provide Information repository co-ordination and update the Knowledge Management Repository;
- (f) provide Solution documentation, deliverables and templates;
- (g) deliver innovation and ideation sessions to enable the Customer to understand the 'art of the possible';
- (h) provide general management, administration and monitoring of people, processes, third party vendors and /or technology;
- (i) staff augmentation;
- (j) use the Customer's proprietary MS Project Online project management tool either through direct access or by providing plan data and reports to the Customer's project management officer, the method to be chosen by the Customer.

General obligations

- 5.22 The Supplier shall ensure that each Software and Update shall:
- (a) conform to the Requirements and the Specification (or the applicable parts of it), operate in accordance with the Software Documentation and be free from material defects in materials, workmanship and installation;
 - (b) be free from all viruses and other contaminants including any codes or instructions that may be used to damage any data files or other computer programs used by Customer; and
 - (c) be developed giving due consideration to any security risks that may arise in the use of the Software and as such the Supplier shall comply with the security requirements in Schedule 2.4 (*Security Management*) and all appropriate industry standards;
- 5.23 The Supplier shall ensure that there are no disabling programs or devices in the Software or Update (or both), and nor shall the Supplier introduce, or cause to be introduced, any at any time.
- 5.24 The Supplier shall ensure that the Software Documentation:
- (a) is a full and accurate description of the operation, features, functionality and performance of the Software providing sufficient information to enable the Customer's users with appropriate training and skills to install, access, load, store, copy, modify, transmit, run and otherwise use the Software;
 - (b) is current and up-to-date; and
 - (c) comprises all documentation that the Supplier normally makes available to its customers.
- 5.25 The Supplier shall ensure that all media provided by the Supplier will be provided to the Customer free from material defects in design, materials and workmanship and remain so for twelve (12) months after delivery.
- 5.26 The Supplier shall ensure that the Source Materials shall be sufficient to enable a reasonably skilled programmer to understand, amend, maintain and enhance the Software.
- 5.27 The Supplier shall be responsible for the reliability of the Software during the Warranty Period. If, within the Warranty Period, or as soon as reasonably practicable thereafter, Customer notifies the Supplier of any defect or fault in the Software in consequence of which it fails to conform to its Specification or Requirements (or both), the Supplier shall take all such steps as are required to remedy such breach or Defect, which may include promptly repairing or replacing the Software (at no additional cost to Customer).
- 5.28 The Supplier shall adapt to the standardised tools that the Customer plans to use and establish. Until such point that the standardised tool is established, the Supplier shall adapt the same tools used by a third party supplier of application development services for the Application. The supplier shall integrate with VSTS

for the sharing of requirements, traceability, test data, scripts, results and evidence and confirm this with the Customer's personnel for each Work Package.

Escrow

- 5.29 Any requirements for escrow shall be agreed by the Parties in a Work Package.

6. AM SERVICES

- 6.1 In relation to the internal delivery and automation platforms, the Supplier shall:

- (a) ensure that they are integrated to Customer's tools, in order to enable real time and near real time sharing of operational data (and the Supplier acknowledges that the Customer's expectation is that for Service Management, the Supplier shall use the Customer's Service Management Tool unless the Parties agree otherwise);
- (b) cover the costs of setup, implementation and support of these;
- (c) maintain them throughout the Term of the Agreement in order to include the latest AM support-related technologies at no cost to the Customer; and
- (d) ensure that upon the expiry of the Term or termination of the Agreement, all data associated with specific applications is converted into an industry standard format and migrated to the new supplier at no additional cost.

- 6.2 In relation to the internal delivery and automation platforms the Supplier agrees:

- (a) that all data created by its systems is to be owned by the Customer (including all data relating to the application estate, such as diagrams and interface specifications); and
- (b) that scripts for automation and analytics are owned by the Customer.

Corrective Maintenance

- 6.3 Corrective Maintenance is a proactive and reactive task performed to identify, avoid, isolate, and rectify software or configuration faults (or both) so that the IT Service can be optimised or restored (or both) within operational tolerances to meet established business outcomes.
- 6.4 The Supplier shall measure and report on the volume and percentage of automated events (informational, warning and exception) and alerts that lead to Corrective Maintenance tasks and specifically knowledge articles logged in the Knowledge Management Repository, and also measure and report on the volume and percentage of Incidents avoided through the use of automation leading to Corrective Maintenance.
- 6.5 The Supplier shall look for opportunities to automate corrective maintenance through the use of new technologies such as Analytics, Application Performance Monitoring and Machine Learning.

Updates

- 6.6 Where the Supplier provides the AD Services and the AM Services, the Supplier shall ensure that all Updates provided or to be provided by the Supplier during the agreed lifecycle from the date of the Test Certificate shall:
- (a) be fully compatible with and shall not have any detrimental effect on the operation, performance or functionality of the Software; and
 - (b) not require a change to the platform and/or operating system on which the Software operates.
- 6.7 The Supplier shall:
- (a) in relation to all Updates, provide AM Services upon Customer's request for the agreed period following the date on which such Update was first made available, or such other period as set out in the relevant Call-Off Agreement;
 - (b) in relation to the Software, notwithstanding any failure by Customer to obtain or implement any Update or Major Update, make available AM Services therefore for the agreed period from the date of the Test Certificate; and
 - (c) in any event the Supplier shall provide the AM Services in respect of the current Update and the previous three (3) major Updates,
- provided that the Supplier shall always provide the AM Services in respect of any particular Update for so long as it continues to provide similar services in respect of such Update to one or more of its other customers.
- 6.8 The Customer shall not be obliged to install or use any Major Update, and if a Major Update includes a fix for an error, the Supplier shall make such fix available to the Customer at no additional Charge.
- 6.9 The Supplier shall provide to Customer all Minor Updates.
- 6.10 Subject to paragraph 6.8, where the Parties so agree, the Supplier shall offer to Customer and shall, on request of Customer, provide (subject to agreement of the cost via the Change Control Procedure), all Major Upgrades. The cost of the provision of such Major Upgrades shall be agreed pursuant to the Change Control Procedure.

Documentation for Updates

- 6.11 The Supplier shall deliver a copy of the Documentation associated with an Update to Customer in documentary and electronic format at no additional charge to Customer.
- 6.12 Customer may make as many copies of the Documentation associated with an Update as are reasonably necessary for its business purposes and for the Users of any Update.

- 6.13 The Supplier shall ensure that the Documentation associated with an Update shall contain a full and accurate description of how to install the relevant Update, as well as the operation, features, functionality and performance of the relevant Update, and comprises all documentation which the Supplier normally makes available to its customers and shall enable the Customer's users to make proper use of the functions and facilities provided by the Update.

Incident and problem management

- 6.14 The Supplier shall manage and resolve all Incidents, working in accordance with the Customer's incident management process, and in accordance with this Schedule 2.1 (Services Description), the applicable Service Levels set out in Schedule 2.2 (Performance Levels), and the relevant Call-Off Agreement.
- 6.15 Each Incident shall be allocated a Priority Level using the Priority Level Criteria, such allocation to be made by the Party that recorded the Incident. The Customer may, acting reasonably and based on the severity and growing impact on the Customer and its customers, change the Priority Level allocated to any Incident at any time on reasonable notice to the Supplier.
- 6.16 The Supplier shall identify, manage, carry out root cause analysis and resolve all Problems in accordance with this Schedule 2.1 (Services Description), the applicable Service Levels set out in Schedule 2.2 (Performance Levels), and the relevant Call-Off Agreement.
- 6.17 The Supplier shall allocate for each Problem a Priority Level using the Priority Level Criteria set out in the table below, however the Customer shall allocate the Priority following any Major Incident (P1 and P2):

Priority Level 1	Problems where the elimination of the underlying root cause(s) is critical to preventing occurrence or re-occurrence of potential Priority Level 1 Incidents. To identify Trigger - Root Cause- Aggravating and Avoidance factors in order to prevent recurrence of Major (P1 & P2) incidents or to minimize the potential impact.
Priority Level 2	Problems where the root cause and elimination are critical to preventing occurrence or re-occurrence of potential Priority Level 2 Incidents. To identify Trigger - Root Cause- Aggravating and Avoidance factors in order to prevent recurrence minor incidents or to minimize the potential impact including to reduce incident volumes.
Priority Level 3	Operational issues with no direct service impact.

Support hours and contacts

- 6.18 Unless otherwise specified in the relevant Agreement, the Supplier shall be available to provide support twenty-four (24) hours a day, seven (7) days a week.
- 6.19 The Supplier shall establish a single point of contact such that Customer is always able to directly contact the Supplier. The point of contact should be a Major Incident Manager to face into the Customer's Major Incident Manager.

Documentation

- 6.20 The Supplier shall maintain and update existing application code, process and service design documentation and Software Documentation, as well as all OAT testing scripts, including rectifying where such documentation is inaccurate or incomplete.
- 6.21 The Supplier shall produce a 'Joint Procedures Manual', which shall set out how the Supplier is to collaborate with the Customer and its other suppliers and shall outline the ways of working.
- 6.22 The Supplier shall store all Supplier documentation necessary for the operation and governance of AM Services and the Agreement in a Knowledge Management Repository that is accessible by the Customer at all times. As at the commencement of the Agreement this shall be the Customer's Service Management tool, 'ServiceNow.'
- 6.23 The Supplier shall maintain automated and manual operations documentation for all the code for the Application, within the System Information Document (SID) and the System Control Manual per Application.
- 6.24 The Supplier shall maintain Application Inventory in ServiceNow and application architecture and design repositories.
- 6.25 The Supplier and its support teams shall use ServiceNow through direct access in order to log and update all operational data, including Incidents, Problems Asset Data.
- 6.26 The Supplier shall maintain application design and documentation in structured repositories, design tools or IDEs allowing for modelling, search and analysis of application design building-blocks.

Adaptive Maintenance

- 6.27 The Supplier shall provide:
 - (a) patches and Upgrades, including small software patches, OS upgrades (e.g. minor Upgrades) and security patches;
 - (b) specific adaptation required to support business change needs;
 - (c) modifications of specific IT Services, even though the IT Service operates as expected (i.e. change where there is no fault or error);

- (d) application performance tuning and optimisation; and
- (e) upgrades that affect multiple Applications (e.g. upgrades to integration components, Windows 10 migration or Single Sign-On (SSO) authentication changes) or a large technical upgrade, to be agreed with the Customer, may be considered as separate Projects.

Preventative Maintenance

- 6.28 The Supplier shall proactively undertake regular Preventative Maintenance measures to ensure the optimised performance and availability of IT Services, to mitigate the likelihood of failure. Preventative Maintenance is typically undertaken while the IT Service is in an operational state, via planned and scheduled change, and communicated accordingly.
- 6.29 The Supplier shall as part of Continuous Service Improvement (CSI), proactively identify, communicate and when required implement opportunities for more efficient monitoring and automation of the AM Services.

Operational processing support

- 6.30 The Supplier shall assure the effective access control, event management and support services of all aspects of IT Services, including identification of trends and potential issues that may be linked to the domain of another supplier to the Customer.
- 6.31 The Supplier shall proactively alert, identify issues and/or problems, raise Incident and/or Problem records (manually and/or automated via Event Management) and prioritise resolution to make effective changes to the IT Service quickly and reduce disruption to colleagues and business, all in accordance and compliance with the Customer's Change Management processes.
- 6.32 The Supplier shall provide regular predictable support activities, including:
 - (a) financial close outs;
 - (b) month-end financial closing support;
 - (c) year-end financial closing support consists of 24x7 monitoring of applications to support a timely fiscal year end close; and
 - (d) preparation, support and monitoring weekly, bi-weekly and monthly payroll processes including labour.
- 6.33 The Supplier shall prepare and monitor year-end tasks as required by Application.
- 6.34 The Supplier shall produce a Company Secretariat monthly executive support.
- 6.35 The Supplier shall provide for Clock changes (UK and US).
- 6.36 The Supplier shall provide Initial Program Load (IPL) support, including off-hour application support to perform application verifications after the mainframe or server shutdown or re-start, as the case may be.

- 6.37 The Supplier shall provide support for Heightened State of Alerts (HSOA), including but not limited to 24x7 enhanced monitoring and support of potential changes.
- 6.38 The Supplier shall provide predictable support activities as it relates to SAP including:
- (a) period closures;
 - (b) payroll runs;
 - (c) benefits interfaces;
 - (d) HRSP upgrades;
 - (e) year-end activities;
 - (f) step progression;
 - (g) job progression;
 - (h) front office interface activities.

Application monitoring

- 6.39 Many of the Customer's systems are either business or operational critical and as such Application Monitoring is required to ensure that IT Services operate and perform in an expected manner. Application Monitoring must use techniques that routinely (real-time) identify, measure and evaluate the performance of IT Services and provide the means to isolate and rectify any abnormalities or shortcomings. the Customer expects transparency of IT Service monitoring and performance (End-User experience and component-level performance) via visual graphical and statistical dashboards and reporting with the in-house SMI function.
- 6.40 The Supplier shall:
- (a) provide monitoring tools and licenses to fulfil their obligations (where agreed by the Parties);
 - (b) provide automated monitoring and health-checks, and integrate with the Customer SMI toolset, provide automated event management procedures to generate automatic Incident tickets in reaction to Alerts;
 - (c) provide the Customer Support functions (where agreed by the Parties), regionally, with real-time access to the Supplier's monitoring tools; and
 - (d) track all system health parameters, analyse trends and report any preventive maintenance needs.

Scheduling

- 6.41 The Supplier shall maintain a schedule of all jobs relating to specific Applications, for which they are selected to provide AM Services, with the purpose of tracking

and optimising job schedules all of which shall be stored in ServiceNow as part of the Service Information Documentation.

Risk Management

- 6.42 The Customer wishes to ensure effective management of risk, in line with the risk appetite of National Grid IT, by integrating with risk management within the SMI, ensuring that it is consistently applied and acted upon.
- 6.43 The Supplier shall:
- (a) identify risks and propose corresponding mitigation plans to the Customer; and
 - (b) perform risk analysis and update the SMI accordingly, whenever there is a significant change affecting the system, such as interconnectivity, change in operating system.

Data Management

- 6.44 The Supplier shall develop and execute architectures, policies, practices and procedures that properly manage the full data lifecycle needs of the Customer. This shall include but not be limited to controlling, protecting and delivering data as required.
- 6.45 In the event of any major data loss for an Application or set of Applications, due to any reason, participate in recovery of data from backups, in conjunction with the Customer infrastructure support team and perform testing and data validation on the restored data.

Performance Management

- 6.46 The Supplier shall:
- (a) monitor and manage the performance and availability of Applications;
 - (b) detect, diagnose and continuously plan for implementing fixes to Application performance problems;
 - (c) perform Application tuning and optimisation to improve the efficiency and reliability of programs and to minimize ongoing maintenance requirements by utilizing automation and self-healing capabilities;
 - (d) collaborate with other suppliers to the Customer to review, fine tune and implement performance management; and
 - (e) achieve the end goal of performance management which is to maintain and improve the level of transaction times and overall user experiences.

Database Administration and Database Maintenance Support

- 6.47 By utilizing comprehensive managed database administrator services, the Supplier shall manage, administer and maintain databases, where relevant, for the specific Applications which they are selected to provide the AM Services.
- 6.48 The Supplier shall provide consistent and precise 24x7/365 monitoring and management of the health and performance of the databases, and specifically, perform database tuning and optimisation (unless alternative support hours have been specified in a Work Package).

Quality Assurance

- 6.49 The Supplier shall employ a quality assurance program designed to promote performance of the Services at a level consistent with Best Industry Practice to ensure the AM Services are delivered with a high quality in its procedures and with best practices.

Code Quality Assurance & Management

- 6.50 The Supplier shall implement Code Quality Assurance to ensure the developed code complies with the standard industry specification. The code quality assurance process includes peer reviews at key milestones such as design completion and code completion in accordance with the digital risk and security requirements.
- 6.51 The Supplier shall, where possible, work on improving the efficiency and reliability of legacy Applications (if they are in their scope of applications supported) and minimize ongoing maintenance requirements through activities such as Application tuning, code restructuring, shifting to a modern environment, and virtualization.

Regulatory Compliance

- 6.52 The Supplier shall assure and provide evidence that it is operating its controls effectively and in compliance with regulations, policies and obligations (specifically e.g.: SOX, GDPR) applicable locally and globally through document control, compliance training, ongoing auditing, and recording and reporting of exception events and corrective actions. The Supplier shall manage the diversity of regulations to avoid the risk of non-compliance and protect brand reputation.

Application De-Commissioning

- 6.53 The Supplier shall comprehensively define its process of removing a system, Application, database, or platform from service, while retaining access to its data for reporting, regulatory compliance, and regular business needs.
- 6.54 The Supplier shall provide an archiving process for decommissioning legacy applications and establishing a model for continuous application portfolio hygiene.

Technical Integration and Middleware

- 6.55 As part of the end to end AM Service, the Supplier shall be responsible for the operation of middleware services for the specific Applications, for which they are selected to provide Service, where these Applications have middleware interfaces

or are in scope. This includes the integration of the internal and external Applications, as well as the integration with other third parties. Technologies including, but are not limited to, Oracle Fusion, SAP PI.

Technology Refresh

- 6.56 The Supplier shall propose periodic replacement of technology to ensure continuing reliability and improved efficiency. For replacement of the technology, the Supplier shall provide written plans for installed technologies that require replacement, as applicable and to extent necessary to perform the Services in accordance with the agreed Service Levels. Supplier shall partner with the Customer and develop a roadmap for technology refresh.
- 6.57 The Supplier shall:
- (a) ensure that technologies utilized in delivering the Services to the Customer, excluding Supplier Third Party Software that is available commercially off the shelf, are capable of support by other parties in the marketplace, and do not lead to sole reliance on the Supplier for support, unless dictated by the Customer's specific requirements; and
 - (b) contribute to ensuring that the life of the technologies installed is not prolonged past the date when technical support is available for such technology (unless there is adequate business justification to do so), creating legacy technologies that become unsupportable and costly.

Analytics

- 6.58 The Supplier shall utilise analytics processes and tools to continuously improve the performance of the Services.
- 6.59 The Supplier shall deliver data extracts and interactive analytics related to the Services provided using a toolset or feeds to the Customer toolset, that structure and communicates quantitative information. These extracts and analytical views should also include transactional data that reflects the Customer business process performance. the Customer users should be able to access, create and run their own queries and schedule extracts to run at pre-set intervals.

Automation

- 6.60 The Customer wishes to leverage the benefits of automation within Application Management. The Supplier shall utilise business process automation, integrating enterprise applications to reduce human intervention wherever possible.
- 6.61 The Supplier shall utilise automation tools to improve design, workflow and delivery to bring better integration and efficiencies across their in-scope Application Portfolio. It will be essential that any automation should be easily integrated into our existing services. The Supplier shall license the appropriate tools and integrate. The Supplier shall integrate with ServiceNow for workflow automation.

6.62 The Supplier shall improve the performance, reliability and availability of the applications while reducing risk and the cost of support. Areas of automation should include but not limited to:

- (a) monitoring and Alerting;
- (b) health Checks;
- (c) manual Data Processing;
- (d) routine Maintenance Tasks;
- (e) scheduling; and
- (f) self-healing capabilities.

Testing

6.63 The Supplier shall adapt to the standardised testing tools that the Customer plans to establish. Until such point that such a standardised tool is established, the Supplier shall adapt the same testing tools used by a third-party supplier of application development services for that Application. The Supplier shall integrate with the Customer's tools (such as VSTS) for the sharing of requirements, traceability, test data, scripts, results and evidence and confirm this with the Customer's personnel for each Work Package.

7. OTHER SERVICES

The parties may agree to include in a Call-Off Agreement some or all of the following Services:

7.1 Project Management and System Integration

- (a) Project Management and Programme Management
- (b) Project / Program Strategy definition
- (c) Project / Program Delivery approach
- (d) Scoping, costing and high-level timelines
- (e) Delivering Business Change
- (f) Delivering Business Processes
- (g) Establish / Support Governance

7.2 Quality Assurance

7.3 Architecture and Strategy

- (a) Application Strategy

- (b) Systems Integration Strategy
- (c) Solution Architecture Services
- (d) Enterprise Architecture Services
- (e) External Software Evaluation / assessment
- (f) Rationalisation and Harmonisation assessment
- (g) Decommissioning strategy

7.4 Information Management

- (a) Data Management and Consolidation
- (b) Data Migration
- (c) Decision Support Analytics
- (d) Advanced Analytics and Optimization
- (e) Enterprise Content Management
- (f) Business Intelligence and Performance Management
- (g) Code and Environment Management

7.5 Other consultancy

- (a) Strategy development
- (b) Product roadmap development
- (c) Reference customer visits

ANNEX 1: WORK PACKAGE CALL-OFF AND TEMPLATE

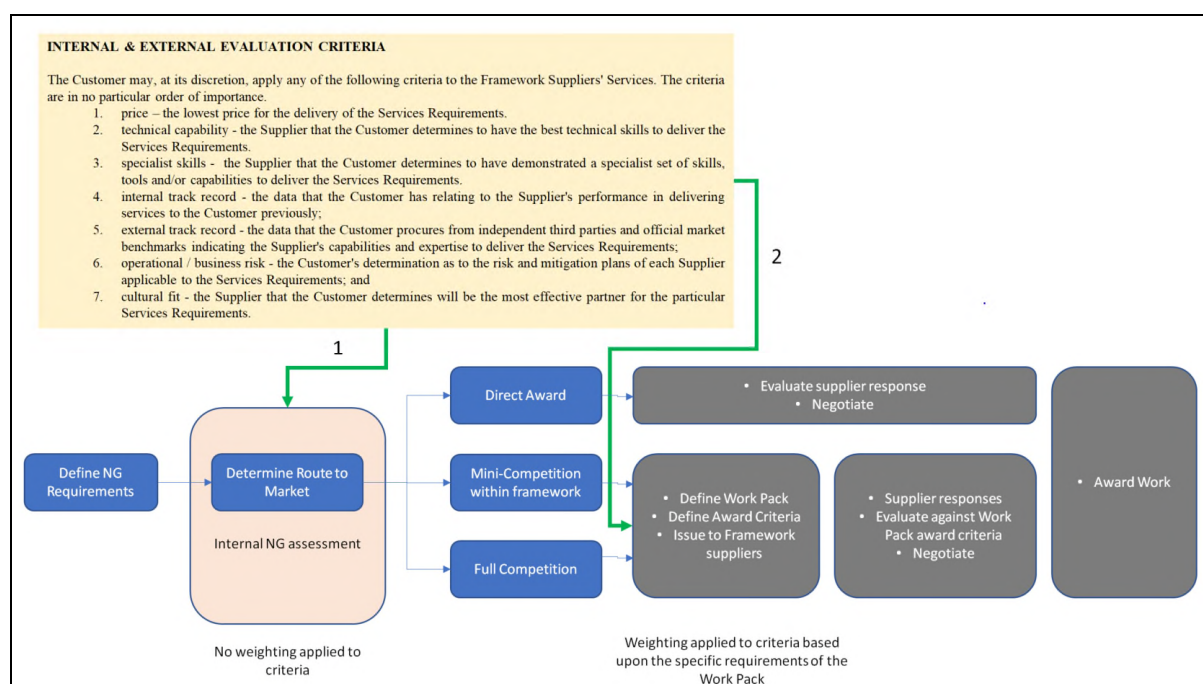
1. INTRODUCTION

1.1 This Annex 1 sets out the ways in which the Customer can procure Services under the Framework Agreement. Depending upon the circumstances, the Customer may:

- (a) make a direct award to the most suitable provider of the relevant Services (see paragraph 2 below for more detail);
- (b) perform an initial review to identify suitably qualified Framework Suppliers and invite a sub-set to provide a proposal (see paragraph 3 below); or
- (c) send the same requirement to all Framework Suppliers (again see paragraph 3 below).

1.2 In each case there are criteria for award to be applied which are explained in more detail at paragraph 5 below.

1.3 The processes for award are more simply illustrated in the diagram below.



2. PROCEDURE FOR DIRECT AWARD WITHOUT A FURTHER COMPETITION

2.1 To make a direct award the Customer shall:

- (a) determine whether its Service Requirements can be met by the existing description of the Services as set out in this Schedule 2.1 (Services Description);
- (b) develop a Statement of Requirements setting out its requirements for the Services and identify the Framework Supplier capable of supplying the Services;

- (c) amend or refine the Template Call-Off Agreement to reflect its Services Requirements;
- (d) apply the Award Criteria set out in paragraph 5 below to the Framework Suppliers capable of meeting the Statement of Requirements; and
- (e) on that basis, award the Call-Off Agreement to the successful Framework Supplier.

3. PROCEDURE FOR FURTHER COMPETITION

3.1 For Further Competition, the Customer shall:

- (a) develop a Statement of Requirements setting out its requirements for the Services and identify the Framework Suppliers capable of supplying the Services;
- (b) amend or refine the Template Call-Off Agreement to reflect its Services Requirements;
- (c) if the Customer so decides, perform an initial review of the Suppliers to determine whether to invite some or all of the Framework Suppliers to tender, based on the Award Criteria;
- (d) invite tenders by conducting a Further Competition;
- (e) include in the invitation to tender relative weightings for the Award Criteria;
- (f) set a time limit for the receipt by it of the tenders;
- (g) evaluate the Framework Suppliers applying the Award Criteria set out in paragraph 5 below; and
- (h) on that basis, award its Call-Off Agreement to the successful Framework Supplier.

3.2 The Supplier shall ensure that any prices submitted in relation to a Further Competition Procedure are based on the Charging Structure and take into account any discount to which the Customer may be entitled as set out in Schedule 7.1 (Charges and Invoicing).

3.3 The Supplier agrees that:

- (a) all tenders submitted by the Supplier shall remain open for acceptance by the Customer for sixty (60) Working Days (or such other period specified in the invitation to tender issued); and
- (b) all tenders submitted by the Supplier will be made in good faith and that the Supplier will not fix the price of the tender by any agreement with any other person.

3.4 The Supplier certifies that it shall not:

- (a) communicate to any person other than the person inviting these tenders the amount of the tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain quotations required for the preparation of the tender; and
- (b) enter into any arrangement with any other person that he or the other person(s) shall refrain from submitting a tender or as to the amount of any tenders to be submitted.

4. NO AWARD

- 4.1 The Customer shall be entitled at all times to decline to make an award for its Services Requirements. Nothing in this Agreement shall oblige the Customer to award any Call-Off Agreements.

5. AWARD CRITERIA

- 5.1 A Call-Off Agreement shall be awarded on the basis of most economically advantageous tender as determined by the Customer considering the criteria below.

- 5.2 To make a direct award the Customer shall apply the Award Criteria objectively, reasonably and in a manner consistent with its status as a regulated utility.

- 5.3 For Further Competition, the Customer shall include in the invitation to tender any relative weightings for the Award Criteria.

- 5.4 The Award Criteria for evaluation of Suppliers are as follows:

- (a) price – the lowest price for the delivery of the Services Requirements;
- (b) technical capability – the Supplier that the Customer determines to have the best technical skills to deliver the Services Requirements;
- (c) specialist skills - the Supplier that the Customer determines to have demonstrated a specialist set of skills, tools and/or capabilities to deliver the Services Requirements;
- (d) internal track record - the data that the Customer has relating to the Supplier's performance in delivering services to the Customer previously;
- (e) external track record - the data that the Customer procures from independent third parties and official market benchmarks indicating the Supplier's capabilities and expertise to deliver the Services Requirements;
- (f) operational / business risk - the Customer's determination as to the risk and mitigation plans of each Supplier applicable to the Services Requirements; and
- (g) cultural fit - the Supplier that the Customer determines will be the most effective partner for the particular Services Requirements.

5.5 The criteria are in no particular order of importance.

ANNEX 2: TEMPLATE CALL-OFF AGREEMENT

CALL-OFF AGREEMENT

[] Call-Off Agreement

Order No. []

- (A) On or about [•], the Customer and the Supplier entered into a contract (the "**Agreement**") which permits the Customer to purchase any of the Available Services from the Supplier in accordance with the Call-Off Procedure.
- (B) In accordance with the Call-Off Procedure, the Customer has decided to enter into this Call-Off Agreement with the Supplier for the provision of the Services in accordance with and subject to the terms and conditions of the Agreement as amended and supplemented by this Call-Off Agreement.
- (C) In this Call-Off Agreement, unless the context otherwise requires, capitalised words shall have the meanings set out in Schedule 1 (Definitions).

Table of Appendices

1 (Services)

2 (Charges for the Services)

3 (Implementation)

Section 1: Customer Details

Call-Off Agreement Reference: Parties

1.	Customer	<i>[Guidance Note: Insert the name of the Customer.]</i>
	Address	<i>[Guidance Note: Insert the street address which is the principal place of business of the Customer.]</i>

The Service Recipients for the purpose of this Call-Off Agreement are:

	Service Recipients	
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Section 2: Call-Off Agreement Particulars

	[Specific Business Requirements]	<i>[Guidance Note: insert the [Specific Business Requirements].]</i>
	Customer Responsibilities	The service specific Customer Responsibilities which the Customer shall perform are set out at Appendix 4 (Customer Responsibilities) to this Call-Off Agreement.

Section 3: Personnel and Governance

	Customer Representative	Name	<i>[Guidance Note: insert name of Customer Representative.]</i>
		Address	<i>[Guidance Note: insert address of Customer Representative.]</i>
		Telephone No.	<i>[Guidance Note: insert telephone number.]</i>
		Email	<i>[Guidance Note: insert email address.]</i>
	Supplier Representative	Name	<i>[Guidance Note: insert name of Supplier Representative.]</i>
		Address	<i>[Guidance Note: insert address of Supplier Representative.]</i>
		Telephone No.	<i>[Guidance Note: insert telephone number.]</i>
		Email	<i>[Guidance Note: insert email address.]</i>

	Customer Notice	Name	<i>[Guidance Note: insert name of person on whom notices for the Customer should be served.]</i>
		Address	<i>[Guidance Note: insert address for service of notices.]</i>
		Email	<i>[Guidance Note: insert email address for service of notices.]</i>
	Supplier Notice	Name	<i>[Guidance Note: insert name of person on whom notices for the Supplier should be served.]</i>
		Address	<i>[Guidance Note: insert address for service of notices.]</i>
		Email	<i>[Guidance Note: insert email address for service of notices.]</i>

Section 4: Services

4.1 The Services are set out in Appendix 1 (Services) to this Call-Off Agreement.

Section 5: Implementation

The Outline Implementation Plan is set out in Appendix 3 (Implementation) to this Call-Off Agreement.

	Customer Project Manager(s)	<i>[Guidance Note: Provide the name, address, telephone number and email address for the Customer's Project Manager. If there is more than one Implementation and there will be different persons managing those Implementations, please provide the name, address, telephone number and email address for those Project Managers and identify which Implementation(s) the person will be project managing.]</i>	
	Supplier's Project Manager	Name	<i>[Guidance Note: insert name of Project Manager.]</i>
		Address	<i>[Guidance Note: insert address for service of notices.]</i>
		Telephone No.	<i>[Guidance Note: insert telephone number.]</i>
		Email	<i>[Guidance Note: insert email address.]</i>

Section 6: Charges

The Charges for the Services are set out in Appendix 2 (Charges for the Services) to this Call-Off Agreement.

	Invoice Address(es)	<i>[Guidance Note: If separate invoices are to be raised for the Customer and some or all of the Service Recipients, please provide an address for the recipient of each invoice.]</i>
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Section 7: Insurance

	Required Insurances
	<i>[Guidance Note: The Insurances which the Supplier shall be required to take out and maintain, or procure the taking out and maintenance of.]</i>

Section 8: Special Conditions

The following provisions are 'special conditions' which shall, in the event of any conflict, take precedence over any other provisions of the Call-Off Agreement.

	Special Conditions
	<p>The provisions of Clause 33.1(b) shall be amended to read as follows:-</p> <p>33.1 The Customer may terminate this Agreement by issuing a Termination Notice to the Supplier:</p> <p>(b) for convenience on the date set out in the Termination Notice, which shall be no less than thirty (30) days from the date of issue of the Termination Notice;</p> <p><i>[Guidance Note 1: if the special condition is an amendment to an existing provision of the Call-Off Agreement it should be expressed in one of three ways: (a) by citing the old text which is to be amended or deleted and citing the new text which amends or replaces the old text; (b) by using track changes to show proposed insertions and deletions; or (c) where there are material changes proposed to a number of provisions, by citing that part of the Call-Off Agreement to be replaced and appending the replacement part to the Call-Off Agreement.</i></p> <p><i>Examples</i></p> <p>A. Clause 36.4(a):</p> <p>Old Text: Delete "£10 million" after the words "shall in no event exceed".</p> <p>New Text: Insert "£15 million" in place of the deleted text.</p>

	<p>B. <i>Clause 36.4(a): " the Supplier's aggregate liability in respect of loss of or damage to the Customer Premises or other property or assets of the Customer (including technical infrastructure, assets or equipment but excluding any loss or damage to the Customer's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed £10 million £15 million).</i></p> <p>C. <i>Schedule 3.1 (Charges and Invoicing): "Schedule 3.1 (Charges and Invoicing) to the Agreement shall be deleted and replaced by a schedule of the same name which is set out at Annex 1 to this Call-Off Agreement. "]</i></p> <p><i>[Guidance Note 2: parties to consider:-</i></p> <p><i>ownership of specially written software, applicable delivery deadlines and relevant Implementation Plan, any associated payment milestones applicable to agreed delivery milestones and associated Delay Payments, impact on the liability regime, whether any staff are affected, the relevant Testing required and associated Performance Levels and any Service Credits, any refinement to the standard 12 month Warranty Period and the extent to which the Work Package affects Customer Data and/or Personal Data]</i></p>
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Section 9: Formation of Call-Off Agreement

The execution of this Call-Off Agreement by the Supplier and the Customer shall create a valid and legally binding contract comprising the Agreement as amended and supplemented by this Call-Off Agreement.

SIGNED for and on behalf of the Customer:

Signature	
Print Name	
Title	
Date	

SIGNED for and on behalf of the Supplier:

Signature	
Print Name	
Title	
Date	

Appendix 1 (Services)

[Drafting Note: This Appendix will be reviewed once the Service Catalogue has been completed.]

Service			Service Period	
Unique Reference Number	Services	Recipient	Service Start Date	Service End Date
<i>[Guidance Note: insert Unique Reference Number for each of the Core Services which the Customer wishes to order from the Supplier]</i>	<i>[Guidance Note: insert the name of the entity which will receive the relevant service (i.e. it will be the Customer or, if there are Service Recipients, one of the Service Recipients).]</i>	<i>[Guidance Note: insert the name of the entity which will receive the relevant service (i.e. it will be the Customer or, if there are Service Recipients, one of the Service Recipients).]</i>	<i>[Effective Date] [Guidance Note: insert the date on which the service shall start, expressed as dd.mm.yy.]</i>	<i>[Guidance Note: insert the date on which the service shall end, expressed as dd.mm.yy.]</i>

Appendix 2 - (Charges for the Services)

[Drafting Note: This Schedule will be completed with reference to Schedule 7.1 (*Charges and Invoicing*).]

[Guidance Note; Insert details of the Charges payable by the Customer and its Service Recipients]

Appendix 3 - (Outline Implementation Plan)

Outline Implementation Plan

Milestone	Deliverables (bulleted list showing all Deliverables (and associated tasks) required for each Milestone)	Duration (Working Days)	Milestone Date	Link to ATP/CPP

SCHEDULE 2.2: PERFORMANCE LEVELS

1. DEFINITIONS

In this schedule, the following definitions shall apply:

Application	A Software application (including a website) that the Supplier hosts, operates, manages, provides development environments in respect of, and/or supports in accordance with the provisions of the Services and related provisions of this Agreement;
Application Availability	has the meaning given in Paragraph 1.2 of Part II of Annex 1;
Application Tier	means the classification of an Application as Platinum/Gold, Silver, Bronze or Tin;
Available	has the meaning given in Paragraph 1.1 of Part II of Annex 1;
End User	any person authorised by the Customer to use the Application and the Services;
Incentive Payment	has the meaning given in Paragraph 6.1 of Part A of this Schedule;
Incident	a reported occurrence of a failure to deliver any part of the Services in accordance with the Customer Requirements or the Performance Indicators;
Incident Response Time	has the meaning set out in paragraph 2 of Part II of Annex 1 to this Schedule;
Non-Available	means that an Application is not Available;
NPS Survey	Net Promoter Score

Operational Hours or Business Hours

in relation to any Application, the hours for which that Application is to be operational [in that territory of use] as set out in the table below:

Application Tier	Operational Hours
Platinum/Gold	24-hrs for P1/P2 Operational Hours 7am-5pm for P3/P4
Silver	Up to 24-hrs for P2 Operational Hours 7am-5pm for P3/P4
Bronze	Operational Hours 7am-5pm for P3/P4
Tin	Operational Hours 7am-5pm for P4

Performance Monitoring Report

has the meaning given in Paragraph 1.1(a) of Part B of this Schedule;

Priority 1 Incident or "P1"

an Incident that, in the reasonable opinion of the Customer:

- (a) constitutes an outage that causes a loss of the Service which prevents the majority of the end users of an Application from working;
- (b) has a critical impact on the activities of the Customer;
- (c) causes significant financial loss and/or disruption to the Customer; or
- (d) results in any material loss or corruption of Customer Data.

Non-exhaustive examples:

- a loss of power to a data centre causing failure of Services; or
- a failure of the Services to

	provide the user authentication service;
Priority 2 Incident or "P2"	<p>(a) an Incident that, in the reasonable opinion of the Customer has the potential to:</p> <p>(a) have a major (but not critical) adverse impact on the Customer's operations and for which no technology based workaround is available; or</p> <p>(b) cause a financial loss and/or disruption to the Customer which is more than trivial but less severe than the significant financial loss described in the definition of a Priority 1 Incident.</p> <p>(b) Non-exhaustive examples:</p> <ul style="list-style-type: none"> • corruption of organisational database tables; or • loss of ability to update Customer Data.
Priority 3 Incident or "P3"	<p>an Incident that, in the reasonable opinion of the Customer has the potential to:</p> <p>(a) have a major adverse impact on the activities of the Customer which can be reduced to a moderate adverse impact due to the availability of a cost neutral workaround;</p> <p>(b) have a moderate adverse impact on the business operation of the Customer.</p> <p><i>Non-exhaustive example:</i></p> <ul style="list-style-type: none"> • inability to access data for a class of customers;
Priority 4 Incident or "P4"	<p>an Incident that, in the reasonable opinion of the Customer has the potential to have a minor adverse impact on the activities of the Customer.</p> <p><i>Non-exhaustive example:</i></p> <ul style="list-style-type: none"> • inability to access data for a single customer;

Repeat KPI Failure	has the meaning given in Paragraph 3.1 of Part A;
Resolution	has the meaning as set out in paragraph 3.1 of Part II of Annex 1 to this Schedule.
Resolution Time	has the meaning as set out in paragraph 3.1 of Part II of Annex 1 to this Schedule.
Satisfaction Survey	has the meaning given in Paragraph 4 of Part B of this Schedule;
Service Downtime	any period of time during which any of the Applications are not Available;
Service Target	means Target Performance Level (as defined in Schedule 1).

PART A: PERFORMANCE INDICATORS AND SERVICE CREDITS

1. PERFORMANCE INDICATORS

- 1.1 Annex 1 sets out the Key Performance Indicators and Subsidiary Performance Indicators that the Parties have agreed shall be used to measure the performance of the Services by the Supplier.
- 1.2 The Supplier shall monitor its performance against each Performance Indicator and shall send the Customer a report detailing the level of service actually achieved in accordance with Part B.
- 1.3 Service Points, and therefore Service Credits, shall accrue for any KPI Failure and shall be calculated in accordance with Paragraphs 2, 3 and 4.

2. SERVICE POINTS

- 2.1 If the level of performance of the Supplier during a Service Period achieves the Target Performance Level in respect of a Key Performance Indicator, no Service Points shall accrue to the Supplier in respect of that Key Performance Indicator.
- 2.2 If the level of performance of the Supplier during a Service Period is below the Target Performance Level in respect of a Key Performance Indicator, Service Points shall accrue to the Supplier in respect of that Key Performance Indicator as set out in Paragraph 2.3 and 2.4.
- 2.3 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure shall be the applicable number depending on whether the KPI Failure is a "Minor KPI Failure", a "Serious KPI Failure", a "Severe KPI Failure" or a "KPI Service Threshold", unless the KPI Failure is a Repeat KPI Failure when the provisions of Paragraph 3.2 shall apply.
- 2.4 For each Key Performance Indicator, the categorisation of KPI Failures as "Minor KPI Failure", "Serious KPI Failure", "Severe KPI Failure" or "KPI Service Threshold", and the allocation of Service Points, shall be determined as part of onboarding the Supplier into the Customer's service level management/service reporting process and/or in a Call-Off Agreement.

3. REPEAT KPI FAILURES AND RELATED KPI FAILURES

Repeat KPI Failures

- 3.1 If a KPI Failure occurs in respect of the same Key Performance Indicator in any two consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a "Repeat KPI Failure".

- 3.2 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure that is a Repeat KPI Failure shall be calculated as follows:

$$SP = P \times 2$$

where:

SP the number of Service Points that shall accrue for the Repeat KPI Failure;
and

P the applicable number of Service Points for that KPI Failure depending on whether the Repeat KPI Failure is a Minor KPI Failure, a Serious KPI Failure, a Severe KPI Failure or a failure to meet the KPI Service Threshold.

Below is a worked example based on the following example Service Points regime for Application Availability:

Application Availability Priority Levels	Service Points
Target Performance Level: 99%	0
Minor KPI Failure: 98.0% - 98.9%	1
Serious KPI Failure: 97.0% - 97.9%	2
Severe KPI Failure: 96.0% - 96.9%	3
KPI Service Threshold: below 96%	4

Example 1

If the Supplier achieves Application Availability of 98.5% in a given Measurement Period, it will incur a Minor KPI Failure for Application Availability in that Measurement Period and accordingly accrue 1 Service Point. If, in the next Measurement Period, it achieves Application Availability of 96.5%, it will incur a Severe KPI Failure and accordingly accrue 3 Service Points, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur 6 Service Points for the failure (i.e. $SP = 3 \times 2$). If in the next Measurement Period it achieves Application Availability of 96.5%, the Supplier will again incur 6 Service Points.

Example 2

If the Supplier achieves Application Availability of 96.5% in a given Measurement Period, it will incur a Severe KPI Failure for Application Availability in that Measurement Period and accordingly accrue 3 Service Points. If, in the next Measurement Period, it achieves Application Availability of 98.5%, it will incur a

Minor KPI Failure and accordingly accrue 1 Service Point, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur 2 Service Points for the failure (i.e. SP = 1 x 2). If in the next Measurement Period it achieves Application Availability of 96.5%, the Supplier will incur 6 Service Points.

Related KPI Failures

- 3.3 If any specific Key Performance Indicators refer to both Application Availability and Incident Response Times, the Incident Response Times achieved by the Supplier for any period of time during a Service Period during which the relevant Service or element of a Service is determined to be Non-Available shall not be taken into account in calculating the average Incident Response Times over the course of that Service Period. Accordingly, the Supplier shall not incur any Service Points for failure to meet Incident Response Times in circumstances where such failure is a result of, and the Supplier has already incurred Service Points for, the Service being Non-Available.

4. SERVICE CREDITS

- 4.1 Schedule 7.1 (Charges and Invoicing) sets out the mechanism by which Service Points shall be converted into Service Credits.
- 4.2 The Customer shall use the Performance Monitoring Reports provided pursuant to Part B, among other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each Service Period.
- 4.3 The Parties will agree no later than ninety (90) days following the relevant Implementation Service Commencement Date the date at which a Service Credit applies to each Key Performance Indicator.

5. EARN BACK

- 5.1 The Supplier may earn back the Service Credits incurred for a KPI Failure in previous Measurement Periods as follows:

- (a) if the Supplier has:
- (i) promptly remedied the KPI Failure in accordance with the relevant Key Performance Indicator;
 - (ii) demonstrated to the Customer's reasonable satisfaction that it has identified and permanently fixed the root cause of and/or completed the corrective actions for that KPI Failure; and
 - (iii) for three (3) consecutive Measurement Periods immediately subsequent to the Measurement Period in which the Service Credit was incurred, the Supplier meets or exceeds the Target Performance Level for that Key Performance Indicator,

then the Supplier may earn back an amount equal to fifty per cent (50%) of the Service Credit incurred for that Key Performance Indicator, such amount to be set out in the subsequent invoice for payment by the Customer; and

- (b) if the Supplier has met or exceeded the affected Key Performance Indicator in the three (3) consecutive Measurement Periods immediately subsequent to the period set out in Paragraph 5.1(a)(a)(iii) above, resulting in six (6) consecutive Measurement Periods of the Key Performance Indicator being met or exceeded immediately following the Measurement Period in which the Service Credit was incurred, then the Supplier may earn back a further amount equal to fifty percent (50%) of the Service Credit incurred for that Key Performance Indicator, such amount to be set out in the subsequent invoice for payment by the Customer.

6. INCENTIVE PAYMENT

- 6.1 If the Supplier has achieved one hundred per cent (100%) Application Availability on all of its Application Availability Key Performance Indicators under the Agreement and all Call-Off Agreements in each Measurement Period during a period of six (6) consecutive Measurement Periods, the Supplier shall be entitled to claim an incentive payment equal to two per cent (2%) of the base monthly Charges for the sixth (6th) Measurement Period (the "Incentive Payment").
- 6.2 The claim for the Incentive Payment shall be submitted by the Supplier to the Customer in its invoice for Charges applicable to the Measurement Period that is the sixth (6th) Measurement Period of achieving one hundred per cent (100%) Application Availability, together with the any supporting performance Management reports or documentation required by the Customer.
- 6.3 The Supplier may claim an Incentive Payment on a rolling basis in each subsequent sixth (6th) Measurement Period thereafter in which the Supplier achieves one hundred per cent (100%) Application Availability on all of its Application Availability Key Performance Indicators under the Agreement and all Call-Off Agreements.
- 6.4 For example, if the Measurement Period for all Application Availability Key Performance Indicators is a month, and the Supplier has provided seven (7) consecutive months of one hundred per cent (100%) Application Availability on all of its Application Availability Key Performance Indicators under the Agreement and all Call-Off Agreements, the Supplier may claim two (2) Incentive Payments:
 - (a) one to be invoiced in the sixth month and equal to 2% of the base monthly Charges in that sixth month; and
 - (b) the second to be invoiced in the seventh month and equal to 2% of the base monthly Charges in that seventh month.

PART B: PERFORMANCE MONITORING

1. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 1.1 The Parties will agree as part of onboarding the Supplier into the Customer's service level management/service reporting process or in a Call-Off Agreement the types, format and frequency of reports the Supplier will provide regarding its performance on the Performance Indicators, including:
- (a) a report that summarises the performance by the Supplier against each of the Performance Indicators as more particularly described in Paragraph 1.2 (the '**Performance Monitoring Report**'); and
 - (b) a report that summarises the Supplier's performance over the relevant Service Period as more particularly described in Paragraph 1.3 (the '**Balanced Scorecard Report**').

Performance Monitoring Report

- 1.2 The Performance Monitoring Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information:

Information in respect of the Service Period just ended

- (a) for each Key Performance Indicator and Subsidiary Performance Indicator, the actual performance achieved over the Service Period, and that achieved over the previous three (3) Measurement Periods;
- (b) a summary of all Performance Failures that occurred during the Service Period;
- (c) the priority level of each KPI Failure that occurred during the Service Period and whether each KPI Failure that occurred during the Service Period fell below the KPI Service Threshold;
- (d) which Performance Failures remain outstanding and progress in resolving them;
- (e) for any Material KPI Failures or Material PI Failures occurring during the Service Period, the cause of the relevant KPI Failure or PI Failure and the action being taken to reduce the likelihood of recurrence;
- (f) the status of any outstanding Rectification Plan processes, including:
 - (i) whether or not a Rectification Plan has been agreed; and
 - (ii) where a Rectification Plan has been agreed, a summary of the Supplier's progress in implementing that Rectification Plan;
- (g) for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
- (h) the number of Service Points awarded in respect of each KPI Failure;

- (i) the Service Credits to be applied, indicating the KPI Failure(s) to which the Service Credits relate;
- (j) the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the BCDR Plan;
- (k) relevant particulars of any aspects of the Supplier's performance that fail to meet the requirements of this Agreement;
- (l) such other details as the Customer may reasonably require from time to time; and

Information in respect of previous Service Periods

- (m) a rolling total of the number of Performance Failures that have occurred over the past six Service Periods;
- (n) the amount of Service Credits that have been incurred by the Supplier over the past six Service Periods;
- (o) the conduct and performance of any agreed periodic tests that have occurred in such Service Period such as the annual failover test of the BCDR Plan; and

Information in respect of the next Quarter

- (p) any scheduled Service Downtime for Permitted Maintenance and Updates that has been agreed between the Customer and the Supplier for the next Quarter.

Balanced Scorecard Report

- 1.3 The Balanced Scorecard Report shall be presented in the form of a dashboard and, as a minimum, shall contain a high level summary of the Supplier's performance over the relevant Service Period, including details of the following:
 - (a) financial indicators;
 - (b) the Target Performance Levels achieved;
 - (c) behavioural indicators;
 - (d) performance against its obligation to pay its Sub-contractors within thirty (30) days of receipt of an undisputed invoice;
 - (e) Milestone trend chart, showing performance of the overall programme; and
 - (f) sustainability and energy efficiency indicators, for example energy consumption and recycling performance.
- 1.4 The Parties shall agree as part of onboarding the Supplier into the Customer's service level management/service reporting process or in a Call-Off Agreement the meetings at which the Parties will manage and review the Supplier's performance

under this Agreement, the Performance Monitoring Reports and the Balanced Scorecard Reports, including the frequency, location and attendees for such meetings.

- 1.5 The Customer shall be entitled to raise any additional questions and request any further information from the Supplier regarding any KPI Failure or PI Failure.

2. PERFORMANCE RECORDS

- 2.1 The Supplier shall keep appropriate documents and records (including the Supplier's application support team records, staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records and complaints received) in relation to the Services being delivered. Without prejudice to the generality of the foregoing, the Supplier shall maintain accurate records of call histories for a minimum of twelve (12) months and provide prompt access to such records to the Customer upon the Customer's request. The records and documents of the Supplier shall be available for inspection by the Customer or its nominee at any time and the Customer or its nominee may make copies of any such records and documents.
- 2.2 In addition to the requirement in Paragraph 2.1 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 each Operational Service Commencement Date and the calculations of the amount of Service Credits for any specified period.
- 2.3 The Supplier shall ensure that the Performance Monitoring Report, the Balanced Scorecard Report and any variations or amendments thereto, 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 are capable of being printed.

3. PERFORMANCE VERIFICATION

The Customer reserves the right to verify the Availability of the Application or the Services (or both) and the Supplier's performance under this Agreement against the Performance Indicators including by sending test transactions through the Application or otherwise.

4. SATISFACTION SURVEYS

- 4.1 In order to assess the level of performance of the Supplier, the Customer may undertake satisfaction surveys in respect of End Users or various groups of End Users (each such survey a "**Satisfaction Survey**"), and other surveys (including surveys regarding the Supplier's behaviour and contribution to the Customer's business objectives and collaboration with the Customer and the Customer's other suppliers), the results of which may be reflected in the Balanced Scorecard Report and/or reviewed by a board or committee in accordance with Schedule 8.1 (*Governance*).

ANNEX 1: KEY PERFORMANCE INDICATORS AND SUBSIDIARY PERFORMANCE INDICATORS

PART I: KEY PERFORMANCE INDICATORS AND SUBSIDIARY PERFORMANCE INDICATORS TABLES

The Key Performance Indicators and Subsidiary Performance Indicators that shall apply to the Operational Services are set out below:

1. Key Performance Indicators

The Key Performance Indicators are set out in the document below.

2. Subsidiary Performance Indicators

The Subsidiary Performance Indicators will be agreed by the Parties in each Call-Off Agreement.

PART II: DEFINITIONS

1. APPLICATION AVAILABILITY

1.1 Each Application shall be Available when:

- (a) End Users are able to access and utilise all the functions of that Application; and
- (b) that Application is able to process the Customer Data and to provide any required reports within the timescales set out in the Services Description (as measured on a 24 x 7 basis); and
- (c) all Performance Indicators for that Application other than Application Availability are above the KPI Service Threshold.

1.2 Application Availability is the period of time in a Service Period that the Application is Available calculated as a percentage of time that it is scheduled to be Available.

1.3 When calculating Application Availability in accordance with this Paragraph 1, Service Points shall accrue if:

- (a) any Service Downtime occurs as a result of Emergency Maintenance undertaken by the Supplier; or
- (b) where maintenance undertaken by the Supplier exceeds a certain number of hours in any Service Period, such number to be specified by the Customer in a Call-Off Agreement.

2. INCIDENT RESPONSE TIMES

2.1 Incident Response Times will be measured as the time between when the Incident is first reported to the Supplier's application support team and the time the Supplier's application support team acknowledges such notification.

2.2 The Supplier shall monitor the Incident Response Times and shall provide the results of such monitoring to the Customer in accordance with the provisions of Part B of this Schedule.

2.3 Incident Response times for each Application Tier are as set out in the table below:

Application Tier	Incident Response Time
Platinum / Gold	P1 - 15 mins P2 - 30 mins P3 - 3 Operational Hours P4 - 6 Operational Hours

Application Tier	Incident Response Time
Silver	P2 - 30 mins P3 - 3 Operational Hours P4 - 6 Operational Hours
Bronze	P3 - 3 Operational Hours P4 - 6 Operational Hours
Tin	Only P4 Incidents allowed

3. RESOLUTION TIMES

3.1 The '**Resolution Time**' of an Incident is the period from the time that the Incident has been reported to the Supplier to the point of its Resolution and '**Resolution**' means in relation to an Incident either:

- (a) the root cause of the Incident has been removed and the Services are being provided in accordance with the Services Description and Service Levels; or
- (b) the Customer has been provided with a workaround in relation to the Incident deemed acceptable by the Customer.

3.2 Resolution Times for Priority 3 Incidents and Priority 4 Incidents shall be measured in Operational Hours.

Worked example: if the Operational Hours for a fault are 0700-1700, then the clock stops measuring Resolution Time at 1700 in the evening and restarts at 0700 the following day).

3.3 Resolution Times for Priority 1 Incidents and Priority 2 Incidents shall be measured 24x7.

3.4 The Supplier shall measure Resolution Times as part of its service management responsibilities and report periodically to the Customer on Resolution Times as part of the Performance Monitoring Report.

3.5 Resolution Times for each Application Tier are as set out in the table below:

Application Tier	Resolution Time
Platinum / Gold	P1 - 2hrs P2 - 4 hrs P3 - 12 Operational Hours P4 - 24 Operational Hours

Application Tier	Resolution Time
Silver	P2 - 4 hrs P3 - 12 Operational Hours P4 - 24 Operational Hours
Bronze	P3 - 12 Operational Hours P4 - 24 Operational Hours
Tin	Only P4 Incidents allowed

SCHEDULE 2.3: STANDARDS

1. GENERAL

- 1.1 Throughout the term of this Agreement, the Parties shall monitor and notify each other of any new or emergent standards that could affect the Supplier's provision, or the Customer's receipt, of the Services. Any changes to the Standards, including the adoption of any such new or emergent standard, shall be agreed in accordance with the Change Control Procedure.
- 1.2 Where a new or emergent standard is to be developed or introduced by the Customer, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or the Customer's receipt, of the Services is explained to the Customer (in a reasonable timeframe), prior to the implementation of the new or emergent standard.
- 1.3 Where Standards referenced conflict with each other or with Best Industry Practice, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require the prior written agreement of the Customer and shall be implemented within an agreed timescale.

2. TECHNOLOGY AND DIGITAL SERVICES PRACTICE

[Please refer to security standards set out in Schedule 2.4]

3. TECHNOLOGY ARCHITECTURE STANDARDS

The Supplier shall produce full and detailed technical architecture documentation for the Supplier Solution in accordance with Best Industry Practice.

4. ACCESSIBLE DIGITAL STANDARDS

The Supplier shall comply with (or with equivalents to):

- (a) the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.0 Conformance Level AA; and
- (b) ISO/IEC 13066-1: 2011 Information Technology - Interoperability with assistive technology (AT) - Part 1: Requirements and recommendations for interoperability.

5. SERVICE MANAGEMENT SOFTWARE & STANDARDS

- 5.1 Subject to Paragraphs 2 to 4 (inclusive), the Supplier shall reference relevant industry and HM Government standards and best practice guidelines in the management of the Services, including the following or their equivalents:
- (a) ITIL v3 2011;
 - (b) ISO/IEC 20000-1 2011 'ITSM Specification for Service Management';
 - (c) ISO/IEC 20000-2 2012 'ITSM Code of Practice for Service Management';

- (d) ISO 10007 'Quality management systems - Guidelines for configuration management';
 - (e) BS25999-1:2006 'Code of Practice for Business Continuity Management' and, ISO/IEC 27031:2011, ISO 22301 and ISO/IEC 24762:2008 in the provision of 'IT Service Continuity Strategy' or 'Disaster Recovery' plans;
 - (f) ISO/IEC 27001-2013 'Information Security Management Systems';
 - (g) Control Objectives for Information and Related Technology (CobIT);
 - (h) National Institute of Standards and Technology 80-53 (NIST);
 - (i) The NIST Cybersecurity Framework (CSF); and
 - (j) Canadian Standards Association (CSA).
- 5.2 For the purposes of management of the Services and delivery performance the Supplier shall make use of Software that complies with Best Industry Practice including availability, change, incident, knowledge, problem, release & deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management. If such Software has been assessed under the ITIL software scheme as being compliant to 'Bronze Level,' then this shall be deemed acceptable.
- 6. ENVIRONMENTAL STANDARDS**
- 6.1 The Supplier warrants that it has obtained ISO 14001 (or equivalent) certification for its environmental management and shall comply with and maintain certification requirements throughout the Term. The Supplier shall follow a sound environmental management policy, ensuring that any Goods and the Services are procured, produced, packaged, delivered, and are capable of being used and ultimately disposed of in ways appropriate to such standard.
- 6.2 The Supplier shall comply with relevant obligations under the Waste Electrical and Electronic Equipment Regulations 2006 in compliance with Directive 2002/96/EC and subsequent replacements (including those in compliance with Directive 2012/19/EU).
- 6.3 The Supplier shall (when designing, procuring, implementing and delivering the Services) ensure compliance with Article 6 and Annex III of the Energy Efficiency Directive 2012/27/EU and subsequent replacements.
- 6.4 The Supplier shall comply with the EU Code of Conduct on Data Centres' Energy Efficiency. The Supplier shall ensure that any data centre used in delivering the Services are registered as a Participant under such Code of Conduct.
- 6.5 The Supplier shall comply with the Customer's waste reduction policy made available to the Supplier from time to time.

7. HARDWARE SAFETY STANDARDS

- 7.1 The Supplier shall comply with those BS or other standards relevant to the provision of the Services.
- 7.2 Where required to do so as part of the Services, the Supplier shall perform electrical safety checks in relation to all equipment supplied under this Agreement in accordance with the relevant health and safety regulations.

SCHEDULE 2.4: SECURITY MANAGEMENT

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

Baseline Security Requirements	the requirements set out in Annex 1.
National Grid Security Framework or NGSF	the framework comprising the Baseline Security Requirements and the Customer's security policies, standards and processes from time to time.

2. INTRODUCTION

- 2.1 The Parties acknowledge that the purpose of the National Grid Security Framework is to ensure a good organisational approach to security under which the specific requirements of this Agreement will be met.
- 2.2 The Parties shall each appoint a member of the Programme Board to be responsible for security. The initial member of the Programme Board appointed by the Supplier for such purpose shall be the person named as such in Schedule 9.2 (Key Personnel) and the provisions of clauses 14.5 and 14.6 (Key Personnel) shall apply in relation to such person.
- 2.3 Both Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security.
- 2.4 The Supplier shall use as a minimum Best Industry Practice in the day to day operation of any system holding, transferring or processing Customer Data and any system that could directly or indirectly have an impact on that information, and shall ensure that Customer Data remains under the effective control of the Supplier at all times.
- 2.5 The Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Customer.
- 2.6 The Customer and the Supplier acknowledge that information security risks are shared between the parties and that a compromise of either the Supplier or the Customer's security provisions represents an unacceptable risk to the Customer requiring immediate communication and co-operation between the parties.

3. NATIONAL GRID SECURITY FRAMEWORK

- 3.1 The Supplier shall at all times comply with the National Grid Security Framework.
- 3.2 Subject to clause 20.11 (Customer Data and Security Requirements) the references to standards, guidance and policies set out in Annex 1 of this Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.

- 3.3 In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies referred to in paragraph 3.2, the Supplier shall immediately notify the Customer Representative of such inconsistency and the Customer Representative shall, as soon as practicable, notify the Supplier with which provision the Supplier should comply.

ANNEX 1: BASELINE SECURITY REQUIREMENTS

1. POLICIES AND STANDARDS

- 1.1 The Supplier shall comply with the Customer's security policies and standards ('Security Policies and Standards') as notified by the Customer to the Supplier from time to time. As at the Effective Date, those policies and standards include:

Security Policies

- Cyber Security Policy.
- Global User Management Security Policy.
- Policy Framework.
- Acceptable Use Standard.
- Email Communications and Internet Policy.
- Global Systems Acquisition Development Maintenance Policy.
- Global Communications and Operations Policy.
- Global Critical Systems Support Policy.
- Global Data Privacy Policy.
- Global Incident Management Policy.
- Global Information Access Policy.
- Global Information Security Compliance.
- Global Organisation of Information Security.
- Global Physical Protection Policy.
- Global Risk Asset Management Policy.
- Group Information Security Management Policy.
- Personal Data Handling.

Security Standards

- ISMS 029 Managing Risks Related to Third Party Access.
- ISMS 042 Release of Computer Systems Usage Information.
- ISMS 045 Emergency Revocation of User Access Standard.
- ISMS 051 Media Standard.
- ISMS 101 Standard & Process for Approval & Review of Information Security Policy Framework documents.
- ISMS 102 Protecting Information - Standard and Guidelines.
- ISMS 103 Information Access.
- ISMS 104 Passwords & PIN management.
- ISMS 105 Malicious Code prevention.
- ISMS 106 Firewall.

- ISMS 107 Security Logging & Monitoring.
- ISMS 108 User ID and Account Management.
- ISMS 112 Incident Management.
- ISMS 113 Change Control & Configuration Management.
- ISMS 114 Patch Management.
- ISMS 115 Testing.
- ISMS 116 Backup & Restore Recovery.
- ISMS 117 Exceptions to Policy Exceptions.
- ISMS 118 Technical Compliance Checking.
- ISMS 119 Disposal or Re-deployment of Information Assets.
- ISMS 120 Critical National Infrastructure (CNI).
- ISMS 121 Oracle, SWL and DB2.
- ISMS 123 Access Processing Transmission Storage of Credit Card data.
- ISMS 124 Physical Security Standard.
- ISMS 125 Clear Desk and Clear Screen Standard.
- ISMS 128 Cryptography Standard.
- ISMS 129 Cloud Security Standard.
- ISMS 132 Secure Code Security.
- Management Security Directives.

2. HUMAN RESOURCES

2.1 The Supplier shall ensure that all Supplier Personnel shall enter into appropriate obligations of confidentiality, as further required by Clause 21 (*Confidentiality*), and shall further comply with the following policies, as they may be updated or replaced from time to time:

- (a) NG Group Security Procedure - Personnel Security;
- (b) NG HR Group Procedure - Employment Screening; and
- (c) NG UK Contractor Background Check Requirements.

3. PERFORMANCE EXCELLENCE AND METRICS

3.1 The Supplier shall comply with the performance standards for security matters set out in Schedule 2.2 (*Performance Levels*).

4. THREAT ASSESSMENT

4.1 The Supplier shall continuously monitor the threat landscape in which the Customer operates and shall share with the Customer all information or intelligence that might help identify any threat to the Customer's information systems and operations.

5. SECURITY PRINCIPLES

- 5.1 The Supplier acknowledges that the Customer requires its information systems to be protected in accordance with the following security principles:
- (a) least privilege;
 - (b) segregation of duties;
 - (c) defence in depth;
 - (d) promoting privacy;
 - (e) securing the weakest link; and
 - (f) failing securely.
- 5.2 The Supplier shall work with the Customer's Digital Risk & Security team to develop and refine the Customer's requirements as a result of changes to the technical and threat landscapes.
- 5.3 The Supplier shall ensure that it becomes aware of and responds to changing requirements at an industry-leading pace.
- 5.4 The Supplier shall inform the Customer immediately if it becomes aware of any situation that could result in the introduction of any vulnerability into the Customer's information systems and shall cooperate fully with the Customer in developing and implementing an appropriate response to that vulnerability.

6. SECURITY ARCHITECTURE

- 6.1 The Supplier shall, in its design and performance of the Services, adhere to the following security architecture principles:
- (a) unified directory (such as users, security groups, assets, policies, standards);
 - (b) the maintenance of an accurate and up-to-date asset inventory;
 - (c) scalable, flexible and testable environments for end user devices and services;
 - (d) interoperability with security components;
 - (e) maintainability of systems and services;
 - (f) real-time visibility of events across the estate; and
 - (g) synchronised clock time references.

7. SYSTEM AND SOFTWARE DEVELOPMENT LIFECYCLE

- 7.1 The Supplier shall maintain a separation of production and non-production environments.

7.2 The Supplier shall permit the Customer access to any and all of its code development pipelines, including artefact repositories, as well as to its testing environments, for the purpose of performing offline code reviews and automated scans.

7.3 The Supplier shall ensure that the Customer's application development standards are communicated to the Supplier's developers, and that those developers comply with those standards.

8. SECURITY TESTING

8.1 The Supplier shall cooperate with the Customer in relation to the Customer's monitoring of, and maintenance of, the security of its information assets. The Supplier acknowledges that this may require it to engage with third party assessors to review the security of the Customer and its other suppliers.

8.2 The Supplier shall conduct annual independent security tests of its information systems associated with the service provision to the Customer. The Supplier shall share the output of independent security reviews at the Customer's request.

9. ENVIRONMENT HARDENING

9.1 The Supplier shall ensure that all information assets are:

- (a) accounted for within appropriate asset management systems;
- (b) deployed on secured networks where access is strictly limited to authorised and trained individuals; and
- (c) accessed through unique individual user IDs and not through group IDs.

10. AUTHENTICATION AND AUTHORISATION

10.1 The Supplier shall implement robust processes to ensure that accounts are protected, including the implementation of user account and password policies (such as password length, complexity, age, history and sharing).

10.2 The Supplier shall ensure that account credentials are encrypted at rest and in transit across networks.

10.3 The Supplier shall not permit the storage of administrative credentials in unprotected files.

10.4 The Supplier shall replace manufacturer default passwords with secure alternatives.

10.5 The Supplier shall ensure that administrators or users needing access to sensitive information shall be required to authenticate using a Customer-approved multi-factor authentication technology (where 'sensitive information' means information that, without appropriate protection and care, could have an adverse effect on the Customer's compliance record, business operations, reputation or the privacy of one or more natural persons).

10.6 The Supplier shall ensure that administrators maintain both a privileged and non-privileged account, with the former being used solely for the purpose of system administration tasks.

10.7 The Supplier shall monitor all access logs and report upon or, where appropriate, escalate activities outside the roles and responsibilities associated with any user.

11. USER ACCESS CONTROLS

11.1 The Supplier shall adopt and support processes and policies in relation to identity and role management, including:

- (a) joiners, movers and leavers;
- (b) the definition of user roles and responsibilities;
- (c) the enforcement of unique, non-sharable accounts;
- (d) distinguishing between administrative, user and service accounts and the policies and processes associated with each type of account; and
- (e) disabling and reinstating accounts.

11.2 In a case where a user requires additional privileges, the Supplier shall ensure that access will be provided only after the completion (including Customer authorisation) of the relevant user access request process.

11.3 The Supplier shall ensure that user access rights shall be automatically revoked as part of the personnel leaver process.

12. DATA SECURITY

12.1 The Supplier acknowledges that the Customer is committed to the protection of its information assets according to its own data classification standards and those of all relevant external regulatory bodies and rules, including the following:

- (a) UK and EU data protection rules and regulations, including the EU General Data Protection Regulation;
- (b) the North America Electric Reliability Corporation (NERC), including NERC Critical Infrastructure Protection (NERC CIP) protected information;
- (c) the Federal Energy Regulatory Commission (FERC);
- (d) Critical Energy/Electric Infrastructure Information (CEII);
- (e) Sarbanes-Oxley compliance; and
- (f) the Standard for the Protection of Personal Information of Residents of the Commonwealth (Massachusetts state law 201 CMR 17.00).

12.2 The Supplier shall not be permitted to take copies of data without the Customer's written authorisation.

- 12.3 The Supplier shall perform data backups for essential services and data and shall perform regular tests of those backups in accordance with Customer policies and business requirements.
- 12.4 The Supplier shall ensure that its services and processes align with the Customer data loss prevention tools and architectures that detect and prevent attempts to exfiltrate sensitive data.
- 12.5 The Supplier shall ensure that sensitive business data (including personally identifiable information or such other sensitive business data so declared by the Customer) shall be masked or completely removed from non-production environments.
- 12.6 The Supplier shall securely erase data from information systems immediately prior to de-commissioning in accordance with European standard EN15713:2009.

13. ENCRYPTION AND KEY MANAGEMENT

- 13.1 The Supplier shall adopt the safe and appropriate use of encryption technologies to safeguard data at rest, data in transit across networks and data when transported via portable devices.
- 13.2 The Supplier shall ensure that cryptographic modules (whether hardware or software) used directly or indirectly to protect Customer information systems shall comply with the Customer's latest cryptography standards.
- 13.3 The Supplier shall ensure that administrative connections both into and out of applications shall be encrypted with Transport Layer Security (TLS) v1.2 or as otherwise required to comply with the relevant Security Policies and Standards.
- 13.4 The Supplier shall ensure that all user credentials traversing the network shall be encrypted with TLS v1.2 or as otherwise required to comply with the relevant Security Policies and Standards.
- 13.5 The Supplier shall ensure that all passwords stored at rest (for example, in account databases or in application configuration scripts) shall be protected using one-way keyed hashing algorithms.
- 13.6 The Supplier shall ensure that no clear text (unprotected) user names or passwords are ever stored in configuration or other files. The Supplier shall immediately inform the Customer if it discovers applications or other circumstances that contravene that requirement.
- 13.7 The Supplier shall ensure that digital certification validation by end user applications shall not result in the display of warning messages about untrusted authorities, insecure cryptography algorithms, certificate validity or revocation status.

14. SYSTEM SECURITY

- 14.1 The Supplier acknowledges that the Customer requires that all end user devices be protected with layers of security controls including centrally-managed host-based firewall, anti-malware, secured configurations, and reporting and intrusion detection systems. The Supplier shall ensure that such controls are deployed to all devices on the network.

- 14.2 The Supplier shall ensure that maintenance services support the identification, organisation, testing and distribution of security updates to devices within the timeframes described in the Security Policies and Standards.
- 14.3 The Supplier shall document secure baseline configurations and deploy them to all components within the infrastructure as appropriate. The parties shall review those baselines on a regular basis and shall amend them as appropriate in response to changing threats to the Customer's information systems.
- 14.4 The Supplier shall catalogue and maintain, in secured libraries, virtualised images that have been security tested in accordance with the Customer's security standards.
- 14.5 The Supplier shall replace manufacturer default configuration settings with secured alternatives. It shall disable unwanted system and network services, including the disabling or modification of all default factory passwords.

15. NETWORK SECURITY

- 15.1 The Supplier acknowledges that applicable network security controls shall at all times include:
 - (a) the segregation of production and non-production environments, as well as
 - (b) the separation of networks associated with general business activities from networks associated with the management and control of critical national infrastructure;
- 15.2 The Supplier acknowledges that network security controls that support the principles of 'least privilege' and 'segregation of duties' shall apply at all times to the Customer System, meaning that a 'default deny' approach to network traffic shall be adopted as the baseline policy.
- 15.3 The Supplier shall deploy systems that provide administrators with a real-time and accurate view of the network and attached devices. The Supplier shall ensure that traffic relating to the monitoring and replacement of network devices shall be secured and restricted to authorised network management services.
- 15.4 The Supplier shall:
 - (a) maintain details or firewall configuration settings;
 - (b) ensure that access control rules can always be identified with specific applications and services; and
 - (c) review configuration settings and access rules on at least an annual basis.
- 15.5 The Supplier shall deploy accurate time servers in support of synchronisation, logging and auditing functions across the network.

16. LOGGING AND MONITORING

- 16.1 The Supplier shall ensure that all applications at all times securely log the following events:
- (a) access events;
 - (b) indications of intrusive activities;
 - (c) the commissioning and decommissioning of information assets;
 - (d) administrative activity;
 - (e) changes to the critical configuration and data files and virtual images;
 - (f) traffic flows across the network; and
 - (g) audit file manipulation.

17. VULNERABILITY MANAGEMENT

- 17.1 The Supplier shall ensure that all vulnerabilities are dealt with in accordance with the Customer's Security Policies and Standards.
- 17.2 The Supplier shall apply security updates to information systems in accordance with the Customer's Security Policies and Standards.

18. Incident Handling and Response

- 18.1 The Supplier acknowledges that the Customer maintains its own Cyber Security Operations Centre (CSOC), operating 24x7, that monitors and processes event information from its assets.
- 18.2 The Customer may require the Supplier to feed event log information into the Customer's Security Incident and Event Management (SIEM) system.
- 18.3 The Supplier shall notify the Customer immediately in the event of any data breach.
- 18.4 The parties shall develop a written incident response plan that is to be followed in the event of a significant security incident (as defined in the plan)

19. AUDIT AND ASSESSMENT

- 19.1 The Supplier acknowledges that the arrangements set out in Schedule 7.5 (Financial Reports and Audit Rights) apply to certain security-related matters.

20. USE OF THIRD PARTIES

- 20.1 The Supplier acknowledges that the requirements of Clause 15 (*Appointment of Sub-Contractors, Supply Chain Rights and Protections*), including those relating to the compliance of members of the Supplier's supply chain with the Customer's security requirements.

21. USFP SAP

21.1 The following security management activities are within the scope of the Supplier's responsibilities:

- (a) creation and deletion of parent & derived roles and mass changes of roles and profile comparison.
- (b) maintenance of user groups.
- (c) roles and user administration.
- (d) maintenance of Su24, parent & derived roles, Structural authorization tables, role comparison job.
- (e) maintenance of Infotype level documentation for all Roles.
- (f) trouble-shooting the issues of roles and authorization.
- (g) creation of Authorization object, t-codes and missing authorization object.
- (h) supporting the testing of roles in development, and of transports for roles and controls changes.
- (i) discussion with business on roles and authorization design modifications
Change document of roles, authorization objects, custom t-code library
- (j) provision of support for security audits
- (k) provision of support for ITGC processes (for example, but not limited to, Transfers, Retirements, Inactives (including moribund), Terminations)
- (l) delivering Security Work Requests within the to-be-agreed timeframe.
- (m) support role management reporting as applicable
- (n) maintenance of supporting security-related documentation as applicable (for example, but not limited to, Technical Design Documents) for AM delivered amendments
- (o) supporting 'Standard Operating Procedure' (SOP) reviews and updates as necessary
- (p) monitoring system per the Supplier's policy for security

SCHEDULE 2.5: INSURANCE REQUIREMENTS

1. OBLIGATION TO MAINTAIN INSURANCES

- 1.1 Without prejudice to its obligations to the Customer under this Agreement, including its indemnity obligations, the Supplier shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 and any other insurances as may be required by applicable Law (together the 'Insurances'). The Supplier shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice.
- 1.3 The Insurances shall be taken out and maintained with insurers whose security rating meets the Customer's minimum criterion of 'A-' as assessed by Standard & Poor's (or equivalent rating by A.M. Best).
- 1.4 The Supplier shall ensure that the Commercial General Liability Insurance policy contains an indemnity to principals clause under which the Customer shall be indemnified in respect of claims made against the Customer in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Supplier is legally liable.

2. GENERAL OBLIGATIONS

Without limiting the other provisions of this Agreement, the Supplier shall:

- (a) take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
- (b) promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
- (c) hold all policies in respect of the Insurances.

3. FAILURE TO INSURE

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it that would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Customer may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the Customer shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

4. EVIDENCE OF INSURANCES

The Supplier shall upon the Effective Date and within fifteen (15) Working Days after the renewal or replacement of each of the Insurances, provide evidence to the Customer that the Insurances are in force and effect and meet in full the requirements of this Schedule. Receipt of such evidence by the Customer shall not relieve the Supplier of any of its liabilities and obligations under this Agreement.

5. CANCELLATION

- 5.1 Subject to Paragraph 5.2, the Supplier shall notify the Customer in writing at least five (5) Working Days prior to the cancellation, or non-renewal of any of the Insurances.
- 5.2 Without prejudice to the Supplier's obligations under Paragraph 4, Paragraph 5.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

6. INSURANCE CLAIMS

- 6.1 In the event that the Customer receives a claim relating to or arising out of the Services or this Agreement (or both), the Supplier shall co-operate with the Customer and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.
- 6.2 Except where the Customer is the claimant party, the Supplier shall give the Customer notice within twenty (20) Working Days after any insurance claim in excess of [*to be determined in the relevant Call-Off Agreement*] relating to or arising out of the provision of the Services or this Agreement on any of the Insurances or which, but for the application of the applicable policy excess or deductible, would be made on any of the Insurances and (if required by the Customer) full details of the incident giving rise to the claim.
- 6.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 6.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Customer any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.

ANNEX 1: REQUIRED INSURANCES

PART A: COMMERCIAL GENERAL LIABILITY INSURANCE

The Supplier maintains Commercial General Liability Insurance covering product liability, premises liability, personal and advertising injury liability, third party property damage and bodily injury and contractual liability, in each case arising out of the Supplier's negligence. This insurance shall have a minimum per occurrence and in the aggregate limit of five million dollars (\$5,000,000). The Supplier will maintain such insurance from the date of this Agreement for the Term (or until earlier termination of this Agreement).

PART B: PROFESSIONAL INDEMNITY INSURANCE

The Supplier maintains Professional Errors & Omissions insurance covering actual or alleged breach of duty, neglect, error, misstatement, misleading statements or omission, solely for acts or omissions committed by the Supplier in providing professional services to Customer with a minimum per claim limit of five million dollars (\$5,000,000) (or local currency equivalent). Coverage covers network security and privacy liability. The Supplier will maintain such insurance from the date of this Agreement for the Term (or until earlier termination of this Agreement) and for a period of six (6) years thereafter.

Part C: UNITED KINGDOM COMPULSORY INSURANCES

The Supplier shall meet its insurance obligations under applicable Law in full, including, UK employers' liability insurance and motor third party liability insurance.

SCHEDULE 3: CUSTOMER RESPONSIBILITY

1. INTRODUCTION

- 1.1 The responsibilities of the Customer set out in this Schedule shall constitute the Customer Responsibilities under this Agreement. Any obligations of the Customer in Schedule 2.1 (*Services Description*) shall not be Customer Responsibilities and the Customer shall have no obligation to perform any such obligations unless they are specifically stated to be 'Customer Responsibilities' and cross referenced in the table in Paragraph 3.
- 1.2 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 those obligations of the Customer that are set out in the Clauses of this Agreement and the Paragraphs of the Schedules (except Schedule 2.1 (*Services Description*));
- 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 and the Termination Assistance Period;
- 2.3 provide sufficient and suitably qualified staff to fulfil the Customer's roles and duties under this Agreement as defined in the Implementation Plan;
- 2.4 use its reasonable endeavours to provide such documentation, data 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 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 Premises (as a licensee only) and facilities (including relevant IT 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 as otherwise 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 as agreed in the relevant Call-Off Agreement.

SCHEDULE 4.2: COMMERCIAL SENSITIVE INFORMATION

No.	Date	Item(s)	Duration of Confidentiality

SCHEDULE 4.3: NOTIFIED KEY SUB-CONTRACTORS

1. In accordance with Clause 15.6 (Appointment of Key Sub-contractors), the Supplier is entitled to sub-contract its obligations under this Agreement to the Key Sub-contractors listed in the table below.
2. The Parties agree that they will update this Schedule (to be agreed in the relevant Call-Off Agreement) periodically to record any Key Sub-contractors appointed by the Supplier with the consent of the Customer after the Effective Date for the purposes of the delivery of the Services.

Key Sub-contractor name and address (if not the same as the registered office)	Registered office and company number	Related product/Service description	Key Sub-contract price expressed as a percentage of total projected Charges over the Term	Key role in delivery of the Services	Credit Rating Threshold
					Level 1

SCHEDULE 4.4: THIRD PARTY CONTRACT

1. The contracts listed in the table below constitute Third Party Contracts entered into exclusively for the purposes of delivering the Services.
2. The Supplier shall be entitled to update this Schedule (to be agreed in the relevant Call-Off Agreement) in accordance with clause 15.5 (Appointment of Sub-contractors).

Third party supplier name and address (if not the same as the registered office)	Registered office and company number	Related product/service description

SCHEDULE 4.5: BACKGROUND CHECK PROCEDURE

1. The Supplier shall comply with the background checking policy set out in this schedule.

Background Checking - Contractor Personnel

2. In response to the increasing threat posed to National Grid from 'insider risk' on a number of fronts, National Grid has updated its current background checking requirements for Contractors. National Grid has a responsibility for the safety and security of its employees and the public as well as an important obligation as the owner of infrastructure critical to the UK, to effectively manage this risk. As such we must ensure that appropriate background checking processes are in place, which are in line with government best practice for both our own staff and those of our Contract partners. The new requirements aim to provide clarity on the level of checks we require whilst only imposing a level of checks that are proportionate to the risk.
3. The requirements for background checking will normally only apply to employees working on National Grid sites or systems who are recruited after contract award. Note existing National Grid contractors should have been implementing background checking of new employees since 1st April 2008. It is recognised that the benefit of retrospectively carrying out background checks on existing employees would not normally outweigh the risk. However, in this instance, National Grid requires that all contractor personnel employed in connection with the work required as described in this tender must have been subject to a background check. If employees have been recruited and had equivalent background checks in the last 12 month there is no need to repeat the checks. If an employee has been employed by the Contractor for more than 12 months there is no need for an employment and address check, only an ID verification (if not carried out at recruitment) and a criminal record check.
4. The minimum requirement for new employees, for any contract let in connection with this enquiry, will be:
 - 4.1 ID verification
 - 4.2 Right to Work in UK check
 - 4.3 5 year address verification
 - 4.4 3 year employment (or education) history verification
 - 4.5 Basic criminal record check (unspent convictions only)
5. These requirements will apply to contractor and sub-contractor personnel alike.
6. Where an organisation has been carrying out different background checking of staff for example Government Security Vetting and Clearance of staff and wants to use this standard in lieu of the above requirements this should be proposed and will be discussed with the National Grid contract manager (who shall be communicated to the Customer).

7. National Grid reserves the right to require, as part of any contract let in connection with this enquiry, additional background checking requirements for specific high risk roles e.g. a government Counter Terrorism Check (CTC).
8. The carrying out of background checks and subsequent assessment will be the responsibility of the Contractor. The requirements should be cascaded down to Sub Contractors so far as is practicable. Where this is not considered practicable it should be discussed and agreed with the National Grid contract manager. Where a background check reveals one of the following, the person in question must not be utilised as part of the National Grid contract:
 - 8.1 The contractor employee refuses to give their consent or provide information for legitimately requested Screening purposes.
 - 8.2 The contractor employee has not been able to adequately confirm their identity to their employer or where the employee has attempted to mislead their employer as to their identity.
 - 8.3 The contractor employee has not been able to confirm to their employer they have a right to work in the UK, where they do not have a right to work in the UK or where the employee has attempted to mislead their employer over their right to work.
 - 8.4 The contractor employee fails to achieve security vetting clearance by the security services where the contract requires that security clearance is obtained.
 - 8.5 Current or previous affiliation with terrorist organisations as recognised by the UK government.
 - 8.6 Previous employment within National Grid that resulted in an unsatisfactory termination or where they were previously removed from working on any National Grid contract to perform work for National Grid.
9. Where a background check reveals one of the following and the Contractor still wishes to employ a person on the National Grid contract, the acceptance of the person must be discussed and agreed with the National Grid contract manager:
 - 9.1 Any gaps in employment or address history greater than 1 month where a reasonable explanation cannot be provided.
 - 9.2 Any unspent criminal conviction other than for motoring offences.
 - 9.3 Contractors and Sub-contractors may of course continue or implement background checking requirements above the minimum requirements of National Grid if they deem appropriate or where required by other clients. Please also note that escorted 'visitors' to site including delivery and collection company personnel will normally be excluded from any background checking requirements.

SCHEDULE 5.1: SOFTWARE

1. THE SOFTWARE

- 1.1 The Software below is licensed to the Customer in accordance with Clauses 16 (*Intellectual Property Rights*) and 17 (*Licences Granted by the Supplier*).
- 1.2 The Parties agree that they will update this Schedule periodically to record any Supplier Software or Third Party Software subsequently licensed by the Supplier or third parties for the purposes of the delivery of the Services.

2. SUPPLIER SOFTWARE

- 2.1 The Supplier Software shall be included in the onboarding plan in the following format:

Software	Supplier (if an Affiliate of the Supplier)	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)

3. THIRD PARTY SOFTWARE

The Third Party Software shall be included in the onboarding plan in the following format:

Third Party Software	Supplier	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)

**ANNEX 1: FORM OF LETTER RE SUB-LICENSING OF SUPPLIER COTS SOFTWARE AND
SUPPLIER COTS BACKGROUND IPRS**

[Supplier letterhead]

[insert
name and address]

Customer

[Date]

Dear Sirs

LICENCES FOR SUPPLIER COTS SOFTWARE AND SUPPLIER COTS BACKGROUND IPRs

We refer to the agreement between us dated [insert date] in respect of [*brief summary of subject of the Agreement*] (the 'Agreement'). Capitalised expressions used in this letter have the same meanings as in the Agreement.

In accordance with Clause 17.3(b) of the Agreement we confirm that:

1. the Customer is licensed by the Supplier to use the Supplier COTS Software and Supplier COTS Background IPRs identified in the first column of the Appendix to this letter (the 'Appendix') on the terms of the licences identified in the second column of the Appendix (the 'Licences'); and
2. notwithstanding any provision to the contrary in the Licences, it is agreed that the Customer may sub-license, assign and novate the Supplier COTS Software and Supplier COTS Background IPRs as referred to in Clause 17.3(b) of the Agreement.

Yours faithfully,

Signed:

On behalf of [*name of the Supplier*]

ANNEX 2: FORM OF CONFIDENTIALITY UNDERTAKING

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [*date*] 20

BETWEEN:

- (1) [*insert name*] of [*insert address*] (the 'Sub-licensee'); and
- (2) [*insert name*] of [*insert address*] (the 'Supplier' and together with the Supplier, the 'Parties').

WHEREAS:

- A [*insert name of Customer*] (the 'Customer') and the Supplier are party to a contract dated [*insert date*] (the 'Contract') for the provision by the Supplier of [*insert brief description of services*] to the Customer.
- B The Customer wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to the Customer pursuant to the Contract (the 'Sub-licence').
- C It is a requirement of the Contract that, before the Customer grants such sub-licence to the Sub-licensee, the Sub-licensee execute a confidentiality agreement in favour of the Supplier in or substantially in the form of this Agreement to protect the Confidential Information of the Supplier.

IT IS AGREED as follows:

1. INTERPRETATION

- 1.1 In this Agreement, unless the context otherwise requires:

**Confidential
Information**

means

- (a) Information, including all personal data within the meaning of the Data Protection Act 1998, and however it is conveyed, provided by the Customer to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:
 - (i) the Supplier; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how or personnel of the Supplier;

- (b) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to the Customer pursuant to or in connection with the Sub-licence;
- (c) other Information provided by the Customer pursuant to this Agreement to the Sub-licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub-licensee's attention or into the Sub-licensee's possession in connection with the Sub-licence; and
- (d) Information derived from any of the above,
but not including any Information that:
 - (i) was in the possession of the Sub-licensee without obligation of confidentiality prior to its disclosure by the Customer;
 - (ii) the Sub-licensee obtained on a non-confidential basis from a third party who is not, to the Sub-licensee's knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Sub-licensee;
 - (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
 - (iv) was independently developed without access to the Confidential Information;

Information	means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and
Sub-licence	has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

- (a) a reference to any gender includes a reference to other genders;
- (b) the singular includes the plural and vice versa;
- (c) the words 'include' and cognate expressions shall be construed as if they were immediately followed by the words 'without limitation';
- (d) references to any statutory provision include a reference to that provision as modified, replaced, amended or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
- (e) headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- (f) references to Clauses are to clauses of this Agreement.

2. CONFIDENTIALITY OBLIGATIONS

2.1 In consideration of the Customer entering into the Sub-licence, the Sub-licensee shall:

- (a) treat all Confidential Information as secret and confidential;
- (b) have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- (c) not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Agreement;
- (d) not transfer any of the Confidential Information outside the United Kingdom;
- (e) not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;
- (f) immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- (g) upon the expiry or termination of the Sub-licence:
 - (i) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
 - (ii) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information

technology staff of the Sub-licensee) from any computer, word processor, voicemail system or any other device; and

(iii) make no further use of any Confidential Information.

3. PERMITTED DISCLOSURES

- 3.1 The Sub-licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
- (a) reasonably need to receive the Confidential Information in connection with the Sub-licence; and
 - (b) have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and
 - (c) have agreed to terms similar to those in this Agreement.
- 3.2 The Sub-licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub-licensee.
- 3.3 Before making a disclosure pursuant to Clause 3.2, the Sub-licensee shall, if the circumstances permit:
- (a) notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
 - (b) ask the court or other public body to treat the Confidential Information as confidential.

4. GENERAL

- 4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
- (a) to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
 - (b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
 - (c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay

by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub-licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub-licensee of any of the provisions of this Agreement. Accordingly, the Sub-licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Sub-licensee to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

5. NOTICES

- 5.1 Any notice to be given under this Agreement (each a “Notice”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.

5.2 Any Notice:

- (a) if to be given to the Supplier shall be sent to:

[Address]

Attention: [Contact name and/or position, e.g. “The Finance Director”]

- (b) if to be given to the Sub-licensee shall be sent to:

[Name of Organisation]

[Address]

Attention: []

6. GOVERNING LAW

- 6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.
- 6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

IN WITNESS of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of [*name of Supplier*]

Signature:

Date:

Name:

Position:

For and on behalf of [*name of Sub-licensee*]

Signature:

Date:

Name:

Position:

SCHEDULE 5.2: CUSTOMER THIRD PARTY SOFTWARE

1. THIRD PARTY SOFTWARE

- 1.1 This schedule shall be agreed in the relevant Call-Off Agreement.

SCHEDULE 5.3: CUSTOMER THIRD PARTY CONTRACTS

1. THIRD PARTY CONTRACTS

- 1.1 This schedule shall be agreed in the relevant Call-Off Agreement.

SCHEDULE 5.4: CUSTOMER HARDWARE

1. HARDWARE

- 1.1 This schedule shall be agreed in the relevant Call-Off Agreement.

SCHEDULE 6.1: IMPLEMENTATION

1. INTRODUCTION

1.1 This Schedule:

- (a) describes the approach which the Supplier shall follow for the purposes of onboarding and so as to demonstrate its readiness to supply the Services;
- (b) defines the objectives and fundamental principles to be adhered to in respect of and which underpin each Implementation;
- (c) defines the process for the preparation and implementation of the Outline Implementation Plan and Detailed Implementation Plan in respect of a Work Pack, which shall be finalised by the Supplier in accordance with Paragraph 5. The development and provision of these detailed plans shall be provided by the Supplier without charge; and
- (d) identifies 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. ONBOARDING & READINESS TO SUPPLY

2.1 The Supplier shall:

- (a) perform and provide the Implementation Services in accordance with the objectives, principles and requirements as set out in Annex 1; and
- (b) perform such other tasks and provide such other outputs as are required so that the Supplier is ready to perform the Services in accordance with the terms of the Agreement from the applicable Operational Service Commencement Date.

2.2 The Supplier is responsible for demonstrating its readiness to provide the Services and for being in a position to tender for, implement and provide the Services in accordance with the terms of the applicable Work Pack and this Agreement from the applicable Operational Service Commencement Date.

2.3 Prior to the Service Commencement Date, the Supplier shall provide the Customer with an agreed onboarding plan.

3. IMPLEMENTATION

3.1 Implementation consists of all the activities required to commence provision of, or, as applicable, transfer responsibility for the Services, the Transferring Employees, the Transferring Assets and the Third Party Contracts to the Supplier pursuant to the terms of the Implementation Plan and this Agreement.

3.2 In addition to the information set out at Annex 2 (Outline Implementation Plan), each Work Pack shall set out:

- (a) the Milestones, Milestone Date, Acceptance Criteria, Liquidated Damages and Liquidated Damages Period;
- (b) the other activities required to meet the Milestones, the required completion dates and the associated Acceptance Criteria; and
- (c) the Deliverables, the required completion dates and the associated Acceptance Criteria,

that are relevant to the implementation of the Services and/or Deliverables to be provided pursuant to that Work Pack.

3.3 The Supplier shall perform the activities specified in the applicable Work Pack and the associated Implementation Plan and provide such Deliverables as may be so specified by the specified completion dates and in accordance with the specified Acceptance Criteria.

4. OUTLINE IMPLEMENTATION PLAN

4.1 The Outline Implementation Plan is set out in Annex 2, which shall reflect the objectives, principles and requirements as set out in Annex 1.

4.2 All changes to the Outline Implementation Plan shall be subject to the Change Control Procedure 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 31 (Customer Cause)) and any such attempt shall be invalid.

5. APPROVAL OF THE DETAILED IMPLEMENTATION PLAN

5.1 In respect of each Work Pack, the Supplier shall prepare and submit a draft of the Detailed Implementation Plan to the Customer for approval within ten (10) Working Days of the effective date of each such Work Pack.

5.2 The Supplier shall ensure that the draft Detailed Implementation Plan:

- (a) incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;
- (b) includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:
 - (i) the completion of each design document;
 - (ii) the completion of the build phase;
 - (iii) the completion of any Testing to be undertaken in accordance with Schedule 6.2 (Testing Procedures); and
 - (iv) training and roll-out activities;

- (c) clearly outlines all the steps required to implement the Milestones to be achieved in the next fifteen (15) months, together with a high level plan for the rest of the programme, in conformity with the Customer Requirements;
 - (d) clearly outlines the required roles and responsibilities of both Parties, including staffing requirements; and
 - (e) is produced using a software tool as specified, or agreed by the Customer.
- 5.3 Prior to the submission of the draft Detailed Implementation Plan to the Customer in accordance with Paragraph 5.1, the Customer shall have the right:
 - (a) to review any documentation produced by the Supplier in relation to the development of the Detailed Implementation Plan, including:
 - (i) details of the Supplier's intended approach to the Detailed Implementation Plan and its development;
 - (ii) copies of any drafts of the Detailed Implementation Plan produced by the Supplier; and
 - (iii) any other work in progress in relation to the Detailed Implementation Plan; and
 - (b) to require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan.
- 5.4 Following receipt of the draft Detailed Implementation Plan from the Supplier, the Customer shall:
 - (a) review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
 - (b) notify the Supplier in writing that it approves or rejects the draft Detailed Implementation Plan no later than twenty (20) Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Customer.
- 5.5 If the Customer rejects the draft Detailed Implementation Plan:
 - (a) the Customer shall inform the Supplier in writing of its reasons for its rejection; and
 - (b) the Supplier shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Customer's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Customer for the Customer's approval within twenty (20) Working Days of the date of the Customer's notice of rejection. The provisions of Paragraph 5.4 and this Paragraph 5.5 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

- 5.6 If the Customer approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of the Customer's notice of approval.
- 5.7 Any proposed amendments to the Detailed Implementation Plan in respect of each Work Pack shall not come into force until they have been approved in writing by the Customer.

ANNEX 1: ONBOARDING OBLIGATIONS/OBJECTIVES /REQUIREMENTS

ANNEX 2: OUTLINE IMPLEMENTATION PLAN

Project deliverables are determined during start-up following completion of the SDF Project Classification Tool, the following table illustrates the SDF deliverables for each stage of the SDF lifecycle:

Milestone	Deliverables
Management	Project Initiation Document (PID) Retrospective (Lessons Learned Log) Product Backlog (including Sprint Backlogs) Burndown Chart per Sprint Capacity Scaling Plan Post Investment Appraisal Investment Closure Report Client Survey (US Only) RAID Log Project Plans Action Log Change Request Forms Project Status Report
Design	Logical Technical Model (LTM) Logical Data Model (LDM) Physical Technical Model (PTM) Functional Design Document Detailed Application Design Document Build Specification
Build	Application Code Application Configuration

Milestone	Deliverables
Testing	<p>Test Strategy (for Agile delivery)</p> <p>Defect Log</p> <p>Environment Strategy (UK SO projects only)</p> <p>Use of Live Data Request Form</p> <p>Evidence of Operational Acceptance Test (OAT) e.g VSTS</p> <p>Evidence of System Testing e.g. VSTS</p> <p>Evidence of Integration Testing e.g. VSTS</p> <p>Evidence of User Acceptance Testing (UAT) e.g. VSTS</p> <p>Environment Plan (UK SO Projects only)</p>
Implementation	<p>Training Plans</p> <p>Release Deployment Plan</p> <p>Decommissioning Plan</p>
Service Transition	<p>Early Life Support Plan</p> <p>Service Impact Assessment (SIA)</p> <p>Service Operating Model (SOM)</p> <p>Service Level Agreement (SLA)</p> <p>Operational Level Agreement (OLA)</p> <p>Application Run Book</p> <p>Disaster Recovery (DR) Plan</p>

SCHEDULE 6.2: TESTING PROCEDURE

1. INTRODUCTION

1.1 This Schedule:

- (a) describes the approach which the Supplier shall follow in the course of conducting Testing Procedures;
- (b) defines the objectives and fundamental principles to be adhered to in respect of and which underpin each Testing Procedure;
- (c) defines the process for standard testing, with specific testing to be defined in a Work Pack, should the Supplier be awarded one;
- (d) identifies 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.

1.2 Prior to the Service Commencement Date, the Supplier shall provide the Customer with an agreed onboarding plan.

2. DEFINITIONS

In this Schedule, the following definitions shall apply to both functional and non-functional test delivery:

Component	any constituent parts of the infrastructure for a Service, hardware or Software;
Material Test Issue	a Test Issue of Severity Level 1 or Severity Level 2;
Priority Level	the level of priority of a Test Issue, the criteria for which are described in Annex 1;
Severity Level	the level of severity of a Test Issue, the criteria for which are described in Annex 1;
Test Assurer	any person appointed by the Customer pursuant to Paragraph 11.1
Test Certificate	a certificate materially in the form of the document contained in Annex 2 issued by the Customer when a Deliverable has satisfied its relevant Test Success Criteria;
Test Issue	any variance or non-conformity of a Deliverable from its requirements (such requirements being set out in the relevant Test Success Criteria);

Test Issue Threshold	in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan;
Test Issue Management Log	a log for the recording of Test Issues as described further in Paragraph 10.1;
Test Plan	a plan: <ul style="list-style-type: none"> (a) for the Testing of Deliverables; and (b) setting out other agreed criteria related to the achievement of Milestones, as described further in Paragraph 6;
Test Reports	the reports to be produced by the Supplier setting out the results of Tests;
Test Specification	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 8;
Test Strategy	a strategy for the conduct of Testing as described further in Paragraph 5;
Test Success Criteria	in relation to a Test, the test success criteria for that Test as referred to in Paragraph 7;
Testing Procedures	the applicable testing procedures and Test Success Criteria set out in this Schedule.

3. RISK

- 3.1 The issue of a Test Certificate, a Milestone Achievement Certificate or a conditional Milestone Achievement Certificate shall not:
- (a) operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet or satisfy the Customer's requirements for that Deliverable or Milestone; or
 - (b) affect the Customer's right subsequently to reject:
 - (i) all or any element of the Deliverables to which a Test Certificate relates; or
 - (ii) any Milestone to which the Milestone Achievement Certificate relates.

- 3.2 Notwithstanding the issuing of any Test Certificate or Milestone Achievement Certificate (including the Milestone Achievement Certificate in respect of Authority to Proceed), the Supplier shall remain solely responsible for ensuring that:
- (a) the Supplier Solution as designed and developed is suitable for the delivery of the Services and meets the Customer Requirements;
 - (b) the Services are implemented in accordance with this Agreement; and
 - (c) each Target Performance Level is met from the relevant Operational Service Commencement Date.

4. TESTING OVERVIEW

- 4.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, the Test Plans and the Test Specifications.
- 4.2 The Supplier shall not submit any Deliverable for Testing:
- (a) unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
 - (b) until the Customer has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and
 - (c) until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).
- 4.3 The Supplier shall use reasonable endeavours to submit each 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 Deliverable.
- 4.4 The Customer shall be entitled to review the relevant Test Reports and the Test Issue Management Log for any Test at any time.
- 4.5 Any Disputes between the Customer and the Supplier regarding Testing shall be referred to the Dispute Resolution Procedure using the Expedited Dispute Timetable.

5. TEST STRATEGY

- 5.1 The Supplier shall, in collaboration with the Customer, develop the final Test Strategy as soon as practicable after the Effective Date but in any case no later than twenty (20) Working Days (or such other period as the Parties may agree in writing) after the Effective Date.
- 5.2 The final Test Strategy, which must comply at all times with the Customer's solution delivery framework, test frameworks and mandatory toolsets, shall include:
- (a) an overview of how Testing will be conducted in accordance with the Implementation Plan;

- (b) the process to be used to capture and record Test results and the categorisation of Test Issues;
- (c) the method for mapping the expected Test results to the Test Success Criteria, the original Test requirement and its source, and any Test Issues that arise;
- (d) the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;
- (e) the procedure to be followed to sign off each Test;
- (f) 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 for the resolution of Test Issues;
- (g) the names and contact details of the Customer's and the Supplier's Test representatives;
- (h) a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and Customer or third party involvement in the conduct of the Tests;
- (i) the technical environments required to support the Tests;
- (j) the procedure for establishing and managing the configuration of the Test environments;
- (k) a defect management process, including resolution SLAs and triage attendance & management;
- (l) the roles and responsibilities of relevant Supplier and Customer personnel;
- (m) Test suspension and resumption criteria;
- (n) the scope and approach to non-functional testing and operational acceptance testing; and
- (o) the agreed timescales for the resolution of Test Issues based on their Priority Level.

6. TEST PLANS

- 6.1 The Supplier shall develop Test Plans and submit them for the Customer's approval as soon as practicable but in any case no later than twenty (20) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) 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:

- (a) the relevant Test definition, priority 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 satisfied;
- (b) a detailed procedure for the Tests to be carried out, including:
 - (i) the timetable for the Tests, including start and end dates, to be based on the relative priority of those Tests;
 - (ii) the Testing mechanism;
 - (iii) 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;
 - (iv) the mechanism for ensuring the quality, completeness and relevance of the Tests;
 - (v) the format and an example of Test progress reports and the process with which the Customer accesses daily Test schedules;
 - (vi) the process which the Customer will use to review Test Issues and the Supplier's progress in resolving these in a timely basis;
 - (vii) the Test Schedule;
 - (viii) the re-Test procedure, the timetable and the resources which would be required for re-Testing; and
- (c) the process for escalating Test Issues from a re-test situation to the taking of specific remedial action to resolve the Test Issue.

6.3 The Customer shall not unreasonably withhold or delay its approval of the Test Plans provided that the Supplier shall incorporate any reasonable requirements of the Customer in the Test Plans.

7. TEST SUCCESS CRITERIA

The Test Success Criteria for:

- (a) each Test that must be Achieved for the Supplier to Achieve the Milestone are set out in Annex 4; and
- (b) all other Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 6.

8. TEST SPECIFICATION

8.1 Following approval of a Test Plan, the Supplier shall develop compliant Test Specifications for each relevant Deliverable and submit them for the Customer's approval as soon as reasonably practicable and in any event at least ten (10)

Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start of the relevant Testing (as specified in the Implementation Plan).

8.2 Each Test Specification shall include as a minimum:

- (a) 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;
- (b) a plan to make the resources available for Testing;
- (c) Test scripts;
- (d) Test pre-requisites and the mechanism for measuring them; and
- (e) expected Test results, including:
 - (i) a mechanism to be used to capture and record Test results; and
 - (ii) a method to process the Test results to establish their content.

8.3 The Customer shall not unreasonably withhold or delay its approval of a Test Specifications provided that the Supplier shall incorporate any reasonable requirements of the Customer in the Test Specifications.

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 shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Assurer in accordance with Paragraph 11.

9.3 The Supplier shall notify the Customer at least 10 Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Tests and the Customer shall ensure that the Test Assurer 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 assurance process.

9.5 The Supplier shall provide to the Customer in relation to each Test:

- (a) a draft Test Report not less than two (2) Working Days (or such other period as the Parties may agree in writing) prior to the date on which the Test is planned to end; and
- (b) the final Test Report within five (5) Working Days (or such other period as the Parties may agree in writing) of completion of Testing.

- 9.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
- (a) an overview of the Testing conducted, including the requirements that were tested as a result of the Testing, the requirements that were not met and those that were not fully tested;
 - (b) identification of the relevant Test Success Criteria that have been satisfied;
 - (c) identification of the relevant Test Success Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met and the risks associated with that failure;
 - (d) the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed and the risks associated with that failure;
 - (e) the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 10.1; and
 - (f) the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware or software (or both) during Testing.

10. TEST ISSUES

- 10.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level and Priority Level allocated to each Test Issue.
- 10.2 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 at all times to the Customer upon request.
- 10.3 The Supplier may only close Test Issues with the Customer's agreement to do so.
- 10.4 The Supplier shall comply with the defects management process included in the Test Strategy (as referred to in Paragraph 5.2(k)), including resolution SLAs and triage attendance & management.
- 10.5 The Customer 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 ASSURANCE

- 11.1 The Customer may, in its sole discretion, require the attendance at any Test of one or more Test Assurer selected by the Customer, each of whom shall have appropriate skills to fulfil the role of a Test Assurer.
- 11.2 The Supplier shall give the Test Assurers access to any documentation and Testing environments reasonably necessary and requested by the Test Assurer to perform their role as a Test Assurer in respect of the relevant Tests.
- 11.3 The Test Assurers:
- (a) shall actively review the Test documentation;
 - (b) may 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 element of the Test should be re-Tested;
 - (c) shall not be involved in the execution of any Test;
 - (d) shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
 - (e) 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 (the Supplier agrees that it shall implement any actions raised in such reports produced by the Test Assurers);
 - (f) may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
 - (g) 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 12.2(b) (Records, Reports, Audits & Open Book Data), 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 shall be on:
- (a) adherence to an agreed methodology;
 - (b) adherence to the agreed Testing process;
 - (c) adherence to the Quality Plan;
 - (d) review of status and key development issues; and

- (e) 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 five (5) 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 (such agreement 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 shall:
- (a) 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
 - (b) subsequently prepare a written report for the Supplier detailing its concerns,
- and the Supplier shall, within a reasonable timeframe, respond in writing to the Customer's report.
- 12.7 In the event of an inadequate response to the Customer's 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 The Customer shall issue a Test Certificate as soon as reasonably practicable 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 the Customer shall notify the Supplier and:
- (a) the Customer may issue a Test Certificate conditional upon the remediation of the Test Issues;

- (b) where the Parties agree that there is sufficient time prior to the relevant Milestone Date, the Customer may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or
 - (c) where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Customer's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of Clause 27.1 (Rectification Plan Process).
- 13.3 The Customer shall be entitled, without prejudice to any other rights and remedies that it has under this Agreement, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.
- 14. ISSUE OF MILESTONE ACHIEVEMENT CERTIFICATE**
- 14.1 The Customer shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following:
 - (a) the issuing by the Customer of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
 - (b) performance by the Supplier to the reasonable satisfaction of the Customer of any other tasks identified in the Implementation Plan as associated with that Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).
- 14.2 The grant of a Milestone Achievement Certificate shall 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).
- 14.3 If a Milestone is not Achieved, the Customer shall promptly issue a report to the Supplier setting out:
 - (a) the applicable Test Issues ; and
 - (b) any other reasons for the relevant Milestone not being Achieved.
- 14.4 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Customer shall issue a Milestone Achievement Certificate.
- 14.5 If there is one or more Material Test Issue(s), the Customer shall refuse to issue a Milestone Achievement Certificate and, without prejudice to the Customer's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of Clause 27.1 (Rectification Plan Process).
- 14.6 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Customer may at its discretion (without waiving any rights

in relation to the other options) choose to issue a Milestone Achievement Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:

- (a) any Rectification Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Customer agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Customer within ten (10) Working Days of receipt of the Customer's report pursuant to Paragraph 14.3); and
- (b) where the Customer issues a conditional Milestone Achievement Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

ANNEX 1: TEST ISSUES - SEVERITY LEVELS AND PRIORITY LEVELS

SEVERITY ISSUES

1. SEVERITY LEVEL 1 TEST ISSUE (CRITICAL). A TEST ISSUE:

- (a) that affects critical functionality, critical data or results in unrecoverable data loss;
- (b) that would cause financial loss to the Customer or any member of the Customer Group, or severe reputational damage to any of those persons; or
- (c) in relation to which there is no workaround, or workarounds exist that would be unacceptable to end users.

2. SEVERITY LEVEL 2 TEST ISSUE (HIGH). A TEST ISSUE:

- (a) that affects a major part of the system that may be inaccessible or not functioning;
- (b) that would cause financial or reputational damage to the Customer or any member of the Customer Group; or
- (c) in relation to which workarounds exist that are acceptable to end users;

3. SEVERITY LEVEL 3 TEST ISSUE (MEDIUM). A TEST ISSUE:

- (a) that allows end users to continue with their tasks with an acceptable workaround, although they are inconvenienced;
- (b) that would not cause financial or reputational damage to the Customer or any member of the Customer Group;

but for which, as reasonably determined by the Customer, there is a practicable workaround available;

4. SEVERITY LEVEL 4 TEST ISSUE (LOW). A TEST ISSUE:

- (a) that does not affect functionality or data;
- (b) that does not give rise to financial or reputational damage to the Customer or any member of the Customer Group;
- (c) in relation to which there is an obvious workaround, or no workaround is required; or
- (d) that does not affect an end user's productivity or efficiency.

PRIORITY ISSUES

Level	Description	Timescale for fix and deployment
Priority 1 - Critical	Prevents all test execution, or meaningful execution in an area of the system	As soon as a fix is available
Priority 2 - High	Prevents further execution of a test script	Next available deployment or extraordinary deployment if none scheduled
Priority 3 - Medium	Testing can continue with workarounds	[To be agreed in the relevant Call-Off Agreement]
Priority 4 - Low	Does not prevent testing from continuing	[To be agreed in the relevant Call-Off Agreement]

ANNEX 2: TEST CERTIFICATE

To: [NAME OF SUPPLIER]

FROM: [NAME OF AUTHORITY]

[Date]

Dear Sirs,

TEST CERTIFICATE

Deliverables: [*insert description of Deliverables*]

We refer to the agreement (the ‘**Agreement**’) relating to the provision of the Services between the [name of Customer] (the ‘**Customer**’) and [*name of Supplier*] (the ‘**Supplier**’) dated [*date*].

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (Definitions) or Schedule 6.2 (*Testing Procedures*) of 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 Paragraph 13.1 of Schedule 6.2 (*Testing Procedures*) of the Agreement on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

**delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of [*name of Customer*]

ANNEX 3: MILESTONE ACHIEVEMENT CERTIFICATE

To: [NAME OF SUPPLIER]

FROM: [NAME OF AUTHORITY]

[Date]

Dear Sirs,

MILESTONE ACHIEVEMENT CERTIFICATE

Milestone: [*insert description of Milestone*]

We refer to the agreement (the ‘**Agreement**’) relating to the provision of the Services between the [*name of Customer*] (the ‘**Customer**’) and [*name of Supplier*] (the ‘**Supplier**’) dated [*date*].

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (Definitions) or Schedule 6.2 (*Testing Procedures*) of 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 Paragraph 14.1 of Schedule 6.2 (*Testing Procedures*) of the Agreement on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with the provisions of Schedule 7.1 (*Charges and Invoicing*)]*

**delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of [*Customer*]

ANNEX 4: TEST SUCCESS CRITERIA

1. TESTS TO BE ACHIEVED IN ORDER TO ACHIEVE THE MILESTONE

Test	Pre-conditions*	Test Success Criteria
<i>[List all Tests relating to Milestone]</i>		

*Note: The Pre-Conditions are that e.g. the Success Criteria for the previous Tests must be satisfied before the Milestone tests are commenced.

SCHEDULE 7.1: CHARGES AND INVOICING

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

Capped ADR	in relation to a Milestone Payment or Service Charge means a capped average day rate calculated by reference to a Time and Materials pricing mechanism, the amount to be agreed in the relevant Call-Off Agreement.
Certificate of Costs	a certificate of costs signed by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Customer in advance of issue of the relevant certificate) and substantially in the format set out in Annex 3.
Costs	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:</p> <ul style="list-style-type: none">(a) the cost to the Supplier or the Key Sub-contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including:<ul style="list-style-type: none">(i) base salary paid to the Supplier Personnel;(ii) employer's national insurance contributions;(iii) pension contributions;(iv) car allowances;(v) any other contractual employment benefits;(vi) staff training;(vii) work place accommodation;(viii) work place IT equipment and tools reasonably necessary to perform the Services (but not including items included within limb (b) below); and(ix) reasonable recruitment costs, as agreed with the Customer;

- (b) costs incurred in respect of those Assets that are detailed on the Registers and that 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;
- (c) operational costs that are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the delivery of the Services;
- (d) Forecast Contingency Costs;
- (e) Reimbursable Expenses to the extent these are incurred in delivering any Services where the Charges for those Services are to be calculated on a Fixed Price mechanism;

but excluding:

- (f) Overhead;
- (g) financing or similar costs;
- (h) maintenance and support costs to the extent that these relate to maintenance or support services provided beyond the Term, whether in relation to Assets or otherwise;
- (i) taxation;
- (j) fines and penalties;
- (k) amounts payable under Schedule 7.3 (Benchmarking); and
- (l) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

Delay Payment Rate	has the meaning given in Paragraph 1.1(a) of Part C.
Forecast Contingency Costs	the costs that the Supplier forecasts may be incurred in relation to the risks and contingencies that are identified in the Risk Register, such costs being those set out in the column headed 'Forecast Contingency Costs' in the Risk Register (as such costs are updated from time to time).
Guaranteed Maximum Price	in relation to a Milestone, one hundred and ten percent (110%) of the Target Price for the relevant Milestone.

Incurred Costs	<p>in relation to a Milestone, the sum of:</p> <p>(a) the fixed day costs multiplied by the number of Man Days that have been expended by the Supplier Personnel in Achieving the relevant Milestone; and</p> <p>(b) any amount that would fall within limbs (b) or (c) of the definition of 'Costs' (but subject to exceptions (i) to (viii) in that definition), to the extent that such amount has been incurred in Achieving the relevant Milestone;</p>
Indexation and Index	the adjustment of an amount or sum that will apply to the day rates agreed in Table 1 which will be used in Time and Materials, and Fixed Price Work Orders.
India Index	India Urban Consumer price index as available at https://dbie.rbi.org.in/DBIE/dbie.rbi?site=home from time to time.
Innovation Fund	has the meaning given to it in Paragraph 8 of Part C.
Man Day	<p>(a) in respect of onshore resources, eight (8) Man Hours; and</p> <p>(b) in respect of offshore resources, nine (9) Man Hours,</p> <p>whether or not such hours are worked consecutively and whether or not they are worked on the same day.</p>
Man Hours	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 Sites) but excluding lunch breaks.
Milestone Group	has the meaning given in Paragraph 1.6 of Part B.
Milestone Retention	has the meaning given in Paragraph 1.3 of Part B.
Overhead	those amounts that are intended to recover a proportion of the Supplier's or the Key Sub-contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of 'Costs'.
Philippines Index	the Philippines Consumer Price Index.

Reimbursable Expenses	<p>reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Customer's expenses policy current from time to time, but not including:</p> <p>(a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Customer otherwise agrees in advance in writing; and</p> <p>(b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed.</p>
Sign-On Credit	the one-off lump sum credit available to the Customer in accordance with Paragraph 6 of Part C.
Supporting Documentation	sufficient information in writing to enable the Customer reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from the Customer detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts.
Target Cost	has the meaning given in Paragraph 3.1 of Part A.
Target Price	has the meaning given in Paragraph 3.1 of Part A.
UK Index	Office of National Stats (ONS) Annual Survey of Hours & Earnings (ASHE).
	Table 14.7b SOC Code 2136.
US Index	the US Employment Cost Index.
Verification Period	in relation to an Allowable Assumption, the period from (and including) the Effective Date to (and including) the date at which the relevant Allowable Assumption expires, as set out against the relevant Allowable Assumption in column 11 in the table in Annex 5.
Volume Discount	the reduction in the Charges at the end of each Contract Year (if applicable) as detailed at Paragraph 5 of Part A.

PART A: PRICING

1. APPLICABLE PRICING MECHANISM

- 1.1 Milestone Payments and Service Charges shall be calculated using the pricing mechanism specified in Annex 2 and on the basis of the rates and prices specified in Annex 1 as more particularly set out in this Schedule.
- 1.2 Table 1 of Annex 2 sets out the pricing mechanism that shall be used to calculate each Milestone Payment, which shall be one or more of the following:
- (a) **‘Time and Materials,’** in which case the provisions of Paragraph 2 shall apply;
 - (b) **‘Guaranteed Maximum Price with Target Cost,’** in which case the provisions of Paragraph 3 shall apply; or
 - (c) **‘Fixed Price,’** in which case the provisions of Paragraph 4 shall apply.
- 1.3 Table 2 of Annex 2 sets out which pricing mechanism shall be used to calculate each Service Charge, which shall be one or more of the following:
- (a) **‘Time and Materials,’** in which case the provisions of Paragraph 2 shall apply;
 - (b) **‘Volume Based’** pricing, in which case the provisions of Paragraph 5 shall apply; or
 - (c) **‘Fixed Price,’** in which case the provisions of Paragraph 4 shall apply.

2. TIME AND MATERIALS MILESTONE PAYMENTS OR SERVICE CHARGES

- 2.1 Where Table 1 or Table 2 of Annex 2 (or such lower day rates agreed by the parties in respect of any Call-Off Agreement) indicates that a Milestone Payment or Service Charge (as applicable) is to be calculated by reference to a Time and Materials pricing mechanism:
- (a) the day rates set out in Table 1 of Annex 1 shall be used to calculate the relevant Charges, provided that the Supplier (or its Sub-contractor) shall:
 - (i) not be entitled to include any uplift for risks or contingencies within its day rates;
 - (ii) not be paid any Charges to the extent that they would otherwise exceed the cap unless the Supplier has obtained the Customer’s prior written consent. The Supplier shall monitor the amount of each Charge incurred in relation to the relevant cap and notify the Customer immediately in the event of any risk that the cap may be exceeded and the Customer shall instruct the Supplier on how to proceed;
 - (iii) unless otherwise agreed by the Customer in relation to the relevant Milestone Payment or Service Charge (as the case may be), not be

paid any Charges to the extent that they would otherwise exceed the amount calculated by multiplying:

- (A) the total number of days expended by the Supplier in relation to the relevant Milestone; or
 - (B) the total number of days expended by the Supplier during the relevant Service Period in relation to the relevant Service, by the Capped ADR; and
- (iv) only be entitled to be paid Charges that have been properly and reasonably incurred, taking into account the Supplier's obligation to deliver the Services in a proportionate and efficient manner; and
- (b) supplier resource shall only work remotely (including from a Supplier location or from their home) on an exceptions basis, and the day rate applicable to any resource shall be the onsite day rate;
- (c) the Supplier shall keep records of hours properly worked by Supplier Personnel (in the form of timesheets) and expenses incurred and submit a summary of the relevant records with each invoice. If the Customer requests copies of such records, the Supplier shall make them available to the Customer within ten (10) Working Days of the Customer's request.
- 2.2 The Supplier shall be entitled to Index the rates set out in Table 1 of Annex 1 in accordance with Paragraph 5 of Part C.
3. **GUARANTEED MAXIMUM PRICE WITH TARGET COST INCENTIVE MILESTONE PAYMENTS**
- 3.1 Where Table 1 of Annex 2 indicates that a Milestone Payment is to be calculated by reference to the Guaranteed Maximum Price with Target Cost pricing mechanism, the target Costs (the '**Target Cost**') and the target Charge (the '**Target Price**') for the relevant Milestone shall be as agreed by the parties in the relevant Call-Off Agreement.
- 3.2 If the Incurred Costs relating to a Milestone are lower than the Target Cost for that Milestone, the difference between the Incurred Costs and the Target Cost shall be shared equally between the Customer and the Supplier (resulting in the Supplier receiving a higher pre-tax income in relation to that Milestone), and the Milestone Payment shall be calculated as follows:

$$\text{Milestone Payment} = \text{TP} - ((\text{TC} - \text{IC})/2)$$

where:

- TP is the Target Price for the relevant Milestone;
- TC is the Target Cost for the relevant Milestone; and
- IC is the Incurred Costs relating to the relevant Milestone.

- 3.3 If the Incurred Costs relating to a Milestone are greater than the Target Cost for that Milestone, the difference between the Incurred Costs and the Target Cost shall be borne equally between the Customer and the Supplier (resulting in the Supplier receiving a lower pre-tax income in relation to that Milestone), provided that the maximum Milestone Payment payable by the Customer for the relevant Milestone shall not exceed an amount equal to the guaranteed maximum price for that Milestone as agreed by the parties in the relevant Call-Off Agreement (the ‘**Guaranteed Maximum Price**’). Represented numerically:

(a) if:

(i) $IC > TC$; and

(ii) $TP + ((IC - TC)/2) < GMP$,

then Milestone Payment = $TP + ((IC - TC)/2)$; or

(b) if:

(i) $IC > TC$; and

(ii) $TP + ((IC - TC)/2) \geq GMP$,

then Milestone Payment = GMP

where:

IC is the Incurred Costs relating to the relevant Milestone;

TC is the Target Cost for the relevant Milestone;

TP is the Target Price for the relevant Milestone; and

is $TP * 1.1$, being the Guaranteed Maximum Price for

GMP the relevant Milestone.

- 3.4 The Supplier shall be entitled to Index the day costs set out in Table 1 of Annex 1 in accordance with Paragraph 5 of Part C.

4. FIXED PRICE MILESTONE PAYMENTS OR SERVICE CHARGES

- 4.1 Where Table 1 or Table 2 of Annex 2 indicates that a Milestone Payment or Service Charge is to be calculated by reference to a Fixed Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 1 of Annex 1.

5. VOLUME DISCOUNT

- 5.1 The Charges payable by the Customer in any Contract Year (discounting any charges paid for applications maintenance) shall be subject to a percentage discount applied at the end of such Contract Year, such percentage to be determined by reference to the total Charges payable by the Customer in such Contract Year.

- 5.2 If the aggregate Charges payable by the Customer in any Contract Year are within the tiers specified below, such Charges shall be subject to the relevant discount specified below, which will be calculated as a percentage reduction against the applicable Charges:

Spend Group	Tier	Spend Tier (per Contract Year) (USD)	Total Discount if the spend is in this tier (%)
Total Charges		<i>Discount for spend <\$10m</i>	0.0%
		<i>Discount for the incremental spend between \$10-20m</i>	1.0%
		<i>Discount for the incremental spend between \$20-30m</i>	3.0%
		<i>Discount for the incremental spend between \$30-40m</i>	5.50%
		<i>Discount for the incremental spend between \$40-50m</i>	7.0%
		<i>Discount for the incremental spend greater than \$50m+</i>	10.0%

- 5.3 Where Charges are invoiced in a currency other than United States Dollars, the Charges shall be converted into United States Dollars at the applicable average yearly exchange rate set out at www.xe.com.
- 5.4 Within thirty (30) days of the end of each Calendar Year, the Supplier shall provide a written reconciliation to the Customer, such reconciliation to be performed as follows:
- the Supplier shall determine the total Charges paid or payable by the Customer in the Contract Year prior to the application of any Volume Discount ("**Pre-Discount Total**");
 - the Supplier shall calculate the total Volume Discount applicable to the Pre-Discount Total in accordance with the Paragraph 5.2 ("**Total Discount**");
 - the Supplier shall provide the Customer with an adjustment invoice, compensate the Customer with efforts of equivalent amount, or issue a credit note of a sum equal to the Total Discount (to be agreed by the Finance Performance Board, according to Schedule 8.1 (*Governance*)), such compensation to be applied in Pounds Sterling and United States Dollars, in proportion to the applicable currencies of the Charges payable in such Contract Year.

By way of worked example, if the total Charges paid or payable by the Customer in a Contract Year prior to the application of any Volume Discount and after conversion into United States Dollars in accordance with Paragraph 5.3 is \$45,000,000, this is the Pre-Discount Total.

The Total Discount is \$1,300,000, calculated as set out below. The Finance Performance Board shall determine how the \$1,300,000 shall be applied.

Discount tier	Charges within each discount tier	Discount on spend within discount tier (5)	Total Charges within discount tier after discount
<\$10m	\$10m	0.0%	Nil
\$10-20m	\$10m	1.0%	\$100,000
\$20-30m	\$10m	3.0%	\$300,000
\$30-40m	\$10m	5.50%	\$550,000
\$40-50m	\$5m	7.0%	\$350,000
\$50m +	Nil	10.0%	Nil
Total Discount:			\$1,300,000

6. REIMBURSABLE EXPENSES

6.1 Where:

- (a) Services are to be charged using the Time and Materials or Guaranteed Maximum Price with Target Cost pricing mechanism; and
- (b) unless agreed otherwise in the relevant Call-Off Agreement, Time and Materials and Guaranteed Maximum Price shall be inclusive of Reimbursable Expenses. Where the Customer does agree that the Supplier is permitted to charge the Customer for any Reimbursable Expenses, this is provided that these are supported by Supporting Documentation and that the total Reimbursable Expenses that the Supplier may be entitled to recover shall in no circumstances exceed four per cent (4%) of the total Time and Materials and Guaranteed Maximum Price payable under the applicable Call-Off Agreement.

6.2 The Customer shall provide a copy of its current expenses policy to the Supplier upon request.

6.3 Except as expressly set out in Paragraph 6.1, the Charges shall include all costs and expenses relating to the Deliverables, the Services and the Supplier's performance of its obligations under this Agreement and no further amounts shall be payable by the Customer to the Supplier in respect of such performance, including in respect of matters such as:

- (a) any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document and report reproduction, shipping, desktop and office equipment costs required by the Supplier Personnel, including network or data interchange costs or other telecommunications charges;

- (b) any costs associated with any change of resources due to poor performance or quality, whether at the request of the Customer or otherwise;
- (c) any amount for any services provided or costs incurred by the Supplier prior to the Effective Date; or
- (d) except where otherwise set out in this Agreement, any amount for any costs incurred by the Supplier in relation to establishing this Agreement or any set-up activities such as network connectivity or governance.

7. PRICING TRANSPARENCY

- 7.1 The Supplier shall provide a breakdown of the Charges in the relevant Call-Off Agreement using the figures in Table 1 of Annex 1. The breakdown shall refer to the role, location rate card and a number of days. If the Charges are fixed for a specific Work Package, the Supplier shall show the risk premium assumed in the total price calculation.

8. APPLICATION MAINTENANCE

- 8.1 The application maintenance charges proposed in the Supplier Solution and final negotiations phase of the Agreement will be used as the basis for providing Charges in the respective Call-Off Agreement.

9. NEW SKILLS ON THE RATE CARD

- 9.1 Any new roles or skills added to the Table 1 of Annex 1 shall match the closest existing role or skill and a similar rate shall be applied on a fair and objective basis.

PART B: CHARGING MECHANISMS

1. MILESTONE PAYMENTS

- 1.1 Subject to the provisions of Paragraph 1.3 of Part C in relation to the deduction of Delay Payments, on the Achievement of a Milestone the Supplier shall be entitled to invoice the Customer for the Milestone Payment associated with that Milestone less the applicable Milestone Retention in accordance with this Part B.
- 1.2 Each invoice relating to a Milestone Payment shall be supported by:
- (a) a Milestone Achievement Certificate; and
 - (b) where the Milestone Payment is to be calculated by reference to a Guaranteed Maximum Price with Target Cost or Time and Materials pricing mechanism, a Certificate of Costs with Supporting Documentation or such other evidence as the Customer and Supplier may agree in relation to a Call-Off Agreement as reasonable to allow the Customer to assess value for money in the proposed Charges.
- 1.3 For all Applications Development Work Packages called off under this Agreement, the '**Milestone Retention**' for the final Milestone shall be forty percent (40%) of the Charges.
- 1.4 The remaining sixty percent (60%) of the applicable Charges for Applications Development Work Packages shall be paid in accordance with the agreed payment profile for the Charges in a Call-Off Agreement, and each applicable Milestone shall be subject to the Milestone Retention as follows:
- (a) where the Milestone Payment for the relevant Milestone is determined by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, ten percent (10%) of the Target Price for the Milestone;
 - (b) where the Milestone Payment for the relevant Milestone is determined by reference to a Time and Materials, Fixed Price or Firm Price pricing mechanism, ten percent (10%) of the Charges for that Milestone,

and, in the case of a Key Milestone, prior to deduction from the Milestone Payment of any Delay Payment attributable to that Key Milestone and without taking account of any amount payable by the Supplier pursuant to Paragraph 1.3 of Part C.

Guaranteed Maximum Price with Target Cost pricing mechanism

- 1.5 Where a Milestone Payment relating to a single Milestone is to be calculated by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, then the following payment process shall apply:
- (a) upon the issue of a Milestone Achievement Certificate for the Milestone, the Supplier may invoice the Customer for the Target Price for the relevant Milestone, less the Milestone Retention calculated using such Target Price; and

- (b) no later than sixty (60) Working Days after the invoice referred to in Paragraph 1.2 has been issued, the Supplier shall:
 - (i) submit to the Customer a report setting out the Incurred Costs and actual Milestone Payment for the Milestone;
 - (ii) issue to the Customer an invoice or credit note for the difference between the actual Milestone Payment payable and the Target Price invoiced for the Milestone (in each case, after deducting the applicable Milestone Retention);
 - (iii) where a credit note is to be issued to the Customer pursuant to Paragraph 1.5(b)(ii), repay to the Customer a sum equal to such difference as a debt within ten (10) Working Days of issue of the credit note; and
 - (iv) issue a Certificate of Costs with Supporting Documentation, or such other evidence as agreed by the Customer and Supplier in accordance with Paragraph 1.2(b), which shall exclude any accruals, prepayments and provisions.

1.6 Where Milestones are stated in Table 1 of Annex 2 to constitute a group of Milestones (a '**Milestone Group**') and the Milestone Payments relating to the Milestones in that Milestone Group are each to be calculated by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, then the following payment process shall apply:

- (a) in respect of each Milestone within the Milestone Group, the Supplier may invoice the Customer for the Target Price for the relevant Milestone, less the Milestone Retention calculated using such Target Price, upon the issue of the associated Milestone Achievement Certificate; and
- (b) no later than sixty (60) Working Days after the issue of the invoice for the final Milestone Payment relating to the Milestone Group, the Supplier shall:
 - (i) submit to the Customer a report setting out the Incurred Costs and actual Milestone Payments for the Milestone Group;
 - (ii) issue to the Customer an invoice or credit note for the difference between the aggregate of the actual Milestone Payments payable and Target Prices invoiced for Milestones in the Milestone Group (in each case, after deducting all Milestone Retentions relating to that Milestone Group);
 - (iii) where a credit note is to be issued to the Customer pursuant to Paragraph 1.6(b)(ii), repay to the Customer a sum equal to such difference as a debt within ten (10) Working Days of issue of the credit note; and
 - (iv) issue a Certificate of Costs with Supporting Documentation, or such other evidence as agreed by the Customer and Supplier in accordance with Paragraph 1.2(b), which shall exclude any accruals, prepayments and provisions.

- 1.7 If the Supplier does not repay any such sum as is referred to in Paragraph 1.5(b)(ii) or 1.6(b)(ii) within ten (10) Working Days of issue of the relevant credit note, it shall repay such sum together with interest on such sum at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.
- 1.8 Following the issue of a Certificate of Costs or such other evidence as agreed by the Customer and Supplier in accordance with Paragraph 1.2, 1.5(b)(iii) or 1.6(b)(iii), the Supplier shall not be entitled to invoice the Customer for any additional Charges relating to the Milestone or Milestone Group (as applicable) except as provided in Paragraph 1.9.

Release of Milestone Retentions

- 1.9 On Achievement of a CPP Milestone relating to the Supplier Solution or one or more Services (as the case may be), the Supplier shall be entitled to invoice the Customer for an amount equal to all Milestone Retentions that relate to Milestones identified in the '*CPP Milestone Charge Number*' column of Table 1 (or, in relation to Milestone Retentions in respect of Optional Services, Table 4) of Annex 2 and corresponding CPP Milestone Charge Number identified in Table 2 of Annex 4 of Schedule 6.2 (*Testing Procedures*) as being payable in respect of that CPP Milestone and have not been paid before such CPP Milestone.

2. SERVICE CHARGES

- 2.1 Each Service to which a Service Charge relates shall commence on the Achievement of the Milestone set out against that Service in the 'Service Charge Trigger Event' column of Table 2 of Annex 2.
- 2.2 The Supplier shall invoice Service Charges for each Service Period in arrears in accordance with the requirements of Part D.
- 2.3 If a Service Charge is to be calculated by reference to a Fixed Price pricing mechanism and the relevant Service:
- (a) commences on a day other than the first day of a month; or
 - (b) ends on a day other than the last day of a month; or
 - (c) does both (a) and (b),

the Service Charge for the relevant Service Period shall be pro-rated in proportion to that the number of days in the month for which the Service is provided compared to the total number of days in that month.

- 2.4 Any Service Credits that accrue during a Service Period shall be deducted from the Service Charges payable for the next following Service Period. An invoice for a Service Charge shall not be payable by the Customer unless all adjustments (including Service Credits) relating to the Service Charges for the immediately preceding Service Period have been agreed.

3. OPTIONAL SERVICES

If the Customer gives notice pursuant to Clause 5.10 (*Optional Services*) that it requires the Supplier to provide any or all of the Optional Services:

- (a) the Milestone Payments (if any) for the relevant Optional Services shall be calculated by reference to the pricing mechanism for those Optional Services set out in Table 3 of Annex 2; and
- (b) the Service Charges for the relevant Optional Services shall be calculated by reference to the pricing mechanism for those Optional Services set out in Table 4 of Annex 2,

in both cases using the relevant rates and prices specified in Annex 1.

PART C: ADJUSTMENTS TO THE CHARGES AND RISK REGISTER

1. DELAY PAYMENTS

- 1.1 If a Key Milestone has not been Achieved on or before the relevant Milestone Date, the Supplier shall pay A Delay Payment to the Customer in respect of that Key Milestone. Delay Payments shall accrue:
- (a) at the daily rate (the ‘**Delay Payment Rate**’) determined in accordance with Paragraph 1.2;
 - (b) from (but excluding) the relevant Milestone Date to (and including) the later of:
 - (i) the date on which the Key Milestone is Achieved; and
 - (ii) the expiry of the Delay Deduction Period; and
 - (c) on a daily basis, with any part day’s Delay counting as a day.
- 1.2 Where a Delay Payment is payable in respect of a Key Milestone, the Delay Payment Rate shall be the amount set out in Table 1 of Annex 2 for the Key Milestone.
- 1.3 The Parties agree that Delay Payments calculated in accordance with the applicable Delay Payment Rates are in each case a genuine pre-estimate of the Losses that the Customer will incur as a result of any failure by the Supplier to Achieve the relevant Key Milestone by the Milestone Date. Delay Payment Rates are stated exclusive of VAT.
- 1.4 The Delay Payment in respect of a Key Milestone shall be shown as a deduction from the amount due from the Customer to the Supplier in the next invoice due to be issued by the Supplier after the date on which the relevant Key Milestone is Achieved or the expiry of the Delay Deduction Period (as the case may be). If the relevant Key Milestone is not Achieved by the expiry of the Delay Deduction Period and no invoice is due to be issued by the Supplier within ten (10) Working Days of expiry of the Delay Deduction Period, then the Supplier shall within ten (10) Working Days of expiry of the Delay Deduction Period:
- (a) issue a credit note to the Customer in respect of the total amount of the Delay Payment in respect of the Key Milestone; and
 - (b) pay to the Customer as a debt a sum equal to the total amount of the Delay Payment in respect of the Key Milestone together with interest on such amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.

2. PAYMENTS FOR DELAYS DUE TO CUSTOMER CAUSE

- 2.1 If the Supplier is entitled in accordance with Clause 31.1(iii)(D) (*Customer Cause*) to compensation for failure to Achieve a Milestone by its Milestone Date, then,

subject always to Clause 25 (*Limitations on Liability*), such compensation shall be determined in accordance with the following principles:

- (a) the compensation shall reimburse the Supplier for additional Costs incurred by the Supplier that the Supplier:
 - (i) can demonstrate it has incurred solely and directly as a result of the Customer Cause; and
 - (ii) is, has been, or will be unable to mitigate, having complied with its obligations under Clause 31.1 (*Customer Cause*).
- (b) the compensation shall not operate so as to put the Supplier in a better position than it would have been in but for the occurrence of the Customer Cause;
- (c) where the Milestone Payment for the relevant Milestone is to be calculated by reference to the Guaranteed Maximum Price with Target Cost pricing mechanism, then:
 - (i) the Target Price for the Milestone shall be increased in accordance with the following formula:

$$\text{NTP} = \text{TP} + (\text{AC} \times 1)$$

where:

NTP is the revised Target Price for the relevant Milestone;

TP is the original Target Price for the relevant Milestone;
and

AC is an amount equal to any additional Costs incurred by the Supplier in Achieving the Milestone to the extent that the Supplier can demonstrate that such additional Costs were caused by the Customer Cause; and

- (ii) the Guaranteed Maximum Price shall be increased to an amount equal to one hundred and ten percent (110%) of the Target Price as adjusted pursuant to Paragraph 2.1(c)(i);
- (d) where the relevant Milestone Payment is to be calculated based upon a Fixed Price pricing mechanism, the compensation shall include such amount as is appropriate to maintain the pre-tax income set out in respect of the relevant Milestone; and
- (e) where the Milestone Payment includes any Charges which are capped, then to the extent that the compensation agreed pursuant to this Paragraph 2 results in the Customer paying additional Time and Materials Charges for resources or effort that the Supplier demonstrates are required as a result of the Customer Cause, such additional Time and Materials Charges shall be disregarded for the purposes of calculating the relevant cap.

- 2.2 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.

3. SERVICE CREDITS

- 3.1 Service Credits shall be calculated by reference to the number of Service Points accrued in any one Service Period pursuant to the provisions of Schedule 2.2 (*Performance Levels*).

- 3.2 For each Service Period:

- (a) the Service Points accrued shall be converted to a percentage deduction from the Service Charges for the relevant Service Period on the basis of one point equating to a fifteen percent (15%) deduction in the Service Charges; and
- (b) the total Service Credits applicable for the Service Period shall be calculated in accordance with the following formula:

$$SC = TSP \times X \times AC$$

where:

SC is the total Service Credits for the relevant Service Period;

TSP is the total Service Points that have accrued for the relevant Service Period;

X is fifteen percent (15%); and

AC is the total Services Charges payable for the relevant Service Period (prior to deduction of applicable Service Credits).

- 3.3 The liability of the Supplier in respect of Service Credits shall be subject to Clause 25.4(c) (*Financial and other Limits*) provided always that the operation of the Service Credit Cap shall not affect the continued accrual of Service Points in excess of such financial limit in accordance with the provisions of Schedule 2.2 (*Performance Levels*).

- 3.4 Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.

- 3.5 Service Credits shall be shown as a deduction from the amount due from the Customer to the Supplier in the invoice for the Service Period immediately succeeding the Service Period to which they relate.

4. CHANGES TO CHARGES

- 4.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 8.2 (*Change Control Procedure*) and on the basis that the Supplier pre-tax income on such Charges shall be no greater than that applying to Charges using the same pricing mechanism as at the Effective Date (as set out in the Contract Inception Report).

5. INDEXATION

5.1 Except as set out in this Paragraph 5, any amounts or sums in this Agreement that shall not be subject to Indexation.

5.2 The day rates set out in Table 1 of Annex 1 are subject to Indexation and the relevant adjustment shall be:

- (a) applied on 1 January 2020 and on the first day of January in each subsequent Contract Year; and
- (b) determined by multiplying the relevant amount or sum by the following percentage increase:
 - (i) for the UK Onsite and UK Onshore resources, the applicable percentage shall be the lesser of: (a) the change in the median UK Index on 1 January for each of the first three Contract Years ; and (b) 2.1%;
 - (ii) for the US Onsite resources, the applicable percentage shall be the lesser of: (a) the change in the median US Index on 1 January for each of the first three Contract Years ; and (b) 1.9%;
 - (iii) for the US Onshore resources, the applicable percentage shall be the lesser of: (a) the change in the median US Index on 1 January for each of the first three Contract Years ; and (b) 1.9%;
 - (iv) for the India resources, the applicable percentage shall be the lesser of: (a) the change in the median India Index on 1 January for each of the first three Contract Years ; and (b) 3.7%; and
 - (v) for the Philippines resources, the applicable percentage shall be the lesser of: (a) the change in the median Philippines Index on 1 January for each of the first three Contract Years ; and (b) 3.6%.

5.3 Any Indexation to the day rates set out in Table 1 of Annex 1 in respect of any Extension Period shall be agreed in writing between the parties as a Change.

5.4 Except as set out in this Paragraph 5, neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-contractors of the performance of their obligations.

6. SIGN-ON CREDIT

6.1 The Customer may be entitled to a one-time sign-on credit, dependent upon the total Charges paid or payable by the Customer (prior to the application of any Volume Discount) in the twelve month period commencing on the first day of the fourth months following the Effective Date ("**Sign-On Credit Measurement Period**"), in United States Dollars, and after conversion of all Charges into United States Dollars in accordance with Paragraph 6.3.

6.2 The Customer shall receive a Sign-On Credit of USD 300,000 if the revenue for the Sign-On Credit Measurement Period is equal to or greater than USD 50,000,000.

6.3 Such Sign-On Credit may be applied as compensation with efforts of equivalent amount in the twelve months following the Sign-On Credit Measurement Period.

7. TRANSITION COSTS

7.1 The Supplier shall not be permitted to charge the Customer for any costs related to the costs of transition of Application Development Work Packs from one supplier to another unless agreed otherwise in the applicable Call-Off Agreement.

8. FUND

8.1 Provided the total Charges payable by the Customer in the preceding Contract Year exceed \$50,000,000, the Supplier shall make an innovation fund of \$233,333.33 available in each of the second, third and fourth Contract Years, which together will constitute the "Innovation Fund".

8.2 The Customer may at its discretion contribute to the Innovation Fund, either towards a specific Call-Off Agreement or to the total value of the Innovation Fund.

8.3 The objective of this Innovation Fund is to have amounts available every calendar year for the Term to enable the Supplier to subsidise incremental innovation projects leveraging Supplier's innovations which will bring incremental business benefits or savings to the Customer.

8.4 In the event that any of the Innovation Fund is not used at the end of the Term, any outstanding balance may be carried to next contract year. The Customer will formalise such request to through the Innovation Board in accordance with Schedule 8.1 (*Governance*).

9. ALLOWABLE ASSUMPTIONS

9.1 The Supplier shall determine whether each Allowable Assumption is accurate within its Verification Period.

9.2 During each Verification Period, the Customer shall provide the Supplier with reasonable assistance and access to information within its possession or reasonable control and that the Customer deems is relevant to the Allowable Assumption being verified.

9.3 Within ten (10) Working Days of the end of each Verification Period, the Supplier shall provide the Customer with a written report setting out the results of the Supplier's verification activity for the relevant Allowable Assumption, including whether the Allowable Assumption is accurate or whether the Implementation Plan or the Contract Inception Report (or both of them) requires adjustment.

9.4 Each Allowable Assumption shall be deemed accurate unless adjusting for the relevant Allowable Assumption has an impact on the Implementation Plan which would require adjustment under the Change Control Procedure, as identified in column 3 of the table in Annex 5 in which case Paragraph 9.5 shall apply.

- 9.5 Where the Parties agree that an Allowable Assumption is not accurate and the Implementation Plan requires adjustment:
- (a) the Supplier shall take all reasonable steps to mitigate the impact of the Allowable Assumption and the Implementation Plan;
 - (b) the Supplier may (subject to Paragraph 9.5(c)) propose a Change to take account of the impact of the adjustment of the Allowable Assumption and such Change Request shall be considered in accordance with the Change Control Procedure; and
 - (c) where the Supplier proposes a Change to the Charges under Paragraph 9.5(b), the Change Request shall reflect the requirements of the table in Annex 5, including the requirement that any proposed adjustment to the Charges shall not exceed the maximum impact on the relevant Charges as specified in column 7 of the table in Annex 5.

10. RISK REGISTER

- 10.1 The Parties shall review the Risk Register set out in Annex 4 from time to time and as otherwise required for the purposes of Schedule 8.1 (*Governance*).

PART D: INVOICING AND PAYMENT TERMS

1. SUPPLIER INVOICES

- 1.1 The Supplier shall prepare and provide to the Customer for approval of the format a template invoice within ten (10) Working Days of the Effective Date which shall include, as a minimum, the details set out in Paragraph 1.2 together with such other information as the Customer may reasonably require to assess whether the Charges that will be detailed therein are properly payable. If the Customer does not approve the template invoice then the Supplier shall make such amendments as the Customer may reasonably require.
- 1.2 The Supplier shall ensure that each invoice contains the following information:
- (a) the date of the invoice;
 - (b) a unique invoice number;
 - (c) the Service Period or other period(s) to which the relevant Charge(s) relate;
 - (d) the correct reference for this Agreement;
 - (e) the reference number of the purchase order to which it relates (if any);
 - (f) the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
 - (g) a description of the Services;
 - (h) the pricing mechanism used to calculate the Charges (such as Guaranteed Maximum Price with Target Cost, Fixed Price, Time and Materials);
 - (i) any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;
 - (j) the total Charges gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to the Customer under the terms of this Agreement, and, separately, any VAT or other sales tax payable in respect of each of the same;
 - (k) details of any Service Credits or Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;
 - (l) 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);
 - (m) a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries; and

- (n) the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
- 1.3 The Supplier shall invoice the Customer in respect of Services in accordance with the requirements of Part B. The Supplier shall first submit to the Customer a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within five (5) Working Days of its receipt by the Customer, following which the Supplier shall be entitled to submit its invoice.
- 1.4 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Customer as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Customer any other documentation reasonably required by the Customer from time to time to substantiate an invoice.
- 1.5 The Supplier shall submit all invoices and Supporting Documentation to:
1-3 Strand
London
WC2N 5EH
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.
- 1.6 All Supplier invoices shall be expressed in sterling or such other currency set out in the applicable Call-Off Agreement.
- 1.7 The Customer shall regard an invoice as valid only if it complies with the provisions of this Part D. Where any invoice does not conform to the Customer's requirements set out in this Part D, the Customer shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice that complies with those requirements.
- 1.8 If the Customer fails to consider and verify an invoice in accordance with Paragraphs 1.3 and 1.7, the invoice shall be regarded as valid and undisputed for the purpose of Paragraph 2 [*Payment in 30 days*] after a reasonable time has passed.

2. PAYMENT TERMS

- 2.1 Subject to the relevant provisions of this Schedule, including Paragraph 2.1, the Customer shall make payment to the Supplier within forty-two (42) days of verifying that the invoice is valid and undisputed.
- 2.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.
- 2.3 The Customer shall not be liable to make payment to the Supplier for any sums in respect of which the Supplier does not provide the relevant invoice by the date falling six (6) calendar months from the date on which the Supplier was first entitled to submit an invoice for such sums.

ANNEX 1: PRICING MECHANISM

1. TABLE 1: SUPPLIER PERSONNEL RATE CARD FOR CALCULATION OF TIME AND MATERIALS CHARGES

Standard Rate Card

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
1	1-P	J2EE / .net Development	J2EE, Java, asp.net, C, C++, C#	Developer	Proficient	1-5	£270.00	\$429.00	£110.00	\$144.00
1	1-S	J2EE / .net Development	J2EE, Java, asp.net, C, C++, C#	Developer	Senior	6-10	£290.00	\$470.00	£128.00	\$174.00
1	1-E	J2EE / .net Development	J2EE, Java, asp.net, C, C++, C#	Architect	Expert	10+	£320.00	\$498.00	£145.00	\$213.00
2	2-P	Database Designer	Oracle, MySQL, SQL Server Developer, PL / SQL, T-SQL	Developer	Proficient	1-5	£270.00	\$449.00	£109.00	\$144.00
2	2-S	Database Designer	Oracle, MySQL, SQL Server Developer, PL / SQL, T-SQL	Developer	Senior	6-10	£290.00	\$481.00	£141.00	\$194.00
2	2-E	Database Designer	Oracle, MySQL, SQL Server Developer, PL / SQL, T-SQL	Architect	Expert	10+	£320.00	\$563.00	£170.00	\$230.00
3	3-P	Database Administrator	Oracle, MySQL, SQL Server Administrator	Administrator	Proficient	1-5	£260.00	\$490.00	£121.00	\$151.00
3	3-S	Database Administrator	Oracle, MySQL, SQL Server Administrator	Administrator	Senior	6-10	£280.00	\$546.00	£150.00	\$187.00
3	3-E	Database Administrator	Oracle, MySQL, SQL Server Administrator	Administrator	Expert	10+	£300.00	\$578.00	£175.00	\$245.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
4	4-P	Open Systems	Unix / Linux, Apache TomCat, Red Hat Enterprise Linux	Developer	Proficient	1-5	£245.00	\$429.00	£110.00	\$159.00
4	4-S	Open Systems	Unix / Linux, Apache TomCat, Red Hat Enterprise Linux	Developer	Senior	6-10	£270.00	\$470.00	£140.00	\$203.00
4	4-E	Open Systems	Unix / Linux, Apache TomCat, Red Hat Enterprise Linux	Architect	Expert	10+	£305.00	\$498.00	£160.00	\$217.00
5	5-P	Enterprise Applications	Oracle applications, SharePoint, Salesforce	Developer	Proficient	1-5	£307.40	\$457.00	£124.00	\$179.00
5	5-S	Enterprise Applications	Oracle applications, SharePoint, Salesforce	Developer	Senior	6-10	£365.70	\$533.00	£150.00	\$208.00
5	5-E	Enterprise Applications	Oracle applications, SharePoint, Salesforce	Architect	Expert	10+	£413.40	\$563.00	£174.00	\$257.00
6	6-P	Visual Basic Development	VB, VBA, VB Script	Developer	Proficient	1-5	£250.00	\$429.00	£104.00	\$144.00
6	6-S	Visual Basic Development	VB, VBA, VB Script	Developer	Senior	6-10	£270.00	\$470.00	£130.00	\$184.00
6	6-E	Visual Basic Development	VB, VBA, VB Script	Architect	Expert	10+	£290.00	\$498.00	£147.00	\$202.00
7	7-P	Cloud Development	AWS, Azure, Infrastructure-as-a-service, Platform as a service, Service-oriented app dev	Cloud Infra Developer	Proficient	1-5	£296.80	\$457.00	£130.00	\$179.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
7	7-S	Cloud Development	AWS, Azure, Infrastructure-as-a-service, Platform as a service, Service-oriented app dev	Cloud Infra Developer	Senior	6-10	£318.00	\$533.00	£155.00	\$206.00
7	7-E	Cloud Development	AWS, Azure, Infrastructure-as-a-service, Platform as a service, Service-oriented app dev	Cloud Architect	Expert	10+	£360.40	\$563.00	£185.00	\$278.00
8	8-P	Cloud DevOps	DevOps technologies (Zookeeper, Capistrano, etc.), Continuous Integration (CircleCI, TravisCI, etc.)	Cloud Infra Developer	Proficient	1-5	£312.70	\$457.00	£120.00	\$189.00
8	8-S	Cloud DevOps	DevOps technologies (Zookeeper, Capistrano, etc.), Continuous Integration (CircleCI, TravisCI, etc.)	Cloud Infra Developer	Senior	6-10	£360.00	\$533.00	£150.00	\$213.00
8	8-E	Cloud DevOps	DevOps technologies (Zookeeper, Capistrano, etc.), Continuous Integration (CircleCI, TravisCI, etc.)	Cloud Architect	Expert	10+	£420.00	\$563.00	£180.00	\$279.00
9	9-P	Cloud Operations	Site reliability, Infrastructure, Security	Cloud Infra Developer	Proficient	1-5	£280.90	\$457.00	£120.00	\$179.00
9	9-S	Cloud Operations	Site reliability, Infrastructure, Security	Cloud Infra Developer	Senior	6-10	£296.80	\$533.00	£145.00	\$206.00
9	9-E	Cloud Operations	Site reliability, Infrastructure, Security	Cloud Architect	Expert	10+	£312.70	\$563.00	£175.00	\$288.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
10	10-P	Enterprise Data Mgmt	EDI (Informatica), BI / EDW (Teradata) - JCAPS, SAP PI / PO, GlobalScape, EAM (Maximo), Oracle MDM	Developer	Proficient	1-5	£285.00	\$523.00	£120.00	\$180.00
10	10-S	Enterprise Data Mgmt	EDI (Informatica), BI / EDW (Teradata) - JCAPS, SAP PI / PO, GlobalScape, EAM (Maximo), Oracle MDM	Developer	Senior	6-10	£340.00	\$563.00	£155.00	\$228.00
10	10-E	Enterprise Data Mgmt	EDI (Informatica), BI / EDW (Teradata) - JCAPS, SAP PI / PO, GlobalScape, EAM (Maximo), Oracle MDM	Architect	Expert	10+	£390.00	\$744.00	£180.00	\$281.00
11	11-P	SAP Development	SAP Modules, SAP BO, SAP Mobility, Third-Party Interfaces, SAP ABAP programming	Developer	Proficient	1-5	£310.00	\$632.00	£125.00	\$169.00
11	11-S	SAP Development	SAP Modules, SAP BO, SAP Mobility, Third-Party Interfaces, SAP ABAP programming	Developer	Senior	6-10	£360.00	\$685.00	£145.00	\$212.00
11	11-E	SAP Development	SAP Modules, SAP BO, SAP Mobility, Third-Party Interfaces, SAP ABAP programming	Architect	Expert	10+	£410.00	\$765.00	£180.00	\$232.00
12	12-P	Big Data	Big Data Software (Hadoop, Splunk, Hive), Non-Relational database (noSQL, Mongo), Stream Processing (Spark), data lakes, data pipelines & processes	Analyst	Proficient	1-5	£312.70	\$490.00	£130.00	\$168.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
12	12-S	Big Data	Big Data Software (Hadoop, Splunk, Hive), Non-Relational database (noSQL, Mongo), Stream Processing (Spark), data lakes, data pipelines & processes	Analyst	Senior	6-10	£335.00	\$545.00	£184.00	\$235.00
12	12-E	Big Data	Big Data Software (Hadoop, Splunk, Hive), Non-Relational database (noSQL, Mongo), Stream Processing (Spark), data lakes, data pipelines & processes	Architect	Expert	10+	£360.40	\$592.00	£214.00	\$278.00
13	13-P	Statistical Modeling	Python, R, SAS	Analyst	Proficient	1-5	£320.00	\$450.00	£125.00	\$197.00
13	13-S	Statistical Modeling	Python, R, SAS	Analyst	Senior	6-10	£360.00	\$538.00	£170.00	\$265.00
13	13-E	Statistical Modeling	Python, R, SAS	Architect	Expert	10+	£390.00	\$574.00	£205.00	\$301.00
14	14-P	Business Intelligence	Tableau, Alteryx, PowerBI	Developer	Proficient	1-5	£305.00	\$458.00	£130.00	\$173.00
14	14-S	Business Intelligence	Tableau, Alteryx, PowerBI	Developer	Senior	6-10	£380.00	\$535.00	£170.00	\$228.00
14	14-E	Business Intelligence	Tableau, Alteryx, PowerBI	Architect	Expert	10+	£410.00	\$740.00	£210.00	\$278.00
15	15-P	Legacy Development	Mainframe, AS-400, COBOL, Lotus Notes, Fortran, VMS	Developer	Proficient	1-5	£275.60	\$429.00	£110.00	\$149.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
15	15-S	Legacy Development	Mainframe, AS-400, COBOL, Lotus Notes, Fortran, VMS	Developer	Senior	6-10	£302.10	\$470.00	£130.00	\$192.00
15	15-E	Legacy Development	Mainframe, AS-400, COBOL, Lotus Notes, Fortran, VMS	Architect	Expert	10+	£320.00	\$498.00	£145.00	\$213.00
16	16-A	SAP Functional Consultant	Responsible for understanding the design of the SAP system. Delivers Information Technology (IT) consulting expertise, package customization and integration and total SAP system solutions. Develops and offers integrated, end-to-end IT solutions in that support strategic, operational and financial goals and positions.	Analyst	Analyst	1-3	£384.16	\$587.00	£130.00	\$173.00
16	16-C	SAP Functional Consultant	Responsible for understanding the design of the SAP system. Delivers Information Technology (IT) consulting expertise, package customization and integration and total SAP system solutions. Develops and offers integrated, end-to-end IT solutions in that support strategic, operational and financial goals and positions.	Consultant	Consultant	3-5	£417.48	\$693.00	£147.00	\$222.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
16	16-S	SAP Functional Consultant	Responsible for understanding the design of the SAP system. Delivers Information Technology (IT) consulting expertise, package customization and integration and total SAP system solutions. Develops and offers integrated, end-to-end IT solutions in that support strategic, operational and financial goals and positions.	Sr Consultant	Sr Consultant	5-10	£443.94	\$735.00	£167.00	\$246.00
16	16-P	SAP Functional Consultant	Responsible for understanding the design of the SAP system. Delivers Information Technology (IT) consulting expertise, package customization and integration and total SAP system solutions. Develops and offers integrated, end-to-end IT solutions in that support strategic, operational and financial goals and positions.	Principal Consultant	Principal Consultant	10-15	£576.24	\$840.00	£217.00	\$312.00
16	16-P	SAP Functional Consultant	Responsible for understanding the design of the SAP system. Delivers Information Technology (IT) consulting expertise, package customization and integration and total SAP system solutions. Develops and offers integrated, end-to-end IT solutions in that support strategic, operational and financial goals and positions.	Partner	Partner	15+	£768.32	\$878.00	£240.00	\$333.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
17	17-C	Other Project Services: Program Management & System Integration	Project Management and Program Management; Project / Program Strategy definition; Project / Program Delivery approach; Scoping, costing and high-level timelines; Delivering Business Change; Delivering Business Processes; Establish / Support Governance; Establish / Support Quality Assurance	Consultant	Consultant	1-3	£390.00	\$630.00	£136.00	\$182.00
17	17-S	Other Project Services: Program Management & System Integration	Project Management and Program Management; Project / Program Strategy definition; Project / Program Delivery approach; Scoping, costing and high-level timelines; Delivering Business Change; Delivering Business Processes; Establish / Support Governance; Establish / Support Quality Assurance	Sr Consultant	Sr Consultant	3-5	£450.00	\$765.00	£167.00	\$246.00
17	17-M	Other Project Services: Program Management & System Integration	Project Management and Program Management; Project / Program Strategy definition; Project / Program Delivery approach; Scoping, costing and high-level timelines; Delivering Business Change; Delivering Business Processes; Establish / Support Governance; Establish / Support Quality Assurance	Manager	Manager	5-10	£550.00	\$843.00	£190.00	\$253.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
17	17-P	Other Project Services: Program Management & System Integration	Project Management and Program Management; Project / Program Strategy definition; Project / Program Delivery approach; Scoping, costing and high-level timelines; Delivering Business Change; Delivering Business Processes; Establish / Support Governance; Establish / Support Quality Assurance	Principal Consultant	Principal Consultant	10-15	£665.00	\$951.00	£254.00	\$352.00
17	17-P	Other Project Services: Program Management & System Integration	Project Management and Program Management; Project / Program Strategy definition; Project / Program Delivery approach; Scoping, costing and high-level timelines; Delivering Business Change; Delivering Business Processes; Establish / Support Governance; Establish / Support Quality Assurance	Partner	Partner	15+	£785.00	\$1,245.00	£288.00	\$372.00
18	18-P	UI Development	JSP, JQuery, HTML, Flex, AngularJS	Developer	Proficient	1-5	£275.00	\$428.00	£115.00	\$178.00
18	18-S	UI Development	JSP, JQuery, HTML, Flex, AngularJS	Developer	Senior	6-10	£325.00	\$445.00	£145.00	\$206.00
18	18-E	UI Development	JSP, JQuery, HTML, Flex, AngularJS	Architect	Expert	10+	£380.00	\$563.00	£175.00	\$253.00
19	19-A	Testing - Functional	Quality assurance strategy, documentation, test case design, defect logging, create test scenarios and test cases	Tester	Analyst / Tester	2-5	£230.00	\$427.00	£97.00	\$144.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
19	19-L	Testing - Functional	Quality assurance strategy, documentation, test case design, defect logging, create test scenarios and test cases	Tester	Lead / Manager	5+	£255.00	\$491.00	£117.00	\$176.00
20	20-A	Testing - Performance	Create and execute performance test strategy; performs test planning, test scripting, test execution, defect tracking and management; coordinate with multiple project teams for performance testing environment availability. Also responsible for reviewing architecture, non-functional requirements, preparing estimates and defining non-functional test plans and strategies. The role will also provide performance testing consultancy and guidance.	Tester	Analyst / Tester	2-5	£235.00	\$470.00	£107.00	\$148.00
20	20-L	Testing - Performance	Create and execute performance test strategy; performs test planning, test scripting, test execution, defect tracking and management; coordinate with multiple project teams for performance testing environment availability. Also responsible for reviewing architecture, non-functional requirements, preparing estimates and defining non-functional test plans and strategies. The role will also provide performance testing consultancy and guidance.	Tester	Lead / Manager	5+	£260.00	\$540.00	£127.00	\$192.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
21	21-A	Testing - Mobile	Ensure the quality of mobile app and web channels	Tester	Analyst / Tester	2-5	£235.00	\$448.00	£107.00	\$148.00
21	21-L	Testing - Mobile	Ensure the quality of mobile app and web channels	Tester	Lead / Manager	5+	£260.00	\$487.00	£123.00	\$182.00
22	22-A	Testing - Integration	Interface, system and data integrity, compatibility, standardization and security; develop and maintain documentation for each interface	Tester	Analyst / Tester	2-5	£230.00	\$427.00	£105.00	\$144.00
22	22-L	Testing - Integration	Interface, system and data integrity, compatibility, standardization and security; develop and maintain documentation for each interface	Tester	Lead / Manager	5+	£255.00	\$491.00	£125.00	\$176.00
23	23-A	Testing - Automation	Automation development, scripting & execution on WEB, Digital, mobile, and/or Mainframe applications	Tester	Analyst / Tester	2-5	£235.00	\$448.00	£110.00	\$149.00
23	23-L	Testing - Automation	Automation development, scripting & execution on WEB, Digital, mobile, and/or Mainframe applications	Tester	Lead / Manager	5+	£260.00	\$540.00	£130.00	\$192.00
24	24-A	Testing - Security	Penetration, malware defense, incident response, risk, and compliance	Tester	Analyst / Tester	2-5	£230.00	\$470.00	£110.00	\$149.00
24	24-L	Testing - Security	Penetration, malware defense, incident response, risk, and compliance	Tester	Lead / Manager	5+	£250.00	\$540.00	£130.00	\$192.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
25	25-S	Project Management	Project Manager	PM	Strong	3-5	£390.50	\$613.00	£160.00	\$228.00
25	25-E	Project Management	Senior Project Manager	PM	Expert	5-8	£418.00	\$704.00	£194.00	\$258.00
26	26-E	Project Management - Agile / Scrum	Agile Coach / Scrum Master	SM	Expert	5-8	£430.00	\$739.00	£224.00	\$317.00
27	27-S	Business Analysts	Business Analyst	BA	Strong	3-5	£384.16	\$592.00	£135.00	\$206.00
27	27-E	Business Analysts	Senior Business Analyst	BA	Expert	5-8	£468.44	\$628.00	£175.00	\$240.00
28	28-P	System Analyst / Designer	System administration, architecture, performance	Developer	Proficient	1-5	£313.00	\$449.00	£94.00	\$144.00
28	28-S	System Analyst / Designer	System administration, architecture, performance	Developer	Senior	6-10	£346.50	\$486.00	£140.00	\$186.00
28	28-E	System Analyst / Designer	System administration, architecture, performance	Architect	Expert	10+	£414.00	\$536.00	£192.00	\$237.00
29	29-P	Int & Prod Support	Release management, integration and production systems support (general)	Support	Proficient	1-5	£215.00	\$457.00	£97.00	\$153.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
29	29-S	Int & Prod Support	Release management, integration and production systems support (general)	Support	Senior	6-10	£230.00	\$486.00	£127.00	\$185.00
29	29-M	Int & Prod Support	Release management, integration and production systems support (general)	Support	Manager	10+	£245.00	\$563.00	£150.00	\$245.00
30	30-P	Integration - Middleware	Tibco, Web Methods, IBM Websphere, Web Services (SOAP / REST), IBM MQ, Oracle Fusion, Mulesoft	Developer	Proficient	1-5	£320.00	\$457.00	£125.00	\$156.00
30	30-S	Integration - Middleware	Tibco, Web Methods, IBM Websphere, Web Services (SOAP / REST), IBM MQ, Oracle Fusion, Mulesoft	Developer	Senior	6-10	£355.00	\$533.00	£155.00	\$215.00
30	30-E	Integration - Middleware	Tibco, Web Methods, IBM Websphere, Web Services (SOAP / REST), IBM MQ, Oracle Fusion, Mulesoft	Architect	Expert	10+	£395.00	\$563.00	£185.00	\$255.00
31	31-P	Integration - Process Management / Improvement	Analyses, plans, and implements integration between disparate applications. Improves performance, quality and efficiency in order to achieve optimum growth and customer satisfaction using Business Process Management best practices and Six Sigma techniques.	Developer	Proficient	1-5	£280.00	\$429.00	£121.00	\$147.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
31	31-S	Integration - Process Management / Improvement	Analyses, plans, and implements integration between disparate applications. Improves performance, quality and efficiency in order to achieve optimum growth and customer satisfaction using Business Process Management best practices and Six Sigma techniques.	Developer	Senior	6-10	£330.00	\$470.00	£145.00	\$195.00
31	31-E	Integration - Process Management / Improvement	Analyses, plans, and implements integration between disparate applications. Improves performance, quality and efficiency in order to achieve optimum growth and customer satisfaction using Business Process Management best practices and Six Sigma techniques.	Architect	Expert	10+	£385.00	\$498.00	£180.00	\$232.00
32	32-P	Integration - Monitoring	Integration and scheduling jobs; Supporting and monitoring job execution	Developer	Proficient	1-5	£256.00	\$429.00	£110.00	\$141.00
32	32-S	Integration - Monitoring	Integration and scheduling jobs; Supporting and monitoring job execution	Developer	Senior	6-10	£276.00	\$470.00	£135.00	\$182.00
32	32-E	Integration - Monitoring	Integration and scheduling jobs; Supporting and monitoring job execution	Architect	Expert	10+	£296.00	\$498.00	£165.00	\$228.00
33	33-P	UX Development	Content Strategist, Interaction / Visual Designer, Usability	Developer	Proficient	1-5	£290.00	\$457.00	£130.00	\$185.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
33	33-S	UX Development	Content Strategist, Interaction / Visual Designer, Usability	Developer	Senior	6-10	£340.00	\$533.00	£160.00	\$215.00
33	33-E	UX Development	Content Strategist, Interaction / Visual Designer, Usability	Architect	Expert	10+	£380.00	\$563.00	£200.00	\$270.00
34	34-S	Service Manager	Liaise between IS and a National Grid line of Business regarding service issues: Service Management, Incident Management, Escalation Management, Incident reporting.	Support	Strong	3-5	£371.00	\$448.00	£120.00	\$176.00
34	34-E	Service Manager	Liaise between IS and a National Grid line of Business regarding service issues: Service Management, Incident Management, Escalation Management, Incident reporting	Support	Expert	5-8	£413.40	\$486.00	£145.00	\$200.00
35	35-S	Code Manager / Software Librarian	Controls the location & movement of all Software Objects. - Manages the movement of objects between the models. Assists in the generation of code during Development & Production. - Ensures integrity of code with executables or Run Time Version.	Support	Strong	3-5	£240.00	\$462.00	£114.00	\$160.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
35	35-E	Code Manager / Software Librarian	Controls the location & movement of all Software Objects. - Manages the movement of objects between the models. Assists in the generation of code during Development & Production. - Ensures integrity of code with executables or Run Time Version.	Support	Expert	5-8	£260.00	\$492.00	£126.10	\$199.00
36	36-P	Mobility	iOS, Android, HTML5, Airwatch, IMB MPaaS	Developer	Proficient	1-5	£340.00	\$457.00	£130.00	\$185.00
36	36-S	Mobility	iOS, Android, HTML5, Airwatch, IMB MPaaS	Developer	Senior	6-10	£380.00	\$533.00	£175.00	\$228.00
36	36-E	Mobility	iOS, Android, HTML5, Airwatch, IMB MPaaS	Architect	Expert	10+	£440.00	\$563.00	£210.00	\$270.00
37	37-P	SAP Configuration	Define systems strategy, develops systems requirements, design and prototyping. Responsible for all aspects of the SAP System Development Life Cycle from conceptual phase through implementation	Developer	Proficient	1-5	£380.00	\$573.00	£125.00	\$166.00
37	37-S	SAP Configuration	Define systems strategy, develops systems requirements, design and prototyping. Responsible for all aspects of the SAP System Development Life Cycle from conceptual phase through implementation	Developer	Senior	6-10	£409.00	\$727.00	£160.00	\$215.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
37	37-E	SAP Configuration	Define systems strategy, develops systems requirements, design and prototyping. Responsible for all aspects of the SAP System Development Life Cycle from conceptual phase through implementation	Architect	Expert	10+	£458.00	\$816.00	£190.00	\$258.00
38	38-P	SAP Basis	SAP Basis administration	Developer	Proficient	1-5	£350.84	\$567.00	£123.00	\$166.00
38	38-S	SAP Basis	SAP Basis administration	Developer	Senior	6-10	£396.90	\$665.00	£153.00	\$215.00
38	38-E	SAP Basis	SAP Basis administration	Architect	Expert	10+	£437.08	\$735.00	£187.00	\$257.00
39	39-P	SAP Architecture	SAP cloud architecture, SAP cloud solution(s), SAP solution manager	Developer	Proficient	1-5	£381.60	\$622.00	£126.10	\$193.00
39	39-S	SAP Architecture	SAP cloud architecture, SAP cloud solution(s), SAP solution manager	Developer	Senior	6-10	£413.40	\$693.00	£165.00	\$229.00
39	39-E	SAP Architecture	SAP cloud architecture, SAP cloud solution(s), SAP solution manager	Architect	Expert	10+	£455.80	\$816.00	£213.00	\$292.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
40	40-A	SAP HANA Functional Consultant	Responsible for understanding the design of the HANA system. Delivers Information Technology (IT) consulting expertise, package customization and integration and total SAP system solutions, including integration of SAP SD, FSCM, AR, AP, COPA, CC, CI / CA, BW, HANA. Develops and offers integrated, end-to-end IT solutions in that support strategic, operational and financial goals and positions.	Analyst	Analyst	1-3	£384.16	\$579.00	£137.00	\$189.00
40	40-C	SAP HANA Functional Consultant	Responsible for understanding the design of the HANA system. Delivers Information Technology (IT) consulting expertise, package customization and integration and total SAP system solutions, including integration of SAP SD, FSCM, AR, AP, COPA, CC, CI / CA, BW, HANA. Develops and offers integrated, end-to-end IT solutions in that support strategic, operational and financial goals and positions.	Consultant	Consultant	3-5	£435.12	\$693.00	£157.00	\$223.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
40	40-S	SAP HANA Functional Consultant	Responsible for understanding the design of the HANA system. Delivers Information Technology (IT) consulting expertise, package customization and integration and total SAP system solutions, including integration of SAP SD, FSCM, AR, AP, COPA, CC, CI / CA, BW, HANA. Develops and offers integrated, end-to-end IT solutions in that support strategic, operational and financial goals and positions.	Sr Consultant	Sr Consultant	5-10	£492.94	\$735.00	£177.00	\$268.00
40	40-P	SAP HANA Functional Consultant	Responsible for understanding the design of the HANA system. Delivers Information Technology (IT) consulting expertise, package customization and integration and total SAP system solutions, including integration of SAP SD, FSCM, AR, AP, COPA, CC, CI / CA, BW, HANA. Develops and offers integrated, end-to-end IT solutions in that support strategic, operational and financial goals and positions.	Principal Consultant	Principal Consultant	10-15	£576.24	\$951.00	£254.00	\$349.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
40	40-P	SAP HANA Functional Consultant	Responsible for understanding the design of the HANA system. Delivers Information Technology (IT) consulting expertise, package customization and integration and total SAP system solutions, including integration of SAP SD, FSCM, AR, AP, COPA, CC, CI / CA, BW, HANA. Develops and offers integrated, end-to-end IT solutions in that support strategic, operational and financial goals and positions.	Partner	Partner	15+	£768.32	\$1,165.00	£297.00	\$415.00
41	41-C	Other Project Services: Architecture and Strategy	Application Strategy; Systems Integration Strategy; Solution Architecture Services; Enterprise Architecture Services; External Software Evaluation / assessment; Rationalization and Harmonization assessment; Decommissioning strategy	Consultant	Consultant	1-3	£415.00	\$622.00	£115.00	\$156.00
41	41-S	Other Project Services: Architecture and Strategy	Application Strategy; Systems Integration Strategy; Solution Architecture Services; Enterprise Architecture Services; External Software Evaluation / assessment; Rationalization and Harmonization assessment; Decommissioning strategy	Sr Consultant	Sr Consultant	3-5	£465.00	\$701.00	£155.00	\$195.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
41	41-M	Other Project Services: Architecture and Strategy	Application Strategy; Systems Integration Strategy; Solution Architecture Services; Enterprise Architecture Services; External Software Evaluation / assessment; Rationalization and Harmonization assessment; Decommissioning strategy	Manager	Manager	5-10	£550.00	\$817.00	£176.00	\$247.00
41	41-P	Other Project Services: Architecture and Strategy	Application Strategy; Systems Integration Strategy; Solution Architecture Services; Enterprise Architecture Services; External Software Evaluation / assessment; Rationalization and Harmonization assessment; Decommissioning strategy	Principal Consultant	Principal Consultant	10-15	£685.00	\$951.00	£257.00	\$323.00
41	41-P	Other Project Services: Architecture and Strategy	Application Strategy; Systems Integration Strategy; Solution Architecture Services; Enterprise Architecture Services; External Software Evaluation / assessment; Rationalization and Harmonization assessment; Decommissioning strategy	Partner	Partner	15+	£830.00	\$1,155.00	£305.00	\$392.00
42	42-C	Other Project Services: Information Management	Data Management and Consolidation; Data Migration; Decision Support Analytics; Advanced Analytics and Optimization; Enterprise Content Management; Business Intelligence and Performance Management	Consultant	Consultant	1-3	£380.00	\$536.00	£117.00	\$156.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
42	42-S	Other Project Services: Information Management	Data Management and Consolidation; Data Migration; Decision Support Analytics; Advanced Analytics and Optimization; Enterprise Content Management; Business Intelligence and Performance Management	Sr Consultant	Sr Consultant	3-5	£420.00	\$625.00	£143.00	\$191.00
42	42-M	Other Project Services: Information Management	Data Management and Consolidation; Data Migration; Decision Support Analytics; Advanced Analytics and Optimization; Enterprise Content Management; Business Intelligence and Performance Management	Manager	Manager	5-10	£470.00	\$735.00	£173.00	\$232.00
42	42-P	Other Project Services: Information Management	Data Management and Consolidation; Data Migration; Decision Support Analytics; Advanced Analytics and Optimization; Enterprise Content Management; Business Intelligence and Performance Management	Principal Consultant	Principal Consultant	10-15	£550.00	\$893.00	£259.00	\$323.00
42	42-P	Other Project Services: Information Management	Data Management and Consolidation; Data Migration; Decision Support Analytics; Advanced Analytics and Optimization; Enterprise Content Management; Business Intelligence and Performance Management	Partner	Partner	15+	£785.00	\$1,165.00	£303.00	\$390.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
43	43-P	Infrastructure Operations - Network	Establishes network standards. Analyzes and resolves complex network related problems. Analyzes and tests all elements of the network infrastructure. Designs secure global networks and establishes standards based on business objectives.	Operations	Proficient	1-5	£240.00	\$413.00	£99.00	\$164.00
43	43-S	Infrastructure Operations - Network	Establishes network standards. Analyzes and resolves complex network related problems. Analyzes and tests all elements of the network infrastructure. Designs secure global networks and establishes standards based on business objectives.	Operations	Senior	6-10	£270.00	\$481.00	£123.00	\$196.00
43	43-E	Infrastructure Operations - Network	Establishes network standards. Analyzes and resolves complex network related problems. Analyzes and tests all elements of the network infrastructure. Designs secure global networks and establishes standards based on business objectives.	Operations	Expert	10+	£295.00	\$508.00	£143.00	\$228.00
44	44-P	Infrastructure Operations - Data Center	Data Center Operations / Support;; Hyper-V / VMWare, Dell / EMC servers & storage, HPE servers and/or storage, Nutanix, etc.	Operations	Proficient	1-5	£212.00	\$413.00	£97.00	\$164.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
44	44-S	Infrastructure Operations - Data Center	Data Center Operations / Support;; Hyper-V / VMWare, Dell / EMC servers & storage, HPE servers and/or storage, Nutanix, etc.	Operations	Senior	6-10	£250.00	\$481.00	£120.00	\$196.00
44	44-E	Infrastructure Operations - Data Center	Data Center Operations / Support;; Hyper-V / VMWare, Dell / EMC servers & storage, HPE servers and/or storage, Nutanix, etc.	Operations	Expert	10+	£310.00	\$508.00	£145.00	\$227.00
45	45-P	Digital / Emerging Technologies	Future-state technologies: e.g. AI, Blockchain, BoTs, etc.	Developer	Proficient	1-5	£344.50	\$503.00	£140.00	\$198.00
45	45-S	Digital / Emerging Technologies	Future-state technologies: e.g. AI, Blockchain, BoTs, etc.	Developer	Senior	6-10	£418.70	\$586.00	£175.00	\$251.00
45	45-E	Digital / Emerging Technologies	Future-state technologies: e.g. AI, Blockchain, BoTs, etc.	Architect	Expert	10+	£524.70	\$620.00	£220.00	\$273.00
46	46-P	ServiceNow Developer	ServiceNow Developer	Developer	Proficient	1-5	£270.30	\$429.00	£123.00	\$163.00
46	46-S	ServiceNow Developer	ServiceNow Developer	Developer	Senior	6-10	£291.50	\$470.00	£143.00	\$194.00
46	46-E	ServiceNow Developer	ServiceNow Developer	Architect	Expert	10+	£312.70	\$498.00	£158.00	\$263.00

Skill ID	Skill Sub ID	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
47	47-S	Configuration & Environment Management	Provision, configuration and handover of technical solutions; Setup new infrastructure, applications and interfaces; apply program updates and patches; manage & control accesses	Administrator	Support	3-5	£265.00	\$450.00	£119.00	\$169.00
47	47-E	Configuration & Environment Management	Provision, configuration and handover of technical solutions; Setup new infrastructure, applications and interfaces; apply program updates and patches; manage & control accesses	Administrator	Lead / Manager	5-8	£315.00	\$517.00	£139.00	\$200.00

Other Rate Card

Skill ID	Skill Sub ID	Type	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
		Specialized Role	CPLEX / Linear Programming	CPLEX / Linear Programming	Developer	Proficient	1-5	£412.00	\$619.00	£176.00	\$234.00
		Specialized Role	CPLEX / Linear Programming	CPLEX / Linear Programming	Developer	Senior	6-10	£513.00	\$723.00	£230.00	\$308.00
		Specialized Role	CPLEX / Linear Programming	CPLEX / Linear Programming	Architect	Expert / Lead	10+	£554.00	\$999.00	£263.00	\$376.00

Skill ID	Skill Sub ID	Type	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
		Specialized Role	Graphical Information System (GIS)	Graphical Information System (GIS)	Developer	Proficient	1-5	£348.00	\$549.00	£156.00	\$222.00
		Specialized Role	Graphical Information System (GIS)	Graphical Information System (GIS)	Developer	Senior	6-10	£408.00	\$640.00	£192.00	\$258.00
		Specialized Role	Graphical Information System (GIS)	Graphical Information System (GIS)	Architect	Expert / Lead	10+	£456.00	\$676.00	£240.00	\$324.00
		Specialized Role	Network Management / Market Management - Systems Engineer	Network Management / Market Management - Systems Engineer		Proficient	1-5	N/A	N/A	N/A	N/A
		Specialized Role	Network Management / Market Management - Systems Engineer	Network Management / Market Management - Systems Engineer		Senior	6-10	N/A	N/A	N/A	N/A
		Specialized Role	Network Management / Market Management - Systems Engineer	Network Management / Market Management - Systems Engineer		Expert / Lead	10+	N/A	N/A	N/A	N/A
		Specialized Role	Distribution Management System - Systems Engineer	Distribution Management System - Systems Engineer		Proficient	1-5	N/A	N/A	N/A	N/A
		Specialized Role	Distribution Management System - Systems Engineer	Distribution Management System - Systems Engineer		Senior	6-10	N/A	N/A	N/A	N/A

Skill ID	Skill Sub ID	Type	Skill	Skill Description (examples)	Role	Level	Minimum work related experience (Years)	UK: Onsite GBP / Day	US: Onsite USD / Day	India GBP / Day	India USD / Day
		Specialized Role	Distribution Management System - Systems Engineer	Distribution Management System - Systems Engineer		Expert / Lead	10+	N/A	N/A	N/A	N/A

2. ONSHORE AND PHILIPPINES RATES

Note that the rates in the above table will be varied as follows to cater for onshore and offshore provision.

2.1 Onshore Rates:

- (a) US Onshore rates will be 3.3% less than US Onsite rates for the same role and experience level.
- (b) UK onshore rates will be 2.4% less than UK Onsite rates for the same role / experience level.
- (c) US Onshore location will include Baton Rouge LA; Monroe LA and Lansing MI.
- (d) UK onshore location will be Leicester or Warwick.

2.2 Offshore Philippines Rates:

- (a) Philippines rates will be 4.9% higher than the India rates for the same role and experience level.
- (b) Additional Offshore location is Philippines.

ANNEX 2: CHARGING MECHANISM AND ADJUSTMENTS

1. TABLE 1: MILESTONE PAYMENTS AND DELAY PAYMENTS

Charge Number	Pricing Mechanism (FIX / GMPTC / T&M)	CPP Milestone Charge Number	Delay Payments (if Key Milestone) (£ per day)
[e.g. M1]	[FIX]	[e.g. M2]	
[e.g. M2]	[FIX]	[e.g. M2]	

2. TABLE 2: SERVICE CHARGES

Charge Number	Pricing Mechanism (VOL / FIX / T&M)	Service Charge Trigger Event	Service Charge Expiration Trigger Event
[e.g. SC1]	[VOL]	[e.g. Achievement of Milestone 4]	
[e.g. SC2]	[FIX]		

3. TABLE 3: OPTIONAL SERVICES MILESTONE PAYMENTS

Charge Number	Pricing Mechanism (FIX GMPTC / T&M)	CPP Milestone Charge Number	Delay Payments (if Key Milestone) (£ per day)
[e.g. OMS1]	[FIX]	[e.g. OMS2]	
[e.g. OMS2]	[FIX]	[e.g. OMS2]	

4. TABLE 4: OPTIONAL SERVICES SERVICE CHARGES

Charge Number	Pricing Mechanism (VOL / FIX / T&M)	Service Charge Trigger Event	Service Charge Expiration Trigger Event
[e.g. OSC1]	[VOL]	[e.g. Achievement of Milestone 6]	
[e.g. OSC2]	[FIX]		

ANNEX 3: PRO-FORMA CERTIFICATE OF COSTS

I *[name of CFO or Director of Finance or equivalent as agreed in advance in writing with the Customer]* of *[insert name of Supplier]*, certify that the financial information provided as part of this Certificate of Costs, incurred in relation to the *[insert name/reference for the Agreement]* (the 'Agreement') in relation to the following *[Milestone/Milestone Group]*:

[Insert details of Milestone/Milestone Group]

1. has been reasonably and properly incurred in accordance with *[name of Supplier]*'s books, accounts, other documents and records;
2. is accurate and not misleading in all key respects; and
3. is in conformity with the Agreement and with all generally accepted accounting principles within the United Kingdom.

Signed *[Director of Finance or equivalent]*

[Name of Supplier]

ANNEX 4: RISK REGISTER

Column 12	Owner				
Column 11	Forecast Contingency Costs				
Column 10	Post mitigation impact (£)				
Column 9	Cost of mitigation				
Column 8	Mitigation (description)				
Column 7	Impact (description)				
Column 6	Impact (£)				
Column 5	Likelihood				
Column 4	Timing				
Column 3	Description of risk				
Column 2	Risk Name				
Column 1	Risk Number				

ANNEX 5: ALLOWABLE ASSUMPTIONS

11	Ref				
10	Description of proposed Allowable Assumption				
9	Impact on the Implementation Plan if the Allowable Assumption is not accurate				
8	Cost Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)				
7	Basis of Calculation of Cost Impact				
6	Applicable Pre-Tax Income				
5	Charge Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)				
4	Verification Method (how the Supplier will verify the Allowable Assumption)				
3	Trigger for Invocation (what will determine that the Implementation Plan may require adjustment for the Allowable Assumption)				
2	Period of Impact (period that the updated assumption will have an impact)				
1	Expiry Date (Date at which the Allowable Assumption expires)				

SCHEDULE 7.3: BENCHMARKING

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

Benchmarked Service	a Service that the Customer elects to include in a Benchmark Review under Paragraph 2.3;
Benchmarker	the independent third party appointed under Paragraph 3.1;
Benchmark Report	the report produced by the Benchmarker following the Benchmark Review as further described in Paragraph 5;
Benchmark Review	a review of one or more of the Services carried out in accordance with Paragraph 4 to determine whether those Services represent Good Value;
Comparable Service	in relation to a Benchmarked Service, a service that is identical or materially similar to the Benchmarked Service (including in terms of scope, specification, volume and quality of performance);
Comparison Group	in relation to a Comparable Service, a sample group of organisations providing the Comparable Service identified by the Benchmarker under Paragraph 4.8 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, where there are a reasonable number of such organisations (and the Benchmarker shall use its reasonable endeavours to ensure that the number of organisations comprises at least three), referencing only those organisations that are carrying on at least a significant part of their business within the United Kingdom;
Equivalent Services Data	in relation to a Comparable Service, data derived from an analysis of the Comparable Service provided by the Comparison Group as adjusted in accordance with Paragraphs 4.8(a) and 4.9 provided that the Benchmarker shall not use any such data that relates to a period which ended more than twenty four (24) months prior to the date of the appointment of the Benchmarker;

Good Value

in relation to a Benchmarked Service, that:

- (a) having taken into account the Performance Indicators and Target Service Levels, the value for money of the Charges attributable to that Benchmarked Service is at least as good as the value for money of the Upper Quartile; and
- (b) any Performance Indicators and Target Service Levels applicable to that Benchmarked Service are, having taken into account the Charges, equal to or better than the median service levels for the Comparable Service using Equivalent Services Data; and

Upper Quartile

the top 25% of instances of provision of a Comparable Service by members of the Comparison Group ranked by best value for money to the recipients of that Comparable Service.

2. FREQUENCY, PURPOSE AND SCOPE OF BENCHMARK REVIEW

- 2.1 The Customer may, by written notice to the Supplier, require a Benchmark Review of the Rate Card in order to establish whether a Benchmarked Service is, or the Benchmarked Services as a whole are, Good Value.
- 2.2 The Customer shall not be entitled to carry out a Benchmark Review of the Rate Card during the eighteen (18) month period from the Operational Service Commencement Date for those Services, nor at intervals of less than eighteen (18) months after any previous Benchmark Review relating to the same Services.
- 2.3 The Services that are to be the Benchmarked Services shall be identified by the Customer in the notice given under Paragraph 2.1.

3. APPOINTMENT OF BENCHMARKER

- 3.1 The Parties shall jointly appoint the Benchmarker.
- 3.2 The Customer shall, at the written request of the Supplier, require the Benchmarker to enter into a confidentiality agreement with the Supplier in, or substantially in, the form set out in Annex 1.
- 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. The Benchmarker shall not be compensated on a contingency fee or incentive basis.
- 3.4 The Customer shall be entitled to pay the Benchmarker's costs and expenses in full and to recover the Supplier's share from the Supplier.

4. BENCHMARK REVIEW

- 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) Working 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:
- (a) a proposed timetable for the Benchmark Review;
 - (b) a description of the information that the Benchmarker requires each Party to provide;
 - (c) a description of the benchmarking methodology to be used;
 - (d) a description that clearly illustrates that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives under Paragraph 2.1;
 - (e) an estimate of the resources required from each Party to underpin the delivery of the plan;
 - (f) a description of how the Benchmarker will scope and identify the Comparison Group;
 - (g) details of any entities which the Benchmarker proposes to include within the Comparison Group; and
 - (h) if in the Benchmarker's professional opinion there are no Comparable Services or the number of entities carrying out Comparable Services is insufficient to create a Comparison Group, a detailed approach for meeting the relevant benchmarking objective(s) under Paragraph 2.1 using a proxy for the Comparison Services or Comparison Group as applicable.
- 4.2 The Parties acknowledge that the selection and or use of proxies for 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.
- 4.3 Each Party shall give notice in writing to the Benchmarker and to the other Party within ten (10) Working Days after receiving the draft plan either approving the draft plan or suggesting amendments to that plan which must be reasonable. Where a Party suggests amendments to the draft plan pursuant to this Paragraph 4.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 4.1 and this Paragraph 4.3 shall apply to any amended draft plan.
- 4.4 Failure by a Party to give notice under Paragraph 4.3 shall be treated as approval of the draft plan by that Party. If the Parties fail to approve the draft plan within thirty (30) Working Days of its first being sent to them pursuant to Paragraph 4.1 then the Benchmarker shall prescribe the plan.

- 4.5 Once the plan is approved by both Parties or prescribed by the Benchmarker, the Benchmarker shall 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 fails to provide any information requested from it by the Benchmarker and described in the plan, such failure shall constitute a material Default for the purposes of paragraph 27.1(c) (*Rectification Plan Process*) only.
- 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:
- (a) finalise the sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The final selection of the Comparison Group (both in terms of number and identity of entities) and of the Comparable Services shall be a matter for the Benchmarker's professional judgment;
 - (b) derive the Equivalent Services Data by applying the adjustment factors listed in Paragraph 4.9 and from an analysis of the Comparable Services;
 - (c) derive the relative value for money of the charges payable for the Comparable Services using the Equivalent Services Data and from that derive the Upper Quartile;
 - (d) derive the median service levels relating to the Comparable Services using the Equivalent Services Data;
 - (e) compare the value for money of the Charges attributable to the Benchmarked Services (having regard in particular to the applicable Performance Indicators and Target Service Levels) to the value for money of the Upper Quartile;
 - (f) compare the Performance Indicators and Target Service Levels attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with the median service levels using the Equivalent Services Data; and
 - (g) determine whether or not each Benchmarked Service is or the Benchmarked Services as a whole are, Good Value.

- 4.9 The Benchmarker shall have regard to the following matters when performing a comparative assessment of a Benchmarked Service and a Comparable Service in order to derive Equivalent Services Data:
- (a) the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);
 - (b) any front-end investment and development costs of the Supplier;
 - (c) the Supplier's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;
 - (d) the extent of the Supplier's management and contract governance responsibilities;
 - (e) any other reasonable factors demonstrated by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive (such as erroneous costing, non-sustainable behaviour including excessive consumption of energy or over-aggressive pricing).

5. BENCHMARK REPORT

- 5.1 The Benchmarker shall be required to prepare a Benchmark Report and deliver it simultaneously to both Parties, at the time specified in the plan approved under Paragraph 4, setting out its findings. The Benchmark Report shall:
- (a) include a finding as to whether or not each Benchmarked Service is or whether the Benchmarked Services as a whole are, Good Value;
 - (b) include other findings (if any) regarding the quality and competitiveness or otherwise of those Services;
 - (c) 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, Performance Indicators or Target Performance Levels (or any combination of them), that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value; and
 - (d) illustrate the method used for any normalisation of the Equivalent Services Data
- 5.2 The Benchmarker shall act as an expert and not as an arbitrator.
- 5.3 Subject to Paragraph 5.4, If the Benchmark 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 Paragraphs 5.6 and 5.7) implement the changes set out in the Benchmark Report as soon as reasonably practicable within timescales agreed with the Customer but in any event within no more than two (2) months. Any associated changes to the Charges shall take effect only from the same date and shall not be retrospective.

- 5.4 Where the Benchmark Report concludes that the Supplier's Charges for the Benchmarked Services must be adjusted by ten per cent (10%) or more from their current level, then:
- (a) the Supplier shall implement the initial ten per cent (10%) adjustment within the timeframe referred to in Paragraph 5.3; and
 - (b) the remaining required adjustment to the Charges will be applied as soon as reasonably possible in the context of the changes which the Supplier can demonstrate it is then making to adjust its underlying cost base, but in any event within no more than nine (nine) months after the date of the Benchmark Report.
- 5.5 The Supplier acknowledges and agrees that Benchmark Reviews shall not result in any increase to the Charges, disapplication of the Performance Indicators or any reduction in the Target Performance Levels.
- 5.6 The Supplier shall be entitled to reject any Benchmark Report if the Supplier reasonably considers that the Benchmarking has not followed the procedure for the related Benchmark Review as set out in this Schedule in any material respect.
- 5.7 The Supplier shall not be obliged to implement any Benchmark Report to the extent this would cause the Supplier to provide the Services at a loss or to the extent the Supplier cannot technically implement the recommended changes.
- 5.8 In the event of any Dispute arising over whether the Benchmarking has followed the procedure for the related Benchmark Review under Paragraph 5.6 or any matter referred to in Paragraph 5.7, the Dispute shall be referred to Expert Determination. 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 and the Performance Indicators and Target Performance Levels shall remain unchanged pending the conclusion of the Expert Determination.
- 5.9 On conclusion of the Expert Determination:
- (a) if the Expert determines that all or any part of the Benchmark 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 pursuant to Paragraph 5.3 (and Paragraph 5.4, if applicable); and
 - (b) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any changes to the Performance Indicators or Target Performance Levels (or any combination of them) shall be implemented by the Supplier:
 - (i) the Supplier shall immediately implement the relevant changes;
 - (ii) the Supplier shall immediately pay an amount equal to any Service Credits that would have accrued up to and including the date of the

Expert's determination if the relevant changes had taken effect on the date determined pursuant to Paragraph 5.3; and

- (iii) the relevant changes shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Agreement.

ANNEX 1: CONFIDENTIALITY AGREEMENT

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made [date]

BETWEEN:

[insert name] of [insert address] (the “Supplier”); and

[*insert name*] of [*insert address*] (the “Benchmarker” and together with the Supplier, the “Parties”)

WHEREAS:

- A [insert name of Customer] (the “Customer”) and the Supplier are party to a contract dated [insert date] (the “Contract”) for the provision by the Supplier of [insert brief description of services] to the Customer.
- B The Benchmarker is to receive Confidential Information from the Supplier for the purpose of carrying out a benchmarking review for the Customer of one or more of such services pursuant to the terms of the Contract (the “Permitted Purpose”).

IT IS AGREED as follows:

1. INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:

“Confidential Information” means:

“Information” means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

a) Information, including all personal data within the meaning of the Data Protection Act 1998, and however it is conveyed, provided by the Supplier to the Benchmarker pursuant to this Agreement that relates to:

- (i) the Supplier; or
- (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;

- b) other Information provided by the Supplier pursuant to this Agreement to the Benchmarker that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Benchmarker's attention or into the Benchmarker's possession in connection with the Permitted Purpose;
- c) discussions, negotiations, and correspondence between the Supplier or any of its directors, officers, employees, consultants or professional advisers and the Benchmarker or any of its directors, officers, employees, consultants and professional advisers in connection with the Permitted Purpose and all matters arising therefrom; and
- d) Information derived from any of the above

but not including any Information that:

- e) was in the possession of the Benchmarker without obligation of confidentiality prior to its disclosure by the Supplier;
- f) the Benchmarker obtained on a non-confidential basis from a third party who is not, to the Benchmarker's knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Benchmarker;
- g) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
- h) was independently developed without access to the Confidential Information;

"Permitted Purpose"

has the meaning given to that expression in recital B to this Agreement.

1.2 In this Agreement:

- (a) a reference to any gender includes a reference to other genders;
- (b) the singular includes the plural and vice versa;
- (c) the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;
- (d) references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
- (e) headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- (f) references to Clauses are to clauses of this Agreement.

2. CONFIDENTIALITY OBLIGATIONS

2.1 In consideration of the Supplier providing Confidential Information to the Benchmarking, the Benchmarking shall:

- (a) treat all Confidential Information as secret and confidential;
- (b) have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- (c) not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or, if relevant, other owner or except as expressly set out in this Agreement;
- (d) not transfer any of the Confidential Information outside the United Kingdom;
- (e) not use or exploit any of the Confidential Information for any purpose whatsoever other than the Permitted Purpose;
- (f) immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- (g) once the Permitted Purpose has been fulfilled:
 - (i) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
 - (ii) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information

technology staff of the Benchmarker) from any computer, word processor, voicemail system or any other device; and

- (iii) make no further use of any Confidential Information.

3. PERMITTED DISCLOSURES

- 3.1 The Benchmarker may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
 - (a) reasonably need to receive the Confidential Information in connection with the Permitted Purpose; and
 - (b) have been informed by the Benchmarker of the confidential nature of the Confidential Information; and
 - (c) have agreed to terms similar to those in this Agreement.
- 3.2 The Benchmarker shall be entitled to disclose Confidential Information to the Customer for the Permitted Purpose and to any Expert appointed in relation to a Dispute as referred to in paragraph 5.8 of schedule 7.3 (Benchmarking) to the Contract.
- 3.3 The Benchmarker shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Benchmarker.
- 3.4 Before making a disclosure pursuant to Clause 3.3, the Benchmarker shall, if the circumstances permit:
 - (a) notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
 - (b) ask the court or other public body to treat the Confidential Information as confidential.

4. GENERAL

- 4.1 The Benchmarker acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
 - (a) to grant the Benchmarker any licence or rights other than as may be expressly stated in this Agreement;
 - (b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or

- (c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this Agreement.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Benchmarker acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Benchmarker of any of the provisions of this Agreement. Accordingly, the Benchmarker acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Benchmarker to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.
- 5. NOTICES**
- 5.1 Any notice to be given under this Agreement (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.
- 5.2 Any Notice:
- (a) if to be given to the Supplier shall be sent to:
- [Address]
- Attention: [Contact name and/or position, e.g. “The Finance Director”]
- (b) if to be given to the Benchmarker shall be sent to:
- [Name of Organisation]

[Address]

Attention: []

6. GOVERNING LAW

6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.

6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

IN WITNESS of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of [name of Supplier]

Signature:

Date:

Name:

Position:

For and on behalf of [name of Benchmark]

Signature:

Date:

Name:

Position:

SCHEDULE 7.4: FINANCIAL DISTRESS

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

Credit Rating Level	a credit rating level as specified in Annex 2;
Credit Rating Threshold	the minimum Credit Rating Level for IBM Corporation as set out in Annex 3 and for each Key Sub-contractor as set out in Schedule 4.3 (Notified Key Sub-contractors); and
Rating Agencies	the rating agencies listed in Annex 1.

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 long term credit ratings issued for IBM Corporation by each of the Rating Agencies are as set out in Annex 3.
- 2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Customer in writing if the credit rating issued by any Rating Agency for IBM Corporation drops below the Credit Rating Threshold (and in any event within five (5) Working Days of the occurrence of the downgrade).
- 2.3 If the credit rating issued by any Rating Agency for IBM Corporation drops below the Credit Rating Threshold, the Supplier shall ensure that IBM Corporation's auditors thereafter provide the Customer within ten (10) Working Days of the end of each Contract Year and within ten (10) Working Days of written request by the Customer (such requests not to exceed four (4) in any Contract Year) with written calculations of the quick ratio for IBM Corporation as at the end of each Contract Year or such other date as may be requested by the Customer. For these purposes the 'quick ratio' on any date means:

$$\frac{A + B + C}{D}$$

where:

- A is the value at the relevant date of all cash in hand and at the bank of IBM Corporation;
- B is the value of all marketable securities held by IBM Corporation determined using closing prices on the Working Day preceding the relevant date;
- C is the value at the relevant date of all account receivables of IBM Corporation; and
- D is the value at the relevant date of the current liabilities of IBM Corporation.

2.4 The Supplier shall:

- (a) regularly monitor the credit ratings of IBM Corporation and each Key Sub-contractor with the Rating Agencies; and
- (b) promptly notify (or shall procure that its auditors promptly notify) the Customer in writing following the occurrence of a Financial Distress Event or 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 ten (10) 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), provided that the Supplier shall only be required to notify the Customer of the events set out in Paragraphs 3.1(d) to (f) if disclosure in respect of such events is required by the rules of the New York Stock Exchange or the US Securities and Exchange Commission.

2.5 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraph 3.1(a), the credit rating of IBM Corporation or the relevant Key Sub-contractor (as the case may be) shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated IBM Corporation or the relevant Key Sub-contractor (as the case may be) at or below the applicable Credit Rating Level.

3. CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

3.1 In the event of:

- (a) the credit rating of IBM Corporation or any Key Sub-contractor dropping below the applicable Credit Rating Threshold;
- (b) the Supplier, IBM Corporation or any Key Sub-contractor issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier, IBM Corporation or any Key Sub-contractor;
- (d) the Supplier, IBM Corporation or any Key Sub-contractor committing a material breach of covenant to its lenders;
- (e) a Key Sub-contractor notifying the Customer that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or
- (f) any of the following:
 - (i) commencement of any litigation against the Supplier, IBM Corporation or any Key Sub-contractor with respect to financial

indebtedness greater than five million pounds (£5,000,000) or obligations under a service contract with a total contract value greater than five million pounds (£5,000,000);

- (ii) non-payment by the Supplier, IBM Corporation or any Key Sub-contractor of any financial indebtedness;
- (iii) any financial indebtedness of the Supplier, IBM Corporation or any Key Sub-contractor becoming due as a result of an event of default; or
- (iv) the cancellation or suspension of any financial indebtedness in respect of the Supplier, IBM Corporation or any Key Sub-contractor,

in each case which the Customer reasonably believes (or would be likely reasonably to believe) could directly affect the continued performance and delivery of the Services in accordance with this Agreement;

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 3.3 to 3.6.

3.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1(e), the Customer shall not exercise any of its rights or remedies under Paragraph 3.3 without first giving the Supplier ten (10) Working Days to:

- (a) rectify such late or non-payment; or
- (b) demonstrate to the Customers reasonable satisfaction that there is a valid reason for late or non-payment.

3.3 The Supplier shall (and shall procure that IBM Corporation or any relevant Key Sub-contractor (or both) shall):

- (a) at the request of the Customer, meet 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
- (b) where the Customer reasonably believes (taking into account the discussions and any representations made under Paragraph 3.3(a)) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement:
 - (i) 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); and

- (ii) provide such financial information relating to the Supplier or IBM Corporation as the Customer may reasonably require.

- 3.4 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 5 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 Dispute Resolution Procedure under Paragraph 3.5.
- 3.5 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 ensure the continued performance of the Supplier's obligations in accordance with the Agreement, 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 Dispute Resolution Procedure.
- 3.6 Following approval of the Financial Distress Service Continuity Plan by the Customer, the Supplier shall:
- (a) 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;
 - (b) where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 3.6(a), submit an updated Financial Distress Service Continuity Plan to the Customer for its approval, and the provisions of Paragraphs 3.4 and 3.5 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and
 - (c) comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 3.7 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 3.6.

4. TERMINATION RIGHTS

The Customer shall be entitled to terminate this Agreement under Clause 33.1(b) (Termination by the Customer) if:

- (a) the Supplier fails to notify the Customer of a Financial Distress Event in accordance with Paragraph 2.4(b);

- (b) the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 3.3 to 3.5; or
- (c) 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 3.6(c).

5. PRIMACY OF CREDIT RATINGS

Without prejudice to the Supplier's obligations and the Customer's rights and remedies under Paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of Paragraphs 3.1(b) to 3.1(f), the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

- (a) the Supplier shall be relieved automatically of its obligations under Paragraphs 3.3 to 3.6; and
- (b) the Customer shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 3.3(b)(ii).

ANNEX 1: RATING AGENCIES

This Annex will be agreed in the relevant Call-Off Agreement.

ANNEX 2: CREDIT RATING LEVELS

This Annex will be agreed in the relevant Call-Off Agreement.

ANNEX 3: CREDIT RATINGS AND CREDIT RATING THRESHOLDS

Entity	Credit rating (long term)	Credit Rating Threshold
IBM Corporation		

SCHEDULE 7.5: FINANCIAL REPORTS AND AUDIT RIGHTS

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

Annual Report	Contract	the annual contract report to be provided by the Supplier to the Customer pursuant to Paragraph 1 of Part B;
Audit Agents		<p>(a) the Customer's internal and external auditors;</p> <p>(b) the Customer's statutory or regulatory auditors;</p> <p>(c) any party formally appointed by the Customer to carry out audit or similar review functions which shall not, without the prior written approval of the Supplier, be a party that the Customer reasonably considers to be a competitor of the Supplier; and</p> <p>(d) successors or assigns of any of the above;</p>
Contract Amendment Report		the contract amendment report to be provided by the Supplier to the Customer pursuant to Paragraph 1 of Part B;
Final Reconciliation Report		the final reconciliation report to be provided by the Supplier to the Customer pursuant to Paragraph 1 of Part B;
Financial Reports		the Contract Inception Report and the reports listed in the table in Paragraph 1.1 of Part B;
Financial Representative		a reasonably skilled and experienced member of the Supplier's staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports;
Financial Transparency Objectives		has the meaning given in Paragraph 1 of Part A;
Material Change		<p>a Change that:</p> <p>(a) materially changes the profile of the Charges; or</p> <p>varies the total Charges payable during the Term by:</p> <p>(i) five percent (5%) or more; or</p> <p>(ii) one million pounds (£1,000,000) or more;</p>

Open Book Data

complete and accurate financial and non-financial information which is sufficient to enable the Customer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:

- (a) the Supplier's Costs broken down against each Service and Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
- (b) operating expenditure relating to the provision of the Services including an analysis showing:
 - (i) the unit costs and quantity of consumables and bought-in services;
 - (ii) manpower resources broken down into the number and grade or role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade; and
 - (iii) Reimbursable Expenses,
- (c) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
- (d) the actual Costs profile for each Service Period.

PART A: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA

1. FINANCIAL TRANSPARENCY OBJECTIVES

The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with the Customer in order to achieve, the following objectives:

Understanding the Charges

- (a) for the Customer to understand any payment sought from it by the Supplier including an analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Services and the Supplier pre-tax income;
- (b) for both Parties to be able to understand the Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;
- (c) to facilitate the use of Guaranteed Maximum Price with Target Cost pricing mechanisms (where relevant as referred to in Schedule 7.1 (Charges and Invoicing));

Agreeing the impact of Change

- (d) for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated or reflected in the Supplier's Charges (or both);
- (e) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

Continuous improvement

- (f) for the Parties to challenge each other with ideas for efficiency and improvements; and
- (g) to enable the Customer to determine that it is achieving value for money relative to current market prices,

(together the 'Financial Transparency Objectives').

2. OPEN BOOK DATA

- 2.1 The Supplier acknowledges the importance to the Customer of the Financial Transparency Objectives and the Customer's need for complete transparency in the way in which the Charges are calculated.
- 2.2 During the Term, and for a period of seven (7) years following the end of the Term, the Supplier shall:
 - (a) maintain and retain the Open Book Data; and

- (b) disclose and allow the Customer or the Audit Agents (or both) access to the Open Book Data.
- 2.3 The parties note that the paragraph (a) of the definition of Costs in Schedule 7.1 (Charges and Invoicing) includes certain categories of cost relating to Supplier Personnel ("Supplier Personnel Costs"). Notwithstanding any other provision of this Schedule 7.5 or Schedule 7.1, in its provision or certification of the Open Book Data, whether via the provision of a Certificate of Costs or otherwise, the Supplier shall not be required to associate specific Supplier Personnel Costs with individual employees or contractors; but it shall nonetheless provide the Supplier Personnel Costs information at a level of abstraction reasonably sufficient for the Customer to achieve the financial transparency objectives and other purposes described in this Schedule 7.5.
- 3. **INTERNAL CONTROLS**
 - 3.1 The Supplier, its Sub-contractors and Affiliates shall develop, document and implement quality assurance and internal controls, including implementing tools and methodologies, to ensure that the Services are performed in an accurate and timely manner, in accordance with the Agreement and any applicable Law and regulations. The Supplier shall design those controls to mitigate risks and give consideration to people, processes and technology, and be aligned with appropriate Standards such as ISO 27001/2, CobIT, NIST 80-53, CSF and CSA.
 - 3.2 Without limiting the scope of paragraph 3.1, the Supplier shall: (i) maintain a strong control environment in its day-to-day operations; (ii) document the processes and procedures for quality assurance and internal controls in its security reports; (iii) develop and execute a process to ensure regular internal control self-assessments are performed with respect to the Services; and (iv) use suitably qualified independent individuals to carry out relevant audits sufficient to monitor the processes and systems used to provide the Services.

PART B: FINANCIAL REPORTS

1. PROVISION OF THE FINANCIAL REPORTS

1.1 The Supplier shall provide

- (a) the Contract Inception Report on or before the Effective Date; and
- (b) during the Term the following financial reports to the Customer, in the frequency specified below:

Financial Report	When to be provided
Contract Amendment Report	Within 1 month of a Material Change being agreed between the Supplier and the Customer
Quarterly Contract Report	Within 1 month of the end of each Quarter
Annual Contract Report	Within 1 month of the end of the Contract Year to which that report relates
Final Reconciliation Report	Within 6 months after the end of the Term

1.2 The Supplier shall provide to the Customer the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates that have been issued by the Customer to the Supplier on or before the Effective Date for the purposes of this Agreement. The Customer shall be entitled to modify the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.

1.3 A copy of each Financial Report shall be held by both the Customer and the Supplier. If there is a Dispute regarding a Financial Report, the Customer's copy of the relevant Financial Report shall be authoritative.

1.4 Each Financial Report shall:

- (a) be completed by the Supplier using reasonable skill and care;
- (b) incorporate and use the same defined terms as are used in this Agreement;
- (c) quote all monetary values in pounds sterling;
- (d) quote all Costs as exclusive of any VAT; and
- (e) quote all Costs and Charges based on current prices.

- 1.5 Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Customer in advance of issue of the relevant Financial Report), acting with express authority, as:
- (a) being accurate and not misleading;
 - (b) having been prepared in conformity with generally accepted accounting principles within the United Kingdom;
 - (c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and
 - (d) compliant with the requirements of Paragraph 1.6.
- 1.6 The Supplier shall:
- (a) prepare each Financial Report using the same methodology as that used for the Contract Inception Report;
 - (b) ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the Costs and pre-tax income forecast by the Supplier; and
 - (c) the Final Reconciliation Report is a true and fair reflection of the Costs;
- 1.7 During the Term, and for a period of thirty-six (36) months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Customer may have on any of the Financial Reports and/or Open Book Data.
- 1.8 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:
- (a) the Costs incurred (or those forecast to be incurred) by the Supplier; and/or
 - (b) the forecast Charges for the remainder of the Term,

the Supplier shall, as soon as practicable, notify the Customer in writing of the event in question detailing the actual or anticipated effect. Notifications provided in accordance with this paragraph 1.8 shall not have the effect of amending any provisions of this Agreement.

2. DISCUSSION OF QUARTERLY CONTRACT REPORTS AND FINAL RECONCILIATION REPORT

- 2.1 Following the delivery by the Supplier of each Quarterly Contract Report, the Parties shall meet to discuss its contents within ten (10) Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.
- 2.2 Following the delivery by the Supplier of the Final Reconciliation Report, the Parties shall meet to discuss its contents within ten (10) Working Days of receipt

(or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

3. SUB-CONTRACTORS

3.1 The Supplier shall, if requested by the Customer, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Sub-contractors.

3.2 Without prejudice to Paragraph 1.1 of Part C, the Supplier shall:

- (a) be responsible for auditing the financial models and reports of its Sub-contractors and for any associated costs and expenses incurred or forecast to be incurred; and
- (b) on written request by the Customer, provide the Customer or procure that the Customer is provided with:
 - (i) full copies of audit reports for the Sub-contractors. The Customer shall be entitled to rely on such audit reports; and
 - (ii) further explanation of, and supporting information in relation to, any audit reports provided.

PART C: AUDIT RIGHTS

1. AUDIT RIGHTS

- 1.1 The Customer, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of thirty-six (36) months thereafter, to assess compliance by the Supplier and its Sub-contractors of the Supplier's obligations under this Agreement, including for the following purposes:
- (a) to verify the integrity and content of any Financial Report;
 - (b) to verify the accuracy of the Charges and any other amounts payable by the Customer under this Agreement (and proposed or actual variations to such Charges and payments);
 - (c) to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
 - (d) to verify the Certificate of Costs or the Open Book Data, or both;
 - (e) to verify the Supplier's and each Sub-contractor's compliance with this Agreement, applicable Law, and standards set out in Schedule 2.3 (*Standards*);
 - (f) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Customer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (g) to identify or investigate any circumstances which may affect the financial stability of the Supplier, the Guarantor or any Sub-contractors or their ability to perform the Services;
 - (h) to obtain such information as is necessary to fulfil the Customer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (i) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
 - (j) to carry out the Customer's internal and statutory audits and to prepare, examine or certify the Customers annual and interim reports and accounts;
 - (k) to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
 - (l) to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
 - (m) to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);

- (n) to review the accuracy and completeness of the Registers;
 - (o) to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
 - (p) to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
 - (q) to review the Supplier's adherence to the Customer's policies and the Standards;
 - (r) to inspect the Customer Assets, including the Customer's IPR, equipment and facilities, for the purposes of ensuring that the Customer Assets are secure and that any register of assets is up to date;
 - (s) to review the design and effectiveness of internal controls to ensure their confidentiality, integrity and availability; or
 - (t) to review the integrity, confidentiality and security of the Customer Data.
- 1.2 Except where an audit is imposed on the Customer by a regulatory body or where the Customer has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement, the Customer may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.

2. CONDUCT OF AUDITS

- 2.1 The Customer shall during each audit comply with those reasonable security, sites, systems and facilities operating procedures of the Supplier and 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.
- 2.2 Subject to the Customer's obligations of confidentiality, the Supplier shall on demand provide the Customer and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:
- (a) all information requested by the Customer within the permitted scope of the audit;
 - (b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - (c) access to the Supplier System; and
 - (d) access to Supplier Personnel.
 - (e) adequate private workspace for Audit Agents in which to perform an audit, including access to photocopies, telephones, facsimile machines, printers, computer hook-ups and networks, and any other facilities or equipment reasonably needed for the performance of the audit. The Customer may,

upon thirty (30) days' prior notice and mutual agreement of scheduling, audit on an ad-hoc basis in the event of a security breach. The scope of such audit will include all people, processes and technologies supporting the Customer.

- 2.3 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 Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.
- 2.4 The Customer shall endeavour to (but is not obliged to) provide at least fifteen (15) Working Days' notice of its intention to conduct an audit.
- 2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Customer for all the Customers reasonable costs incurred in connection with the audit.
- 2.6 Supplier and Customer shall meet promptly after the issuance of any draft audit report and agree upon an action plan to address and resolve any deficiencies, concerns or recommendations arising out of any audit and any non-compliance with Supplier's obligations under this Agreement identified in the audit report.

3. PERIODIC ASSURANCE

- 3.1 The Supplier shall submit to Customer an annual written self-certification based on the audit performed by the Audit Agent that scrutinises and confirms the effectiveness of Supplier's internal controls. If the Supplier fails to adhere to its audit obligations set out in this Schedule, Customer (or an Audit Agent) may, subject to any applicable confidentiality agreements, audit the Supplier's and its relevant subcontractors' control environments and security practices relevant to Services. Such audit may be performed once in any twelve (12) month period, subject to a reasonable prior written notice of at least seven (7) days and under reasonable time, place and manner conditions.
- 3.2 The Customer may request the Supplier to provide a SSAE 18 SOC 1 type II audit report in respect of those Services which comprise Customer application maintenance for which the Supplier has been given design and execution responsibility of the management controls, activities, and processes. Such a request may only be made from the beginning of Contract Year 2 for the relevant Call-Off Contract onwards. Following the receipt of such a request, the Supplier and the Customer shall work together to define the scope and timing of the audit. The cost of such a report shall be borne by the Customer.
- 3.3 If available, the Supplier and its relevant subcontractors shall provide a copy of its multi-client SSAE 18 SOC 2 Type II audit report for Services focused on the Security and Availability principles at its major CICs (client innovation centres) and the supporting OneNet Network (which serves as the local area network) once each calendar year, during the Term. The scope and methodology of such audit report shall cover basic infrastructure requirements in accordance with AICPA requirements for those two covered principles. The report shall cover at least six

months of the Supplier's fiscal year, and the Supplier shall issue a bridge (no change) letter as necessary as required by the Customer. The SSAE 18 SOC 2 type II audit report shall be prepared by an Audit Agent.

- 3.4 The Supplier shall submit to the Customer every three (3) months a compliance dashboard (in red-amber-green (RAG) form) that indicates its degree of conformity with its various compliance obligations under this Agreement, including without limitation matters relating to data protection and personal data (GDPR, DPA), the NIS Directive and Sarbanes-Oxley (SOX) requirements.

4. RESPONSE TO AUDITS

- 4.1 If an audit undertaken pursuant to Paragraphs 1 or 3 identifies that:

- (a) the Supplier has committed a Default, the Customer may (without prejudice to any rights and remedies the Customer may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
- (b) there is an error in a Financial Report, the Supplier shall promptly rectify the error;
- (c) the Customer has overpaid any Charges, the Supplier shall pay to the Customer:
 - (i) the amount overpaid;
 - (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Customer up to the date of repayment by the Supplier; and
 - (iii) the reasonable costs incurred by the Customer in undertaking the audit,the Customer may exercise its right to deduct such amount from the Charges if it prefers; and
- (d) the Customer has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Customer.

- 4.2 Following an audit, the Customer may conduct or instruct the Audit Agent to conduct, an exit conference with a Supplier to obtain its factual concurrence with issues identified in the audit report.

- 4.3 In the event of a breach where personal data is involved, Supplier shall at its cost provide credit monitoring and identity theft protection for a period no shorter than two (2) years.

SCHEDULE 7.6: ANTICIPATED SAVINGS

This Schedule (to be defined in the relevant Call-Off Agreement) defines the key benefit categories in which savings are anticipated.

Ref.	Benefit Category	Indicative amount (£k)	Timescale
1.	<p><i>[E.g. - Reduction in Service Charges as Service delivery becomes more efficient and effective.</i></p> <p><i>Benefit realisation is measured against [a 2016/17 baseline.]</i></p>	£[amount] per annum	Contract Years [x] to [y]
2.	<p><i>[E.g. - Improvements in Authority staff productivity from using more flexible and agile services that match the needs of the business.</i></p> <p><i>Benefits realisation is measured against a baseline of 4,000 directly employed staff in 2016/17.]</i></p>	£[amount] year on year improvement ([x]% productivity increase)	Contract Years [x] to [y]
3.	<p><i>[E.g. - Reduced electrical power consumption arising from adoption of new low energy technology.</i></p> <p><i>Benefit realisation is measured against a 2016/17 baseline.]</i></p>	£[amount] per annum	Contract Years [x] to [y]

SCHEDULE 8.1: GOVERNANCE

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

Annual Review Board	the body described in paragraph 4.
Board Member	the initial persons appointed by the Customer and Supplier to the Boards as set out in ` 1 and any replacements from time to time agreed by the Parties in accordance with paragraph 3.2.
Boards	the Annual Review Board, Quarterly Business Review Board, the Finance Performance Board, the Service Review Board, the Service Level Agreement Board, the Operational Performance Management Board and the Service Innovation Board; and ' Board ' shall mean any of them.
Finance Performance Board	the body described in paragraph 6.
Operational Boards	the Service Review Board, the Service Level Agreement Board, the Operational Performance Management Board and the Service Innovation Board.
Operational Performance Management Board	the body described in paragraph 9.
Project Managers	the individuals appointed as such by the Customer and the Supplier in accordance with paragraph 2.
Quarterly Business Review Board	the body described in paragraph 5.
Service Review Board	the body described in paragraph 8.
Service Innovation Board	the body described in paragraph 10.
Service Level Agreement Board	the body described in paragraph 7.

2. MANAGEMENT OF THE SERVICES

- 2.1 The Supplier and the Customer shall each appoint a project manager for the purposes of this Agreement through whom the Services shall be managed day-to-day.
- 2.2 Both Parties shall 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. BOARDS

Establishment and structure of the Boards

- 3.1 The Customer shall establish the Boards for the purposes of this Agreement on which both the Supplier and the Customer shall be represented.
- 3.2 If either Party wishes to replace any of its appointed Board Members, 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.

Board meetings

- 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:
- (a) a delegate attends the relevant Board meeting in his or her place who (wherever possible) is properly briefed and prepared; and
 - (b) that he or she debriefs that delegate after the Board Meeting.
- 3.4 The Customer shall appoint a chairperson for each Board as identified in the applicable paragraphs of this Schedule 8.1. The chairperson shall be responsible for:
- (a) scheduling Board meetings;
 - (b) setting the agenda for Board meetings and circulating to all attendees in advance of such meeting;
 - (c) chairing the Board meetings;
 - (d) monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;
 - (e) 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
 - (f) 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 endeavour to ensure that Board Members are

empowered to make relevant decisions or have access to empowered individuals so that those decisions can be made.

4. ROLE OF THE ANNUAL REVIEW BOARD

4.1 The Annual Review Board shall:

- (a) provide senior level guidance, leadership and strategy for the overall delivery of the Services;
- (b) be the point of escalation from the other Boards;
- (c) carry out the specific obligations attributed to it in paragraph 4.2; and
- (d) conduct the Annual Review in accordance with the arrangements set out in paragraph 11.

4.2 The Annual Review Board shall:

- (a) ensure that this Agreement is operated throughout the Term in a manner that optimises the value for money and operational benefit derived by the Customer and the commercial benefit derived by the Supplier;
- (b) receive and review reports from the Service Review Board and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;
- (c) determine business strategy and provide guidance on policy matters that may impact on the implementation of the Services or on any Optional Services; and
- (d) authorise the commissioning and initiation of, and assess opportunities for, Optional Services;
- (e) regularly review the Supplier's performance with the Supplier Collaboration Review Survey; and
- (f) have final authority to resolve escalations, disputes and major issues arising from the Quarterly Business Review Board.

4.3 Subject to paragraph 3.2, the Annual Review Board shall comprise such attendees as agreed and documented in the onboarding plan.

4.4 The Annual Review Board shall be formed no later than one (1) month following the Effective Date and its first meeting shall be held no later than six (6) months following the Effective Date.

4.5 The Annual Review Board shall meet once every twelve (12) months.

4.6 The location of the meetings of the Annual Review Board shall agreed and documented in the onboarding plan.

5. ROLE OF QUARTERLY BUSINESS REVIEW BOARD

5.1 The Quarterly Business Review Board shall:

- (a) monitor KPI/PI performance trends and address major disputes and escalations;
- (b) approve budgetary requests, new projects and investment projects;
- (c) facilitate dialogue in relation to innovation, transformation and improvement opportunities;
- (d) promote alignment amongst key stakeholders to adapt to changes in the delivery landscape;
- (e) identify the risks to be reported to the Quarterly Business Review Board via regular risk reports;
- (f) accept or reject new risks proposed for inclusion in the Risk Register;
- (g) ratify or refuse requests to close risks on the Risk Register;
- (h) identify risks relating to or arising from the performance of the Services and provisional owners of those risks;
- (i) share future IS roadmaps, project pipelines and desired project end-states;
- (j) outline desired technologies and capabilities, and solicit Supplier credentials;
- (k) have authority to resolve escalations, disputes and major issues arising from the Operational Boards.

5.2 Subject to paragraph 3.2, the Quarterly Business Review Board shall comprise such attendees as agreed and documented in the onboarding plan.

5.3 The Quarterly Business Review Board shall be formed no later than one (1) month following the Effective Date and its first meeting shall be held no later than three (3) months following the Effective Date.

5.4 The Quarterly Business Review shall meet once every three (3) months.

5.5 The location of the meetings of the Quarterly Business Review Board shall be agreed and documented in the onboarding plan.

6. ROLE OF FINANCE PERFORMANCE BOARD

6.1 The Finance Performance Board shall:

- (a) address contractual compliance and any resulting financial implications of under- or non-performance;
- (b) address the financial impact of any Changes;

- (c) discuss commercial opportunities, including those for price reductions;
 - (d) have authority to resolve financial escalations, disputes and issues arising in relation to the Charges; and
 - (e) provide direction relating to the commercial issues arising between the Customer and the Supplier.
- 6.2 Subject to paragraph 3.2, the Finance Performance Board shall comprise such attendees as agreed and documented in the onboarding plan.
- 6.3 The Finance Performance Board shall be formed no later than one (1) month following the Effective Date and its first meeting shall be held no later than three (3) months following the Effective Date.
- 6.4 The Finance Performance Board shall meet once every three (3) months.
- 6.5 The location of the meetings of the Finance Performance Board shall be agreed and documented in the onboarding plan.
- 7. ROLE OF SERVICE LEVEL AGREEMENT BOARD**
- 7.1 The Service Level Agreement Board shall:
 - (a) review any failures by the Supplier to comply with KPIs and discuss Service Credit allocations; and
 - (b) identify any underlying performance issues affecting the Services and failures to comply with KPIs.
- 7.2 Subject to paragraph 3.2, the Service Level Agreement Board shall comprise such attendees as agreed and documented in the onboarding plan.
- 7.3 The Service Level Agreement Board shall be formed no later than one (1) month following the Effective Date and its first meeting shall be held no later than one (1) month following the Effective Date.
- 7.4 The Service Level Agreement Board shall meet once every month.
- 7.5 The location of the meetings of the Service Level Agreement Board shall be agreed and documented in the onboarding plan.
- 8. ROLE OF SERVICE REVIEW BOARD**
- 8.1 The Service Review Board shall:
 - (a) supervise the operational performance of the Services (for example, the Supplier's performance against the Performance Indicators);
 - (b) identify any gaps in the scope or performance of the Services and potential areas of improvement;

- (c) refine performance metrics as needed to ensure continuing business relevance;
 - (d) review the apportionment of service credits;
 - (e) continually monitor the Supplier's performance with applicable security obligations;
 - (f) have authority to resolve service- and performance-related escalations, disputes and issues arising in relation to the performance of the obligations set out in this Agreement; and
 - (g) provide direction relating to the service- and performance-related issues arising between the Customer and the Supplier.
- 8.2 Subject to paragraph 3.2, the Service Review Board shall comprise such attendees as agreed and documented in the onboarding plan.
- 8.3 The Service Review Board shall be formed no later than the first Service Commencement Date and its first meeting shall be held no later than one (1) month following the first Service Commencement Date.
- 8.4 The Service Review Board shall meet once every month.
- 8.5 The location of the meetings of the Service Review Board shall agreed and documented in the onboarding plan.
- 9. ROLE OF OPERATIONAL PERFORMANCE MANAGEMENT BOARD**
- 9.1 The Operational Performance Management Board shall:
- (a) monitor both the UK- and US-related aspects of the programme;
 - (b) review project delivery status and progress against predefined milestones;
 - (c) supervise the development of large-scale changes;
 - (d) identify and troubleshoot roadblocks and issues on critical paths;
 - (e) track and monitor adherence to the governance structures;
 - (f) have authority to resolve major escalations, disputes and issues arising in relation to the performance of the obligations set out in this Agreement; and
 - (g) provide direction relating to the programme issues arising between the Customer and the Supplier.
- 9.2 Subject to paragraph 3.2, the Operational Performance Management Board shall comprise such attendees as agreed and documented in the onboarding plan.

- 9.3 The Operational Performance Management Board shall be formed no later than one (1) month following the Effective Date and its first meeting shall be held no later than one (1) month following the first Service Commencement Date.
- 9.4 The Operational Performance Management Board shall meet once every month.
- 9.5 The location of the meetings of the Operational Performance Management Board shall be agreed and documented in the onboarding plan.

10. ROLE OF SERVICE INNOVATION BOARD

- 10.1 The Service Innovation Board shall:
- (a) have oversight of the technology used in the provision of the Services in order to ensure that the technological choices made are designed to maximise the long-term value of the Services as a business asset of the Customer;
 - (b) provide input in relation to escalations and other issues arising from technical, innovation and strategy processes;
 - (c) have authority to resolve technology-related escalations, disputes and issues arising in relation to the performance of the obligations set out in this Agreement; and
 - (d) provide direction relating to the technology and innovation-related issues arising between the Customer and the Supplier.
- 10.2 Subject to paragraph 3.2, the Service Innovation Board shall comprise such attendees as agreed and documented in the onboarding plan.
- 10.3 The Service Innovation Board shall be formed no later than one (1) month following the Effective Date and its first meeting shall be held no later than one (1) month following the first Service Commencement Date.
- 10.4 The Service Innovation Board shall meet once every three (3) months.
- 10.5 The location of the meetings of the Service Innovation Board shall be agreed and documented in the onboarding plan.

11. CONTRACT MANAGEMENT MECHANISMS

- 11.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Agreement.
- 11.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Customer, processes for:
- (a) the identification and management of risks;
 - (b) the identification and management of issues; and
 - (c) monitoring and controlling project plans.

11.3 The Risk Register shall be updated by the Supplier and submitted for review by the Quarterly Business Review Board.

12. ANNUAL REVIEW

12.1 The Annual Review Board shall hold an annual review meeting shall be held throughout the Term on a date to be agreed between the Parties.

The attendees of the meetings shall be agreed and documented in the onboarding plan.

SCHEDULE 8.2: CHANGE CONTROL PROCEDURE

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

Customer Change Manager	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;
Change Request	a written request for a Contract Change which shall be substantially in the form of Annex 1;
Change Communication	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
Fast-track Change	any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;
Impact Assessment	an assessment of a Change Request in accordance with Paragraph 5;
Impact Assessment Estimate	has the meaning given in Paragraph 4.3;
Receiving Party	the Party which receives a proposed Contract Change; and
Supplier Change Manager	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 Representative.

2. GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

- 2.1 This Schedule sets out the procedure for dealing with Changes.
- 2.2 Operational Changes shall be processed in accordance with Paragraph 9. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.
- 2.3 The Parties shall deal with Contract Change as follows:
 - (a) either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
 - (b) unless this Agreement otherwise requires, the Supplier shall 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;

- (c) 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;
 - (d) the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;
 - (e) except as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Customer in accordance with Paragraph 6.2; and
 - (f) a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.
- 2.4 To the extent that any Contract Change requires testing or a programme for implementation, then the Parties shall 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 Milestones or a Key Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of those procedures.
- 2.5 Until a Change Authorisation Note has been signed and issued by the Customer in accordance with Paragraph 6.2, then:
- (a) unless the Customer expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and
 - (b) any discussions, negotiations or other communications that 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 Agreement.
- 2.6 The Supplier shall:
- (a) within ten (10) Working Days of the Customer's signature and issue of a Change Authorisation Note, deliver to the Customer a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
 - (b) thereafter provide to the Customer such further copies of the updated Agreement as the Customer may from time to time request.
- 3. COSTS**
- 3.1 Subject to Paragraph 3.3:
- (a) the costs of preparing each Change Request shall be borne by the Party making the Change Request; and

- (b) each Party shall be responsible for all costs and expenses incurred by it, its employees, agents and related third parties with respect to its participation in, and responsibilities and obligations under, the activities contemplated by this Schedule 8.2 (Change Control Procedure), including all costs and expenses incurring in proposing, preparing, discussion, negotiating and agreeing any Change Request or associated Impact Assessment.
- 3.2 The price of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Schedule 7.1 (*Charges and Invoicing*). The Supplier shall be entitled to increase the Charges only 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) shall be 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.
- 3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the 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. A Change Request shall be substantially in the form of Annex 1 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.
- 4.2 If the Supplier issues 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 issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within ten (10) Working Days of the date of receiving the Change Request an estimate ('Impact Assessment Estimate') of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Customer within ten (10) Working Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Customer.
- 4.4 If the Customer accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Customer as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Customer and provided that sufficient information is received by the Customer to fully understand:
 - (a) the nature of the request for clarification; and
 - (b) the reasonable justification for the request;

and the time period to complete the Impact Assessment shall be extended by the time taken by the Customer to provide that clarification. The Customer shall respond to the request for clarification as soon as is reasonably practicable.

5. IMPACT ASSESSMENT

5.1 Each Impact Assessment shall be completed in good faith and shall include:

- (a) details of the proposed Contract Change including the reason for the Contract Change; and
- (b) details of the impact of the proposed Contract Change on the Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Agreement;
- (c) any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:
 - (i) the Services Description, the Performance Indicators or the Target Performance Levels (or any combination of them);
 - (ii) the format of Customer Data, as set out in the Services Description;
 - (iii) the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;
 - (iv) other services provided by third party contractors to the Customer, including any changes required by the proposed Contract Change to the Customer's IT infrastructure;
- (d) details of the cost of implementing the proposed Contract Change;
- (e) 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 or expenditure required by either Party and any alteration to the working practices of either Party;
- (f) a timetable for the implementation, together with any proposals for the testing of the Contract Change;
- (g) details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
- (h) 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 Clause 23 (*Protection of Personal Data*).

5.3 Subject to the provisions of Paragraph 5.4, the Customer shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment, it.

- 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 10 Working Days of receiving such notification. At the Customer's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Customer is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
- 5.5 The calculation of costs for the purposes of Paragraphs 5.1(d) and (e) shall:
- (a) facilitate the Financial Transparency Objectives;
 - (b) include estimated volumes of each type of resource to be employed and the applicable rate card;
 - (c) include full disclosure of any assumptions underlying such Impact Assessment;
 - (d) include evidence of the cost of any assets required for the Change; and
 - (e) include details of any new Sub-contracts necessary to accomplish the Change.

6. CUSTOMER'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:
- (a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
 - (b) 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 does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
 - (c) in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within five (5) Working Days of such request. Subject to Paragraph 5.4, on receiving the modified Change Request or Impact Assessment (or both, as the case may be), 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, then it shall inform the Supplier and the Supplier shall prepare two (2) 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, it shall sign both copies and return one copy to the Supplier. On the Customer's signature the Change Authorisation Note shall constitute (or, where the Customer has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Agreement.
- 6.3 If the Customer does not sign the Change Authorisation Note within ten (10) Working Days, 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 such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

7. SUPPLIER'S RIGHT OF APPROVAL

Following an Impact Assessment, if:

- (a) the Supplier reasonably believes that any proposed Contract Change which is requested by the Customer would:
 - (i) materially and adversely affect the risks to the health and safety of any person; or
 - (ii) require the Services to be performed in a way that infringes any Law; or
- (b) the Supplier demonstrates to the Customer's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Customer of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 4.3.

8. FAST-TRACK CHANGES

- 8.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.
- 8.2 If:
- (a) the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed four (4) in any twelve (12) month period; and

- (b) both Parties agree the value of the proposed Contract Change over the remaining Term and any period for which Termination Services may be required does not exceed the monetary figure agreed in the relevant Call-Off Agreement and 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 4, 5, 6 and 7 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.

- 8.3 The Parties may agree in writing to revise the parameters set out in Paragraph 8.2 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Contract Change notwithstanding that the total number of Contract Changes to which such procedure is applied will then exceed four (4) in a twelve (12) month period.

9. OPERATIONAL CHANGE PROCEDURE

- 9.1 Any Operational 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:

- (a) have an impact on the business of the Customer;
- (b) require a change to this Agreement;
- (c) have a direct impact on use of the Services; or
- (d) involve the Customer in paying any additional Charges or other costs.

- 9.2 The Customer may request an Operational Change by submitting a written request for Operational Change ('RFOC') to the Supplier Representative.

- 9.3 The RFOC shall include the following details:

- (a) the proposed Operational Change; and
- (b) the time-scale for completion of the Operational Change.

- 9.4 The Supplier shall inform the Customer of any impact on the Services that may arise from the proposed Operational Change.

- 9.5 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.

10. COMMUNICATIONS

For any Change Communication to be valid under this Schedule, it must be sent to either the Customer Change Manager or the Supplier Change Manager, as

applicable. The provisions of Clause 44 (*Notices*) shall apply to a Change Communication as if it were a notice.

ANNEX 1: CHANGE REQUEST FORM

CR NO.:	TITLE:	TYPE OF CHANGE:
CONTRACT:		REQUIRED BY DATE:
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) AFFECTED (<i>OPTIONAL FIELD</i>):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

ANNEX 2: CHANGE AUTHORISATION NOTE

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
[KEY MILESTONE DATE: <i>[if any]</i>]		
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:		
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 BASIS):		
SIGNED ON BEHALF OF THE CUSTOMER:		SIGNED ON BEHALF OF THE SUPPLIER:
Signature: _____		Signature: _____
Name: _____		Name: _____
Position: _____		Position: _____
Date: _____		Date: _____

SCHEDULE 8.3: DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

Expert	in relation to a Dispute, a person appointed in accordance with Paragraph 5.2 to act as an expert in relation to that Dispute.
Expert Determination	determination by an Expert in accordance with Paragraph 5.
Multi-Party Dispute	a Dispute that involves the Parties and one or more Related Third Parties.
Multi-Party Dispute Representatives	has the meaning given in Paragraph 7.6
Multi-Party Dispute Resolution Board	has the meaning given in Paragraph 7.6.
Related Third Party	a party to: (a) another contract with the Customer or the Supplier that is relevant to this Agreement; or (b) a Sub-contract.
Supplier Request	a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

2. DISPUTE NOTICES

2.1 If a Dispute arises then:

- (a) the Customer Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
- (b) if such attempts are not successful within a reasonable period, not being longer than twenty (20) Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice:

- (a) shall set out:
 - (i) the material particulars of the Dispute;

- (ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
 - (iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and
 - (b) may specify in accordance with the requirements of Paragraphs 2.2 and 2.3 that the Party issuing the Dispute Notice has determined (in the case of the Customer) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case Paragraph 2.3 shall apply.
- 2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to Paragraph 2.2(b), then:
- (a) if it is served by the Customer it shall be treated as a Multi-Party Procedure Initiation Notice; and
 - (b) if it is served by the Supplier it shall be treated as a Supplier Request, and in each case the provisions of Paragraph 7 shall apply.
- 2.4 Subject to Paragraphs 2.5 and 3.2 and so long as the Customer has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:
- (a) first by commercial negotiation (as prescribed in Paragraph 4);
 - (b) then by recourse to litigation (in accordance with Clause 46 (Governing Law and Jurisdiction)).
- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 5) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 5.1.
- 2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under Paragraph 6 (Urgent Relief).
- 3. EXPEDITED DISPUTE TIMETABLE**
- 3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. Each Party shall not unreasonably withhold or delay its agreement to use the Expedited Dispute Timetable.
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in Paragraph 5.2, five (5) Working Days.

- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within two (2) Working Days after the deadline has passed, the Customer may set a revised deadline provided that it is no less than five (5) Working Days before the end of the period of time specified in the applicable paragraphs (or two (2) Working Days in the case of Paragraph 5.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Customer fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

4. COMMERCIAL NEGOTIATION

Following the service of a Dispute Notice, then, so long as the Customer has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Customer and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Customer's Head of Procurement and the Supplier's Commercial Director.

5. EXPERT DETERMINATION

- 5.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 or, if applicable, mediation in accordance with Paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be 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 of the relevant request made pursuant to Paragraph 5.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:

- (a) if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);
- (b) if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
- (c) if the Dispute relates to a matter of a technical nature not falling within Paragraphs 5.2(a) or (b), on the instructions of the president (or equivalent) of:
 - (i) an appropriate body agreed between the Parties; or
 - (ii) if the Parties do not reach agreement on the relevant body within fifteen (15) Working Days of the relevant request made pursuant to Paragraph 5.1, such body as may be specified by the President of the Law Society on application by either Party.

5.3 The Expert shall act on the following basis:

- (a) he or she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- (b) the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his or her determination within thirty (30) 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;
- (d) 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;
- (e) the process shall be conducted in private and shall be confidential; and
- (f) the Expert shall determine how and by whom the costs of the determination, including his or her fees and expenses, are to be paid.

6. URGENT RELIEF

Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

- (a) for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and
- (b) where compliance with Paragraph 2.1 may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

7. MULTI-PARTY DISPUTES

7.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 7 (the 'Multi-Party Dispute Resolution Procedure').

7.2 If at any time following the issue of a Dispute Notice, the Customer reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Customer shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier that sets out the Customer's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties that are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a 'Multi-Party Procedure Initiation Notice.'

7.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Customer.

- 7.4 The Customer shall (acting reasonably) consider each Supplier Request and shall determine within five (5) Working Days whether the Dispute is:
- (a) a Multi-Party Dispute, in which case the Customer shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
 - (b) not a Multi-Party Dispute, in which case the Customer shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 6.
- 7.5 If the Customer has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
- 7.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the '**Multi-Party Dispute Resolution Board**') comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:
- (a) the Customer;
 - (b) the Supplier;
 - (c) each Related Third Party involved in the Multi-Party Dispute; and
 - (d) any other representatives of any of the Parties or any Related Third Parties whom the Customer considers necessary,
- (together 'Multi-Party Dispute Representatives').
- 7.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:
- (a) the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
 - (b) the Multi-Party Dispute Resolution Board shall first meet within ten (10) Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within five (5) Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Customer, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
 - (c) in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that

a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

- 7.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within twenty-five (25) Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then either Party may request that the Multi-Party Dispute is referred to an expert in which case Paragraph 6 shall apply and references to the 'Supplier' or the 'Parties' in such provisions shall include a reference to all Related Third Parties.

SCHEDULE 8.4: REPORTS AND RECORDS PROVISIONS

1. TRANSPARENCY REPORTS

- 1.1 Within three (3) months of the Effective Date the Supplier shall provide to the Customer for its approval (such approval not to be unreasonably withheld or delayed) draft Transparency Reports in accordance with Annex 1.
- 1.2 If the Customer (acting reasonably) rejects any proposed Transparency Report:
 - (a) the Customer shall provide the Supplier with its reasons for rejection and any recommendations for revision and improvement to the report that the Customer reasonably required; and
 - (b) the Supplier shall submit a revised version of the relevant report for further approval by the Customer within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report set out in such notice.
- 1.3 If the Parties fail to agree on a draft Transparency Report the Customer shall determine what should be included.
- 1.4 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Customer at the frequency referred to in Annex 1.
- 1.5 Any disagreement in connection with the preparation or approval of Transparency Reports, other than under paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.6 The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.

2. OTHER REPORTS

The Customer may require any or all of the following reports:

- (a) delay reports;
- (b) reports relating to Testing and tests carried out under Schedule 2.4 (Security Management) and Schedule 8.6 (Business Continuity and Disaster Recovery);
- (c) reports that the Supplier is required to supply as part of the Management Information;
- (d) annual reports on the Insurances;
- (e) security reports; and
- (f) Force Majeure Event reports.

3. RECORDS

- 3.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Annex 1 (together 'Records'):
- (a) in accordance with the requirements of Good Industry Practice;
 - (b) in chronological order;
 - (c) in a form that is capable of audit; and
 - (d) at its own expense.
- 3.2 The Supplier shall make the Records available for inspection to the Customer on request, subject to the Customer giving reasonable notice.
- 3.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Customer.
- 3.4 The Supplier shall, during the Term and a period of at least seven (7) years following the expiry or termination of this Agreement, 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.
- 3.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least seven (7) years after the expiry or termination of this Agreement.
- 3.6 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 applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices or circulars to shareholders.

ANNEX 1: TRANSPARENCY REPORTS

TITLE	CONTENT	FORMAT	FREQUENCY
<i>(Performance)</i>			
<i>(Charges)</i>			
<i>(Major sub-contractors)</i>			
<i>(Technical)</i>			
<i>(Performance)</i>			

ANNEX 2: RECORDS TO BE KEPT BY THE SUPPLIER

The records to be kept by the Supplier are:

1. This Agreement, its Schedules and all amendments to such documents.
2. All other documents which this Agreement 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 any Expert.
5. All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT 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 Representative in connection with the provision of the Services.
8. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
9. Documents prepared by the Supplier in support of claims for the Charges.
10. Documents submitted by the Supplier pursuant to the Change Control Procedure.
11. Documents submitted by the Supplier pursuant to invocation by it or the Customer of the Dispute Resolution Procedure.
12. Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and the Guarantor, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
13. Invoices and records related to VAT sought to be recovered by the Supplier.
14. Financial records, including audited and un-audited accounts of the Guarantor and the Supplier.
15. 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.
16. All documents relating to the insurances to be maintained under this Agreement and any claims made in respect of them.
17. All journals and audit trail data referred to in Schedule 2.4 (*Security Management*).
18. All other records, notices or certificates required to be produced or maintained by the Supplier pursuant to this Agreement.

SCHEDULE 8.5: EXIT MANAGEMENT

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

Emergency Exit	any termination of this Agreement that is a: <ul style="list-style-type: none">(a) termination of the whole or part of this Agreement in accordance with Clause 33 (Termination Rights), except where the period of notice given under that Clause is greater than or equal to six (6) months;(b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 33 (Termination Rights); or(c) wrongful termination or repudiation of this Agreement by either Party.
Exclusive Assets	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services.
Exit Information	has the meaning given in Paragraph 3.1.
Exit Manager	the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties' respective obligations under this Schedule.
Net Book Value	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Customer of the same date as this Agreement.
Non-Exclusive Assets	those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services but which are also used by the Supplier or Key Sub-Contractor for other purposes of material value.
Ordinary Exit	any termination of this Agreement that occurs: <ul style="list-style-type: none">(a) pursuant to Clause 33 (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 6 months; or(b) as a result of the expiry of the Initial Term or any Extension Period.
Registers	the register and configuration database referred to in Paragraphs 2.1(a), 2.1(b) and 2.1(c).

Transferable Assets those of the Exclusive Assets that are capable of legal transfer to the Customer.

Transferable Contracts the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Customer or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation.

Transferring Contracts has the meaning given in Paragraph 6.2(c).

2. OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

2.1 During the Term, the Supplier shall:

- (a) create and maintain a register of all:
 - (i) Assets, detailing their:
 - (A) make, model and asset number;
 - (B) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
 - (C) Net Book Value;
 - (D) condition, physical location and status (including 'active,' 'lost' and 'stolen'); and
 - (E) use (including technical specifications); and
 - (ii) 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;
- (b) create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Customer 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;
- (c) provide regular updates, as directed by the Customer, to the 'National Grid Unified Configuration Management Database' (uCMDB);
- (d) agree the format of the Registers with the Customer as part of the process of agreeing the Exit Plan; and

- (e) at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.
- 2.2 The Supplier shall procure 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.
- 2.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within three (3) months of the Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall 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.

3. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 3.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Customer and its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Customer of any invitation to tender or to facilitate any potential Replacement Suppliers undertaking due diligence (or both):
 - (a) details of the Service(s);
 - (b) a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
 - (c) an inventory of Customer Data in the Supplier's possession or control;
 - (d) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - (e) a list of on-going and threatened disputes in relation to the provision of the Services;
 - (f) to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Agreement;
 - (g) a report in relation to the service performance covering the most recent twelve (12) month delivery period, including SLA and other performance achievements, details of Service Credits paid, current service issues and risks and current continuous service improvement activity;
 - (h) such other material and information as the Customer shall reasonably require,

(together, the 'Exit Information').

- 3.2 The Supplier acknowledges that the Customer may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Customer is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Customer may not under this Paragraph 3.2 disclose any Supplier's Confidential Information that is information relating to the Supplier's or its Sub-contractors' prices or costs), provided that such actual or prospective Replacement Supplier is under reasonable obligations of confidentiality and to only use such information for the purposes disclosed by the Customer.
- 3.3 The Supplier shall:
- (a) notify the Customer within five (5) Working Days of any material change to the Exit Information that may adversely affect the potential transfer or continuance of any Services and shall consult with the Customer regarding such proposed material changes; and
 - (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Customer.
- 3.4 The Supplier may charge the Customer for its reasonable additional costs to the extent the Customer requests more than four (4) updates in any six (6) month period.
- 3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
- (a) prepare an informed offer for those Services; and
 - (b) not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

4. EXIT PLAN

- 4.1 The Supplier shall, within three (3) months after the Effective Date, deliver to the Customer an Exit Plan that:
- (a) sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Customer or its Replacement Supplier on the expiry or termination of this Agreement;
 - (b) complies with the requirements set out in Paragraph 4.2; and
 - (c) is otherwise reasonably satisfactory to the Customer.
- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

4.3 The Exit Plan shall set out, as a minimum:

- (a) how the Exit Information is obtained;
- (b) 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 sub-contractors to provide the Services;
- (c) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
- (d) the management structure to be employed during the Termination Assistance Period;
- (e) 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;
- (f) 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);
- (g) the scope of the Termination Services that may be required for the benefit of the Customer (including such of the services set out in Annex 1 as are applicable);
- (h) a timetable and critical issues for providing the Termination Services;
- (i) any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
- (j) how the Termination Services would be provided (if required) during the Termination Assistance Period;
- (k) the support that the Supplier requires from the Customer or the Replacement Supplier (or both) to enable the Supplier to carry out its Exit Plan obligations;
- (l) procedures to deal with requests made by the Customer or a Replacement Supplier (or both) for Staffing Information pursuant to Schedule 9.1 (*Staff Transfer*); and
- (m) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier or the Customer (or both) with the aim of ensuring

that there is no disruption to or degradation of the Services during the Termination Assistance Period.

- 4.4 The Parties acknowledge that the migration of the Services from the Supplier to the Customer or its Replacement Supplier (or both) may be phased, such that certain of the Services are handed over before others.
- 4.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Customer for review. Within twenty (20) Working 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. If the Parties are unable to agree the contents of the revised Exit Plan within that twenty (20) Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

Finalisation of the Exit Plan

- 4.6 Within twenty (20) Working Days after service of a Termination Notice by either Party or 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. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 4.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working 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 of the Exit Plan, the Supplier shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

5. TERMINATION SERVICES

Notification of Requirements for Termination Services

- 5.1 The Customer shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a '**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 a Termination Notice. The Termination Assistance Notice shall specify:
 - (a) the date from which Termination Services are required;
 - (b) the nature of the Termination Services required; and

- (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than twelve (12) months after the date that the Supplier ceases to provide the Services.
- 5.2 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 Assistance Period

- 5.3 Throughout the Termination Assistance Period, or such shorter period as the Customer may require, the Supplier shall:
 - (a) continue to provide the Services (as applicable) and, if required by the Customer pursuant to Paragraph 5.1, provide the Termination Services;
 - (b) in addition to providing the Services and the 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 or its Replacement Supplier (or both);
 - (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 5.3(b) without additional costs to the Customer;
 - (d) provide the Services and the Termination Services at no detriment to the Target Performance Levels, except to the extent that the Parties agree otherwise in accordance with Paragraph 5.5; and
 - (e) at the Customer's request and on reasonable notice, deliver up-to-date Registers to the Customer.
- 5.4 Without prejudice to the Supplier's obligations under Paragraph 5.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 5.3(b) without additional costs to the Customer, any additional costs incurred by the Supplier in providing such reasonable assistance that is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.
- 5.5 If the Supplier demonstrates to the Customer's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) or the applicable Service Credits, or both, to take account of such adverse effect.

Termination Obligations

- 5.6 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 5.7 Upon termination or expiry (as the case may be) or 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 Termination Services and its compliance with the other provisions of this Schedule), the Supplier shall:
- (a) cease to use the Customer Data;
 - (b) provide the Customer or the Replacement Supplier (or both) with a complete and uncorrupted version of the Customer Data in electronic form (or such other format as reasonably required by the Customer);
 - (c) 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 all Customer Data and promptly certify to the Customer that it has completed such deletion;
 - (d) return to the Customer such of the following as is in the Supplier's possession or control:
 - (i) all copies of the Customer Software and any other software licensed by the Customer to the Supplier under this Agreement;
 - (ii) all materials created by the Supplier under this Agreement in which the IPRs are owned by the Customer;
 - (iii) any parts of the IT Environment and any other equipment which belongs to the Customer; and
 - (iv) any items that have been on-charged to the Customer, such as consumables;
 - (e) vacate any Customer Premises;
 - (f) provide access during normal working hours to the Customer or the Replacement Supplier (or both) for up to twelve (12) months after expiry or termination to:
 - (i) such information relating to the Services as remains in the possession or control of the Supplier that the Customer had the right to access or request under this Agreement prior to the date of termination; and
 - (ii) 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, provided that the Customer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 5.7(f)(i).

- (g) Upon termination or expiry (as the case may be) or 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 Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.
- (h) 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.

6. ASSETS, SUB-CONTRACTS AND SOFTWARE

6.1 Following notice of termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, without the Customer's prior written consent:

- (a) terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;
- (b) (subject to normal maintenance requirements) make material modifications to, or dispose of, any Exclusive Assets or acquire any new Exclusive Assets; or
- (c) terminate, enter into or vary any licence for software in connection with the Services.

6.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 5.3(e), the Customer shall provide written notice to the Supplier setting out:

- (a) which, if any, of the Transferable Assets the Customer requires to be transferred to the Customer or the Replacement Supplier (**'Transferring Assets'**);
- (b) which, if any, of:
 - (i) the Exclusive Assets that are not Transferable Assets; and
 - (ii) the Non-Exclusive Assets,
 the Customer or the Replacement Supplier requires the continued use of; and
- (c) which, if any, of Transferable Contracts the Customer requires to be assigned or novated to the Customer or the Replacement Supplier (the **'Transferring Contracts'**),

in order for the Customer or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Customer or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Customer or its Replacement Supplier (or both) to enable it to determine which Transferable Assets and Transferable Contracts the Customer or its Replacement Supplier requires to provide the Services or Replacement Services.

- 6.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Customer or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:
- (a) a Termination Payment is payable by the Customer to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or
 - (b) the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Agreement, in which case the Customer shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.
- 6.4 Risk in the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) on payment for the same.
- 6.5 Where the Supplier is notified in accordance with Paragraph 6.2(b) that the Customer or the Replacement Supplier (or both) requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- (a) use its reasonable endeavours to procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Customer) for the Customer or the Replacement Supplier (or both) to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
 - (b) procure a suitable alternative to such assets and the Customer or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 6.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Customer or the Replacement Supplier 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.
- 6.7 The Customer shall:
- (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
 - (b) once a Transferring Contract is novated or assigned to the Customer 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 the Replacement Supplier does the same.

- 6.8 The Supplier shall hold any Transferring Contracts on trust for the Customer until such time as the transfer of the relevant Transferring Contract to the Customer and/or the Replacement Supplier has been effected.
- 6.9 The Supplier shall indemnify the Customer (or the Replacement Supplier, or both, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Customer (or Replacement Supplier) pursuant to Paragraph 6.6 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract.

7. SUPPLIER PERSONNEL

- 7.1 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) shall apply.
- 7.2 The Supplier shall not take any step (expressly or implicitly or 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 or the Replacement Supplier.
- 7.3 During the Termination Assistance Period, the Supplier shall give the Customer and the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Customer or the Replacement Supplier (or both).
- 7.4 The Supplier shall 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.
- 7.5 The Supplier shall not for a period of twelve (12) months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Customer or the Replacement Supplier, except that this paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

8. CHARGES

- 8.1 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 in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.

- 8.2 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 8.3 Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Customer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.
- 9. APPORTIONMENTS**
- 9.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Customer and the Supplier and the Replacement Supplier and the Supplier (as applicable) as follows:
- (a) the amounts shall be annualised and divided by 365 to reach a daily rate;
 - (b) 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
 - (c) the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 9.2 Each Party shall pay (or the Customer shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 9.1 as soon as reasonably practicable.

ANNEX 1: SCOPE OF THE TERMINATION SERVICES

1. The termination services to be provided by the supplier shall include such of the following services as the customer may specify:
- 1.1
- (a) ceasing all non-critical Software changes (except where agreed in writing with the Customer);
 - (b) notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
 - (c) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Customer or the Replacement Supplier after the end of the Termination Assistance Period;

- (d) delivering to the Customer the existing systems support profiles, monitoring or system logs, problem tracking and resolution documentation and status reports all relating to the twelve (12) month period immediately prior to the commencement of the Termination Services);
- (e) providing details of work volumes and staffing requirements over the twelve (12) month period immediately prior to the commencement of the Termination Services;
- (f) 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;
- (g) providing the Customer with any problem logs which have not previously been provided to the Customer;
- (h) 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 six (6) months after the Termination Assistance Period;
- (i) providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services;
- (j) reviewing all Software libraries used in connection with the Services and providing details of these to the Customer and/or the Replacement Supplier;
- (k) making available to the Customer and/or the Replacement Supplier expertise to analyse training requirements relating to the Customer;
- (l) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- (m) generating a computer listing of any Source Code that the Supplier is required to make available to the Customer in accordance with Clause 17 in a form and on media reasonably requested by the Customer;
- (n) agreeing with the Customer a handover plan for all of the Supplier's responsibilities as set out in the National Grid Security Framework;
- (o) delivering copies of the production databases (with content listings) to the Customer's or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Customer;
- (p) assisting with the loading, testing and implementation of the production databases;
- (q) assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;

- (r) in respect of the maintenance and support of the Supplier System, providing historical performance data for the previous twelve (12) month period immediately prior to the commencement of the Termination Services;
- (s) 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 shall end on a date no later than the end of the Termination Assistance Period);
- (t) providing an information pack listing and describing the Services for use by the Customer in the procurement of the Replacement Services;
- (u) answering all reasonable questions from the Customer or the Replacement Supplier (or both) regarding the Services;
- (v) agreeing with the Customer or the Replacement Supplier (or both) a plan for the migration of the Customer Data to the Customer or the Replacement Supplier (or both);
- (w) providing access to the Customer or the Replacement Supplier (or both) 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 or the Replacement Supplier (or both):
 - (i) 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
 - (ii) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- (x) knowledge transfer services, including:
 - (i) transferring all training material and providing appropriate training to those Customer or Replacement Supplier (or both) staff responsible for internal training in connection with the provision of the Services;
 - (ii) providing for transfer to the Customer or the Replacement Supplier (or both) of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
 - (iii) providing the Supplier or the Replacement Supplier (or both) 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.

1.2 The Supplier shall:

- (a) provide a documented plan relating to the training matters referred to in Paragraph 1.1(k) for agreement by the Customer at the time of termination or expiry of this Agreement;
- (b) co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1(n), providing skills and expertise of a suitable standard; and
- (c) fully co-operate in the execution of the Customer Database migration plan agreed pursuant to Paragraph 1.1(w), providing skills and expertise of a reasonably acceptable standard.

1.3 To facilitate the transfer of knowledge from the Supplier to the Customer or its Replacement Supplier (or both), 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.

1.4 The information which the Supplier shall provide to the Customer or the Replacement Supplier (or both) pursuant to Paragraph 1.1(x) shall include:

- (a) copies of up-to-date procedures and operations manuals;
- (b) product information;
- (c) agreements with third party suppliers of goods and services that are to be transferred to the Customer or the Replacement Supplier;
- (d) 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;
- (e) 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;
- (f) details of physical and logical security processes and tools which will be available to the Customer; and
- (g) any relevant interface information.

1.5 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier or the Customer (or both) reasonable access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:

- (a) any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 1.5 shall:

- (i) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
 - (ii) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Customer deems reasonable; and
- 1.6 the Customer or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

SCHEDULE 8.6: BUSINESS CONTINUITY AND DISASTER RECOVERY

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

Business Continuity Plan	has the meaning given in Paragraph 2.2(a)(ii);
Business Continuity Services	has the meaning given in Paragraph 4.2(b);
Disaster	the occurrence of one or more events that, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for the period set out in the relevant Call-Off Agreement or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
Disaster Recovery Plan	has the meaning given in Paragraph 2.2(a)(iii);
Disaster Recovery Services	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
Disaster Recovery System	the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
Related Service Provider	any person who provides services to the Customer in relation to this Agreement from time to time.

2. BCDR PLAN

2.1 Within forty (40) Working Days from the Effective Date the Supplier shall prepare and deliver to the Customer for the Customer's written approval a plan that shall detail the processes and arrangements that the Supplier shall follow to:

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

2.2 The BCDR Plan shall:

- (a) be divided into three parts:
 - (i) Part A, which shall set out general principles applicable to the BCDR Plan;

- (ii) Part B, which shall relate to business continuity (the ‘Business Continuity Plan’); and
 - (iii) Part C, which shall relate to disaster recovery (the ‘Disaster Recovery Plan’); and
 - (b) unless otherwise required by the Customer in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4 and 5.
- 2.3 Following receipt of the draft BCDR Plan from the Supplier, the Customer shall:
- (a) review and comment on the draft BCDR Plan as soon as reasonably practicable; and
 - (b) notify the Supplier in writing that it approves or rejects the draft BCDR Plan no later than twenty (20) Working Days after the date on which the draft BCDR Plan is first delivered to the Customer.
- 2.4 If the Customer rejects the draft BCDR Plan:
- (a) the Customer shall inform the Supplier in writing of its reasons for its rejection; and
 - (b) the Supplier shall then revise the draft BCDR Plan (taking reasonable account of the Customer’s comments) and shall re-submit a revised draft BCDR Plan to the Customer for the Customer’s approval within twenty (20) Working Days of the date of the Customer’s notice of rejection. The provisions of Paragraph 2.3 and this Paragraph 2.4 shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3. PART A OF THE BCDR PLAN AND GENERAL PRINCIPLES AND REQUIREMENTS

3.1 Part A of the BCDR Plan shall:

- (a) set out how the business continuity and disaster recovery elements of the Plan link to each other;
- (b) provide details of how the invocation of any element of the BCDR Plan may affect the operation of the Services and any services provided to the Customer by a Related Service Provider;
- (c) 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;
- (d) detail how the BCDR Plan links and interoperates with any overarching or connected disaster recovery or business continuity plan of the Customer and any of its other Related Service Providers in each case as notified to the Supplier by the Customer from time to time;

- (e) contain a communication strategy including details of an incident and problem management service and advice and help desk facility that can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desktop configurations, where required by the Customer;
- (f) contain a risk analysis, including:
 - (i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (ii) identification of any single points of failure within the Services and processes for managing the risks arising from them;
 - (iii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider; and
 - (iv) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- (g) provide for documentation of processes, including business processes, and procedures;
- (h) set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Customer;
- (i) identify the procedures for reverting to 'normal service';
- (j) set out method(s) of recovering or updating data collected (or that ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
- (k) identify the responsibilities (if any) that the Customer has agreed it will assume in the event of the invocation of the BCDR Plan; and
- (l) 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:

- (a) the Services are provided in accordance with this Agreement at all times during and after the invocation of the BCDR Plan;
- (b) the adverse impact of any Disaster, service failure, or disruption on the operations of the Customer is minimal as far as reasonably possible;
- (c) it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force; and
- (d) there is a process for the management of disaster recovery testing detailed in the BCDR Plan.

3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.

3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators 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. BUSINESS CONTINUITY PLAN – 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, unless the Customer expressly states otherwise in writing:

- (a) the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
- (b) the steps to be taken by the 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:

- (a) address the various possible levels of failures of or disruptions to the Services;
- (b) set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the 'Business Continuity Services');
- (c) specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Business Continuity Plan; and
- (d) clearly set out the conditions or circumstances under which the Business Continuity Plan is invoked.

5. DISASTER RECOVERY PLAN – 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 be invoked only upon the occurrence of a Disaster.

5.3 The Disaster Recovery Plan shall include the following:

- (a) the technical design and build specification of the Disaster Recovery System;
- (b) details of the procedures and processes to be put in place by the Supplier 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:
 - (i) data centre and disaster recovery site audits;
 - (ii) backup methodology and details of the Supplier's approach to data back-up and data verification;
 - (iii) identification of all potential disaster scenarios;
 - (iv) risk analysis;
 - (v) documentation of processes and procedures;
 - (vi) hardware configuration details;
 - (vii) network planning including details of all relevant data networks and communication links;
 - (viii) invocation rules;
 - (ix) Service recovery procedures; and
 - (x) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
- (c) any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Recovery Plan;
- (d) 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;
- (e) access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- (f) testing and management arrangements.

6. REVIEW AND AMENDMENT OF THE BCDR PLAN

6.1 The Supplier shall review the BCDR Plan (and the risk analysis on which it is based):

- (a) on a regular basis and as a minimum once every six (6) months;

- (b) within three (3) calendar months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 8; and
 - (c) where the Customer requests any additional reviews (over and above those provided for in Paragraphs 6.1(a) and 6.1(b)) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Customer's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Customer for the Customer's approval. The Customer shall meet the costs of both Parties of any such additional reviews except that the Supplier shall not be entitled to charge the Customer for any costs that it may incur above any estimate without the Customer's prior written approval.
- 6.2 Each review of the BCDR Plan pursuant to Paragraph 6.1 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 that 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) that may increase the likelihood of the need to invoke the BCDR Plan. The Supplier shall complete the review 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 (a 'Review Report') setting out:
- (a) the findings of the review;
 - (b) any changes in the risk profile associated with the Services; and
 - (c) the Supplier's proposals (the '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 Following receipt of the Review Report and the Supplier's Proposals, the Customer shall:
- (a) review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
 - (b) notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Customer.

- 6.4 If the Customer rejects the Review Report or the Supplier's Proposals (or both, or any of them):
- (a) the Customer shall inform the Supplier in writing of its reasons for its rejection; and
 - (b) the Supplier shall then revise the Review Report or Supplier's Proposals as the case may be (taking reasonable account of the Customer's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report or revised Supplier's Proposals (or both) to the Customer for the Customer's approval within twenty (20) Working Days of the date of the Customer's notice of rejection. The provisions of Paragraph 6.3 and this Paragraph 6.4 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 6.5 The Supplier shall as soon as is reasonably practicable after receiving the Customer's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

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 that 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 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.
- 7.4 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.

- 7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Customer a report setting out:
- (a) the outcome of the test;
 - (b) any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - (c) the Supplier's proposals for remedying any such failures.
- 7.6 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.
- 7.7 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 Agreement.
- 7.8 The Supplier shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Customer.

8. INVOCATION OF THE BCDR 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 invoke or test the BCDR Plan only with the prior consent of the Customer.

SCHEDULE 8.7: CONDUCT OF CLAIMS

1. INDEMNITIES

- 1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Agreement (the 'Indemnifier'), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the 'Beneficiary').
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement (a 'Claim'), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within ten (10) Working Days of receipt of the same.
- 1.3 Subject to Paragraphs 2, on the giving of a notice by the Beneficiary, 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 cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 2.2, the Beneficiary shall not make any admission that could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
- (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute;
 - (c) 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
 - (d) the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 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:
- (a) the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
 - (b) the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within ten (10) Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or

- (c) the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

2. SENSITIVE CLAIMS

- 2.1 With respect to any Claim that the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a 'Sensitive Claim'), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only 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 it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount that would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 2.2 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 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

3. RECOVERY OF SUMS

- 3.1 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 that is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall immediately repay to the Indemnifier whichever is the lesser of:
 - (a) 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
 - (b) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

4. MITIGATION

- 4.1 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.

SCHEDULE 9.1: STAFF TRANSFER

DEFINITIONS AND INTERPRETATION

In this Schedule, the following words and expressions have the following meanings:

Applicable Law	any (a) statute, statutory instrument, bye-law, order, directive, treaty, decree or law; (b) rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body; and (c) industry code of conduct or guideline, which relates to this Agreement, the Services or the activities of which the Services are wholly or partly comprised or to the Customer's business.
Staffing Information	Staffing Information regarding the Transferring Employees
Employment Costs	all salaries, wages, commissions, bonuses, statutory contributions, holiday pay (including payment for accrued but untaken holiday), national insurance contributions, contributions to retirement benefit schemes, taxation (including all income tax deductible under PAYE) and all other employment costs (such as the provision of non-pecuniary benefits)
Final Supplier Staffing Information	<ul style="list-style-type: none">(a) the Supplier Staff List(b) Staffing Information regarding Supplier Personnel on the Supplier Staff List;(c) any additional material terms and conditions of employment and/or Employment Costs of persons listed on the Supplier Staff List;(d) any additional information provided under paragraph 3.8(b); and(e) a list of any Supplier Personnel alleged by the Supplier not to be Re-Transferring Employees
Further Transfer Date	the date on which the Services (or any part of them) cease to be provided by the Supplier (or the relevant Supplier Party (as the case may be)) and Replacement Services start to be performed by the Customer, any other Service Recipient or any Replacement Supplier.
New Employer	such of the Customer, the Replacement Supplier or another Service Recipient to whom Supplier Personnel will transfer under TUPE on a Further Transfer Date.

Outgoing Service Provider Personnel	those individuals whose employment will transfer to the Supplier on or around the Service Commencement Date by operation of TUPE.
Outgoing Supplier	means the organization identified by the Parties in the relevant Call-Off Agreement.
Partial Termination Date	the date on which part of this Agreement terminates following exercise by the Customer of its right to terminate
Recoverable liabilities	all losses, liabilities, indemnified costs, damages and expenses that the indemnified person does or will incur or suffer, all claims or proceedings made, brought or threatened against the indemnified person or any person and all losses, liabilities, indemnified costs, damages and expenses the indemnified person does or will suffer as a result of defending or settling any such actual or threatened claim or proceeding.
Relevant EL Policy	any contract of insurance remaining in force at the Relevant Transfer Date (a) giving indemnity against liability as an employer including employer's liability; (b) being a permanent health or prolonged disability policy covering employees performing the Services; or (c) being an employment protection policy, in all cases where the benefit of such contracts are deemed to transfer to the Supplier pursuant to TUPE.
Relevant Transfer Date	the Service Commencement Date or such other date determined under the law relating to TUPE as being the date of the Relevant Transfer.
Replacement Services	services the same as or substantially similar to the Services (or any part of them) or which will, or may, be received in place of or substitution for the Services or otherwise have the same or similar use, application or outputs as the Services (or any part of them).
Replacement Supplier	any replacement supplier or provider appointed (or proposed to be appointed) by the Customer, any other Service Recipient or any other member of the Customer's group to provide Replacement Services.
Re-Transferring Employees	any Supplier Personnel who are wholly or mainly assigned to the relevant Services immediately before the Further Transfer Date and whose employment contract will transfer to the New Employer pursuant to TUPE with effect from the Further Transfer Date.
Service Commencement Date	the date specified in the relevant Call-Off Agreement.

Services

All services, responsibilities, processes and functions to be provided by or on behalf of the Supplier:

- (a) that are set out, or referred to, in this Agreement; and/or
- (b) would commonly be expected to be performed or fulfilled by a supplier undertaking services which are the same as or similar to any of the services expressly referred to in this Agreement on behalf a customer in the industry AND/OR relate to, are incidental, ancillary or necessary to ensure the proper performance of the services, responsibilities, processes and/or functions referred to in (a) and (b) above, whether or not expressly referred to in this Agreement.

Staffing Information

in respect of each relevant individual (subject to Data Protection Legislation) information including but not limited to the following:

- (a) identity and job title;
- (b) role profile;
- (c) place of work;
- (d) date of commencement of continuous employment;
- (e) date of birth;
- (f) basic pay;
- (g) variable pay (including scale, method of calculation and intervals of payment);
- (h) all relevant contractual or non-contractual termination or severance arrangements (including the method of calculation of any termination or redundancy payments);
- (i) all benefits contractual or non-contractual including pension, bonus options, equity participation and any other incentive schemes;
- (j) contractual holiday entitlements and any additional holiday days purchased;
- (k) notice periods;

- (l) copy of employment contract or applicable standard terms and employee handbook;
- (m) contractual hours of work;
- (n) details of the relevant employee representative body or bodies and relevant collective agreements;
- (o) any loans or educational grants;
- (p) for those employees who are foreign nationals the country of citizenship, immigrant status and all documentation required by Applicable Law to demonstrate a right to work in the United Kingdom;
- (q) information on any disciplinary or grievance procedure taken against or by an employee in the two years immediately preceding the information being provided;
- (r) information about any tribunal claims in the immediately preceding two years or whether there are reasonable grounds to believe a claim may be brought;
- (s) terms of any outstanding retention bonus (including a payment schedule with amounts specified)

Supplier Personnel	any person employed or engaged by any Supplier Party who is wholly or partly engaged in the provision of the Services.
Supplier Party	the Supplier, all members of the Supplier's group that are engaged in the provision of the Services or otherwise in the performance of this Agreement or any sub-contractors authorised by the Customer.
Supplier Staff List	a list of Supplier Personnel prepared by or on behalf of the Supplier who are wholly or mainly assigned to work in the provision of the Services (or part) and who are liable to transfer to the New Employer pursuant to TUPE on a Future Transfer Date.
Term	the period starting with the date of this Agreement and ending on the Termination Date.
Termination Date	the date on which the Services or part of the Services provided under this Agreement expire or terminate for whatever reason.

Termination Notice Date	the date on which notice is served by either of the Parties to terminate this Agreement or part of it in accordance with its terms.
Termination Notice Period	the period starting on the Termination Notice Date and ending on the Termination Date.
Transferring Employees	Outgoing Service Provider Personnel transferring to the Supplier (or the relevant Supplier Party as applicable) under paragraph 2.1 on the Relevant Transfer Date.
Transferring Services	the services performed by the Transferring Employees immediately prior to the Relevant Transfer Date in connection with the undertaking transferred on that date to the Supplier (or as applicable any Supplier Party) under TUPE.
TUPE	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) or any subsequent Applicable Law replacing these Regulations that broadly replicates them.
Unexpected Customer Personnel	any person who is not one of the Transferring Employees but who claims that, as a result of the Parties entering into this Agreement, his contract of employment has transferred to the Supplier (or a relevant Supplier Party) pursuant to TUPE

1. OUTGOING SERVICE PROVIDER PERSONNEL AND THE APPLICATION OF TUPE

- 1.1 The Parties believe that, pursuant to TUPE, on the Service Commencement Date the Supplier will become the employer of the Outgoing Service Provider Personnel.
- 1.2 All Employment Costs (whether or not due for payment at the relevant date) in respect of:
 - (a) the Outgoing Service Provider Personnel shall be the responsibility of the Outgoing Supplier up to the Relevant Transfer Date; and
 - (b) the Outgoing Service Provider Personnel shall be the responsibility of the Supplier on and from the Service Commencement Date and for so long as they remain employed by the Supplier up to and including the Further Transfer Date.
- 1.3 The Supplier shall provide the Outgoing Supplier as soon as practicable but in any event in good time before the Service Commencement Date with all information which the Outgoing Supplier may require to enable it to comply with its information and consultation obligations under TUPE.
- 1.4 The Supplier undertakes to honour the provisions of TUPE and accept the Outgoing Service Provider Personnel into its employment with effect from the Service Commencement Date on terms and conditions of employment which are

substantially the same terms and conditions and no less favourable overall than those which they enjoyed immediately prior to the Service Commencement Date (other than as relate to any occupational pension scheme (as defined in TUPE) with respect to which paragraph 2.2 shall apply).

2. OUTGOING SERVICE PROVIDER PERSONNEL AND PROVISION OF THE SERVICES

2.1 On and from the Service Commencement Date the Supplier shall assume full responsibility for:

- (a) the management and employment of the Outgoing Service Provider Personnel (including all Employment Costs) and
- (b) the acts and omissions of the Outgoing Service Provider Personnel in the provision of the Services,

and the Outgoing Service Provider Personnel shall on that date become part of the Supplier Personnel.

2.2 The Supplier shall indemnify the Customer (and each relevant Outgoing Service Provider) against all Recoverable Liabilities, in each case arising out of or in connection with:

- (a) any act, omission or default by or on behalf of the Supplier or any other Supplier Party on or after the Service Commencement Date in respect of any person employed or engaged by it or any other Supplier Party (including any of the Outgoing Service Provider Personnel);
- (b) the employment or termination of employment by the Supplier or any other Supplier Party of any of the Outgoing Service Provider Personnel (whether or not terminated by notice and, if so terminated, whenever that notice expires) on or from the Service Commencement Date;
- (c) any failure by the Supplier or any other Supplier Party to inform or consult appropriate representatives as required under TUPE and/or any failure or delay by the Supplier or any other Supplier Party to provide sufficient information to the Outgoing Service Provider to enable it to comply with its information and consultation obligations under TUPE;
- (d) any claim brought or other action taken by or on behalf of any of the Outgoing Service Provider Personnel which arises from or in connection with (directly or indirectly) any act or omission and/or communication made to the Outgoing Service Provider Personnel before the Relevant Transfer Date by, on behalf of and/or at the instruction of the Supplier or any other Supplier Party including any claim under Regulations 4(9) or 4(11) of TUPE; and
- (e) any claim by any person employed or engaged by the Supplier or any other Supplier Party that during the Term their employment transferred under TUPE to the Customer.

3. PROVISIONS ON TERMINATION OF THIS AGREEMENT (IN WHOLE OR IN PART)

- 3.1 This Agreement envisages that subsequent to the date upon which it is entered into, the identity of the provider of the Services (or any part) may change as a result of termination of this Agreement (or part) or otherwise and that this may give rise to a subsequent transfer of services in whole or in part to a New Employer as at the Further Transfer Date. In such event, the Supplier shall:
- (a) no later than 21 days following written notification from the Customer that such an event may occur; and
 - (b) at any other time within 21 days of a request by the Customer;
- provide the Customer, any other Service Recipient or the Replacement Supplier if so directed by the Customer (to the extent permitted by law), in writing and in such form as the Customer reasonably requires, with the Supplier Staff List and Staffing Information in respect of all Supplier Personnel.
- 3.2 The Supplier shall notify the Customer in writing in as much detail as possible as soon as practicable and in any event within 21 days of the Supplier (or any other Supplier Party) becoming aware of any additional or new applicable Staffing Information and/or any changes to any Staffing Information already provided.
- 3.3 The Supplier undertakes to the Customer and the New Employer that any Staffing Information which it or any Supplier Party supplies (including any copies of it) shall be complete and accurate in all material respects.
- 3.4 Subject to paragraph 3.2, the Supplier shall provide the New Employer with the Final Supplier Staffing Information not less than 28 days before the Termination Date.
- 3.5 During the Termination Notice Period the Supplier undertakes to the Customer and any New Employer that it shall not (and shall procure that no other Supplier Party shall) without the prior written consent of the Customer:
- (a) terminate or give notice to terminate the employment or engagement of, or replace, any Supplier Personnel other than on the grounds of gross misconduct;
 - (b) deploy or assign any person to perform the Services (or relevant part) who is not listed in the Supplier Staff List;
 - (c) increase the total number of employees listed on the Supplier Staff List;
 - (d) make, propose or permit any changes to the terms and conditions of employment or engagement of Supplier Personnel;
 - (e) increase or reduce to any significant degree the proportion of working time spent on the Services by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed with the Customer;

- (f) introduce any new contractual or customary practice (including for the avoidance of doubt any payments on termination of employment) applicable to Supplier Personnel;

or agree to do any of the above.

- 3.6 The Supplier shall promptly notify the Customer in writing of any notice of resignation received from any person listed on the most recent Supplier Staff List during the period referred to in paragraph 3.5 regardless of when such notice takes effect.
- 3.7 The Supplier confirms that the Customer shall, subject to compliance with any Applicable Laws or official guidance relating to data protection, be permitted to disclose any information provided to it under this paragraph 3 in summary and/or anonymised form to any person who has been invited to tender for the provision of the Services (or similar services) and to any New Employer in jurisdictions where the provisions of TUPE apply.
- 3.8 The Parties acknowledge that TUPE is likely to apply on the expiration or termination (or partial termination) of this Agreement and/or the appointment of a Replacement Supplier to provide all or any part of the Replacement Services and agree that:
 - (a) the contracts of employment of all the Re-Transferring Employees shall have effect from the Further Transfer Date as if originally made between the Re-Transferring Employees and the New Employer (except in relation to rights under any occupational pension scheme excluded under Regulation 10 of TUPE which shall be treated in accordance with the provisions of the Pensions Act 2004, any regulations thereunder, and in particular the Transfer of Employment (Pension Protection) Regulations 2005 as amended);
 - (b) during the period commencing on the Termination Notice Date and ending on the Further Transfer Date the Supplier shall:
 - (i) promptly provide the New Employer with access to such employment records as the New Employer may require to put in place the administrative arrangements for the transfer of the contracts of employment of the Re-Transferring Employees to the New Employer;
 - (ii) allow the New Employer to have copies of any of the documents referred to in paragraph 3.8(b)(i); and
 - (iii) provide all original employment records relating to the Re-Transferring Employees to the New Employer.
- 3.9 In respect of the Re-Transferring Employees the Parties agree that all Employment Costs shall be apportioned on a time basis (regardless of when such sums fall to be paid) as follows:
 - (a) up to and including the Further Transfer Date the Supplier (or the relevant Supplier Party (as appropriate)) shall be responsible for the Employment Costs;

- (b) after the Further Transfer Date the New Employer shall be responsible for the Employment Costs

except that there shall be no apportionment in respect of holiday entitlements. The Supplier shall procure that each relevant Supplier Party complies with this paragraph 3.9.

3.10 The Supplier shall indemnify the New Employer on demand against all Recoverable Liabilities, in each case arising out of or in connection with:

- (a) any act, omission or default by or on behalf of the Supplier (or any relevant Supplier Party) in respect of any person who is or was employed or engaged by the Supplier (or any relevant Supplier Party), except in the case of the Re-Transferring Employees where the Supplier's indemnity shall only apply in respect of such employees insofar as and to the extent that any such act, omission or default occurred on or before the Further Transfer Date or was undertaken by, on behalf of or at the instruction of the Supplier (or any relevant Supplier Party);
- (b) the employment or termination of employment by the Supplier (or any relevant Supplier Party) of any of the Re-Transferring Employees up to and including the Further Transfer Date;
- (c) the Supplier's (or any relevant Supplier Party's) breach of its obligation to inform or consult appropriate representatives as required under TUPE (except to the extent that any such action or claim or part of any such action or claim arises from any failure by the New Employer to give the Supplier (or the relevant Supplier Party) the information required from it or them to enable the Supplier (or the relevant Supplier Party) to comply with its obligations under TUPE);
- (d) any breach by the Supplier (or any relevant Supplier Party) of its obligation to provide employee liability information to the New Employer in accordance with Regulation 11 of TUPE;
- (e) any claim or proceeding made, brought, threatened by or on behalf of any of the Supplier Personnel which arises from or in connection with (directly or indirectly) any act or omission and/or communication made to any of them before the Further Transfer Date by, on behalf of and/or at the instruction of the Supplier (or any relevant Supplier Party) including any claim under Regulations 4(9), 4(11) or 7(1) of TUPE; and
- (f) any claim or proceeding made, brought or threatened by or on behalf of any of the Supplier Personnel which arises from or in connection with (directly or indirectly) the transfer of any benefits on early retirement or redundancy or to a set amount of employer contributions resulting from the Supplier Personnel having been a member of an occupational pension.

3.11 If any person who is not a Re-Transferring Employee claims that their contract of employment has transferred to the New Employer pursuant to TUPE the following provisions shall apply:

- (a) the Customer shall (or if the Customer is not the New Employer, shall use its reasonable endeavours to procure that the New Employer shall) notify the Supplier in writing within seven days of becoming aware of such claim;
- (b) within 14 days of such notification, the Supplier (or the relevant Supplier Party) may either offer employment to that person or take, at its own cost, such other steps as it considers necessary to effect a written withdrawal of that person's claim;
- (c) if the Supplier (or the relevant Supplier Party) offers employment to that person and that offer of employment is accepted, the Customer shall (or if the Customer is not the New Employer, the Customer shall at the Supplier's request use its reasonable endeavours to procure that the New Employer shall) immediately release that person from his employment or purported employment; and
- (d) if the Supplier (or the relevant Supplier Party) makes no offer of employment or makes an offer of employment which is not accepted within 28 days of the date on which the Supplier was notified by the Customer of the claim then, unless the person withdraws his claim upon expiry of the 28 day period, the person shall be deemed to have transferred employment to the New Employer and the New Employer may give notice to terminate that employment of that person within seven days, provided that the Customer shall (or if the Customer is not the New Employer, the Customer shall at the Supplier's request use its reasonable endeavours to procure that the New Employer shall) give that person notice of termination in accordance with his contract of employment and any relevant statutory rights, or make a payment in lieu of notice based on and in accordance with that person's statutory and contractual entitlements.

3.12 The Supplier shall indemnify the New Employer on demand against all Recoverable Liabilities, in each case arising out of or in connection with:

- (a) the termination of employment of any person claiming employment by the New Employer in accordance with paragraph 3.11;
- (b) any claim for Employment Costs by any person claiming employment by the New Employer in accordance with paragraph 3.11; and
- (c) acts or omissions (other than of the New Employer) in relation to any person claiming employment by the New Employer in accordance with paragraph 3.11, including any alleged failure to properly inform and consult with them save that no obligation to indemnify shall arise in respect of any period where such person provide services at the request of the New Employer;

provided that at all times the Customer shall (or if the Customer is not the New Employer, the Customer shall use its reasonable endeavours to procure that the

New Employer shall) use take all reasonable steps not to increase the value of the indemnity arising under this clause.

SCHEDULE 9.2: KEY PERSONNEL

1. KEY PERSONNEL

- 1.1 The details of the Key Personnel shall be agreed and documented in the onboarding plan.

KEY ROLE	Name of KEY Personnel	Responsibilities/ Authorities	Phase of the project during which that person will be a MEMBER OF Key Personnel	MINIMUM PERIOD in Key Role

SCHEDULE 10: APPROVED SUB-CONTRACTORS

The Supplier may use the following Sub-contractors to provide the corresponding elements of the Services:

Name of Sub-contractor	Company registered number	Registered office	Elements of the Services to be provided	Duration of appointment