

DATED _____ 2025

(1) NORFOLK COUNTY COUNCIL

AND

(2) [_____]

AGREEMENT FOR THE PROVISION OF

AN EDUCATION SOFTWARE SOLUTION

nplaw
Public Sector Legal Expertise

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THIS AGREEMENT is made on

2025

BETWEEN

- (1) **NORFOLK COUNTY COUNCIL** of County Hall, Martineau Lane, Norwich, Norfolk, NR1 2DH (“**Authority**”); and
- (2) [**NAME OF THE PROVIDER**] a company registered in [*England and Wales*] under company number [] whose registered office is at [] (the “**Provider**”)

(each a “**Party**” and together the “**Parties**”).

INTRODUCTION

- (A) The Authority wishes to procure an Education Software Solution along with implementation and maintenance.
- (B) On [DATE] the Authority advertised in the Finder a Tender Service (reference [insert reference]), inviting prospective Providers to submit proposals for the Education Software Solution [].
- (C) The Provider is a leading provider of Education Software systems and implementation services and has experience in the supply and implementation of Education Software Solutions.
- (D) On the basis of the Provider's response to the advertisement and a subsequent tender process, the Authority selected the Provider as its preferred Provider.
- (E) The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

IT IS AGREED as follows:

1. GENERAL PROVISIONS

1.1 Definitions

In the Agreement, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

"Acceptance"

in respect of a Deliverable and/or the Solution (or relevant part of it) shall mean that the Deliverable and/or the Solution (or relevant part of it) concerned has satisfied the Acceptance Criteria applicable to the Acceptance Testing being performed in respect of that Deliverable and/or the Solution (or relevant part of it) and (where applicable) the Authority has issued a Test Certificate in accordance with Schedule A in respect of that Deliverable and/or the Solution (or relevant part of it) and "Accept", "Accepted" and related expressions shall be construed accordingly;

"Acceptance Criteria"

the test criteria specified in Schedule A or determined in accordance with the Agreement or as agreed in writing by the parties (as the case may be) as being applicable to the relevant Deliverable and/or Solution (or the relevant part of it), which must be met for the relevant Deliverable and/or Solution (or the relevant part of it) to pass the Acceptance Tests to which they relate. For the avoidance of doubt, a Deliverable and the Solution as a whole may be subject to a number of different sets of Acceptance Tests in the course of its development, each of which may be subject to different Acceptance Criteria;

"Acceptance Tests"

such tests as are specified in Schedule A or determined in accordance with the Agreement or as agreed in writing by the parties (as the case may be) as being applicable to the relevant Deliverable and/or Solution (or relevant part of them) as the case may be and which shall comply with and be carried out in accordance with the provisions of Schedule A (Standard Form Acceptance Procedures)

	or as otherwise agreed in writing by the parties or determined in accordance with the Agreement (as the case may be). "Acceptance Testing" and related expressions shall be construed accordingly;
"Achieve"	in respect of a Milestone means the satisfaction of the relevant Milestone achievement criteria applicable to that Milestone as set out in Schedule A or determined in accordance with the Agreement or as agreed in writing between the parties (as the case may be), which shall include the Acceptance of all of the Deliverables that are required to be delivered under that Milestone. "Achievement" and other related expressions shall be construed accordingly;
["Achieved KPI"	the level of performance achieved by the Provider against any given KPI;]
"Achievement Certificate"	the achievement certificate issued by the Authority to the Provider where all of the Deliverables required to have been provided under a Milestone have been provided so that they satisfy all of the Acceptance Criteria applicable to them and all Test Certificates have been issued in respect of them;
"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;
"Affiliate"	in relation to a body corporate, means any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;

"Agreement"	means the written agreement between the Authority and the Provider consisting of the Specification, these terms and conditions and the schedules to them (as such schedules have been duly completed and attached to the Specification);
"Agreement Year"	means each successive 12month period commencing on the Commencement Date and each subsequent anniversary of that date. For the purposes of clause 28, Agreement Years shall continue to run following the termination or expiry of the Agreement. For all other purposes the last Agreement Year shall end on the last day of the Term;
"AI System"	the theory and development of computer systems able to perform tasks normally requiring human intelligence, such as visual perception, speech recognition, decision-making, and translation between languages;
"Assets"	all assets and rights used by the Provider to provide the Services in accordance with this Agreement but excluding the Authority Assets;
"ATP Milestone"	the Milestone linked to Authority to Proceed for the relevant Services set out in the Implementation Plan;
"Auditor"	means the National Audit Office, Audit Scotland, Audit Wales or the Northern Ireland Audit Office (as applicable), or an auditor appointed by the Authority as the context requires and who (in so far as such an appointment is within the control of the Authority) shall not be a direct competitor to the Provider;

“ATP Milestone”	the Milestone linked to Authority to Proceed for the relevant Services set out in the Implementation Plan;
“Authorised Users”	those directors, officers, employees, agents, consultants and contractors of the Authority and Service Beneficiaries who are authorised by the Authority to use the Software, Services and Documentation;
“Authority”	Norfolk County Council and any successor or successors in title;
“Authority Assets”	the Authority Materials, the Authority (and Service Beneficiary) infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority (or Service Beneficiary) and which is or may be used in connection with the provision or receipt of the Services;
“Authority Background IPRs”	<p>(a) IPRs owned by the Authority (or applicable Service Beneficiary) before the Effective Date, including IPRs contained in any of the Authority's Know-How, documentation, processes and procedures;</p> <p>(b) IPRs created by the Authority (or any Service Beneficiary) independently of this Agreement; and/or</p> <p>(c) Crown Copyright which is not available to the Provider otherwise than under this Agreement,</p>

	but excluding IPRs owned by the Authority (or any Service Beneficiary) subsisting in Authority Software;
“Authority Cause”	<p>any material breach by the Authority of any of the Authority Responsibilities, except to the extent that such breach is:</p> <p>(a) the result of any act or omission by the Authority to which the Provider has given its prior consent; or</p> <p>caused by the Provider, any Sub-contractor or any Provider Personnel;</p>
“Authority Data”	<p>(b) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Provider by or on behalf of the Authority (or any Service Beneficiary); and/or</p> <p>(ii) which the Provider is required to generate, process, store or transmit pursuant to this Agreement; or</p> <p>any Personal Data for which the Authority (or any Service Beneficiary) is the Controller;</p>
“Authority Materials”	the Authority Data together with any materials, documentation, information, programs and codes

supplied by the Authority (and Service Beneficiary) to the Provider, the IPRs in which:

- (a) are owned or used by or on behalf of the Authority (or any Service Beneficiary); and
- (b) are or may be used in connection with the provision or receipt of the Services,

but excluding any Project Specific IPRs, Specially Written Software, Provider Software, Third Party Software and Documentation relating to Provider Software or Third Party Software;

“Authority Responsibilities” the responsibilities of the Authority specified in this Agreement, but excluding any set out in Schedule I (Authority Responsibilities);

“Authority Software” software which is owned by or licensed to the Authority (or, as applicable, a Service Beneficiary) (other than under or pursuant to this Agreement) and which is or will be used by the Provider for the purposes of providing the Services;

“Authority System” the Authority's (and any applicable Service Beneficiary) computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority (and Service Beneficiary) or the Provider in connection with this Agreement which is owned by Authority (or applicable Service Beneficiary) or licensed to it by a third party and which interfaces with the Provider System or which is necessary for the Authority (and any applicable Service Beneficiary) to receive the Services;

“Authority to Proceed” or “ATP”	the authorisation to the Provider to commence the provision of the relevant Services to the Authority, provided by the Authority in the form of a Milestone Achievement Certificate in respect of the ATP Milestone;
"Business Continuity and Disaster Recovery Plan" or “BCDR Plan”	means the business continuity and disaster recovery plan as set out in Schedule H as amended from time to time in accordance with the Agreement;
“Change Control Procedure”	the procedure set out in clause 17 (Change);
“Change in Law”	any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
“Change Request”	has the meaning given in clause 17 (Change);
“Change Request Information”	has the meaning given in clause 17 (Change);
“Charges”	the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule C (Charges and Rates), including any Milestone Payment or Service Charge;
“Commercially Sensitive Information”	the information listed in Schedule J (Provider Solution) comprising the information of a commercially sensitive nature relating to the pricing of the Services, details of the Provider’s IPRs or its business and investment plans or which the Provider has indicated to the Authority that, if disclosed by the Authority, would cause the Provider significant commercial disadvantage or material financial loss;
“Confidential Information”	(a) Information, including all Personal Data, which (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 and/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,

but not including any Information which:

- (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 Provider's:
 - (a) performance under this Agreement; or

	(b) failure to pay any Sub-contractor;
"Contract Year"	<p>(a) a period of twelve (12) months commencing on the Effective Date; or</p> <p>(b) thereafter a period of twelve (12) months commencing on each anniversary of the Effective Date,</p> <p>provided that the final Contract Year shall end on the expiry or termination of the Term;</p>
"Control"	the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and " Controls " and " Controlled " shall be interpreted accordingly;
"Controller"	has the meaning given in the GDPR;
"COTS Software"	Provider COTS Software and Third Party COTS Software;
"CPP Milestone"	a contract performance point as set out in the Implementation Plan, being the Milestone at which the Provider has demonstrated that the Provider Solution or relevant Service is working satisfactorily in its operating environment in accordance with Schedule A;
"Critical Performance Failure"	as specified in the Appendix;
"Cybersecurity requirements"	all laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions, applicable to either

	party, relating to security of network and information systems and security all as amended or updated from time to time;
“Dependencies”	means any of the dependencies set out under that title in Schedule A and/or the Specification;
“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> <p>(a) in the case of the Authority, of its employees, servants, agents; or</p> <p>(b) in the case of the Provider, of its Sub-contractors or any Provider Personnel,</p> <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>
“Delay”	<p>a delay in the Achievement of a Milestone by its Milestone Date; or</p> <p>a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;</p>
“Deliverable”	an item or feature (including all components of the System) delivered or to be delivered by the Provider at or before a Milestone Date or at any other stage during the performance of this Agreement;
“Deposited Software”	has the meaning given to it in clause 23 (Escrow);

"Documentation"	means the standard documentation produced by the Provider for use with the Solution;
"Due Diligence Information"	means any information supplied to the Provider by or on behalf of the Authority prior to the Call Off Commencement Date;
"Enhancement"	means (i) additional or amended Software (including a patch or fix) which corrects bugs or errors in the relevant Software, increases its protection against unauthorised penetration, maintains interoperability with the relevant operating systems and Software, or otherwise improves the operation of the Software; and (ii) any new version or release of the Software that is generally made available to the Provider's other Authorities. For the avoidance of doubt, each Enhancement shall be provided free of charge;
"Enhancement Implementation Period"	means the period of twelve (12) months (or such shorter period as is specified in the Specification, provided that the period shall not be shorter than 6 months) after the Provider notifies the Authority that such Enhancement is available;
["Escrow Agent"]	[NAME OF ESCROW AGENT];]
["Escrow Agreement"]	an escrow agreement in the form attached to this licence as set out in Schedule K which is to be entered into by the parties and the Escrow Agent in accordance with clause 22;]
"Estimated Year 1 Charges"	has the meaning given to it in the Specification;
"Exit Management Plan"	means the plan for the orderly transfer of the Services to a new provider which shall be generated

	in accordance with this Agreement, as updated from time to time in accordance with the Agreement;
"Expert Determination"	means the determination of a dispute by an expert following the procedure detailed in clause 37;
"Extension Period"	has the meaning given to it in clause 2.2;
"Final Acceptance"	final acceptance of a Solution by the Authority following successful completion of all applicable Acceptance Tests and the Authority issuing an Achievement Certificate to the Provider in respect of that Solution, as described in Schedule A;
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
"Force Majeure Event"	<p>means any event or occurrence which is outside the reasonable control of the party concerned and which is not attributable to any act or failure to take preventative action by that party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:</p> <ul style="list-style-type: none"> (a) any industrial action occurring within the Provider's or any sub-contractor's organisation; or (b) the failure by any sub-contractor to perform its obligations under any sub-contract unless that is itself caused by an

event that would be a Force Majeure Event had it occurred to the Provider;

"Fraud"	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Agreement or defrauding or attempting to defraud or conspiring to defraud a Contracting Authority or the Authority;
"Fund Records"	means data, membership records, correspondence, documents, information, statements and other papers and records relating to the pension fund(s) whose administration is managed using the Solution from time to time;
"Go Live Dates"	means, in respect of each Live Operational Environment, the respective first use of the Solution after Final Acceptance has taken place, and for the avoidance of doubt, all Go Live Dates shall be prior to the [X] July 2026.
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;
"Hosted Solution"	means a Solution that is hosted by the Provider on IT infrastructure provided by the Provider (or by a third party hosting service provider on behalf of the Provider) and made available for use by the Authority on a remote access basis as specified in the Specification;

"Implementation Plan"	where: (i) an implementation plan has been set out in Schedule D, shall mean the document with that title set out in Schedule D; (ii) an implementation plan is to be developed under the Agreement, shall mean the implementation plan agreed in writing by the parties (or determined in accordance with the Agreement as the case may be), and which specifies the timing and sequence of events for the performance of the Services required to develop (where any development is required) and implement the Solution and the delivery of associated Deliverables;
"Initial Period"	has the meaning given in clause 2.1;
"Inherent Fault"	any material failure of the Third Party COTS Software to provide the functionality set out in, or operate in accordance with, its published specifications, excluding any failures arising from the Provider's performance or non-performance of the Services;
"Information"	has the meaning given under section 84 of the FOIA;
"Information Assurance Questionnaire"	The Questionnaire set out at Schedule [X] which shall be used by the Contracting Authority to assess the Information Security risks associated with the solutions.
"Intellectual Property Rights" and "IPRs"	means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including to the United Kingdom) and

	the right to sue for passing off together with all applications for and the right to apply for the foregoing;
"IT Environment"	means the Authority System and the Provider System and shall also include the Solution;
"ITT"	means the invitation to tender for the provision of education software services issued by Norfolk County Council on [xxx];
"Key Personnel"	means any individual identified in the Specification as being key personnel and any replacement for them made in accordance with the Agreement;
["KPIs " ;	means the key performance indicators for all and each part of the Services as specified in the Specification;]
"Known Vulnerability"	means any Vulnerability that has: (a) been assigned a Common Vulnerabilities and Exposures (CVE) number; (b) been disclosed on the National Vulnerability Database available at the website operated by the US National Institute of Standards and Technology (NIST) from time to time; or (c) been disclosed on the internet, or any open public database, such that it would be revealed by reasonable searches conducted in accordance with Good Industry Practice;
"Latent Vulnerability"	means any instance of a Vulnerability that falls within typical classes of Vulnerability (for example, buffer overflows, cross-site scripting (XSS) and Structure Query Language (SQL) injection) but which does not constitute a Known Vulnerability;

"Law"	means any applicable Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978 or any enactment or instrument within the meaning of Section 1 of the Interpretation Act (Northern Ireland) 1954, exercise of the royal prerogative, enforceable EU right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, judgment of a relevant court of law, or legally binding directives or requirements of any regulatory body;
"Live Operational Environments"	means the different operational environments set out in Schedule A;
"Maintenance Agreement"	means the form of maintenance agreement for the Software as attached to this agreement as Schedule L;
"Maintenance Release"	means a release of the Software which corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version;
"Malicious Software"	means 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;
"Mandatory Policies"	the Authority's policies listed in the Specification and/or Schedule A, as amended by written notification to the Provider from time to time;

"Milestone"	a series of Services and/or Deliverables that are required to be successfully completed and delivered in accordance with the Agreement by a particular milestone date, as set out set out under that title in Schedule A, and/or the Implementation Plan (as the case may be);
"Milestone Date"	in respect of each Milestone means the date specified in Schedule A, and/or the Implementation Plan (as the case may be) by which that Milestone is required to be Achieved;
"Mitigate"	the taking of such reasonable steps that would be taken by a prudent Provider in accordance with Good Industry Practice to mitigate against the Vulnerability in question;
"Model Clauses"	means contractual clauses that have been approved for use by the relevant supervisory authorities under applicable Data Protection Laws to enable the lawful transfer of personal data to a country or organisation that would otherwise not be regarded as having adequate safeguards for personal data (which includes the controller to processor terms agreed by European Commission C(2010) 593);
"Modification"	means any Maintenance Release or New Version;
"New Version"	means any new version of the Software which from time to time is publicly marketed and offered for purchase by the Provider in the course of its normal business, being a version which contains such substantially significant differences and functionality from the previous versions as to be generally accepted in the marketplace as constituting a new and different product;

"Non-COTS Software"	Provider Software and Third Party Software that is not COTS Software, including where indicated as such in Schedule J (Provider Solution);
"Object Code"	software and/or data in machine-readable, compiled object code form;
"Optional Functionality"	means any optional additional functionality (whether made available as an optional module or as optional additional functionality contained within a new release or version or otherwise) in respect of the Solution that is made available by the Provider from time to time as part of an Enhancement and which the Authority can elect to take in its sole discretion;
"Order"	means the order submitted by the Authority to the Provider;
"Outline Implementation Plan"	means the outline version of the Implementation Plan contained in the ITT and as set out in Schedule D;
"party"	means the Provider or the Authority;
"Persistent Service Level Failure"	shall have the meaning set out in Schedule B;
"Premises"	means the Authority's premises as set out in the Order Form as varied from time to time by written notice from the Authority to the Provider (provided that such premises shall be within United Kingdom);
"Procurement Act"	means the Procurement Act 2023 (as amended from time to time)
"Project Specific IPRs"	(a) Intellectual Property Rights in items created by the Provider (or by a third party

on behalf of the Provider) specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and/or

- (b) Intellectual Property Rights arising as a result of the performance of the Provider's obligations under this Agreement;

but shall not include the Provider Background IPRs or the Specially Written Software;

"Protective Measures"

appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

"Provider COTS Software"

Provider Software that:

- (a) the Provider 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 Provider save as to price; and

- (b) has a Non-trivial customer base,

including where indicated as such in Schedule J;

"Provider System"

means the information and communications technology system used by the Provider in

	performing the Services (but excluding the Authority System). It shall include any IT systems used to host any Hosted Solution or SaaS Solution;
"Provider Software"	means Software which is proprietary to the Provider (or its Affiliates), including Software which is or will be used by the Provider for the purposes of providing the Services and/or forming part of any Solution;
"Quality Standards"	means the quality standards published from time to time by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with and any other quality standards set out in the Order Form and/or the Specification;
"Rates"	the time and materials rates specified in Schedule C as varied from time to time in accordance with the Agreement;
"Replacement Provider"	means (i) any third party service provider appointed by the Authority to supply any services (including any software solutions) which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Agreement; or (ii) where the Authority undertakes such substantially similar services in house it shall mean the Authority;

"Request for Information"	shall have the meaning set out in the FOIA;
"Restricted Transfer"	means the transfer of any Authority Data to any country or organisation, where such transfer would be prohibited by Data Protection Laws (or the terms of data protection agreements put in place to address data transfer restrictions in Data Protection Laws) in the absence of use of the Model Clauses;
"SaaS Solution"	means a Solution that is provided by the Provider on a software as a service basis, though the use of cloud based IT infrastructure, as specified in the Order Form;
"Schedules"	means the schedules to these terms and conditions that have been duly completed and attached to the Order Form prior to its execution by both parties and "Schedule" shall be construed accordingly;
"Security Requirements"	means the security requirements set out in Annex 1 to Schedule G;
"Service Beneficiaries"	the persons named as such in the Appendix, in each case following notification by the Authority;
"Service Credits"	means a credit against the Charges in respect of a failure to meet applicable Service Levels, calculated in accordance with Schedule B;
"Service Levels"	means the levels to which particular Services and/or the Solution (as applicable) are required to be performed and/or operate as specified in Schedule B;
"Services"	means the services and other items (if any) to be supplied by the Provider as specified in the Order Form (and as may be set out in more detail in the

	Call-off Schedules). It shall include the Solution and any other Deliverables (as applicable);
"Security Policy"	the Authority's information security policy as updated from time to time by written notice to the Provider;
"Software"	all computer programs and computer software (of whatever type and in whatever form or media and shall include any software made available on a hosted or 'software as a service' basis);
"Software Deliverable"	means any Deliverable that comprises Software and shall include any Software functionality made available as part of any Hosted Solution or as part of any SaaS Solution;
"Solution"	the overall solution to be provided/made available to the Authority by the Provider to meet the Authority requirements, including any Software as more particularly described in the Specification and the Schedules;
"Source Code"	the source code of the Software to which it relates together with all related flow charts and technical documentation and such other information and materials as are required to enable the Authority's development personnel to understand, develop and maintain the Software concerned;
"Specification"	the technical and non-technical specification(s) for the Solution (or the relevant part of the Solution as the case may be) prepared by the Authority and agreed with the Provider as set out or referred to in or agreed in accordance with Schedule A (or as

	agreed in writing by the parties if no specification for the Solution is set out or referred to in Schedule A);
"Staff"	means all persons employed by the Provider to perform its obligations under the Agreement together with the Provider's servants, agents, Providers and sub-contractors used in the performance of its obligations under the Agreement including 3 rd party IT providers;
"Support Services"	means the helpdesk and other support services described in the Authority Requirements and/or the Specification and/or Schedule B (as the case may be);
["Target KPI"	Means the minimum level of performance for a KPI which is required by the Customer as set out against the relevant KPI in the Specification;]
"Tender"	means the document(s) submitted by the Provider in response to the ITT;
"Term"	means the term of the Agreement which shall run from the Effective Date until the [fifth (5 th)] anniversary of the final Go Live Date;
"Test Certificate"	has the meaning that is given to it in Schedule A;
"Test Witness"	means any person nominated by the Authority pursuant to paragraph 10, Schedule A.
"Third Party Software"	Software which is proprietary to any third party which is or will be supplied or made available by or on behalf of the Provider as part of the Solution;
"Third Party COTS Software"	Third Party Software that:

(a) the relevant third party 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 Provider save as to price; and

(b) has a Non-trivial customer base,

including where indicated as such in Schedule J;

"Trigger Event"

means an event the occurrence of which shall entitle the Authority to apply to the Escrow Agent for release of the Source Code Materials from Escrow in accordance with the provisions of the Escrow Agreement;

"TUPE"

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246);

"Variation"

has the meaning given to it in clause 34 (Variation);

"VAT"

means value added tax in accordance with the provisions of the Value Added Tax Act 1994;

"Virus"

means a small computer program introduced into a system deliberately (and invariably with malicious or imbecilic intent) which carries out a useless and/or destructive function such.

"Vulnerability"

means a weakness in the computational logic (for example, code) found in Software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly;

“Warranty Period”	means the period starting on the Go Live Date and ending, in relation to any: (i) SaaS Solution or Hosted Service, at the end of the Term; (ii) Solution provided on an on-premises basis, on the expiry of the period set out in the Specification, or the expiry of six months if no period is specified in the Specification; and
"Working Day"	means any day other than a Saturday or Sunday or public holiday in England and Wales.

1.2 Interpretation

The interpretation and construction of the Agreement shall be subject to the following provisions:

- 1.2.1 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to all genders;
- 1.2.2 reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.2.3 references to any Law shall be construed as a reference to the Law as amended by any subsequent Law and to any Law that amends, re-enacts or replaces it, and any references to any Law shall also be deemed, where relevant, to include a reference to the analogous provisions under the laws of Northern Ireland or Scotland (as the case may be);
- 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.5 any obligation on the Provider to do, or to refrain from doing, any act or thing shall include an obligation on the Provider to procure that the Staff and any other individuals engaged by or on behalf of the Provider or its

subcontractors of whatever tier also do, or refrain from doing, such act or thing;

1.2.6 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";

1.2.7 headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement; and

1.2.8 where no specific period is provided for performance of any obligation under the Agreement then the party concerned shall perform it promptly.

1.3 Priority

If there is any conflict between the standards to which a particular obligation is to be performed then the higher standard shall apply. Subject to the previous sentence, if and to the extent of any conflict between the Specification, the clauses of the Agreement and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence (highest first):

1.3.1 this clause 1.3.1;

1.3.2 the Specification;

1.3.3 the other clauses of the Agreement;

1.3.4 the provisions of the Schedules;

1.3.5 any other document referred to in the clauses of the Agreement with the exception of the Tender; and

1.3.6 the Tender (except that where the Tender includes provisions that are more favourable to the Authority then such more favourable terms shall take precedence over any conflicting terms).

2. **TERM**

2.1 The Agreement shall commence on the Commencement Date and shall continue, subject to earlier termination in accordance with its terms, for the initial period set out

in the Specification or, if no such period is stated in the Specification, for an initial period of [()] years ("Initial Period") with effect from the last Go Live Date.

2.2 Subject to the remaining provisions of this clause 2.2, the Authority shall be entitled to extend the Term of the Agreement by such period(s) as the Authority notifies in writing to the Provider from time to time in accordance with this clause 2.2 (each an "Extension Period"). Each Extension Period shall run from the date that the Agreement would otherwise have terminated. If the Authority wishes to extend the Term of the Agreement, it must give the Provider written notice of the extension (which must specify the duration of the Extension Period required) not less than 12 months (or such other period as is agreed between the parties and specified as such in the Specification) before the date on which the Contract would otherwise have terminated. The Authority shall be entitled to exercise its rights under this clause 2.2 on multiple occasions, but the Authority shall not be entitled to extend the total Term of the Agreement so that it runs for more than 10 (ten) years from the Commencement Date.

2.3 Unless the Authority extends the Agreement in accordance with clause 2.2, the Agreement shall automatically terminate by expiry at the end of the Initial Period or the then current Extension Period (as the case may be).

3. **DUE DILIGENCE**

3.1 The Provider acknowledges that:

3.1.1 the Authority has delivered or made available to the Provider all of the information and documents that the Provider considers necessary or relevant for the performance of its obligations under this Agreement;

3.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;

3.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Commencement Date) of all relevant details relating to the:

- (a) suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Commencement Date) future Authority System;
- (b) operating processes and procedures and the working methods of the Authority;
- (c) ownership, functionality, capacity, condition and suitability for use in the provision of the Services of the Authority System; and
- (d) existing contracts (including any licences, support, maintenance and other agreements relating to the Authority System) referred to in the Due Diligence Information; and

3.1.4 it has advised the Authority in writing of:

- (a) each aspect, if any, of the Authority System that is not suitable for the provision of the Services;
- (b) the actions needed to remedy each such unsuitable aspect; and
- (c) a timetable for and the costs of those actions.

3.2 The Provider shall not be relieved from liability or entitled to make any additional charges as a result of any failure by the Provider to comply with its responsibilities under clause 3.1.

4. **IMPLEMENTATION**

4.1 The Provider will prepare an Implementation Plan based on the Outline Implementation Plan and in accordance with the following provisions:

4.1.1 The Provider shall provide the Authority with a draft Implementation Plan for the implementation of the Solution and provision of the Services within [four] weeks of the Commencement Date;

4.1.2 The Provider shall ensure that the draft Implementation Plan incorporates all of the terms of the Outline Implementation Plan and:

- (a) contains information at the level of detail necessary to manage the implementation stage effectively;
- (b) takes account of all dependencies known to, or which should reasonably be known to, the Provider;
- (c) meets the requirements and incorporates all of the Milestones and will enable the Solution to be implemented in each of the Live Operational Environments on or before the respective Go-Live Date; and
- (d) includes an appropriate data migration plan which if properly implemented will enable the Authority's data and records which are required to be transferred to the Solution to be so transferred safely, securely and efficiently.

4.1.3 The Authority shall review the draft Implementation Plan and either approve it or provide reasonable proposed amendments within such period as specified in the Agreement (or promptly if no time period is specified). The parties shall discuss any proposed amendments and if they are not agreed within 30 days after the date the Authority provided them then either party may refer the matter for Expert Determination in accordance with clause 37. On agreement or determination of the outstanding matters, the draft Implementation Plan shall become the Implementation Plan;

4.1.4 Where the parties have failed to agree the Implementation Plan within 30 days (or such other period as the parties agree, acting reasonably) of the date on which the Authority provided its proposed amendments to the Provider in accordance with clause 4.1.3, the Authority shall have the right (in the Authority's absolute discretion) to terminate this Agreement immediately by giving written notice; and

4.1.5 Where the Authority terminates this Agreement pursuant to clause 4.1.4, unless otherwise agreed between the parties in writing, the Provider shall be entitled to recover its Charges for Services provided to the Authority up to the date of termination on a time and materials basis in accordance with the Rates, and the provisions of clause 14.6 shall apply to the payment of those Charges. The Provider shall refund on a pro-rata basis, within 30 days of the date on which the Authority

terminates the Agreement, any Charges paid by the Authority for Services not received by the date of termination. For the avoidance of doubt, this shall include a pro-rata refund of any licence or other usage fees paid in advance in respect of the use of Software.

- 4.2 The Provider shall provide the Deliverables and perform the Services and its other obligations under the Agreement in accordance with (and on or before the dates specified in) the Implementation Plan and any other dates for performance agreed in writing by the parties or otherwise set out in or determined in accordance with the Agreement (or promptly where no other date for performance is specified) and so as to ensure that each Milestone is Achieved on or before its Milestone Date. The Provider shall only supply a Deliverable where the Provider reasonably considers that it is in compliance with the Specification and Authority Requirements and would be likely to pass any relevant Acceptance Tests (and in the case of Software has been tested by the Provider internally in accordance with Good Industry Practice and passed such tests).

Go Live

- 4.3 Pursuant to the Implementation Plan, the Provider and the Authority shall agree the Go Live date for each Live Operational Environment.
- 4.4 With effect from each Go Live Date, the Provider shall, with respect to each Live Operational Environment, provide:
- 4.4.1 a fully functional and operational Solution; and
 - 4.4.2 Support Services as per the Specification.

5. **DELAYS**

- 5.1 If the Provider becomes aware that there is (or is likely to be) any Delay, it shall:
- 5.1.1 Promptly, and in any event within 5 days of becoming aware, notify the Authority in writing of:
 - (a) the fact and likely length of such Delay and summarise the reasons for it; and

(b) the consequences or likely consequences of such Delay; and

5.1.2 take such action as is reasonable to avoid or reduce so far as possible such Delay and the effects of the Delay (including any effects on the achievement of any other Milestones) and to minimise the additional costs incurred as a result of the Delay.

5.2 Provided that the Provider complies with clause 5.1, the Provider shall be given a reasonable extension of time (the length of which shall be determined by the Authority, acting reasonably) for completion of the affected Services (and the Implementation Plan and all associated Milestone Dates shall be adjusted accordingly) if and to the extent that the Delay is caused by:

5.2.1 a Force Majeure Event for which the Provider is excused from liability as described in clause 33; or

5.2.2 an action or omission of the Authority or the Authority's employees, agents or third party providers (other than the Provider and its contractors) or the failure of any Dependency to hold true.

5.3 Where the Provider notifies the Authority of a Delay in accordance with clause 5.1 for which the Provider is entitled to an extension of time under clause 5.2, the Authority may request the Provider to provide proposals (which may include the allocation of additional resources) to minimise the effects of the Delay on the remainder of the project. Where the Authority makes such a request, the Provider shall use reasonable endeavours to present the Client with a reasonable acceleration plan (including a quotation for the additional cost that would be incurred in implementing it) to mitigate the Delay. The Authority shall review any acceleration plan submitted by the Provider and notify the Provider in writing whether or not the Authority wishes to proceed with the plan. If the Authority notifies the Provider that it does wish to proceed then the parties shall agree the acceleration plan (and any associated change in Charges) in accordance with clause 34.

5.4 For the avoidance of doubt, in the event of any Delay, the Authority reserves the right to pursue all remedies and correction plans in accordance with clause 13.

6. **SUPPLY OF SOLUTION & OTHER SERVICES**

6.1 The Provider shall ensure that the Services (and all Deliverables, including the Solution):

6.1.1 comply with and meet their Specification and all of the Authority Requirements applicable to them and that, on delivery (and thereafter for the remainder of the Term in the case of Software Deliverables provided as part of any Hosted Solution or SaaS Solution), all Software Deliverables are free from all Known Vulnerabilities;

6.1.2 are supplied so that the Service Levels for them are met or exceeded (provided that for the avoidance of doubt, Service Levels applicable to the availability and performance of the Solution and any associated Support Services shall only apply with effect from the Go-Live Date for the Solution); and

6.1.3 are supplied in accordance with and so that they comply with the provisions of this Agreement and (to the extent that it does not conflict with the terms of the Agreement) the Tender. For the avoidance of doubt, where the provisions of the Agreement and the Tender conflict, the order of priority in clause 1.3 shall apply.

6.1.4 are designed and operated with regard to the National Cyber Security Centre 14 Cloud Security Principles as amended from time to time.

6.2 The Provider shall perform its obligations under the Agreement:

6.2.1 in accordance with Good Industry Practice, using only appropriately skilled, qualified and experienced Staff;

6.2.2 in accordance with all Laws and the Mandatory Policies;

6.2.3 in accordance with the Cybersecurity Requirements; and

6.2.4 in accordance with the Provider's own established procedures and practices to the extent that they do not conflict with the other requirements of the Agreement.

6.3 In performing its obligations under this Agreement, the Provider shall:

6.3.1 co-operate with the Authority in all matters relating to the Solutions;

- 6.3.2 comply with the Authorities reasonable instructions;
- 6.3.3 not do or omit anything which may cause the Authority to:
 - (a) lose any licence, authority, consent or permission on which it relies for the purposes of carrying out its business;
 - (b) fail to meet any of its own legal and regulatory compliance obligations; and
- 6.3.4 notify the Authority immediately of any occurrence or perceived occurrence of any error, omission, data breach, fault, Virus or Malicious Software which may affect the Authority, Authority Data or the provision of the Services and/or any Solutions.
- 6.4 The Provider shall keep the Authority informed of any planned or actual technical developments which may in the reasonable opinion of the Provider affect the Solution and/or any of the Services.
- 6.5 The Authority shall be entitled to update and amend the Mandatory Policies from time to time on written notice to the Provider. The Authority shall notify the Provider of any material changes or proposed changes to the Mandatory Policies in accordance with the provisions of clause 34 (Variation). If the Provider believes that a change or proposed change to the Mandatory Policies will have a material and unavoidable cost implication to the Services it shall provide evidence of the cause of any increased costs and the steps proposed to mitigate those costs. Any change to the Charges shall then be agreed in accordance with clause 34 (Variation).
- 6.6 The Provider shall at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body.
- 6.7 The Provider shall ensure that:
 - 6.7.1 the release of any Enhancement to any Provider Software complies with the interface requirements of the Authority and (except in relation to Enhancements which are released to address Malicious Software) shall notify the Authority at least three (3) Months before the release of any Enhancement;

- 6.7.2 all Software used by or on behalf of or supplied or made available by the Provider (including any Software used as part of any Hosted Solution or SaaS Solution) are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
- 6.7.3 any products or services recommended or otherwise specified by the Provider for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the requirements of the Agreement;
- 6.7.4 the Services (including the Solution) are compatible with the Authority System; and
- 6.7.5 any Documentation provided by the Provider is comprehensive, accurate and prepared in accordance with Good Industry Practice.
- 6.8 The Authority shall follow the variation procedure in clause 34 (or shall obtain the Provider's prior written approval, which shall not be unreasonably withheld or delayed) when making any changes to the Authority's interface requirements or the Authority System that may adversely affect the ability of the Solution to operate with the Authority System. Unless otherwise agreed with the Provider in writing, the Authority shall ensure that any third party Software forming part of the Authority System that interfaces with the Solution is maintained at a version that is supported by the third party Software provider.
- 6.9 The Provider shall obtain, and maintain throughout the Term, 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.
- 6.10 The Provider shall deliver to the Authority, as part of the Deliverables, such documentation as is required to enable the Authority to properly understand, operate and maintain the Solution.

Use of Artificial Intelligence

- 6.11 Without prejudice to, and in addition to, the other provisions of this Agreement which relate to the Services and Solutions, the provisions of clauses 6.11 to 6.19 shall also apply to any AI Systems which are to be supplied by the Provider to the Authority

and/or which are to be used by the Provider in connection with the delivery of any Services to the Authority.

6.12 The Provider shall ensure that any AI Systems which it uses to deliver any of the Services at any time during the Term shall:

6.12.1 satisfy those parts of the Specification that describe the functionality and performance of the AI Systems; and

6.12.2 comply with all Laws (including the provisions of the EU AI Act 2024) relating to the development and use of AI Systems including in relation to any risk categorisation of the applicable AI System.

6.13 In addition, if any requirements are referred to in the Order for an AI System, the Provider shall provide an AI System that meets those requirements save as to the extent that the Provider specifically states in its response to an Order that its AI System cannot meet certain specific requirements. In such event, the Authority may decide not to procure the affected AI System from the Provider.

6.14 The Provider shall:

6.14.1 train the Authority and its users in the use of the AI Systems in the manner (including in relation to the provision of user manuals) and at the frequency as described in the Specification, both as part of the Acceptance Tests and in connection with the use of the AI Systems by the Authority and its users;

6.14.2 in training the Authority and its users in the use of the AI Systems, the Provider shall use any training data which is made available by the Authority to the Provider for the sole purpose training the Authority's users on the use of the AI Systems and not for any other purpose;

6.14.3 ensure that has obtained all necessary permissions and licences which may be required from any third party to use any third party content which it has used in developing the AI System for the purposes of:

(a) developing the AI Systems; and

(b) training the Authority and its users in the use of the AI Systems;

- 6.15 Any AI Systems shall be tested in accordance with clause 7.
- 6.16 The Provider shall:
- 6.16.1 ensure that the AI System contains a circuit-breaker capable of interrupting and stopping the AI System immediately in the following the Authority's instructions;
 - 6.16.2 maintain the previous iteration of the AI System for twelve (12) months and a log of the key differences between each; and
 - 6.16.3 immediately following the Authority's request, roll-back the AI System to an earlier iteration.
 - 6.16.4 At all times during the Term, the Provider shall provide the Authority with any Updates or Upgrades to the AI System as often as is reasonably required for the proper functioning and security of the AI System in accordance with this Agreement.
 - 6.16.5 The provision of any such Updates or Upgrades to the AI System will not have any adverse effect on the functionality, performance or compatibility of the AI System and will not result in any reduction in the features, functionality, characteristics or performance of the AI System.
 - 6.16.6 No AI System may be used for ethical decision making unless such capability is expressly required by the Authority when placing an Order for an AI System.
 - 6.16.7 In the event that any AI System may make decisions which may be influenced by ethical choices, all such decisions must be reviewed and approved by a human who has the skills and expertise to review and approve or reject any such decision in the knowledge that the decision has been made by the AI System as based on the ethical decision- making capabilities of the AI System. In so doing, to the extent that the human reviewer (whether of the Provider or the Authority) elects not to follow an ethical decision of the AI System, the AI System will not act on any such decision.
 - 6.16.8 The Provider will provide assistance to the Authority in complying with its legal and regulatory obligations in connection with the AI System.

6.16.9 The Provider will ensure that the AI System is designed, developed and tested in a way which ensures that its operation is sufficiently transparent to enable the Authority to understand and use the AI System appropriately. In particular, the Provider will produce to the Authority, on request, information which allows the Authority to understand:

- (a) the logic behind an individual output from the AI System;
- (b) in respect of the AI System or any specific part thereof, which features contributed most to the output of the AI System; and
- (c) how Authority Personal Data is processed by the AI System and the processes that allow data subject rights to be exercised in connection with the AI System.
- (d) in each case, in accordance with Good Industry Practice.

6.17 Prior to installation of the AI System the Provider will carry out testing in accordance with Good Industry Practice and appropriate to the intended purpose of the AI System to identify any output or model performance which may result in an individual being treated differently on the basis of a protected characteristic set out in the Equality Act 2010.

6.18 The Provider will ensure that any potential security risks relating to the AI System are mitigated in accordance with Good Industry Practice and as set out in the Specification.

6.19 The Provider warrants that:

6.19.1 the User Manual provides, or allows the Authority to provide, meaningful information about the logic involved in the AI System for the purposes of satisfying any applicable transparency provisions under the EU / UK GDPR (including but not limited to Articles 13(2)(f), 14(2)(g), and 15(1)(h)).

- (a) the AI System will not provide any output or AI System Work which causes unlawful discrimination;
- (b) the development, installation, use or possession of the AI System will not infringe the Intellectual Property Rights of any third party;

(c) that the AI System will not cause any loss or damage to the Authority's data, systems, hardware, records, programs or other property.

(d) no viruses or disabling code (including code intended by the Provider to limit or prevent the use of the AI System) or Malware) are contained in AI System, the media on which it is delivered or any documentation provide for use with the AI System;

(e) in relation to the review and audit of the Provider's Records relating to the use of the use of the AI System:

(i) copies of these Records shall be provided to the Authority by [insert milestone date] and/or upon reasonable request.

6.19.2 Subject to the limitations and requirements set out in Schedule 5, the Authority shall permit the Provider and its third-party representatives (including its designated auditor) to:

(a) gain (physical and remote electronic) access to, and take copies of, the Records and information relating to the Authority's use of the AI System (whether held at the Authority's premises or on the Authority's IT systems):

(b) deploy reasonable online audit tools as part of the AI System for these specific purposes;

(c) inspect the Records and the AI System.

6.19.3 The Authority shall give all necessary assistance to the conduct of such audits.

7. TESTING

7.1 The Provider shall submit all Software Deliverables (and the Solution as a whole) for Acceptance Testing in accordance with Schedule A. Each party shall comply with their obligations set out in Schedule A. The testing process set out in that Schedule shall apply to all Deliverables and to the Solution as a whole, subject only to such variations (if any) as may be expressly set out in writing in the Specification.

7.2 If the results of any Acceptance Test do not satisfy the Acceptance Criteria applicable to it, the Provider shall (at the Provider's own cost) promptly correct the defects in the Deliverable and submit the corrected Deliverable for retesting in accordance with clause 7.1.

7.3 Following Final Acceptance the Authority shall notify the Provider of the Go Live Date.

8. **SOLUTION WARRANTY**

8.1 The Provider acknowledges that the Authority has entered into this Agreement in reliance upon the Provider's expertise in supplying Software and Solutions to meet the Authority's business requirements.

8.2 Subject to clause 8.3, the Provider shall ensure that throughout the Warranty Period the Solution shall:

8.2.1 be of satisfactory quality and free from material defects and errors;

8.2.2 comply with all Laws;

8.2.3 comply with and provide the facilities, functionality and performance specified in the Specification and the Authority Requirements and Documentation; and

8.2.4 not cause any defects or errors in the IT Environment.

8.3 The Provider shall not be liable for any breach of clauses 6.1 or 8.1 that is caused by:

8.3.1 defects or errors in the Authority System other than the Solution (except where and to the extent that these have themselves been caused by defects or errors in the Solution or any breach of the Provider's obligations under the Agreement);

8.3.2 misuse by or on behalf of the Authority; or

8.3.3 any Force Majeure Event for which the Provider is excused from liability under clause 33,

and any non-compliance with the Service Levels for which this Provider is excused from liability under this clause 8.3 shall be disregarded for the purposes of calculating Service Level performance and any applicable Service Credits.

8.4 If the Authority notifies the Provider of any breach of the warranty set out in clause 8.1 for which it is not excused from liability under clause 8.3, then, without prejudice to the Authority's other rights and remedies, the Provider shall promptly repair the Solution or replace the Solution (or the relevant parts of it) so that it fully complies with the Agreement. Unless otherwise agreed with the Authority, all repairs to or replacements of the Solution (or parts of it) must be carried out:

8.4.1 in the case of any breach of warranty that constitutes a breach of any of the Service Levels in Schedule B, within the resolution time specified for that Service Level in Schedule B; and

8.4.2 in all other cases, within 30 days after notice of the breach is given by the Authority.

9. **SUPPORT & MAINTENANCE SERVICES**

Where the Services include the provision of any 'on premises' Solution or Hosted Solution then the provisions of this clause 9 shall apply with effect from each relevant Go Live Date until the [termination of the Agreement].

9.1 The Provider shall proactively monitor for any Vulnerabilities that may affect the Solution. The Provider shall notify the Authority immediately if it becomes aware of any new Vulnerability and shall develop and make available to the Authority patches to remedy any identified Vulnerability as soon as reasonably practicable following its identification. The provisions relating to Enhancements below shall apply to the issue of each patch.

9.2 The Provider shall make Enhancements of all Provider Software available to the Authority within thirty (30) days after their release or, if earlier, the date on which it makes them generally available to other authorities. The Provider shall ensure that:

9.2.1 no Enhancement adversely affects the then existing facilities or functions of the Solution or leads to any material reduction in functionality; and

9.2.2 each Enhancement Mitigates against all Known Vulnerabilities and Latent Vulnerabilities affecting the Solution since the last Enhancement provided.

9.3 Unless otherwise agreed in writing with the Provider, the Authority shall acquire and install (or make arrangements for the installation of) each Enhancement prior to the end of the Enhancement Implementation Period provided that the Authority shall not be obliged to acquire or install any Optional Functionality. If the Authority fails to acquire and install or make arrangements for the installation of an Enhancement of the Provider Software (excluding any Optional Functionality) within the Enhancement Implementation Period in breach of this clause 9.3 and such failure is not attributable to a failure of the Enhancement to comply with the Agreement, the Provider shall not be liable for any defects or errors in the Provider Software that would have been resolved by the use of the Enhancement.

9.4 The Provider may make Optional Functionality available to the Authority on a chargeable basis. Where it does so, the Provider shall notify the Authority in writing of the amount of the increase in Charges that will apply if the Authority elects to acquire the Optional Functionality. The Provider shall provide this notification within a reasonable period prior to the release of the Optional Functionality (and the proposed increase in Charge shall be calculated on the same basis as the Provider uses for its other Authorities who use the Solution). The Authority shall not be obliged to acquire any Optional Functionality and failure to do so shall not affect the Provider's obligations under the Agreement, including the Provider's obligations in relation to the provision of Support Services.

9.5 The Provider shall:

9.5.1 keep the Authority informed of any planned or actual technical or business developments (including details of any product roadmap applicable to the Solution), whether of the Provider or of any relevant third party that may, in the reasonable opinion of the Provider, be likely to affect the Solution;

9.5.2 inform the Authority of any new Optional Functionality for the Solution (or any part of it);

- 9.5.3 offer to the Authority the opportunity to examine any Optional Functionality of the Solution (or any part of it) and any tests or results of tests of such Optional Functionality that the Provider may carry out, or may have carried out; and
- 9.5.4 at the Authority's request, install and integrate such Optional Functionality into the Solution (or, if appropriate, substitute such Optional Functionality for the relevant part of the Solution);
- 9.6 The Provider shall make all Enhancements available to the Authority without additional charge unless:
 - 9.6.1 the Enhancement is required to address changes in Law, in which case the provision of the Enhancement shall be chargeable by the Provider in accordance with clause 34.8; or
 - 9.6.2 the Enhancement includes Optional Functionality that the Authority has agreed to take under clause 9.4, in which case the Provider shall be entitled charge for the Optional Functionality in accordance with clause 9.4.
- 9.7 The Provider shall provide the Support Services in accordance with the Specification and Schedule B.

10. **HOSTED SERVICES**

Where the Services include the provision of a Hosted Solution the provisions of this clause 10 shall apply.

- 10.1 The Provider shall:
 - 10.1.1 implement any Enhancements acquired by the Authority under clause 9;
 - 10.1.2 host the Solution at a secure datacentre within the United Kingdom or the EEA and ensure that the Authority's instance of any Software is physically or logically separated and ring-fenced from instances of the Software made available to other Authorities;
 - 10.1.3 host the Solution on appropriate hosting equipment and systems so that it is available for use by the Authority and any person authorised by the Authority in accordance with the terms of the Agreement;

- 10.1.4 ensure that the Provider Systems on which the Solution is hosted are and remain adequate for and with sufficient capacity to host the Solution and all Authority Data;
 - 10.1.5 ensure that the Provider Systems on which the Solution is hosted are supported, maintained, patched, updated, upgraded and refreshed in accordance with Good Industry Practice. Without limiting the generality of the previous sentence, the Provider shall ensure that all Software forming part of these Systems is and remains at a version and release level that is fully supported by the relevant software provider and shall replace any Software in good time prior to it ceasing to be so supported;
 - 10.1.6 maintain and operate appropriate IT security measures (including physical, logical and organisational measures) in respect of the Provider Systems (and all data held on them) in accordance with good IT industry practice to prevent unauthorised access and use of or the introduction of viruses and other electronic contaminants to the Provider Systems (and associated data) and to maintain their integrity and operation; and
 - 10.1.7 ensure that the security of the Provider Systems is regularly tested by an appropriately qualified third party testing provider (which shall include penetration testing not less than once every 12 months) and the results are provided to the Authority on request.
- 10.2 If there is any actual or suspected breach of security in relation to (or unauthorised access of) the Provider Systems (or any data held on them), the Provider shall:
- 10.2.1 notify the Authority of this promptly and shall provide the Authority with such information and assistance as the Authority may reasonably request in respect of it;
 - 10.2.2 use its best endeavours to identify and remedy the breach and the causes of it, to isolate, contain and then eradicate any virus or other electronic contaminants introduced to the Provider Systems (and any associated data) and minimise any adverse consequences arising from it;

- 10.2.3 make any subsequent changes to the Provider Systems and any associated security policies, systems and procedures as are reasonably required to address any Vulnerability that may have been exploited to enable the breach to take place;
 - 10.2.4 notify the Authority in writing of the steps that it has taken to comply with this clause and provide the Authority with such evidence as it may reasonably request to demonstrate this;
 - 10.2.5 electronically monitor the performance of the underpinning infrastructure of the Solution hosted on a 24x7x365 basis; and
 - 10.2.6 provide for the secure hosting and transfer of all data submitted to and/or transmitted via the Services and that will meet or exceed ISO 27001 information security management standard.
- 10.3 Where specified in the Specification, the Provider shall provide the Authority with such secure links to the Hosted Solution as are specified in the Specification and/or Schedule A (as the case may be).
- 10.4 The Authority shall use all reasonable endeavours to ensure that it does not use the Solution to upload or transmit content that:
- 10.4.1 will constitute libel or slander or is otherwise unlawful;
 - 10.4.2 infringes Intellectual Property Rights;
 - 10.4.3 is abusive, offensive, anti-social, racist, harmful or threatening or encourages or promotes illegal or socially unacceptable or irresponsible behaviour;
 - 10.4.4 has any fraudulent purpose or effect or that conceals the identity of the Authority or impersonates any individual or organization; or
 - 10.4.5 violates generally accepted standards of telecommunications networks conduct and usage, including, but not limited to, denial of service attacks, web page defacement, port and network scanning, and unauthorised system penetrations,

(in each case "**Harmful Content**"). In particular, the Authority shall ensure that it has in place and enforces an appropriate acceptable use policy governing authorised users' use of the Solution.

10.5 Where the Authority uploads any Harmful Content to the Solution or uses the Solution to transmit any Harmful content, the Provider shall be entitled to temporarily suspend use of the Solution until such time as the Harmful Content has been removed from the Solution. The Provider shall (i) permit the Authority access to the Solution in order to assist with the removal of the Harmful Content and (ii) use all reasonable endeavours to remove the Harmful Content from the Solution as soon as reasonably practicable; and (iii) be permitted to charge the Authority for its reasonably incurred costs in complying with this clause 10.5.

10.6 Where any authorised user of the Solution deliberately uploads any Harmful Content to the Solution or uses the Solution to transmit any Harmful content, the Provider has notified the Authority of this in writing and the user concerned continues to upload or transmit such Harmful Content, then the Provider shall be entitled to suspend such authorised user's access to the Solution. The Provider shall restore such access as soon as the Authority provides reasonable evidence that the user concerned has agreed not to continue to use the Solution in such manner.

11. **SAAS SOLUTIONS**

Where the Services include the provision of a SaaS Solution the provisions of this clause 11 shall apply.

11.1 Clause 9 shall not apply to SaaS Solutions but the Provider shall provide the Support Services in relation to the SaaS Solution in accordance with the Specification and Schedule B.

11.2 The Provider shall proactively monitor for any Vulnerabilities that may affect the SaaS Solution. If the Provider becomes aware of any new Vulnerability it shall develop and implement patches to the SaaS Solution to remedy any identified Vulnerability as soon as reasonably practicable following its identification.

11.3 The Provider shall be entitled to make changes to the SaaS Solution from time to time provided that:

11.3.1 the Provider shall give the Authority reasonable prior written notice of any proposed change to the SaaS Solution and shall provide the Authority with such updated Documentation as may be reasonably required to enable the Authority to fully understand the proposed changes;

11.3.2 the change is applied generally to the Provider's Authorities and is not specific to the Authority; and

11.3.3 the change does not materially adversely affect the performance or functionality of the SaaS Solution.

11.4 Where the Provider makes Enhancements to the standard service offering on which the SaaS Solution is based, the Provider shall make such Enhancement available to the Authority no later than the date that it makes them generally available to other Authorities. Clauses 9.4, 9.6 and 11.3 shall apply to Enhancements to the SaaS Solution.

11.5 Clause 10 shall apply to the SaaS solution, except that the Provider shall be entitled to make the SaaS Solution available on a multi-tenanted basis using cloud hosted servers from such data-centres and locations as may be determined by the Provider or its third party hosting provider(s) from time to time, subject only to any restrictions set out in the Specification and the Tender.

12. **ON PREMISES SOLUTION**

Where the Services include the provision of a Hosted Solution the provisions of this clause 12 shall apply.

12.1 In consideration of the Fee paid by the Authority to the Provider, receipt of [the first instalment of] which the Provider hereby acknowledges, the Provider grants to the Authority and its Affiliates [a non-exclusive OR an exclusive], [(subject to clause 11) perpetual licence OR licence for a term of [NUMBER] years commencing on, and including, [the date of this licence]]:

[DRAFTING NOTE: WE PROPOSE THAT WHERE LICENCES ARE FOR A FIXED TERM AND ARE IMPLEMENTED ACROSS STAGGERED GO LIVE DATES THAT WE HAVE A COTERMINUS DATE LINKED TO THE LAST GO LIVE DATE]

- 12.1.1 to use the Software;
 - 12.1.2 to develop, modify and maintain the Software (but only after the occurrence of a Trigger Event);
 - 12.1.3 to grant to any Divested Entity a sub-licence to use the Software for a period not exceeding [one year] from the Date of Disposal; and
 - 12.1.4 subject to clause 3.6(b), to grant to any Authorised Agent a sub-licence to use, and, after the occurrence of a Trigger Event, to develop, modify and maintain, the Software.
- 12.2 In relation to scope of use:
- 12.2.1 for the purposes of clause 3.5(a), clause 3.5(c) and clause 3.5(d) above, use of the Software shall be restricted to use of the Software in object code form (and, after the occurrence of a Trigger Event, in source code form) for the normal business purposes of the Authority or any Affiliate, or, in the case of clause 3.5(c), any Divested Entity, but shall include any act which is reasonably incidental to such use, including the [creation of as many copies of the Software as may be necessary to enable use of the Software in accordance with this clause 3.6(a) and the] maintenance of a reasonable number of back-up or test copies of the Software.
 - 12.2.2 any sub-licence granted to an Authorised Agent under clause 3.5(d) shall limit the Authorised Agent's right to use (or, where permitted by clause 3.5(d), to develop, modify and maintain) the Software to such right as is necessary for the purpose of carrying out the Relevant Services only.
- 12.3 the Authority shall have no right to copy, adapt, reverse engineer, decompile, disassemble or modify the Software in whole or in part except:
- 12.3.1 as provided in this clause 3;
 - 12.3.2 as permitted by law; or

12.3.3 to the extent that such action is legitimately required for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Authority or any Affiliate.

12.4 In relation to assignment and sub-licensing:

12.4.1 the Authority shall not grant sub-licences except as expressly permitted under clause 3.5(c) or clause 3.5(d).

12.4.2 the Authority shall be permitted to assign or novate the benefit and burden of this licence as a whole to any company which at the time in question is an Affiliate of the Authority or to any entity which succeeds to all or substantially all of [the Authority assets and business, subject to that assignee or new company first undertaking in writing to the Provider that it will henceforth perform all the obligations of the Authority under this licence. All references in this licence to the Authority shall be construed as including any such company. The Provider shall continue to comply with the provisions of this licence after any such assignment or novation.

12.4.3 Subject to clause 3.7(b), the Authority shall not:

- (a) sub-license, assign or novate the benefit or burden of this licence in whole or in part;
- (b) allow the Software to become the subject of any charge, lien or encumbrance; and
- (c) deal in any other manner with any or all of its rights and obligations under this agreement,

without the prior written consent of the Provider, such consent not to be unreasonably withheld or delayed.

12.5 The Provider may at any time assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this licence, provided it gives written notice to the Authority.

12.6 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

- 12.7 Notwithstanding clause 6, a party assigning any or all of its rights under this agreement may disclose to a proposed assignee any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the other party which is [reasonably] necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 3.10 shall be made until notice of the identity of the proposed assignee has been given to the other party.

New Versions and Maintenance Releases

- 12.8 The Provider shall promptly inform the Authority of any New Versions and shall offer to sell such New Versions to the Authority on the terms on which they are generally made available to the Provider's customers by the Provider.
- 12.9 The Provider will provide the Authority with all Maintenance Releases [by no later than the end of each [PERIOD] and in any event] no later than when these are generally made available to its other customers.
- 12.10 The Provider undertakes and warrants that:
- 12.10.1 no Maintenance Release will adversely affect the then existing facilities or functions of the Software;
- 12.10.2 each Maintenance Release shall Mitigate against Known Vulnerabilities and Latent Vulnerabilities affecting the Software since the last New Release provided under clause 12.9.

13. REMEDIES & CORRECTION PLANS

- 13.1 If any part of the Services does not meet the requirements of the Agreement and this is other than as a result of a Default on the part of the Authority or any Force Majeure Event or other matter for which the Provider is excused from liability under the Agreement, then (in addition to the Authority's other rights and remedies), the Provider shall remedy the failure at its own expense. Where the failure comprises a failure to meet a Service Level in Schedule B, the Provider shall remedy it within the resolution time specified in Schedule B. The Provider shall remedy other failures within 30 days of the date that it is notified of the failure (or such other period as the parties may agree).

13.2 If requested by the Authority, the Provider shall (at the Provider's cost) carry out a root cause analysis and prepare and submit a draft Correction Plan for the Authority's approval where:

13.2.1 it has failed to Achieve a Milestone by its Milestone Date;

13.2.2 a Critical Service Level Failure or a Persistent Service Level Failure occurs;

13.2.3 a Software Deliverable (or the Solution as a whole) fails to pass any combination of its Acceptance Tests on three or more occasions;

13.2.4 specified in Schedule B;

13.2.5 the Provider is in material breach of the Agreement; or

13.2.6 there is a delay which (in the Authority's reasonable opinion) is likely to mean the Provider will be unable to make the Solution available for use on a Required Go-Live Date,

and in each case the Provider is not relieved from liability for the failure under the Agreement. For the avoidance of doubt, the Provider shall not be obliged to carry out a root cause analysis and/or prepare a Correction Plan where the failure results from a Authority Default or a Force Majeure Event.

13.3 The draft Correction Plan shall identify the cause of the failure, the issues arising out of it and the steps that the Provider proposes to take to remedy the failure and the issues arising from it and to minimise the risks of a similar failure recurring.

13.4 The draft Correction Plan shall be submitted to the Authority for its approval as soon as possible and in any event not later than ten (10) Working Days (or such other period as the parties may agree) after receipt of the request under clause 13.2.

13.5 The Authority shall not withhold its approval of a draft Correction Plan unreasonably. If the Authority does not approve the draft Correction Plan in writing it shall inform the Provider of its reasons and the Provider shall take those reasons into account in the preparation of a further draft Correction Plan, which shall be resubmitted to the Authority within two (2) Working Days (or such other period as the parties may agree) of the rejection of the first draft.

- 13.6 The Provider shall comply with the Correction Plan following its formal written approval by the Authority.
- 13.7 Approval and implementation of any Correction Plan by the Authority shall not relieve the Provider of any responsibility to perform its obligations under the Agreement, and no estoppel or waiver shall arise from any such approval and/or implementation.
- 13.8 Where the parties have failed to agree a Correction Plan within fifteen (15) Working Days of the Authority making a request in accordance with clause 13.2, either party shall be entitled to refer the matter for Expert Determination in accordance with clause 37.3.

14. **AUTHORITY SYSTEM AND PREMISES ACCESS**

- 14.1 The Provider shall take reasonable care to ensure that, in the execution of its obligations, it shall not interfere with or disrupt the operations of the Authority.
- 14.2 The Provider shall not access or use any of the Authority's IT facilities, Authority System or Premises except as and to the extent expressly permitted by the Authority in writing (such permission not to be unreasonably withheld or delayed) and shall limit such access and use to that required for the purposes of providing the Services and/or Deliverables.
- 14.3 The Provider shall ensure that at all times when Staff are at the Authority's Premises and/or are accessing or using the Authority's IT facilities or Authority System that they:
- 14.3.1 in the case of access to Premises, attend all requested site inductions and training, act in a professional and courteous manner and carry suitable identification with them which shall be produced to the Authority's staff upon request;
 - 14.3.2 comply with all applicable staff, contractors' and other policies and procedures of the Authority notified to Staff that apply to the Premises, the Authority's IT facilities or/or the Authority System (including any IT security, usage, access controls, health and safety policies and procedures and codes of conduct);

- 14.3.3 comply with the reasonable instructions of the Authority and shall co-operate with any other persons operating at the Premises or operating the Authority's IT facilities and/or Authority System;
- 14.3.4 not access or use such Authority System and/or other IT systems, or through any act or omission allow any third party to access or use them, in a manner that has or is likely to have an adverse effect on such Authority System and/or other IT systems or may compromise their security, including by:
- (a) transmitting any data, or sending or uploading any material that contains viruses or technologically harmful material; or
 - (b) denial of service attacks or distributed denial of service attacks; or
 - (c) accessing any computer equipment, device, network, systems, data, information or Software when not authorised to do so.
- 14.4 The Provider shall ensure that no property or equipment at the Premises is destroyed or damaged by Staff and that any such destruction or damage is promptly made good at the Provider's own expense to the Authority's reasonable satisfaction before the Provider leaves the Premises.
- 14.5 The Provider further agrees that access to any third party systems forming part of the Authority's IT facilities and/or Authority System shall be subject to any such additional terms and conditions as may be imposed by the relevant third party, including applicable licence terms. The Provider will comply with any such terms and conditions (including the terms of any licences or other agreements) and shall indemnify the Authority against any losses, liabilities, costs, claims and expenses incurred as a result of a breach by the Provider of any of these terms and conditions (including the terms of any such licences or other agreements).
- 14.6 The Authority shall be entitled, without liability, to remove or to refuse access or admission to any person who is or has been in breach of this clause 14.
15. **COTS SOFTWARE**
- 15.1 The Provider shall grant to the Authority and each of the Service Beneficiaries, or, in respect of Third Party COTS Software, shall procure the grant direct by the owner or

an authorised licensor thereof to the Authority and each of the Service Beneficiaries of, a right to access and use the COTS Software for the Term on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Provider or the relevant third party, provided that, except where the Authority has given its prior written consent, the Provider shall ensure that such terms:

- 15.1.1 permit access to and use of the COTS Software by Authorised Users for any purpose relating to the exercise of the Authority's, or the applicable Service Beneficiary's, business or function;
- 15.1.2 are governed by the laws of England and Wales and subject, in respect of the settlement of disputes and claims (whether contractual or non-contractual), to the jurisdiction of the courts of England and Wales;
- 15.1.3 provide for the liability of the Provider or the relevant third party to the Authority for:
 - (a) infringement or alleged infringement (including the defence of such infringement or alleged infringement) of third party Intellectual Property Rights to be unlimited and not subject to any exclusions; and
 - (b) a satisfactory level of liability for breach of Data Protection Legislation;
 - (c) any other breach of Law (to the extent limited) to be limited at an amount no less than one year's fees payable pursuant to the applicable terms;
- 15.1.4 include obligations no less onerous on the Provider or the relevant third party than those imposed on the Provider under this Agreement in respect of:
 - (a) data protection requirements set out in clause 19 (Protection of Information); and

(b) FOIA requirements set out in clause 21 (Freedom of Information);

15.1.5 include confidentiality obligations on the Provider or relevant third party no less stringent than those placed on the Provider under clause 20 (Confidential Information);

15.1.6 permit the disclosure of confidential information of Provider or the relevant third party by the Council on a confidential basis to its personnel, advisers, consultants, Providers or other persons engaged by the Authority for any purpose relating to or connected with this Agreement or the COTS Software and, for the purposes of the foregoing, reference 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 Authority under clause 20 (Confidential Information); and

15.1.7 require the Provider or relevant third party to comply with Law and provide that that the Provider or relevant third party will neither be relieved of its obligations to supply and permit the Authority and Service Beneficiaries to use the COTS Software in accordance with the terms, nor be entitled to an increase in the applicable fees for the same, as the result of Change in Law.

Subject to the foregoing, the applicable terms shall be set out in Schedule 10 (COTS Software Usage Terms).

Patents

15.2 Where a patent owned by the Provider is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs by Authority or any Replacement Provider, the Provider hereby grants to the Authority, the Service Beneficiaries and the Replacement Provider 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.

16. PAYMENT AND CHARGES

- 16.1 In consideration for and subject to the performance of the Services and supply of the Deliverables and Achievement of the Milestones, the Authority shall pay the Provider the Charges in accordance with Schedule C.
- 16.2 Where Schedule C provides for any Charges to be calculated on a time and materials basis:
- 16.2.1 the Charges shall be calculated in accordance with the Rates;
 - 16.2.2 the Provider shall maintain appropriate records of all time spent by each member of Staff and of the time spent producing each Deliverable. The Provider shall make these records available to the Authority at any time on request; and
 - 16.2.3 for the avoidance of doubt, Charges shall not be payable for time spent (i) remedying any breach of the Provider's obligations for which the Provider is not relieved from liability under the Agreement; or (ii) attending Authority relationship meetings or dealing with disputes or other Authority relationship matters.
- 16.3 Where any Charges are calculated on a time spent basis then unless otherwise specified in Schedule C, the Provider shall invoice for the Charges monthly in arrears following completion of the Services to which they relate. Where any Charges are payable on the Achievement of Milestones or in accordance with any payment schedule set out in Schedule C then the Provider shall invoice for them in accordance with Schedule C.
- 16.4 Subject to and in accordance with Schedule C, the Provider shall be entitled to recover from the Authority any reasonable and proper travel and subsistence expenses incurred by the Provider in attending Authority Premises, provided that those expenses have been agreed in writing by the Authority prior to them being incurred and the Provider provides such evidence as the Authority reasonably requests from the Provider to substantiate the expenses incurred. For the avoidance of doubt, the Provider shall not be entitled to recover travel and subsistence expenses incurred by Provider Staff working at their usual place of employment nor where the expenses have not been approved in advance in writing by the Authority.

- 16.5 The Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Authority to substantiate the invoice (including copies of the resource usage records described above).
- 16.6 The Authority shall pay all valid and correctly rendered invoices for the Charges within thirty (30) days of receipt.
- 16.7 Where the Provider enters into a sub-contract with a Provider or contractor for the purpose of performing its obligations under the Agreement, in accordance with Section 73 of the Procurement Act, the provisions of section 68 of the Procurement Act shall be implied into such sub-contract.
- 16.8 The Provider shall add VAT to the Charges at the prevailing rate as applicable.
- 16.9 The Provider shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under the Contract. Any amounts due under this clause 16.9 shall be paid by the Provider to the Authority not less than ten (10) Working Days before the date upon which the tax or other liability is payable by the Authority.
- 16.10 The Rates and any periodic Charges shall remain fixed until the expiry of the period specified in the Specification following the Commencement Date (or if no other period is specified in the Specification, for the period of 12 months following the Commencement Date). On the date of expiry of the relevant period and thereafter on each anniversary of that date (each a "**Price Revision Date**") for Services subsequently provided, the Provider may increase the Rates and any periodic Charges by written notice to the Authority, provided that each such increase does not exceed the percentage change in the indexation reference specified in the Specification (or, if no indexation reference is specified in the Specification, the Office of National Statistics' Retail Prices Index or such equivalent index as the parties agree in writing if that index ceases to be published for any reason) during the 12 month period expiring ninety (90) days before the relevant Price Revision Date. No increase in the Rates and Charges shall be made under this clause 16.10 in any year unless the Provider has notified the Authority in writing of the proposed increase at least thirty (30) days prior to relevant

Price Revision Date. For the avoidance of doubt, the Provider shall not be entitled to any increase in the Price with respect to any changes requested by the Customer which are reasonably necessary to comply with changes to Data Protection Legislation and Cyber Security Requirements which become known and take effect after the Commencement Date.

- 16.11 If a party fails to make any payment due to the other under the Agreement by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 4% per annum above Barclays PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause 16.11 shall not apply to payments the defaulting party disputes in good faith.
- 16.12 Any Service Credits payable by the Provider shall become payable to the Authority by the Provider on the first day of the month following the month to which such Service Credits accrue. They may be recovered by the Authority at the Authority's option as credits against the next invoice(s) which may subsequently be due for issue under the Agreement or as a debt due from the Provider. Service Credits shall not count towards the liability caps set out in the Agreement. If any Service Credits remain outstanding on termination of the Agreement then they shall be payable by the Provider as a debt due to the Authority.
- 16.13 Service Credits shall not operate to prevent the Authority from recovering damages in respect of any breach of the Agreement to which they relate or to limit the amount of such damages, but any such damages shall be reduced by an amount equivalent to the Service Credits received by the relevant the Authority in respect of the breach.
- 16.14 The Authority may retain or set off any amount owed to it by the Provider against any amount due to the Provider under the Agreement or under any other agreement between the Provider and the Authority.
- 16.15 If the Authority wishes to exercise its right pursuant to clause 16.14 it shall give notice to the Provider within thirty (30) days of receipt of the relevant invoice, setting out the Authority's reasons for retaining or setting off the relevant Charges.

17. **CHANGE**

Change Control Procedure

- 17.1 Unless otherwise stated in this Agreement, any Change shall be made only in accordance with this clause 17.
- 17.2 The Parties shall deal with Change as follows:
- 17.2.1 either Party may at any time request a Change by giving notice in writing to the other Party identifying the proposed Change (a **“Change Request”**) ;
 - 17.2.2 the Authority Representative shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in clause 17.4;
 - 17.2.3 the Provider shall have the right to reject a Change Request solely in the manner set out in clause 17.5; and
 - 17.2.4 in any preparation of a Change Request or Change Request Information each Party will be liable for their own costs.
- 17.3 The Provider shall (in good faith) submit to the Authority in writing, within ten (10) Working Days (or such longer period as may be agreed) of receipt of a written Change Request from the Authority Representative (or at the same time as any written Change Request that the Provider may submit):
- 17.3.1 a full written quotation including a detailed breakdown and such supporting evidence of its costs and resources as the Authority shall reasonably require for such Change;
 - 17.3.2 particulars of any changes which would be required to the Authority Requirements in order to implement the proposed Change;
 - 17.3.3 particulars of the other changes (if any) which would be required to this Agreement in order to implement the proposed Change; and
 - 17.3.4 the full cost and risk implications for the Authority that would result from the Change, including any proposed amendment to the Charges, provided

that any such amendment to the Charges must be reasonable and proportionate in the circumstances and comply with the principles set out in Schedule C,

(together, the **“Change Request Information”**).

17.4 Upon receipt of the Change Request Information:

17.4.1 the Authority may elect, subject to clause 17.6, to approve the proposed Contract Change, in which case this Agreement will be amended accordingly and the Parties shall forthwith complete and sign a change control notice in such form as the Authority Representative shall reasonably require recording the Change that shall include the Change Request Information; or

17.4.2 the Authority Representative may, in his absolute discretion reject the Change, in which case he shall notify the Provider of the rejection; or

17.4.3 where the Authority Representative reasonably considers that the Provider has not complied with clause 17.3, he may require the Provider to resubmit the Change Request Information, in which event the Provider shall make such modifications as are necessary to comply with clause 17.3 and resubmit the same to the Authority Representative within five (5) Working Days of the Authority Representative’s request and the provisions of this clause 17.4 shall apply thereto.

17.5 Following a Change Request if:

17.5.1 the Provider reasonably believes that any proposed Change which is requested by the Authority Representative would:

(a) materially and adversely affect the risks to the health and safety of any person; and/or

(b) require the Services to be performed in a way that infringes any Law; and/or

17.5.2 the Provider demonstrates to the Authority Representative’s reasonable satisfaction that:

(a) the proposed Change is technically impossible to implement;
and

(b) neither the Provider Solution nor the Services Description state that the Provider does have the technical capacity and flexibility required to implement the proposed Change,

then the Provider shall be entitled to reject the proposed Change and shall notify the Authority Representative of its reasons for doing so within five (5) Working Days.

17.6 Until such time as any Change is formally accepted in accordance with clause 17.4.1 and the applicable change control notice has been signed by a representative of the Authority having the necessary authority, the same shall not be binding on the Authority and the Provider will, unless otherwise agreed in writing, continue to perform and be paid as if no Change had been required.

Change in Law

17.7 The Provider 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 Change in Law. For the avoidance of doubt, the Provider shall not release a New Version solely in response to any Change in Law.

18. STATUTORY OBLIGATIONS AND REGULATIONS

Prevention of Corruption

18.1 The Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Authority or any other public body or person employed by or on behalf of the Authority any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the Agreement or any other contract with the Authority or any other public body or person employed by or on behalf of the Authority, or for showing or refraining from showing favour or disfavour to any person in relation to any such contract.

- 18.2 The Provider warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body in connection with the Agreement.
- 18.3 If the Provider, its Staff or any person acting on the Provider's behalf, engages in conduct prohibited by clauses 18.1 or 18.2, the Authority may:
- 18.3.1 terminate the Agreement with immediate effect by giving notice in writing to the Provider and recover from the Provider the amount of any loss suffered by the Authority resulting from the termination; and/or
- 18.3.2 recover in full from the Provider any other loss sustained by the Authority in consequence of any breach of those clauses.

Discrimination

- 18.4 The Provider shall not unlawfully discriminate within the meaning and scope of any Laws relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).
- 18.5 The Provider shall take all reasonable steps to secure the observance of clause 18.4 by all servants, employees or agents of the Provider and all Providers and sub-contractors employed in the execution of the Agreement.

Health and Safety

- 18.6 The Provider shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Authority shall promptly notify the Provider of any health and safety hazards which may exist or arise at the Premises and which may affect the Provider in the performance of its obligations under the Agreement.
- 18.7 While on the Premises, the Provider shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working there, provided that the Authority has notified the Provider of the health and safety measures it requires the Provider's Staff to comply with in writing and, if applicable, provided the Provider with a copy of the relevant policy.

- 18.8 The Provider shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 18.9 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and/or the Health and Safety at Work (Northern Ireland) Order 1978 (as applicable) and any other Laws and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Agreement.
- 18.10 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Authority on request.

Authority's Best Value Duty and Continuing Improvement

- 18.11 The Provider shall at all times assist the Authority in the achievement of its duty to obtain best value in accordance with the Local Government Act 1999 (where applicable) and shall do all that is reasonably required by the Authority in this regard.
- 18.12 The Provider shall at all times during the Agreement:
- 18.12.1 to the extent of its obligations in the Agreement make arrangements to secure continuous improvement in the way in which the Services are provided; and
- 18.12.2 use all reasonable endeavours to implement the efficiencies to be found in Good Industry Practice.

19. PROTECTION OF INFORMATION

- 19.1 Terms defined in the Data Protection Laws shall have the meanings set out in the Data Protection Laws when used in the Agreement, including: 'controller', 'data subject', 'personal data', 'personal data breach', 'joint controller', 'sub processor', 'process', 'processing' and 'processor' (and their equivalent terms).
- 19.2 The parties shall comply with all applicable requirements of the Data Protection Laws and, where applicable the Data Protection Supplementary Terms in relation to the

processing of any personal data in connection with the Agreement. This clause 19 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Laws.

19.3 Each party shall provide the other with the name and contact details of its data protection contact, who is responsible for data protection matters on a day to day basis as applicable to the Services.

19.4 The Provider and the Authority shall each take all reasonable precautions (having regard to the nature of their other respective obligations under the Agreement) to preserve the integrity of Authority Personal Data and to prevent any destruction, corruption or loss of Authority Personal Data.

19.5 The Authority and the Provider acknowledge that the Authority is the controller of Authority Personal Data and the Provider is its processor. The Provider shall in supplying the Services and Deliverables and in exercising its rights and performing its obligations under the Agreement comply in all respects with Data Protection Laws, and not do anything to put the Authority in breach of Data Protection Laws. In particular, but without prejudice to the generality of the foregoing, the Provider shall:

19.5.1 only process the Authority Personal Data in accordance with written instructions of the Authority from time to time, unless such processing is required by any Law (other than contract law) to which the Provider is subject, in which case, the Provider shall (to the extent permitted by law) inform the Authority of that legal requirement before carrying out the processing. The Provider shall immediately inform the Authority if, in its opinion, an instruction infringes Data Protection Laws;

19.5.2 implement and maintain in place at all times appropriate technical and organisational measures to protect the Authority Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. The Provider shall ensure that these measures shall be appropriate to the risk to data subjects and the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Authority Personal Data and having regard to the nature of the Authority Personal Data which is to be protected; such

measures shall include, in addition and without prejudice to other specific commitments:

- (a) where appropriate, the pseudonymisation of Authority Personal Data;
- (b) the encryption of all Authority Personal Data when in transit, and being held on any server, laptop, phone, mobile storage or any other device, and otherwise in circumstances where the amount of Authority Personal Data or its sensitivity warrant the same;
- (c) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (d) the ability to restore the availability and access to Authority Personal Data in a timely manner in the event of a physical or technical incident; and
- (e) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing,

19.5.3 without prejudice to the generality of clause 19.5.2 the Provider shall take and comply with all of the measures it has informed the Authority that it will take to protect the Authority Personal Data, including those specified elsewhere in this clause 19, and shall update them from time to time throughout the Term of the Agreement so that they continue to comply with Good Industry Practice, provided that it shall not make any changes that might result in a lesser degree of protection being afforded to any affected Authority Personal Data;

If there is any conflict or inconsistency between any of the requirements set out in sub-clauses 19.5.2 and 19.5.3, the requirement that provides the greater level of security shall apply;

19.5.4 inform the Authority immediately (and in any event within 24 hours) if at any time: (i) there is a breach or suspected breach of security in relation to any Authority Personal Data; or (ii) any Authority Personal Data is or is suspected to be used, disclosed to or accessed by a third party except in accordance

with the Agreement; or (iii) any Authority Personal Data is lost, corrupted, destroyed or otherwise rendered unusable or inaccessible. This shall include providing a description of (and the approximate volume of) the Authority Personal Data and data subjects affected, the nature of the breach, the likely consequences of the breach and the measures taken and/or proposed to be taken to address the breach, and providing all necessary assistance to the Authority in making notifications to affected individuals, the Information Commissioner's Office ("**ICO**"), and any other regulators. The Provider shall immediately take such actions as the Authority shall reasonably require to remedy the breach and to avoid (or where that is not possible to minimise) potential loss, damage or distress to affected data subjects. The Provider shall also reimburse the Authority for (i) all legal and other costs reasonably incurred in connection with such breach or suspected breach and any associated remedial action, including any costs associated with investigation of the issue, notifications to affected individuals, the ICO and other regulators and the provision of services to the affected individuals to minimise/assist them to manage the risks to them; and (ii) all claims arising out of such breach that the Authority is obliged or legally advised to pay;

19.5.5 not engage or authorise (and shall ensure that no sub-processor of any tier engages or authorises) a sub-processor or any other third party (other than the Provider's own staff) to process the Authority Personal Data (each a "**Sub-Processor**") unless:

- (a) the Provider has undertaken appropriate due diligence into the Sub-Processor and the technical and organisational measures that the Sub-Processor has to ensure processing in compliance with the GDPR (and has obtained satisfactory results to such due diligence);
- (b) it has notified the Authority in writing a reasonable period prior to the appointment of the Sub-Processor, such notice to include details of the Proposed Processor and the processing that it is anticipated that it will undertake. If the Authority objects to the appointment of the Proposed Processor on reasonable grounds then the Provider shall use reasonable endeavours to address the Authority's objections; and

- (c) the proposed sub-processor has either entered into a direct contract with the Authority or a contract with the Provider incorporating provisions equivalent to those in the Agreement relating to confidentiality, data protection and security. For the avoidance of doubt, the Provider shall remain liable for the acts and omissions of its sub-processors (of whatever tier) as if they were the Provider's own.

The Provider's right to delegate or sub-contract pursuant to the Agreement shall be subject to the terms of this clause 19.5.5 and the provisions of clause 36.1.

For the purposes of this clause 19.5.5, the Authority hereby agrees to the appointment of the sub-processors set out in the Specification. The Provider acknowledges and agrees that the provisions of this clause 19.5.5 apply equally to any sub-processors already appointed by the Provider. The Provider undertakes that it has undertaken due diligence into their respective technical and organisational measures to ensure processing in compliance with the GDPR (and obtained satisfactory results to such due diligence), and that it has concluded with each a written agreement incorporating provisions equivalent to those in the Agreement relating to confidentiality, data protection and security. The Provider acknowledges that the Authority's agreement to the appointment of such sub-processors is conditional upon the Provider's compliance with the terms of this clause;

- 19.5.6 not make or permit any Restricted Transfer of any Authority Personal Data to be made without the prior written consent of the Authority and subject to the implementation of such measures and the conclusion of all necessary contracts (including Model Clauses) as are required to enable the Authority to comply with Data Protection Laws in relation to such transfer;
- 19.5.7 provide all assistance reasonably required to enable the Authority to fulfil the Authority's obligations to respond to any complaints, requests or other exercise of rights by Data Subjects, requests from third parties to disclose any Authority Personal Data, and/or any communications from the ICO or any supervisory authority, in accordance with Data Protection Laws.

19.5.8 provide all necessary assistance to enable the Authority to comply with its obligations under Article 25 (privacy by design and by default), and Articles 32-34 (security, breach notification) of the GDPR and to fulfil the Authority's obligations to perform data protection impact assessments and consult with supervisory authorities in relation to any high risk processing of Authority Personal Data under the Agreement pursuant to Articles 35 and 36 of the GDPR;

19.5.9 the Provider shall:

- (a) make available to the Authority all information, documentation and assistance the Authority reasonably requests from time to time to enable the Authority to verify that the Provider is in compliance with the Agreement; and
- (b) permit the Authority or a representative of the Authority (subject to reasonable and appropriate confidentiality undertakings), on 2 Working Days' written notice (or less in the case of an emergency, including but not limited to data security breach), to perform both remote and on-site audits and inspections of the premises, systems, employees and relevant records and information of the Provider (and/or those of its agents, Affiliates and sub-contractors) and provide and/or procure the provision of all reasonable assistance in connection therewith, and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Provider is in full compliance with its obligations under the Agreement and/or to enable the Authority to fulfil any request from the ICO or other supervisory authority or regulator;

19.6 On the expiry or termination of the provision of the Services, the Provider shall notify the Authority of any Authority Personal Data that it holds. The Provider shall immediately transfer to the Authority a copy of all the Authority Personal Data in a non-proprietary, readable format. The Provider shall securely and permanently destroy all copies of the Authority Personal Data in its possession or control (other than any copy transferred to the Authority in accordance with this paragraph) unless the Provider is required by law to retain any copies of such data. The Provider shall be

the controller in relation to any such retained Authority Personal Data, shall process it solely as necessary to comply with its legal obligations and shall comply with all applicable Data Protection Law. For the avoidance of doubt, the provision of a copy of the Authority Data on the expiry or termination of the provision of the Services shall be chargeable in accordance with clauses 32.4.1 and 32.6, unless the Authority terminates the Agreement in accordance with 31.2, in which case it shall be provided at the Provider's cost.

19.7 The Provider shall ensure that:

19.7.1 access to the Authority Personal Data is limited to those individuals who need access in order to meet the Provider's obligations under the Agreement (together the "Authorised Personnel"); and

19.7.2 all Authorised Personnel are appropriately trained in the handling of the Authority Personal Data, are informed of the confidential nature of the Authority Personal Data and are bound by and comply with appropriate confidentiality obligations and usage restriction when accessing it. The Provider shall be responsible for the acts and omissions of Authorised Personnel as if they were those of the Provider itself.

19.8 The Provider shall not store, copy, disclose, or use the Authority Personal Data except as necessary for the performance by the Provider of its obligations under the Agreement or as otherwise expressly authorised in writing by the Authority.

19.9 The Provider shall preserve the integrity of Authority Personal Data and prevent the corruption or loss of Authority Personal Data at all times that the relevant Authority Personal Data is under its control or the control of any sub-contractor.

19.10 Where expressly required by the Authority the Provider shall perform secure back-ups of all Authority Personal Data and shall ensure that up-to-date back-ups are stored off-site in accordance with Good Industry Practice. The Provider shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than 6 monthly intervals (or such other intervals as may be agreed in writing between the parties).

- 19.11 The Provider shall ensure that any system on which the Provider holds any Authority Personal Data, including back-up data, is a secure system that complies with the Security Requirements.
- 19.12 If the Authority Personal Data is corrupted, lost or sufficiently degraded as a result of the Provider's Default so as to be unusable, the Authority may: (a) require the Provider (at the Provider's expense) to restore or procure the restoration of Authority Personal Data in accordance with the BCDR Plan. The Provider shall do so in accordance with (and within the timescales expected by) industry best practice; and/or (b) itself restore or procure the restoration of Authority Personal Data, and shall be repaid by the Provider any reasonable expenses incurred in doing so.
- 19.13 If at any time the Provider suspects or has reason to believe that Authority Personal Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Provider shall notify the Authority immediately and inform the Authority of the remedial action the Provider proposes to take.
- 19.14 The Provider shall comply with the requirements of the Security Policy at all times in connection with the performance of its obligations under the Agreement.
- 19.15 The Authority shall notify the Provider of any material changes or proposed changes to the Security Policy in accordance with the provisions of clause 34 (Variation). If the Provider believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it shall provide evidence of the cause of any increased costs and the steps proposed to mitigate those costs. Any change to the Charges shall then be agreed in accordance with clause 34 (Variation).
- 19.16 The Provider shall, as an enduring obligation throughout the term of the Agreement, 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 any Malicious Software in the Provider System (which shall include the Solution where the Provider is providing a Hosted Solution or SaaS Solution) and to contain the spread of, and minimise the impact of, Malicious Software on the Solution and Authority System. Without prejudice to the preceding sentence, the Authority shall ensure that it has and maintains installed and updated appropriate anti-virus Software on its systems to check for any Malicious Software in the Authority

System (and the Solution where the Solution is an on-premises Solution hosted by the Authority and not by the Provider).

- 19.17 Notwithstanding clause 19.16, if Malicious Software is found in the IT Environment, the parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data (including any Authority Personal Data), assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

20. **CONFIDENTIAL INFORMATION**

- 20.1 Except to the extent set out in this clause 20 or where disclosure is expressly permitted elsewhere in the Agreement, each party shall:

20.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

20.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

- 20.2 Clause 20.1 shall not apply to the extent that:

20.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA pursuant to clause 21 (Freedom of Information);

20.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

20.2.3 such information was obtained from a third party which to the party's reasonable knowledge is without obligation of confidentiality;

20.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Agreement; or

20.2.5 such information is independently developed without access to the other party's Confidential Information.

- 20.3 The Provider may only disclose the Authority's Confidential Information to its Staff or Affiliates who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff and Affiliates are aware of and shall comply with these obligations as to confidentiality.
- 20.4 The Provider shall not, and shall procure that its Staff and Affiliates do not, use any of the Authority's Confidential Information otherwise than for the purposes of the Agreement.
- 20.5 At the written request of the Authority, the Provider shall procure that those Affiliates and members of the Staff identified in the Authority's notice and who are not otherwise subject to confidentiality obligations commensurate with this clause 20 sign a confidentiality undertaking prior to commencing any work in accordance with the Agreement.
- 20.6 Nothing in the Agreement shall prevent the Authority from disclosing the Provider's Confidential Information:
- 20.6.1 to any consultant, contractor or other person engaged by the Authority;
 - 20.6.2 for the purpose of the examination and certification of the Authority's accounts; or
 - 20.6.3 for any examination pursuant to Section 6 (1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 20.7 The Authority shall ensure that any government department, employee, third party or sub-contractor to whom the Provider's Confidential Information is disclosed pursuant to clause 20.6 is made aware of the Authority's obligations of confidentiality and subject to and comply with commensurate obligations of confidentiality.
- 20.8 Nothing in this clause 20 shall prevent either party from using any techniques, ideas or know-how developed during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

21. **FREEDOM OF INFORMATION**

21.1 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.

21.2 The Provider shall (and shall procure that its sub-contractors and Affiliates shall):

21.2.1 transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

21.2.2 provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and

21.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA.

21.3 The Authority shall be responsible for determining in its absolute discretion, and notwithstanding any other provision in the Agreement or any other agreement, whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA. However, prior to disclosing any information provided by the Provider to the Authority in response to any FOIA request, the Authority shall: (i) where possible, consult with the Provider and shall consider any representations made by the Provider in relation to any proposed disclosure in good faith; and (ii) where the Authority considers that an exemption from its obligations to disclose such information applies (including any exemption applicable to trade secrets or information provided in confidence), then the Authority shall apply such exemption.

21.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised in writing to do so by the Authority.

21.5 The Provider acknowledges that (notwithstanding the provisions of clauses 21.3 and 21.8) the Authority may, acting in accordance with the Secretary of State for

Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA to disclose information concerning the Provider or the Services:

- (a) in certain circumstances without consulting the Provider; or
- (b) following consultation with the Provider and having taken their views into account,

provided always that where 21.5 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

- 21.6 The Provider shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 21.7 The Provider acknowledges that the Authority may be obliged to disclose Commercially Sensitive Information in accordance with clause 21.5.
- 21.8 The parties acknowledge that, except for any information to which an exemption from disclosure applies or is available in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA. The Authority shall comply with clause 21.3 when making such determination.
- 21.9 The Provider shall not make any press announcements or publicise the Agreement in any way without the Authority's prior approval and shall take reasonable steps to ensure that its servants, employees, agents, sub-contractors, Providers, professional advisors and consultants comply with this clause 21.9.
- 21.10 The Authority shall be entitled to publicise the Agreement in accordance with any legal obligation upon the Authority, including any examination of the Agreement by the Auditor.
- 21.11 The Provider shall not do anything or cause anything to be done, which may damage the reputation of the Authority or bring the Authority into disrepute.

22. INTELLECTUAL PROPERTY RIGHTS AND LICENCE

22.1 Except as and to the extent expressly otherwise provided in this clause 22 or as expressly otherwise agreed in writing by the parties, the Agreement shall not affect the ownership of any Intellectual Property Rights, regardless of whether or not they are used or made available under the Agreement. For the avoidance of doubt, as between the parties, all Intellectual Property Rights in the:

22.1.1 Authority Data shall belong to and remain with the Authority;

22.1.2 Software and associated Documentation provided or made available as part of the Solution shall belong to and remain with the Provider; and

22.1.3 any materials generated other than in the course of this Agreement shall remain owned by the party that makes them available under it.

22.2 The Provider hereby grants (or shall procure the grant in the case of rights owned by third parties) the Authority, a non-exclusive, non-transferrable (other than as part of any assignment of the Agreement) licence (with no right to grant sub-licences other than as provided in clause 22.3) to use the Solution for the purposes of administering the pension fund(s) administered by the Authority from time to time and for any ancillary purposes (the “**Solution Licence**”). The Solution Licence shall continue for the Term unless otherwise specified in the Specification. For the avoidance of doubt, where the Specification specifies that the Solution Licence shall be perpetual then it shall continue in full force and effect without limit in time notwithstanding the termination of the Agreement, save that the Provider shall have the right to terminate any perpetual Solution Licence following termination of the Agreement by notice in writing to the Authority where the Provider would have had a right to terminate the Agreement in accordance with clause 31.7 if the Agreement was still in effect.

22.3 The Solution Licence shall include the right to permit:

22.3.1 permanent and temporary employees and individuals who are contractors of the Authority to use the Solution on behalf of the Authority in the ordinary course of their duties;

22.3.2 contractors and agents of the Authority to use the Solution in the course of administering the pension fund(s) administered by the Authority from time to time

and for any ancillary purposes, provided that the Provider's prior written consent (which shall not be unreasonably withheld or delayed and may be subject to payment of a reasonable additional fee for use for other purposes) shall be required if the contractor or agent is a competitor of the Provider or if the Solution is to be used for any purpose other than in the ordinary course of provision of administration services for the fund(s) administered by the Authority; and

22.3.3 members of the fund(s) administered by the Authority and related employers to use the modules of the Solution that are relevant to them,

in each case upon and subject to the terms of the Agreement (including this clause 22). For the avoidance of doubt, any use by these permitted users shall count towards any relevant usage limits set out in the Agreement and usage is limited to use for the fund(s) which the Authority is responsible for administering from time to time. The Authority shall be liable to the Provider for the acts and omissions of the Authority's permitted users of the Solution as if they were the acts and omissions of the Authority.

22.4 Where the Solution is provided as an 'on premises' solution and not as a Hosted Solution or SaaS Solution, the Authority's right to use the Solution shall include any act which is reasonably incidental to such use, including the creation of as many copies of the Solution as may be reasonably required to enable its proper use of the Solution and the maintenance of a reasonable number of back-up, test and development instances of the Solution. It shall also include the right to freely transfer the Solution to alternative hardware and locations at any time.

22.5 The Provider hereby grants (or shall procure the grant in the case of rights owned by third parties) to the Authority, a world-wide, non-exclusive, perpetual, irrevocable licence (with the right to freely grant sub-licences) to use and exploit (and to permit its sub-licensees to use and exploit) any document Deliverables that do not comprise Software or Software Documentation for all purposes in connection with the administration of the pension fund(s) that are administered by the Authority from time to time. For the avoidance of doubt, the licence granted under this clause 22.5 shall not apply to any Software (including any Hosted Solution or SaaS Solution) or to any Software Documentation.

22.6 The Solution Licence shall:

- 22.6.1 be subject to any restrictions and limitations that are specifically stated in writing in the Specification to apply to the Solution provided that the Provider shall ensure that any such restrictions and limitations do not conflict with the provisions set out in this clause 22; and
- 22.6.2 not include the right to (and the Authority shall not and shall not permit any third party to):
- (a) disassemble, decompile, reverse translate or in any other manner decode the Solution in whole or in part, except as permitted by law; or
 - (b) copy, adapt or modify the Solution in whole or in part except as permitted in this clause 22 or for any copy, adaptation or modification created incidentally in the course of using the Solution as permitted by the Agreement or as permitted by law.
- 22.7 The Authority shall not remove, alter or destroy any proprietary, trademark or copyright notices placed upon or contained within the Solution.
- 22.8 All Intellectual Property Rights in any Authority Data and in any materials or products supplied, developed or made available by the Authority to the Provider from time to time shall remain the exclusive property of the Authority and such items shall be used only as authorised by the Authority in writing. The Authority shall permit the Provider to use such Authority Data, materials or products to the extent necessary to enable the Provider to provide the Services. The Provider shall not use such materials or products for any other purposes. All such rights granted by the Authority will terminate immediately upon the termination of the Services to which they relate.
- 22.9 Where any Intellectual Property Rights other than rights in Authority Data are developed by or for the Provider in the performance of the Services ("**Developed IPR**"), then: (i) unless the Developed IPR forms part of any document Deliverable, such Developed IPR will be deemed to form part of the Solution and will be licensed by the Provider to the Authority in accordance with clause 22.2; and (ii) if the Developed IPR forms part of any document Deliverable, then it shall be licensed by the Provider to the Authority in accordance with clause 22.5.

- 22.10 The Provider hereby assigns (by way of a present assignment of a future right) to the Authority ownership of any Intellectual Property Rights in Authority Data that may vest in the Provider (or its contractors of whatever tier).
- 22.11 The Provider warrants and represents that the use of the Services and Deliverables (including the Solution) as permitted by the Agreement shall not infringe the Intellectual Property Rights of any third party. For the avoidance of doubt, this warranty and representation shall not apply to any infringement that results directly from the use of data, items or materials that were originally provided by the Authority.
- 22.12 The Provider shall, during and after the Term, indemnify and keep indemnified and hold the Authority harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may suffer or incur as a result of any claim that the performance by the Provider of the Services and/or the possession or use by the Authority (or its authorised users) of the Deliverables/Solution infringes or allegedly infringes a third party's Intellectual Property Rights ("Claim") except where the Claim arises from:
- (a) designs or other items supplied by the Authority;
 - (b) the use of data supplied by the Authority which is not required to be verified by the Provider under any provision of the Agreement;
 - (c) the Authority (or any third party acting on the instructions of the Authority) using the Solution and/or Deliverables other than as intended by the Agreement; or
 - (d) modifications made to the Solution by the Authority (or by any third party on behalf of the Authority).
- 22.13 The Authority shall notify the Provider in writing of the Claim and the Authority shall not make any admissions which may be prejudicial to the defence or settlement of the Claim without the Provider's prior written agreement (which shall not be unreasonably withheld or delayed). The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Provider:

- (a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
- (b) shall take due and proper account of the interests of the Authority; and
- (c) shall not settle or compromise the Claim without the Authority's prior approval (not to be unreasonably withheld or delayed).

22.14 If a Claim is made in connection with the Agreement or in the reasonable opinion of the Provider is likely to be made, the Provider shall immediately notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:

- (a) modify the relevant part of the Services or the Deliverables without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or
- (b) procure a licence to use and supply the Services or the Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Authority.

22.15 In the event that a modification or substitution in accordance with clause 22.14(a) is not possible so as to avoid the infringement, or the Provider has been unable to procure a licence in accordance with clause 22.14(b) the Authority shall be entitled to delete the relevant Service from the Agreement and any Charges paid or payable in respect of such Service shall be reduced accordingly. Where the parties cannot agree the amount of such reduction, the dispute shall be referred for Expert Determination in accordance with clause 37.3.

23. **[ESCROW]**

23.1 Where requested by the Authority from time to time the Provider shall enter into (and shall use reasonable endeavours to procure that the relevant third party owner of any

Third Party Software shall enter into) an escrow agreement in respect of such of the Software forming part of the Solution as the Authority requests (“**Deposited Software**”) on the standard terms of the NCC Group (or such other escrow agent as the parties may agree from time to time). Such escrow agreement shall be entered into for the benefit of the Authority and the fees payable under it shall be as specified in the Specification or in accordance with the default provisions of the escrow agent if not otherwise specified in the Specification. The Provider shall ensure that (and shall procure that each owner of the Deposited Software shall ensure that) the deposited version of the Source Code is the current version of the Deposited Software and that the deposited version is kept up-to-date as the Deposited Software is modified or upgraded. The Provider shall pay the initial storage fees under the escrow agreement and Authority shall pay the release fees.

- 23.2 In circumstances where Authority obtains the release of the Source Code from escrow, the Provider hereby grants to Authority a perpetual, assignable, royalty-free and non-exclusive licence to Use and support the Source Code version of the Deposited Software to the extent necessary for the receipt of the Services or any Replacement Services or Authority's normal business undertakings.]

24. **PROVIDER'S STAFF AND KEY PERSONNEL**

- 24.1 The Provider shall ensure that, except in the case of sickness or injury, compassionate leave, or termination of employment or engagement ("**Unforeseen Circumstances**"), the Key Personnel are and remain assigned to provide the Services and are not replaced or removed from the Services to which they have been allocated except as expressly otherwise provided under the Agreement or as agreed in writing with the Authority (and the Authority shall not unreasonably withhold or delay its agreement to a change in Key Personnel requested by the Provider).
- 24.2 If at any time any Key Personnel are unavailable through Unforeseen Circumstances, the Provider shall allocate alternative personnel reasonably acceptable to the Authority and of equivalent expertise and experience to provide the Services for the duration of the unavailability of such Key Personnel. With effect from their appointment, such alternative personnel shall become Key Personnel.
- 24.3 The Authority reserves the right (acting reasonably) to require the Provider to remove any or all members of the Provider Personnel (including any Key Personnel) at any time

during the term of the Agreement. The Provider will promptly comply with any such instruction and provide a replacement who is acceptable to the Authority (acting reasonably).

24.4 For the duration of the Agreement and for a period of twelve (12) months thereafter neither the Authority nor the Provider shall solicit the employment of the other party's staff who have been engaged in the Services or their procurement or management without that other party's prior written consent. A party shall not be in breach of this clause 24.4 as a result of running a national advertising campaign open to all comers and not specifically targeted at any of the Staff of the other party. For the purposes of this clause, "national advertising campaign" shall mean advertising campaign in any part of the United Kingdom.

24.5 Each party shall comply with its respective obligations set out in Schedule E.

25. **REPORTING AND GOVERNANCE**

25.1 The Provider shall prepare a summary report in the format reasonably requested by the Authority at such frequency as is set out in the Specification detailing:

25.1.1 the activities for the time period covered by the report;

25.1.2 the performance of the Provider under the Agreement, including the Provider's performance against any Service Levels;

25.1.3 any open issues to be addressed by the Provider and the Authority; and

25.1.4 such other information as the Authority reasonably requests.

25.2 The Parties shall hold regular project implementation meetings following the Commencement Date and prior to the Go-Live Date at such frequency as is set out in the Specification or, if no frequency specified in the Specification, at least on a monthly basis. The parties shall also comply with the other governance processes (if any) set out in the Specification and Schedules.

25.3 The Parties shall hold performance review meetings at the Authority's premises, at such intervals as are specified in the Specification and/or Schedules (as the case may be).

25.4 The Provider shall ensure the availability of the Provider Project Manager and, where relevant, all other appropriate Staff to attend and participate in the meetings referred to in clauses 25.2 and 25.3. The Provider shall also prepare for and present at any such meetings a detailed analysis of its activities to date and, if requested by the Authority, provide further detail on any issues which the Authority may wish to focus on at a particular meeting.

25.5 In addition to performing its obligations in accordance with clauses 25.1 to 25.4 above, the Provider shall provide any other ad hoc reports that the Authority reasonably requests from time to time. For the avoidance of doubt, the reports and meetings referred to in clauses 25.1 to 25.3 shall be included within the Charges, but the Provider shall, unless otherwise agreed between the parties in writing, be entitled to charge the Authority on a time and materials basis in accordance with the Rates for any ad hoc reports provided pursuant to this clause 25.5.

25.6 [KPI Publication Responsibilities

25.6.1 Pursuant to section 71 of the Act, and notwithstanding any of the other obligations contained herein, the Customer shall publish the Provider's Performance against the KPIs set out in the Specification at least on a 12 monthly basis.]

26. **RECORDS AND AUDIT ACCESS**

26.1 Where a regulatory body (including the Auditor) wishes to carry out, or requires the Authority to carry out an audit, the Authority may comply with such request without affecting its other rights under this clause 26. In addition, the Authority (or a third party on behalf of the Authority) may carry out one (1) Financial Audit and one (1) Operational Audit (both as defined below) in any Agreement Year (plus any further Financial Audits or Operational Audits it deems appropriate in connection with a material Default or suspected material Default by the Provider) and for a period of twelve (12) months following the end of the Agreement for any or all of the following purposes:

26.1.1 to verify the accuracy of Charges where and to the extent that those Charges are calculated and charged by the Provider to the Authority on a time and materials basis only (a "**Financial Audit**");

- 26.1.2 to review the integrity, confidentiality and security of the Authority's Confidential Information;
- 26.1.3 to review the Provider's compliance with its obligations under the Agreement; and/or
- 26.1.4 to review any records created during the design and development of the Solution and pre-operational environment such as information relating to Acceptance Testing,

(and an audit for any of the purposes referred to in clauses 26.1.2 to 26.1.4 (inclusive) is an **"Operational Audit"**). For each audit, the Authority may then carry out a follow-up assessment limited in scope to confirming that actions from the Operational Audit have been carried out.

26.2 Subject to the Authority's obligations of confidentiality, the Provider shall on demand provide the Authority (and/or its agents or representatives) with all reasonable cooperation and assistance in relation to each audit, including:

- 26.2.1 all information requested by the Authority within the permitted scope of the audit;
- 26.2.2 reasonable access to any sites controlled by the Provider; and
- 26.2.3 access to Staff within a reasonable period of time of a request.

For the avoidance of doubt, Financial Audits shall not extend to any review of (and the Authority shall not be entitled to require the Provider to provide) any documents or information relating to the Provider's costs incurred in performing the Provider's obligations (other than any documents and information required to verify any expenses that the Provider recharges to the Authority).

26.3 The Authority shall ensure that any third party carrying out an audit on behalf of the Authority in accordance with this clause 26 is committed to confidentiality provisions that are equivalent to those imposed on the Authority in this Agreement, and use reasonable endeavours to ensure that any audit does not cause disruption to the Provider's normal business operations.

- 26.4 The parties shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 26, unless the audit reveals a material Default by the Provider in which case the Provider shall reimburse the Authority for all reasonable costs incurred by the Authority in the course of the audit.

27. BUSINESS CONTINUITY AND DISASTER RECOVERY

- 27.1 The Provider shall ensure that it is able to implement the provisions of the Business Continuity and Disaster Recovery Plan at any time in accordance with its terms.
- 27.2 The Provider shall test the Business Continuity and Disaster Recovery Plan on a regular basis (and, in any event, not less than once in every 12 month period). The Provider shall provide the Authority with reasonable evidence of the successful completion of such tests where reasonably requested by the Authority from time to time.
- 27.3 The Provider shall maintain and update the Business Continuity and Disaster Recovery Plan throughout the Term in accordance with Good Industry Practice and shall provide the Authority with a copy of the updated plan on reasonable request.
- 27.4 The Provider shall implement the Business Continuity and Disaster Recovery Plan in accordance with its terms in the event that the Services are not available and in any other circumstances that the Business Continuity and Disaster Recovery Plan is designed to address.

28. LIABILITIES

- 28.1 Nothing in the Agreement shall be construed to limit or exclude either party's liability for:
- 28.1.1 death or personal injury caused by its negligence;
 - 28.1.2 fraud or fraudulent misrepresentation or for wilful misconduct;
 - 28.1.3 liability under the indemnities set out in clauses 22.12 or 29.5 or in Schedule E (Staff Transfer); or
 - 28.1.4 any liability to the extent that it cannot be lawfully excluded or limited.

- 28.2 Nor shall liability to pay the Charges and Service Credits count towards the liability limits set out in this clause 28.
- 28.3 Subject to clauses 28.1, 28.2, 28.4 and 28.6, the Provider's aggregate liability arising as a result of all Provider Defaults, shall in no event exceed:
- 28.3.1 in relation to all Defaults occurring from the Commencement Date to the end of the first Agreement Year, the higher of: (i) five hundred thousand pounds (£500,000); or (ii) a sum equal to one hundred and fifty per cent (150%) of the total Charges paid or which are payable to the Provider under the Agreement; or (iii) the amount (if any) specified as the Provider's Liability Cap in the Specification;
- 28.3.2 in relation to all Defaults occurring in each subsequent Agreement Year that commences during the remainder of the Term, the higher of: (i) five hundred thousand pounds (£500,000) ; or (ii) a sum equal to one hundred and fifty per cent (150%) of the Charges paid, or which are payable, to the Provider under the Agreement; or (iii) the amount (if any) specified as the Provider's Liability Cap in the Specification; and
- 28.3.3 in relation to all Defaults occurring in each Agreement Year that commences after the end of the Term, the higher of: (i) five hundred thousand pounds (£500,000) in each such Agreement Year; or (ii) a sum equal to one hundred and fifty per cent (150%) of the Charges paid, to the Provider under the Agreement; or (iii) the amount (if any) specified as the Provider's Liability Cap in the Specification.
- 28.4 Clause 28.3 shall not apply to any liability for breach of clause 19 (protection of information) and liability for breach of that clause shall not count towards the liability caps in clause 28.3. Subject always to clause 28.1 and clause 28.6, the liability of the Provider to the Authority, of whatever nature arising out of or in connection with a breach of clause 19 (protection of information) (including as a result of breach of contract, negligence or any other tort, under statute or otherwise) shall in no event exceed ten million pounds (£10 million) in for each and every claim.
- 28.5 Subject to clause 28.1 and 28.6, the Authority's aggregate liability for all Authority Defaults shall be limited to:

- 28.5.1 in relation to any Authority Defaults occurring from the Commencement Date to the end of the first Agreement Year, a sum equal to the Estimated Year 1 Charges;
 - 28.5.2 in relation to any Authority Defaults occurring in each subsequent Agreement Year that commences during the remainder of the Term, a sum equal to the Charges paid, or which are payable, to the Provider under the Agreement in the previous Agreement Year; and
 - 28.5.3 in relation to any Authority Defaults occurring in each Agreement Year that commences after the end of the Term, a sum equal to the Charges paid, or which are payable, to the Provider under the Agreement in the last full Contract Year that ends before the end of the Term.
- 28.6 Subject to clause 28.1, in no event shall either party be liable to the other for any:
- 28.6.1 loss of profits;
 - 28.6.2 loss of business;
 - 28.6.3 loss of revenue;
 - 28.6.4 loss of or damage to goodwill;
 - 28.6.5 loss of anticipated savings; and/or
 - 28.6.6 any indirect or consequential loss or damage.
- 28.7 The parties agree and acknowledge that the following shall not fall within the exclusion in 28.6:
- 28.7.1 additional or administrative costs and expenses incurred by the Authority arising from a breach of the Provider's obligations incurred by the Authority where it is required to continue the operation of alternative systems prior to the Go Live Date;
 - 28.7.2 loss resulting directly and naturally from the loss or corruption of the Authority Data; or
 - 28.7.3 loss resulting from third party claims.

29. **INSURANCE**

29.1 The Provider shall effect and maintain throughout the Term with a reputable insurance company:

29.1.1 a policy or policies of public liability insurance to a minimum amount of £5,000,000 (five million pounds) (or such other sum as stated in the Specification) for each and every claim and in the aggregate in any insurance year in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance (or default in performance) of its obligations under the Agreement, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained for a minimum of 6 (six) years following the end of the Agreement;

29.1.2 a policy or policies of professional indemnity insurance to a minimum amount of £10,000,000 (ten million pounds) (or such other sum as stated in the Specification) for each individual claim and in the aggregate in any insurance year. The policy should extend to include cyber liability (first & third party) risks, unless cover has been arranged on a stand-alone policy with an equivalent limit of indemnity. Such insurance shall be maintained for a minimum of 6 (six) years following the end of the Agreement; and

29.1.3 employers' liability insurance in respect of Staff with a minimum limit of indemnity of £5,000,000 (five million pounds) for each and every claim and in the aggregate in any insurance year and as required by law from time to time.

29.2 The Provider shall give the Authority, on request, copies of all insurance policies referred to in clause 29.1 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

29.3 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of the Agreement the Authority may make alternative arrangements to protect its interests (including taking out such insurance cover itself) and may recover the costs of such arrangements from the Provider, either by deducting the costs thereof from any amounts which are or become due or payable to

the Provider, or reclaim such costs as a debt from the Provider. The Provider shall give immediate written notice to the Authority in the event of any cancellation of any of the insurance policies referred to in clause 29.1.

29.4 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Agreement. It shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any such liability .

29.5 The parties acknowledge and agree that the Agreement constitutes a contract for the provision of Services and not a contract of employment. The Provider shall at all times indemnify the Authority and keep the Authority indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Authority is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Term or arising from termination or expiry of the Agreement.

29.6 cyber insurance in relation to any SaaS solutions to a minimum amount of £10,000,000 (ten million pounds) (or such other sum as stated in the Specification) for each individual claim which insurance shall provide cover for losses relating to damage to, or loss of information from, impairment of any of the SaaS solutions as a result of:

29.6.1 any losses resulting from malicious acts (that is, cyberattacks or infection of an IT system by malicious codes).

29.6.2 any losses resulting from non-malicious acts (that is, loss of data or accidental acts or omissions).

30. **WARRANTIES OF AUTHORITY**

30.1 Each of the parties warrants and represents that:

30.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of any parent company) to enter into and perform its obligations under the Agreement;

- 30.1.2 the Agreement is executed by a duly authorised representative of the party;
and
- 30.1.3 in entering the Agreement it has not committed any Fraud.
- 30.2 The Provider warrants and represents that:
 - 30.2.1 as at the Commencement Date, all information, statements and representations contained in the Tender for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Authority prior to execution of the Agreement and it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
 - 30.2.2 to the best of its knowledge and belief no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Agreement;
 - 30.2.3 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Agreement;
 - 30.2.4 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 Provider 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 Provider's assets or revenue;
 - 30.2.5 in the three (3) years prior to the date of the Agreement:
 - (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts; and

- (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

30.2.6 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Agreement.

31. **TERMINATION**

Insolvency

31.1 The Authority may terminate the Agreement with immediate effect by giving notice in writing where in respect of the Provider or any of the Provider's Affiliates:

31.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

31.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide solvent reconstruction or amalgamation); or

31.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or

31.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

31.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

31.1.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or

31.1.7 being a "small company" within the meaning of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

31.1.8 any event similar to those listed in clause 31.1.1 – 31.1.7 occurs under the law of any jurisdiction.

Default

31.2 The Authority may terminate the Agreement by giving written notice to the Provider with immediate effect (or on such longer period of notice as the Authority may specify in its sole discretion):

31.2.1 if there is a Delay to one or more of the Go Live Dates in any of the Live Operational Environments

31.2.2 if the Provider commits a material Default in the reasonable opinion of the Council and if:

(a) it has not remedied such Default within thirty (30) days (or such other period as may be agreed in writing by the Authority) after issue of a written notice by the Provider specifying the Default and requesting it to be remedied; or

(b) such Default is not, in the reasonable opinion of the Authority, capable of remedy;

31.2.3 if there is a Critical Service Level Failure or a Persistent Service Level Failure;

31.2.4 if more than 3 Correction Plans are required to be prepared during any rolling 12 month period;

31.2.5 as provided for in clauses 18.3 (Prevention of Corruption) or 36.32 (Prevention of Fraud);

31.2.6 if the Provider breaches the warranty set out in clause 22.11 (Intellectual Property); or

31.2.7 The Authority may give the Provider written notice of its intention to terminate if it considers that a termination ground listed in section 78(2) of the Procurement Act 2023 applies.

31.3 The Provider may terminate the Agreement by giving written notice to the Authority if the Authority deliberately commits a material Default and the Authority fails to remedy this within thirty (30) days (or such other period as may be agreed in writing by the Provider) after issue of a written notice by the Provider specifying the Default and requesting it to be remedied.

31.4 For the purposes of assessing any damages recoverable, any termination described in clause 31.2 shall be treated as termination for breach of a condition of the Agreement.

Change of Control

31.5 The Provider shall notify the Authority immediately in writing if the Provider undergoes a Change of Control. The Authority may terminate the Agreement with immediate effect by giving notice in writing to the Provider within six months of:

31.5.1 being notified that a Change of Control has occurred; or

31.5.2 where no notification has been made, the date that the Authority becomes aware of the Change of Control,

where the Authority, acting reasonably, believes that the Services will be adversely affected as a result of the Change of Control.

Non-Payment

31.6 If the Authority fails to pay the Provider sums of money when due and such sums are not disputed by the Authority in good faith, the Provider may notify the Authority in writing of such failure to pay and that the Provider intends to exercise its right to terminate the Agreement if the overdue amount is not paid. If the Authority fails to pay such undisputed sums within ninety (90) days of the date of such written notice, the Provider may terminate the Agreement in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause 16.14 (Recovery of Sums Due).

Breach of Solution Licence

- 31.7 The Provider may terminate the Agreement by giving 30 days' notice in writing to the Authority if the Authority deliberately commits a material breach of the terms of the licence granted under clause 22.2 and the breach is not remedied within 30 days after the Provider gives the Authority written notice specifying the breach and requiring it to be remedied.

32. **CONSEQUENCES OF EXPIRY OR TERMINATION**

- 32.1 On expiry or termination of the Agreement and subject to any rights or obligations set out in the Exit Management Plan:

32.1.1 The Authority shall pay the Provider for all Services and Deliverables provided by the Provider prior to termination where and to the extent that such Services and Deliverables comply with the Agreement and are not rejected by the Authority. Where payment is linked to Achievement of particular Milestones and termination occurs prior to such Achievement then the Authority shall pay the Provider a reasonable proportion of the Charges payable for the Services and Deliverables to reflect those Services and Deliverables that had been delivered in accordance with (and which complied in full with) the Agreement as at the date of termination of the Agreement provided that the Authority, acting reasonably, does not reject such Services and Deliverables in accordance with the Authority's rights under the Agreement.

32.1.2 The Provider shall promptly return to the Authority all Authority Confidential Information, Authority Data and Authority's Intellectual Property Rights in its possession or in the possession or under the control of any permitted Providers or sub-contractors, which was obtained or produced in the course of providing the Services, (provided that the Provider may retain copies where it has a legal or regulatory obligation to do so).

32.1.3 The Authority's licence to use the Solution and associated Documentation shall cease unless the Solution Licence is expressed to have been granted on a perpetual basis. Where the Solution Licence has been granted on a perpetual basis then it shall continue in full force and effect without limit in

time following termination of the Agreement except where the Agreement is terminated pursuant to clauses 4.1.4 or 31.6 (when the licence shall terminate on termination of the Agreement).

32.1.4 The Provider shall refund, on a pro-rata basis, any Charges paid by the Authority in advance for Services that have not been provided by the Provider by the date of termination (which shall include a pro-rata refund of any licence or other fees that have been paid for usage of Software in respect of the period after the date of termination).

32.2 Save as otherwise expressly provided in the Agreement:

32.2.1 termination or expiry of the Agreement shall be without prejudice to any rights, remedies or obligations accrued under the Agreement prior to termination or expiration and nothing in the Agreement shall prejudice the right of either party to recover any amount outstanding at such termination or expiry; and

32.2.2 termination of the Agreement for any reason will not affect the coming into force or the continuation in force of any of the provisions which expressly or by implication are intended to come into force or continue in force on or after the termination including clauses 16.9, 16.12 and 16.14 (Payment & Recovery of Sums Due), 17 (Statutory obligations and regulations), and 19 (Protection of Information), 20 (Confidential Information), 21 (Freedom of Information), 22 (Intellectual Property Rights and Licence), 26 (Records and Audit Access), 28 (Liability, Indemnity and Insurance), 29 (Insurance), 32 (Consequences of Expiry or Termination), 36.14 (Cumulative Remedies) and 37 (Governing Law and Jurisdiction).

Exit Management Plan and Transition to a new contractor

32.3 Except as and to the extent otherwise agreed in writing by the parties, the parties shall apply the exit management principles set out in Schedule F to enable the Authority to transition from the Services to the replacement solution and services to be provided by the new provider appointed by the Authority. In consultation with the Authority, the Provider shall prepare and submit to the Authority a draft exit management plan (at the Provider's own cost) within twenty-one (21) days (or such other period as is

agreed in writing between the parties, acting reasonably) of the date reasonably requested by the Authority. The Provider shall ensure that the draft exit management plan meets the requirements of Schedule F (including the exit management principles set out in Annex 1 to Schedule F) and sets out in reasonable detail all of the steps that the Provider reasonably considers appropriate to enable the transition to the Replacement Provider without any adverse impact on the Authority. The parties shall use their respective reasonable endeavours to agree the contents of the draft exit management plan within fifteen (15) Working Days (or such other period as is agreed in writing between the parties acting reasonably) after the submission of the draft exit management plan to the Authority. The Authority shall be entitled to refer any disputes regarding the content of the draft exit management plan for Expert Determination in accordance with clause 37 on written notice to the Provider. From the date on which the parties agree the draft exit management plan, it shall form the Exit Management Plan.

32.4 The parties shall comply with the exit management principles in Schedule F. The parties shall also perform their respective responsibilities set out in the Exit Management Plan in accordance with its terms and the Authority shall use reasonable endeavours to procure that the Replacement Provider acts in accordance with the Exit Management Plan. Where the Authority requests changes to the Exit Management Plan from time to time then the Provider shall not unreasonably withhold or delay its consent to such requests. In addition, the Provider shall:

32.4.1 provide the Authority with a copy of the Authority Data held by or on behalf of the Provider in a commonly used non-proprietary, readable format;

32.4.2 take such steps as may be reasonably required to facilitate an orderly transfer to a new solution and handover of the Services to the Replacement Provider; and

32.4.3 comply with the reasonable instructions of the Authority in assisting with the transfer.

32.5 Where the Authority terminates the Agreement as provided in clause 31.2 the work undertaken by the Provider under this clause 32 shall be undertaken at the Provider's cost.

32.6 Where the Agreement terminates for any other reason, the Provider shall be entitled to charge the Authority for any work undertaken by the Provider under this clause 32 calculated in accordance with the Exit Management Plan (or on a time spent basis in accordance with the Rates if no other method is specified in the Exit Management Plan) except that the Provider shall not make any charge for work which is required to be undertaken as a result of any breach of the Provider's obligations.

33. **FORCE MAJEURE**

33.1 If either party is prevented or delayed from or in performing any of its obligations (other than payment obligations) under the Agreement by a Force Majeure Event, then subject to clause 5.2:

33.1.1 the affected party's obligations shall be suspended for so long as the Force Majeure Event continues and to the extent that it is so prevented, hindered or delayed;

33.1.2 as soon as possible after the start of the Force Majeure Event the affected party shall give notice to the other of the nature of the Force Majeure Event, the date and time at which it started and the likely effects of the Force Majeure Event on its ability to perform its obligations; and

33.1.3 the affected party shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations.

33.2 If the Provider is prevented or delayed from or in performing any material part of the Services under the Agreement by a Force Majeure Event for a continuous period in excess of thirty (30) days, the Authority may terminate the Agreement immediately by notice in writing.

34. **VARIATIONS, ADDITIONAL SERVICES & CHANGES OF LAW**

34.1 Subject to the provisions of this clause 34, either party may request a variation to the Services and/or the Agreement provided that such variation does not amount to a material change to the Agreement. Such a change is hereinafter called a "**Variation**".

34.2 A party may request a Variation by completing and sending the Variation form attached at Appendix 1 to this Agreement ("the **Variation Form**") to the other party.

Where a party submits a Variation Form it shall include sufficient information for the other party to assess the extent of the proposed Variation and any additional cost that may be incurred. Where a Variation Form is submitted by the Authority, the Provider shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the request. Where a Variation Form is submitted by the Provider, the Authority shall respond to it within a reasonable period.

- 34.3 The Provider shall not unreasonably withhold or delay its consent to a Variation requested by the Authority in accordance with this Clause 34. The Authority shall consider any Variation requested by the Provider in good faith.
- 34.4 If the parties agree the Variation (including any variation in the Charges), the parties shall countersign a Variation Form that sets out the agreed terms of the Variation and the Agreement shall be amended accordingly with effect from the date that the relevant Variation Form has been signed by both parties.
- 34.5 The scope of Services set out in the Specification or Schedule B may include the provision of ad-hoc professional services (including consultancy and software development services). The parties acknowledge and agree that in such circumstances (and subject to compliance by both parties with any applicable procurement Laws), the Authority may request and the Provider may provide such ad-hoc and project specific professional services (together the “Ad-Hoc Services”) from time to time under the Agreement provided that such Ad-Hoc Services fall within the anticipated scope of the Agreement. Such Ad-Hoc Services will be requested and agreed in writing using the variation process set out above, but shall not otherwise be treated as constituting a change to the Agreement. The Charges payable for such Ad-Hoc Services shall be calculated in accordance with Schedule C and set out in the Variation. The Provider shall not provide any Ad-Hoc Services that have not been set out in an agreed Variation. For the avoidance of doubt, any Ad-Hoc Services (and any related) shall form part of the Services (and the Deliverables).
- 34.6 Where the Specification and/or Schedule C specifies that the Solution is made available for use by particular numbers of authorised users or other similar metrics, the Authority shall be entitled (subject to compliance by both parties with any applicable procurement Laws) to acquire additional users or expand its usage of the Solution at

any time on written notice to the Provider, subject to payment of any additional Charges for such additional usage calculated in accordance with Schedule C. For the avoidance of doubt, where periodic Charges are payable for such usage and the increase takes effect part-way through a charging period then a pro-rata increase in the relevant periodic Charges shall be payable for the remainder of that charging period.

34.7 The parties acknowledge that the Solution will be used for the purposes of administering pension funds. If there is any change of Law (including any change of Law relating to pension funds and/or their administration) and changes to the Solution are required to enable the Authority to comply with such change of Law (referred to as “Mandatory Changes”) then the Provider shall:

34.7.1 notify the Authority of this in writing as soon as it becomes aware of the need for such Mandatory Changes; and

34.7.2 make such Mandatory Changes to the Solution available to the Authority prior to the implementation of the relevant change of Law.

34.8 The Provider shall be entitled to recover from the Authority a fair and reasonable proportion of the costs and expenses incurred by the Provider in making Mandatory Changes, taking into account: (i) the other Authorities for whom the Provider will be able to make the Mandatory Changes available; and (ii) the need for the Provider to invest in making Mandatory Changes to the Solution to enable it to attract and retain Authorities. The Provider shall provide the Authority with such evidence as the Authority reasonably requires to substantiate the costs and expenses incurred by the Provider in making such Mandatory Changes and the proportion of those costs and expenses that are to be allocated to the Authority. The parties shall then discuss and agree the proportion of such costs and expenses that shall be payable by the Authority and the terms on which they shall be paid. If the parties fail to reach agreement on such costs and expenses or terms within thirty (30) days after the date on which the Mandatory Change has been implemented then either party shall be entitled to refer the matter for Expert Determination in accordance with clause 37. For the purposes of this clause 34.8 the Authority may choose to delegate its authority to a consortium of Authorities made up of a group of Contracting Authority Authorities using the same

Solution, in which case the consortium of Authorities shall be able to act on behalf of and make decisions relating to clause 34.8 on behalf of the Authority.

35. **NOTICES**

35.1 Except as otherwise expressly provided within the Agreement, no notice or other communication from one party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the party sending the communication.

35.2 Any notice which is to be given by either party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or by electronic mail provided that any notice of termination may only be given by letter and may not be served by electronic mail. Such letters and electronic mails shall be addressed to the other party in the manner referred to in clause 35.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other party acknowledges receipt of such letters, or item of electronic mail.

35.3 For the purposes of clause 35.2, the address of each party shall be:

35.3.1 for the Authority: the address set out in the Specification.

35.3.2 for the Provider: the address set out in the Specification.

35.4 Either party may change its address for service by serving a notice in accordance with this clause.

36. **GENERAL PROVISIONS**

Transfer and Sub-Contracting

36.1 Save as expressly set out in this Agreement or as otherwise expressly agreed in writing in advance with the Authority, the Provider shall not assign, novate, sub-contract or in any other way dispose of the Agreement or any part of it. Sub-contracting any part of the Agreement shall not relieve the Provider of any of its obligations or duties under the Agreement. In order to provide the Services in the most efficient manner the Provider may sub-contract appropriate parts of the Services to a trusted third party or

parties who may be located in the United Kingdom, EEA or elsewhere provided always that the Provider obtains the prior written consent of the Authority to such sub-contracting.

36.2 The Provider shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

36.3 Subject to clause 36.5, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Agreement or any part thereof:

36.3.1 to any Contracting Authority (including any Contracting Authority that takes over responsibility for the management of the fund(s) that are being administered by the Authority); or

36.3.2 to any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or

36.3.3 with the prior written consent of the Provider (such consent not to be unreasonably withheld or delayed), to any private sector body which substantially performs the functions of the Authority relating to the administration of the fund(s) for which the Solution is being used by the Authority,

provided that any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under the Agreement. For the avoidance of doubt, this provision shall apply in circumstances where the Authority outsources the administration of the fund(s) administered by the Authority to a third party and the Agreement is to be assigned, novated or otherwise transferred to that third party.

36.4 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause 36.5, affect the validity of the Agreement. In such circumstances, the Agreement shall bind and inure to the benefit of any successor body to the Authority.

36.5 If the rights and obligations under the Agreement are assigned, novated or otherwise disposed of pursuant to clause 36.3 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a

Contracting Authority (in the remainder of this clause both such bodies being referred to as "the Transferee"):

36.5.1 the rights of termination of the Authority in clauses 31.1 and 31.5 (Termination on insolvency and change of control) and 31.2 (Termination on Default) shall be available to the Provider in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and

36.5.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Agreement or any part thereof with the previous consent in writing of the Provider, which shall not be unreasonably withheld or delayed.

36.6 The Authority may disclose to any Transferee any Confidential Information of the Provider which relates to the performance of the Provider's obligations under the Agreement. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Provider's obligations under the Agreement and for no other purposes and shall ensure that the Transferee gives a Confidential Information undertaking in relation to such Confidential Information.

36.7 Each party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Agreement.

Devolution

36.8 In the event of any re-organisation or re-structuring of the Authority as a result of a legislative change or other government intervention, this contract shall be varied, novated or assigned to the relevant successors in title at no additional cost to the Authority save in respect of any additional licences as the case may be.

Waiver

36.9 The failure of either party to insist upon strict performance of any provision of the Agreement, or the failure of either party to exercise, or any delay in exercising, any

right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Agreement.

36.10 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with clause 35 (Notices).

36.11 A waiver of any right or remedy arising from a breach of the Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.

Severability

36.12 If any provision of the Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

36.13 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the Authority and the Provider shall immediately commence good faith negotiations to remedy such invalidity.

Cumulative Remedies

36.14 Except as otherwise expressly provided by the Agreement, all remedies available to either party for breach of the Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

Monitoring of Agreement Performance

36.15 The Provider shall comply with the monitoring arrangements set out in the Specification including providing such data and information as the Provider may be required to produce under the Agreement.

36.16 Where any Service is stated in the Specification to be subject to a specific KPI, the Provider shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than the corresponding Target KPI to such specific KPI.

- 36.17 If the existing Services are varied or new Services are added, Target KPIs for the same will be determined by the parties and included within the form of Variation.
- 36.18 The Provider shall provide monthly reports summarising the Achieved KPIs. For the avoidance of doubt, a failure by the Provider to provide the required monthly reports which prevents the Customer from publishing any KPI data required pursuant to the Act, then the Authority reserves the right to terminate this framework agreement for material default.
- 36.19 In the event that any Achieved KPI falls short of the relevant Target KPI, without prejudice to any other rights the Customer may have, the provisions of clause 6.5 shall apply.

The Contracts (Rights of Third parties) Act 1999

- 36.20 Except as otherwise provided in this clause 36.20, a person who is not a party to the Agreement has no right under the Contracts (Rights of Third parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. Any Replacement Provider shall be entitled to enforce its rights under Schedule E against the Provider.

Provider's Status

- 36.21 At all times during the Term the Provider shall be an independent contractor and nothing in the Agreement shall create a contract of employment, a relationship of agency or partnership or a joint venture between the parties and, accordingly, neither party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other party save as expressly permitted by the terms of the Agreement.

Authority's Obligations

- 36.22 Save as otherwise expressly provided, the obligations of the Authority under the Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the

Authority of its duties and powers in any other capacity lead to any liability under the Agreement (howsoever arising) on the part of the Authority to the Provider.

Entire Agreement

- 36.23 The Agreement constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the parties in relation to such matters. For the avoidance of doubt, no standard terms of the Provider shall apply to or be incorporated into the Agreement except for those terms (if any) expressly agreed within the parameter of the Public Contract Regulations that are set out in writing the Specification.
- 36.24 Each of the parties acknowledges and agrees that in entering into the Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Agreement. The only remedy available to either party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Agreement.
- 36.25 Nothing in clauses 36.23 or 36.24 shall operate to exclude Fraud or fraudulent misrepresentation.

Mistakes in Information

- 36.26 Save where materially inaccurate data has been provided by the Authority, the Provider shall, subject always to its obligations as set out in the Agreement, be responsible for the accuracy of all documentation and information supplied to the Authority by the Provider in connection with the supply of the Services and the Solution.

Counterparts

- 36.27 The Agreement may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

Conflicts of Interest

- 36.28 Acting always in the best interests of the Authority, the Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of the Authority), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Staff and the duties owed to the Authority under the provisions of the Agreement.
- 36.29 The Provider shall promptly notify the Authority (and subject to any overriding duty of confidentiality provide full particulars to the Authority) if any conflict referred to in clause 36.28 above arises or is reasonably foreseeable that cannot be managed in accordance with and by taking the appropriate steps referred to in clause 36.28 and in accordance with the Provider's regulatory and statutory obligations. The Authority reserves the right to terminate the Agreement immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Authority under the provisions of the Agreement. The actions of the Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

Prevention of Fraud

- 36.30 The Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Provider (including its shareholders, members and directors) in connection with the receipt of monies from the Authority.
- 36.31 The Provider shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 36.32 If the Provider or its Staff commits any Fraud in relation to the Agreement or any other contract with a Contracting Authority or the Authority, the Authority may:
- 36.32.1 terminate the Agreement with immediate effect by giving the Provider notice in writing and recover from the Provider the amount of any loss suffered by the Authority resulting from the termination including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Term; and/or

36.32.2 recover in full from the Provider any other loss sustained by the Authority in consequence of any breach of this clause.

37. **DISPUTES AND LAW**

Jurisdiction & Choice of Law

37.1 The Agreement shall be governed by and interpreted in accordance with English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

Dispute Resolution

37.2 If a dispute arises out of or in connection with this agreement or its performance, validity or enforceability (Dispute), then the parties shall follow the procedure set out in this clause:

37.2.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute notice), together with relevant supporting documents. On service of the Dispute notice, the [EMPLOYEE TITLE] of the Authority and [EMPLOYEE TITLE] of the Provider shall attempt in good faith to resolve the Dispute;

37.2.2 if the [EMPLOYEE TITLE] of the Authority and [EMPLOYEE TITLE] of the Provider are for any reason unable to resolve the Dispute within [30] [working] days of service of the Dispute notice, the Dispute shall be referred to the [SENIOR OFFICER TITLE] of the Authority and [SENIOR OFFICER TITLE] of the Provider who shall attempt in good faith to resolve it;

37.2.3 if the [SENIOR OFFICER TITLE] of the Authority and [SENIOR OFFICER TITLE] of the Provider are for any reason unable to resolve the Dispute within [30] [working] days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute and will do so in accordance with clauses 37.6 to 37.9;

37.2.4 For the avoidance of doubt in the event that the relevant employee or officer is unavailable at any stage of the process an alternative shall be substituted of at least equivalent seniority and experience.

Expert Determination

- 37.3 If the terms of this Agreement state that a dispute should be referred for Expert Determination, the parties shall comply with the provisions of clauses 37.4 and 37.5.
- 37.4 The expert shall be appointed by agreement in writing between the parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the expert shall be appointed on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society).
- 37.5 The expert shall act on the following basis:
- 37.5.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- 37.5.2 the expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the parties;
- 37.5.3 the expert shall decide the procedure to be followed in the determination and shall be requested to make his/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;
- 37.5.4 any amount payable by one party to another as a result of the expert's determination shall be due and payable within twenty (20) Working Days of the expert's determination being notified to the parties;
- 37.5.5 the process shall be conducted in private and shall be confidential; and
- 37.5.6 the expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

Mediation

- 37.6 Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.

37.7 If the dispute cannot be resolved by the parties pursuant to clause 37.2 the parties shall refer it to mediation pursuant to the procedure set out in clause 37.9 unless:

- (a) the Authority considers that the dispute is not suitable for resolution by mediation; or
- (b) the Provider does not agree to mediation.

37.8 The obligations of the parties under the Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the parties shall comply fully with the requirements of the Agreement at all times.

37.9 The procedure for mediation and consequential provisions relating to mediation are as follows:

- (a) a neutral adviser or mediator ("**Mediator**") shall be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within 15 Working Days after a request by one party to the other or if the Mediator agreed upon is unable or unwilling to act, either party shall within 15 Working Days from the date of the request to appoint a Mediator or within 15 Working Days of notice to either party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("**CEDR**") to appoint a Mediator;
- (b) the parties shall within 15 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;
- (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings;

- (d) if the parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by their duly authorised representatives;
- (e) failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both parties;
- (f) if the parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts; and
- (g) the costs payable by either party in relation to the mediation shall be agreed between the parties as part of the settlement agreement or otherwise agreed between the parties at any time in writing or, if there is no settlement and the parties have not otherwise reached a written agreement, shared between the parties equally.

APPENDIX 1

VARIATION FORM

Terms and Conditions for Services

[Name of Agreement].....

No of Order Form being varied:.....

Variation Form No:.....

BETWEEN:

[] ("the Authority")

and

[] ("the Provider")

1. The Order is varied as follows: ***[list details of the Variation]***
2. Words and expressions in this Variation shall have the meanings given to them in the Agreement.
3. The Agreement, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Authorised to sign for and on behalf of the Authority

Signature

.....

Date

.....

.....

Name in Capitals

Address

Authorised to sign for and on behalf of the Provider

Signature

Date

Name in Capitals

Address

Schedule A – Specification, Authority Requirements, Authority System, Milestones & Acceptance Procedure

1. Specification(s)

[Service & solution (and where applicable individual deliverable) specification(s) or references to documents containing them to be inserted here.]

2. Authority Requirements

[Authority Requirements for services/solution or references to documents containing them to be inserted here. If Helpdesk and other Support Services are required then these should also be specified here]

Support Requirements

Requirement		Requirement description	
Req #	area		
SUP-1.0	Support	Provider Solution	
SUP-1.1	Operational & Service Management	Describe your normal support arrangements and any requirements for both remote and on-site support. Include whether support is modelled on IT Infrastructure Library (OGC ITIL V4) or equivalent.	

		Reference: The Office of Government Commerce's (OGC) IT Infrastructure Library (ITIL); https://www.axelos.com/best-practice-solutions/itil	
SUP-1.2	Service Level Management	<p>The system must be managed in accordance with good industry practice, compliant with ISO/IEC20000 (2021) or equivalent, including but not limited to the use of documented and controlled processes which cover all the following areas (though they need not be structured as such):</p> <ul style="list-style-type: none"> - configuration management; - change management; - release management; - event management; - incident management; - problem management; - capacity management; - IT service continuity management; - availability management; - disaster recovery, back-up and back-up storage; - security management; 	

		<ul style="list-style-type: none"> - service level management; - and Help Desk operation. 	
SUP-1.3	Operational & Service Management	<p>The Supplier's operational service management shall have robust Configuration Management such as within ITIL v4 is used across all services provided.</p> <ul style="list-style-type: none"> i. Initial configuration is agreed with the Authority ii. All significant service configuration parameters are maintained in a Configuration Management Database (CMDB) (iii) Any changes to systems are recorded in the CMDB <p>The supplier must describe their operational service management process</p>	
SUP-1.4	Operational & Service Management	<p>The Supplier's operational service management shall ensure a robust Change Management process such as within ITIL v4 is used across all services provided and will ensure:-</p> <ul style="list-style-type: none"> 1. The Authority's Change Management Board is notified 2. Changes to production services are signed off by the Authority before implementation 3. Suitable back out plans are always described in every change <p>The supplier must describe their operational service management process</p>	

SUP-1.5	Service Level Management	<p>The Supplier's operational service management shall ensure all system releases are governed by the Configuration Management and Change Management Processes.</p> <ol style="list-style-type: none"> 1. All major version updates to be notified to the Authority at least 8 working weeks before release 2. All minor version updates to be notified to the Authority at least 4 working weeks before release 3. All updates should include any potential impact to the service or associated / integrated applications. 4. The authority should also be notified once the update has been completed. 5. Where the update will have significant impact on the service i.e. Change in the user interface, adequate time/training/manuals should be given for users of the system to familiarise themselves with the change prior to deployment at no extra charge to the council. <p>The supplier must describe their operational service management process</p>
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SUP-1.6	Service availability	<p>The service must be available 24x7, with the exception of agreed service windows. Availability must be a minimum of 99.9%, calculated over a calendar month and defined as:</p> <p>Availability (%) = (Total Hours in Month - Total Period of Unavailability)/ Total Hours in Month x 100%</p>	
SUP-1.7	Service availability	The supplier must provide notifications of any service issues to our nominated service contact(s) within one hour within agreed core business hours.	
SUP-1.8	Service availability	Essential maintenance to the system and all associated applications must be capable of performance without interruption to service. If downtime is experienced for any application delivered through the system, a notice should be displayed on the system stating the expected time to repair. Within one hour of any malfunction during Standard Working Hours, the problem shall be logged, analysed to gauge the severity of the problem and a course of remedial action identified with appropriate persons (including the Council's ICT Service Desk) notified.	
SUP-1.9	Service Level Management	The supplier should avoid actions which detrimentally affect the system's performance during core working hours (for example, complex reports, backups, diagnostics, auditing) - these should be carried out during service windows unless otherwise agreed	

SUP-1.10	Service availability	<p>The Production system (including reporting) must be designed for continuous operation on a 24x7x52 per year basis, save that there may be an agreed regular maintenance window outside the hours of 08:00 to 18:00 Monday to Friday.</p> <p>The system availability must be guaranteed at 99.9% excluding the maintenance window.</p> <p>Unplanned downtime must be notified immediately to designated contacts at NCC to agree and execute a communications plan.</p>
SUP-1.11	Helpdesk	<p>The supplier must provide access to log calls and incidents to nominated Help Desk users. This will be limited to a core team within NCC providing Help Desk, application and business process support to the user base. This will be no more than 20 people, who will need to be trained to access the Help Desk. Within this group, NCC will provide leads who can confirm priorities and approve changes and actions.</p>

SUP-1.12	Helpdesk	<p>The supplier must offer 99% availability of the Help Desk for call logging as indicated below:</p> <ul style="list-style-type: none"> • Telephone support must be available between 8:00 A.M. to 6:00 P.M. Monday – Friday (Excluding Bank Holidays) • Emails must be monitored and support available between 8:00 A.M. to 6:00 P.M. Monday – Friday (Excluding Bank Holidays) <p>An online fault reporting system should be available outside these hours, together with access to support documents and any knowledge base.</p> <p>Measurement of Help Desk response times will be based on the time taken for a Help Desk operative to answer a call. Calls receiving an automated response or placed into a queuing system shall be deemed not to have been answered.</p> <p>The Supplier shall monitor the Help Desk response times and shall provide the results of such monitoring to the council.</p>
SUP-1.13	Operational & Service Management	<p>The Supplier shall define its Service Level agreements including priority levels, response times, fix times, escalation processes, helpdesk contact details and opening hours, and any emergency or out-of-hour provision. Responses will be scored based on respective response and fix times.</p>

SUP-1.14	Service Level Management	Please supply details and cost of your out of hours support?	
SUP-1.15	Service Level Management	For Critical and High Priority incidents, regular updates should be provided which advise on what is being done, possible resolutions, and a description of what caused the problem.	
SUP-1.16	Service Level Management	<p>The supplier must collect service level data to allow performance reports to be generated automatically. The data should cover the following metrics at a minimum:</p> <ul style="list-style-type: none"> * System availability, * Help Desk availability, * System response times, * Support response times 	
SUP-1.17	Service Level Management	The supplier must define the response times for service requests such as 'no fault' incidents, technical support or 'how to' questions:	
SUP-1.18	Service Level Management	The supplier Must provide a named Account Manager who will be the first point of contact for queries, escalation, new projects and developments, and strategic alignment. The Account Manager must attend monthly service reviews with NCC. NCC will provide a service management point of contact from the customer side.	

SUP-1.19	Service Level Management	<p>Service reports must be provided on a monthly basis at the account meetings and include:</p> <ul style="list-style-type: none"> - Service status - incident listings and analysis - patched and outstanding vulnerabilities - performance statistics against agreed SLA's and compliance - capacity management - licence utilisation - change management, including notification of planned service or system events - strategic and product direction 	
SUP-1.20	SLA Performance	Where there is a failure to achieve service levels, a review Must take place within fourteen calendar days of the end of the month in which service levels were not met. This review Must include a plan to fix the issues and should implement the fix by the end of the following month.	
SUP-1.21	SLA Performance		
SUP-1.22	User group	The supplier should operate or have direct engagement with an active System User Group of authorities using the system, that meets regularly and offers the opportunity to influence strategic developments, agree priority of product enhancements, and contribute to the specification of enhancements.	

SUP-1.23	User group	The supplier should provide a mechanism for customers' suggestions to be considered in the future development of the system.	
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3. Mandatory Policies & Quality Standards

[Insert here or refer back to the Specification if they are all listed in the specification. This will be finalised on award]

4. Authority System

[Details of the systems with which the solution is required to operate should be added here. This will be finalised during the procurement process]

5. Milestones & Deliverables

[Milestones and Milestone Achievement Criteria and Milestone Dates to be set out in the table below.]

Milestone Number	Milestone	Milestone Achievement Criteria	Milestone Date	Milestone Notes	Milestone Payment (%)	Milestone Payment (£)
1 Detailed Implementation Plan	Detailed Implementation Plan approved by the Authority				10	
2 Design	Run workshops that are required to achieve successful implementation with the Authority and produce first cut of the new system with initial data load, demonstrate to the Authority and deliver test system				15	

3 Data Migration	Data migration and first full test completed with Milestone Achievement Certificate issued by the Authority				15	
4 Implementation	Go live acceptance criteria met and Milestone Achievement Certificate issued by the Authority				20	
5 Implementation	All modules Ready for Use to allow existing systems to be switched off and final Milestone Achievement Certificate issued by the Authority.				20	
6 Final Rectification	All remaining faults and issues resolved				20	

6. Live Operational Environments

To be agreed on award

<u>Operational Environments</u>	<u>Go Live Date</u>

7. Dependencies

[Set out here any dependencies that the Provider will be entitled to rely on and which would trigger a right for an extension of time and potentially additional charges if they were to occur to the extent they are not already set out in the Specification. If they are all set out in the Specification then state 'As specified in Specification'. If none are to apply, state 'Not Applicable']

8. Standard Acceptance Procedure

[Standard acceptance testing provisions have been set out below. Please note these may be replaced, refined or further supplemented as part of the Service scoping, Tender and Ordering process]

1. In this section (*Standard Acceptance Procedure*), the following definitions shall apply:

“Component”	any constituent part(s) of the Deliverable and/or Solution (as applicable);
“Material Test Issue”	a Severity Level 1 Test Issue or a Severity Level 2 Test Issue;
“Severity Level”	the level of severity of a Test Issue as set out in the definitions of Severity Level 1 Test Issue, Severity Level 2 Test Issue, Severity Level 3 Test Issue, Severity Level 4 Test Issue and Severity Level 5 Test Issue;
“Severity Level 1 Test Issue”	a Test Issue that causes non-recoverable conditions, e.g. it is not possible to continue using a Component, a Component crashes, there is database or file corruption, or data loss;
“Severity Level 2 Test Issue”	a Test Issue for which, as reasonably determined by the Authority, there is no practicable workaround available, and which: (a) causes a Component to become unusable; (b) causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or

(c) has an adverse impact on any other Component(s) or any other area of the Solution/Services;

“Severity Level 3 Test Issue” a Test Issue which:

(a) causes a Component to become unusable;

(b) causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or

(c) has an impact on any other Component(s) or any other area of the Solution/Services;

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

“Severity Level 4 Test Issue” a Test Issue which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Solution/Services;

“Severity Level 5 Test Issue” a Test Issue that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Solution/Services;

“Test” the Acceptance Tests applicable to the relevant Deliverable and/or the Solution and “Testing” shall be construed accordingly;

“Test Certificate” a certificate issued by the Authority when a Deliverable has satisfied its relevant Acceptance Criteria;

“Test Issue” any variance or non-conformity of a Deliverable and/or the Solution from its requirements (such requirements to be set out in the relevant Acceptance Criteria);

“Test Issue Management Log”	a log for the recording of Test Issues as described further in paragraph 9.1 below;
“Test Plan”	a plan: <ul style="list-style-type: none"> (a) for the testing of Deliverables and/or the Solution; and (b) setting out other agreed criteria, as described further in paragraph 5 below;
“Test Reports”	the reports to be produced by the Provider setting out the results of Tests;
“Test Specification”	the test specification developed in accordance with paragraph 7 below;
“Test Strategy”	a strategy for the conduct of testing as described further in paragraph 4 below;
“Test Witness”	any person appointed by the Authority in accordance with paragraph 10 below;
“Testing Procedures”	the applicable testing procedures and Acceptance Criteria set out in (or to be determined in accordance with) this Schedule.

2. RISK

2.1. The issue of a Test Certificate shall not:

2.1.1. operate to transfer to the Authority any risk that the relevant Deliverable will meet and/or satisfy the Authority Requirements and/or the Specification for that Deliverable; or

2.1.2. affect the Authority’s right subsequently to reject all or any elements of the Deliverables to which a Test Certificate relates.

2.2. Notwithstanding the issuing of a Test Certificate, the Provider shall remain solely responsible for ensuring that:

2.2.1.all Deliverables and the Solution as a whole meet the Authority Requirements and the Specification;

2.2.2.the Services (including the Solution) are implemented in accordance with this Agreement; and

2.2.3.each Service Level is met.

3. TESTING OVERVIEW

3.1. The Authority shall have primary responsibility for conducting the Tests pursuant to the Test Strategy, the Test Plans and the Test Specifications and shall be responsible for providing feedback to the Provider within a reasonable time. The Provider shall be entitled to review the performance of Testing conducted by the Authority, Test Reports and the Test Management Log.

3.2. The Provider shall be responsible for the delivery of all remedies, corrections and fixes for all issues, bugs and inconsistencies arising from the Testing.

3.3. All Tests conducted by the Provider shall be conducted in accordance with the Test Strategy, the Test Plans and the Test Specifications.

3.4. The Provider shall not submit any Deliverable and/or the Solution for testing:

3.4.1.unless the Provider is confident that it will satisfy the relevant Acceptance Criteria;

3.4.2.until the Authority has issued a Test Certificate in respect of any prior dependent Deliverable(s); and

3.4.3.until the parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s) and/or the Solution.

3.5. The Provider shall use reasonable endeavours to submit each Deliverable and/or the Solution 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 and/or Solution.

3.6. Prior to the issue of a Test Certificate, the Authority shall be entitled to review the relevant Test Reports and the Test Issue Management Log.

3.7. Any disputes between the Authority and the Provider regarding testing may be referred by either party for Expert Determination in accordance with clause 35.2 of the Agreement.

4. TEST STRATEGY

4.1. The Provider shall develop the Test Strategy as soon as practicable after the Commencement Date but in any case no later than 40 Working Days (or such other period as the parties may agreed in writing) after the Commencement Date.

4.2. The Provider shall ensure that the Test Strategy shall include:

4.2.1.an overview of how testing will be conducted in accordance with the Implementation Plan;

4.2.2.the process to be used to capture and record Test results and the categorisation of Test Issues;

4.2.3.the method for mapping the expected Test results to the Acceptance Criteria;

4.2.4.the procedure to be followed if a Deliverable and/or the Solution fails to satisfy the Acceptance Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;

4.2.5.the procedure to be followed to sign off each Test;

4.2.6.the process for the production and maintenance of Test Reports and reporting, including templates for the Test Reports and the Test Issue Management Log, and a sample plan for the resolution of Test Issues;

4.2.7.the names and contact details of the Authority's and the Provider's Test representatives;

4.2.8.a high level identification of the resources required for testing, including facilities, infrastructure, personnel and Authority and/or third party

involvement in the conduct of the Tests;

4.2.9. the technical environments required to support the Tests; and

4.2.10. the procedure for managing the configuration of the Test environments.

5. TEST PLANS

5.1. The Provider shall develop Test Plans and submit these for the approval of the Authority as soon as practicable but in any case no later than 20 Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start date for the relevant testing (as specified in the Implementation Plan).

5.2. The Provider shall ensure that each Test Plan shall include as a minimum:

5.2.1. the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being tested and, for each Test, the specific Acceptance Criteria to be satisfied;

5.2.2. a detailed procedure for the Tests to be carried out, including:

5.2.2.1. the timetable for the Tests, including start and end dates;

5.2.2.2. the testing mechanism;

5.2.2.3. dates and methods by which the Authority can inspect Test results or witness the Tests in order to establish that the Acceptance Criteria have been met;

5.2.2.4. the mechanism for ensuring the quality, completeness and relevance of the Tests;

5.2.2.5. the format and an example of Test progress reports and the process with which the Authority accesses daily Test schedules;

5.2.2.6. the process which the Authority will use to review Test Issues and the Provider's progress in resolving these in a timely basis;

5.2.2.7. the Test schedule;

5.2.2.8. the re-Test procedure, the timetable and the resources which would be required for re-testing; and

5.2.2.9. the process for escalating Test Issues from a re-test situation to the taking of specific remedial action to resolve the Test Issue.

5.3. The Authority shall not unreasonably withhold or delay its approval of the Test Plans provided that the Provider shall incorporate any reasonable requirements of the Authority in the Test Plans. Any disputes between the Authority and the Provider may be referred by either party for Expert Determination in accordance with clause 37.3 of the Agreement.

5.4. For the avoidance of doubt, the Authority shall give reasonable support to the Provider in the performance of testing.

6. ACCEPTANCE CRITERIA

The Acceptance Criteria shall be in accordance with the Authority Requirements and the Specification and otherwise as agreed between the parties as part of the relevant Test Plan as sufficient to ensure the Deliverables and/or the Solution comply with the Authority Requirements and/or the Specification.

7. TEST SPECIFICATION

7.1. Following approval of the Test Plan, the Provider shall develop the Test Specification for the relevant Deliverables and/or the Solution as soon as reasonably practicable and in any event at least 10 Working Days (or such other period as the parties may agree in the Test Strategy or otherwise in writing) prior to the start of the relevant testing (as specified in the Implementation Plan).

7.2. the Provider shall ensure that each Test Specification shall include as a minimum:

7.2.1. the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be

provided by the Authority and the extent to which it is equivalent to live operational data;

7.2.2.a plan to make the resources available for Testing;

7.2.3.Test scripts;

7.2.4.Test pre-requisites and the mechanism for measuring them; and

7.2.5.expected Test results, including:

7.2.5.1. a mechanism to be used to capture and record Test results; and

7.2.5.2. a method to process the Test results to establish their content.

8. ACCEPTANCE TESTING

8.1. Before submitting any Deliverables and/or the Solution for testing the Provider shall subject the relevant Deliverables or the Solution to its own internal quality control measures.

8.2. The Provider 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 Witnesses in accordance with paragraph 10 below.

8.3. The Provider shall notify the Authority 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 Authority shall ensure that the Test Witnesses attend the Tests, except where the Authority has specified in writing that such attendance is not necessary.

8.4. The Authority may raise and close Test Issues during the Test witnessing process.

8.5. The Provider shall provide to the Authority in relation to each Test:

8.5.1.a draft Test Report not less than 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

8.5.2.the final Test Report within 5 Working Days (or such other period as the Parties may agree in writing) of completion of Testing.

8.6. Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables and the Solution, including:

8.6.1.an overview of the Testing conducted;

8.6.2.identification of the relevant Acceptance Criteria that have been satisfied;

8.6.3.identification of the relevant Acceptance Criteria that have not been satisfied together with the Provider's explanation of why those criteria have not been met;

8.6.4.the Tests that were not completed together with the Provider's explanation of why those Tests were not completed;

8.6.5.the Acceptance 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 9.1 below; and

8.6.6.the specification for any hardware and Software used throughout testing and any changes that were applied to that hardware and/or Software during testing.

9. TEST ISSUES

9.1. Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in each of the definitions and the Test Issue Management Log maintained by the Provider shall log Test Issues reflecting the Severity Level allocated to each Test Issue.

9.2. The Provider 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 Provider shall make the Test Issue Management Log available to the Authority upon request.

9.3. The Authority shall confirm the classification of any Test Issue unresolved at

the end of a Test in consultation with the Provider. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be referred for Expert Determination in accordance with clause 35.

10. TEST WITNESSING

10.1. The Authority may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Authority, each of whom shall have appropriate skills to fulfil the role of a Test Witness.

10.2. The Provider shall give the Test Witnesses access to any documentation and testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.

10.3. The Test Witnesses:

10.3.1. shall actively review the Test documentation;

10.3.2. will attend and engage in the performance of the Tests on behalf of the Authority so as to enable the Authority 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;

10.3.3. shall not be involved in the execution of any Test;

10.3.4. shall be required to verify that the Provider conducted the Tests in accordance with the Acceptance Criteria and the relevant Test Plan and Test Specification;

10.3.5. may produce and deliver their own, independent reports on Testing, which may be used by the Authority to assess whether the Acceptance Criteria have been achieved;

10.3.6. may raise Test Issues on the Test Issue Management Log in respect of any Testing; and

10.3.7. may require the Provider to demonstrate the modifications made to any defective Deliverable and/or the Solution before a Test Issue is

closed.

11. TEST QUALITY AUDIT

11.1. The Authority may perform on-going quality audits in respect of any part of the Testing (each a “Testing Quality Audit”).

11.2. The focus of the Testing Quality Audits shall be on:

11.2.1. adherence to an agreed methodology;

11.2.2. adherence to the agreed Testing process;

11.2.3. review of status and key development issues; and

11.2.4. identification of key risk areas.

11.3. The Provider shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.

11.4. The Authority will give the Provider at least 5 Working Days' written notice of the Authority's intention to undertake a Testing Quality Audit and the Provider may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Provider's reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the Authority will materially and adversely impact the Implementation Plan.

11.5. A Testing Quality Audit may involve document reviews, interviews with the Staff involved in or monitoring the activities being undertaken pursuant to this Schedule, the Authority witnessing Tests and demonstrations of the Deliverables and/or the Solution to the Authority. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Authority and the Provider on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Provider shall provide all reasonable necessary assistance and access to all relevant documentation required by the Authority to enable it to carry out the Testing Quality Audit.

11.6. If the Testing Quality Audit gives the Authority concern in respect of the

testing Procedures or any Test, the Authority shall:

11.6.1. discuss the outcome of the Testing Quality Audit with the Provider, giving the Provider the opportunity to provide feedback in relation to specific activities; and

11.6.2. subsequently prepare a written report for the Provider detailing its concerns,

and the Provider shall, within a reasonable timeframe, respond in writing to the Authority's report.

11.7. In the event of an inadequate response to the Authority's report from the Provider, the Authority (acting reasonably) may withhold a Test Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Authority.

12. OUTCOME OF TESTING

12.1. The Authority shall issue a Test Certificate when the Deliverables and/or the Solution satisfy the Acceptance Criteria in respect of that Test without any Test Issues.

12.2. If the Deliverables and/or the Solution (or any relevant part) do not satisfy the Acceptance Criteria then the Authority shall notify the Provider and:

12.2.1. the Authority may issue a Test Certificate conditional upon the remediation of the Test Issues; or

12.2.2. where the Parties agree that there is sufficient time in accordance with the Implementation Plan, the Authority may extend the Test Plan by such reasonable period or periods as the parties may reasonably agree and require the Provider to rectify the cause of the Test Issue and re-submit the Deliverables and/or the Solution (or the relevant part) to Testing;

12.3. The Authority shall be entitled, without prejudice to any other rights and remedies that it has under the Agreement, to recover from the Provider any reasonable additional costs it may incur as a direct result of further review or

re-Testing which is required for the Acceptance Criteria for that Deliverable and/or the Solution to be satisfied.

13. ISSUE OF ACHIEVEMENT CERTIFICATE

13.1. The Authority shall issue an Achievement Certificate as soon as is reasonably practicable following:

13.1.1. the issuing by the Authority of Test Certificates and/or conditional Test Certificates in respect of all Deliverables and/or the Solution related to the Milestone concerned; and

13.1.2. performance by the Provider to the reasonable satisfaction of the Authority of any other tasks identified in the Implementation Plan as associated with the Milestone concerned (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).

13.2. The grant of an Achievement Certificate shall entitle the Provider to invoice for the Charges relating to that Milestone (when they become due) in accordance with the Schedule C.

13.3. If the Achievement Certificate is not issued by the date set out in the Implementation Plan, the Provider shall promptly issue a report to the Authority setting out:

13.3.1. the applicable Test Issues; and

13.3.2. any other reasons for its non-achievement.

13.4. If there are Test Issues but there are no Material Test Issues, the Authority may at its discretion (without waiving any rights in relation to the other options) choose to issue the Achievement Certificate conditional on the remediation of the Test Issues in accordance with a Correction Plan agreed in accordance with clause 13 of the Agreement.

Schedule B – Support Services, Service Levels and Service Credits

[NOTE: SAMPLE PROVISIONS HAVE BEEN SET OUT BELOW. PLEASE NOTE THESE MAY BE REPLACED, REFINED OR FURTHER SUPPLEMENTED AS PART OF THE SERVICE SCOPING, TENDER AND ORDERING PROCESS]

1. ADDITIONAL DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

Critical Service Level Failure	<p>means:</p> <p>(i) In relation to [the Solution Availability Service Level] a Critical Service Level Failure shall include a loss of [Solution Availability] during core hours (08:00 – 18:00 Mon – Fri excluding bank holidays) for more than [twenty four (24)] hours accumulated in any [three (3) Month] period, or [forty eight (48)] hours in any rolling [twelve (12) Month] period.</p> <p>(ii) In relation to [relevant Service Level to be specified] a Critical Service Level Failure shall include [description of how serious the failure to meet the specified Service Level needs to be to constitute a Critical Service Level Failure][Note: Authorities may add further Critical Service Level Failures as necessary in relation to any other key Service Levels].</p>
Persistent Service Level Failure	<p>Means any failure to meet the same Service Level [three (3)] or more times in any rolling [twelve (12) Month period][Note: Definition to amended as applicable. Note that where a persistent service level failure occurs, this will trigger rights to require the Provider to produce and implement a Correction Plan and also a right for the Authority to terminate].</p>
Service Exclusion	<p>means any matter for which the Provider is excused from liability under clause [9.2] or any other clause of the Agreement.</p>
Service Incident	<p>means any: (i) loss of or reduction in availability, functionality or performance of the Solution or any Authority Data held on it; or</p>

	(ii) defects or errors in the Solution or any Authority Data held on it; or (iii) failure by the Solution to comply with the Authority Requirements or its Specification or any provisions of the Agreement.
Service Level	means the service level for particular Services that the Provider is required to achieve, as set out in the table in paragraph 4 of this Schedule.
Service Level Failure	means a failure to meet the Service Level in respect of a Service Level Performance Criterion.
Service Level Performance Criteria	has the meaning given to it in the table in paragraph 4 of this Schedule.
Service Level Performance Measure	shall be as set out against the relevant Service Level Performance Criterion in the table in paragraph 4 of this Schedule.
Severity 1 Service Incident	<p>means a Service Incident which, in the reasonable opinion of the Authority:</p> <ul style="list-style-type: none"> (a) constitutes a loss of availability or performance of the Solution (or any part of it) which prevents a large group of end users from working; (b) has a critical impact on the activities of the Authority; (c) causes significant financial loss and/or disruption to the Authority; or (d) results in any material loss or corruption of the Authority Data; <p><i>Non-exhaustive examples:</i></p> <ul style="list-style-type: none"> (i) a loss of power to a data centre causing failure of Services; or

	<p>(ii) a failure of the Services to provide user authentication service.</p>
Severity 2 Service Incident	<p>a Service Incident which, in the reasonable opinion of the Authority has the potential to:</p> <p>(a) have a major (but not critical) adverse impact on the activities of the Authority and no workaround acceptable to the Authority is available; or</p> <p>(b) cause a financial loss and/or disruption to the Authority which is more than trivial but less severe than the significant financial loss described in the definition of a Severity 1 Service Failure;</p> <p><i>Non-exhaustive examples:</i></p> <p>(i) corruption of organisational database tables; or</p> <p>(ii) loss of ability to update the Authority Data.</p>
Severity 3 Service Incident	<p>a Service Incident which, in the reasonable opinion of the Authority has the potential to:</p> <p>(a) have a major adverse impact on the activities of the Authority which can be reduced to a moderate adverse impact due to the availability of a workaround acceptable to the Authority; or</p> <p>(b) have a moderate adverse impact on the activities of the Authority.</p> <p><i>Non-exhaustive example:</i></p> <p>inability to access data for a class of Authorities.</p>

Severity 4 Service Incident	<p>a Service Incident which, in the reasonable opinion of the Authority has the potential to have a minor adverse impact on the provision of the Services to end users.</p> <p><i>Non-exhaustive example:</i></p> <p>inability to access data for a single Authority.</p>
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2. SCOPE

2.1 This Schedule sets out the Service Levels which the Provider is required to achieve when providing the Services (including, where appropriate the Solution), the mechanism by which Service Level Failures, Critical Service Level Failures and Persistent Service Level Failures will be managed and the method by which the Provider's performance in the provision by it of the Services will be monitored.

3. PRINCIPAL POINTS

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

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

4. SUPPORT SERVICES & SERVICE LEVELS

4.1 Support Services

[Note: A description of the support and maintenance services required to be provided should be set out here if they are not all set out in the Specification or Authority Requirements. This could include a description of any helpdesk services to be provided and availability (if any) of any on-site support. Where the Specification or Authority Requirements already sets out the

support and maintenance services that are to be provided in sufficient detail, then this section should be completed by referring back to the Order Form and Authority Requirements – i.e. ‘The Support Services comprise the support and maintenance services set out or referred to in the Specification and Authority Requirements.’]

4.2 Service Levels

The Service Levels to which the Provider is required to perform are set out in the table below:

[Note: The sample table set out below provides some examples of possible types of service level. Authorities should amend or replace it as appropriate so that it reflects the service levels and service credit regime required by the Authority (and as applicable any service level and service credit regime proposed by the Provider and agreed by the Authority). The “Service Level Performance Measure should set out how the Provider’s performance will be measured and the “Service Credit for each Service Period” should set out the service credits payable if the Provider fails to meet the service levels.]

Service Levels		Service Credit for each Service Period
Service Level Performance Criterion	Service Level Requirement	

Service Levels		Service Credit for each Service Period
Service Level Performance Criterion	Service Level Requirement	

Service Levels		Service Credit for each Service Period
Service Level Performance Criterion	Service Level Requirement	

4.3 The Service Credits payable by the Provider shall be calculated on the basis of the following formula:

4.4 If the level of performance of the Provider of any element of the provision by it of the Services during the Term:

4.4.1 is likely to or fails to meet any Service Level; or

4.4.2 is likely to cause or causes a Critical Service Failure to occur,

the Provider shall immediately notify the Authority in writing and the Authority, in its absolute discretion and without prejudice to any other of its rights howsoever arising under this Agreement, may:

(a) require the Provider to immediately take all remedial action that is reasonable to mitigate the impact on the Authority and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring; and

(b) if the action taken under paragraph (a) above has not already prevented or remedied the Service Level Failure or Critical Service Level Failure, the Authority shall be entitled to instruct the Provider to comply with the Correction Plan process in clause 13 of the Agreement.

The Authority shall also be entitled to the payment of Service Credits in accordance with paragraph 5 below and the terms of the Agreement.

4.5 Approval and implementation by the Authority of any Correction Plan shall not relieve the Provider of any continuing responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such approval and/or implementation by the Authority.

4.6 The Provider shall not be liable for any Service Incident that is caused by a Service Exclusion and such Service Incidents shall be excluded from the measurement of the Provider's performance against the Service Levels set out above. However, where requested by the Authority, the Provider shall use reasonable endeavours to respond to and resolve Service Incidents that are caused by Service Exclusions within the Service

Levels set out above. Where the Authority requests the Provider to respond to and resolve Service Incidents that are caused by Service Exclusions then the Provider shall be entitled to charge the Authority for such work in accordance with the Rates.

5. SERVICE CREDITS

5.1 Paragraph 4 of this Schedule sets out the formula used to calculate a Service Credit payable to the Authority as a result of a Service Level Failure in a given service period which, for the purpose of this Schedule, shall be each successive period of [one Month] from the initial [Go Live Date] and continuing throughout the Term (the **Service Period**).

5.2 Service Credits are a reduction of the amounts payable in respect of the Services and do not include VAT. Service Credits shall be payable by the Provider in accordance with clauses 16.12 and 16.13 of the Agreement.

5.3 Where paragraph 4 specifies that Service Credits payable in respect of any Service Period shall be subject to a Service Credit Cap then the amount of Service Credits payable in respect of each Service Period shall be limited to and shall not exceed the Service Credit Cap.

6. NATURE OF SERVICE CREDITS

Provider acknowledges and agrees that payment of any Service Credit by Provider is a price adjustment and not an estimate of the loss or damage that may be suffered by the Authority as a result of the Provider's failure to meet the Service Levels and is without prejudice to any entitlement the Authority may have to recover losses, claims, demands, actions, proceedings, damages and other payments, costs, expenses (including legal fees) from Provider resulting from, or otherwise arising in respect of, any such breach of this Agreement, or to any right of the Authority to terminate this Agreement. Nothing in this paragraph will restrict any other rights that the Authority may have under this Agreement in relation to the circumstances in which or the reason for which any Service Credits may be due including the right to seek any other remedies under this Agreement or under applicable Law, provided that any claim for losses, claims, demands, actions, proceedings, damages and other payments, costs, expenses (including legal fees) resulting from a breach of Provider's performance or obligations, in respect of which a Service Credit has already been claimed and paid to the Authority or deducted from the Charges, shall be reduced by the amount of that Service Credit.

Schedule C – Charges & Rates

[This section needs to set out how charges will be calculated and when they will become payable (including where applicable any payment schedule). It should also include agreed day or hourly rates to deal with any out of scope work or work that is to be carried out on a time spent basis. The terms should also set out how a 'day' would be defined, whether or not travel time will be charged for, any provision for recharging of expenses, and any other relevant terms.]

It should also set out what travel and subsistence expenses the Provider is entitled to recover in addition to the Charges and how these will be calculated.

Wording should also be included here setting out the additional charges that will be payable where the Authority wishes to increase usage beyond any agreed limits e.g. if use of the Solution is limited to use by not more than 10 concurrent users, then pricing should be included for options to increase the number of concurrent users]

Schedule D – Outline Implementation Plan/Implementation Plan

[Note: Outline Implementation Plan to be added here. Where an Implementation Plan has been agreed in advance of signing or has been completed by the Authority before signing then it should also be added here]

[Note 2: The Implementation Plan needs to set out what each party needs to do to achieve successful implementation of the Solution/provision of deliverables with responsibilities clearly allocated to each party as well as timescales within which these need to be achieved.]

Schedule E – Staff Transfer

In this Schedule the following terms shall have the meaning given below:

Outgoing Employees	means any individuals who are engaged in and wholly or mainly assigned to the provision of the Services (or any part of the Services) immediately prior to the expiry or termination of this Agreement and “Outgoing Employee” means any one of them;
Relevant Employees	means the employees of the Authority or of any provider of services (other than the Provider) that are to be replaced by the Services; and
TUPE Regulations	Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended and / or replaced from time to time).

For the purposes of paragraph 2, where applicable, references to “Authority” include references to the former provider of the services prior to the Commencement Date where it was not the Authority; and

For the purposes of paragraph 3, where applicable, references to the “Provider” shall be deemed to include references to any sub-contractor of the Provider of whatever tier and the Provider shall procure that its subcontractors comply with that paragraph.

1. General

The parties do not anticipate the TUPE Regulations applying to the performance of this Agreement by either party. To the extent that the TUPE Regulations do apply (or are alleged to apply), the provisions of this Schedule shall apply.

2. No Staff Transfer on Entry

2.1. Notwithstanding the provisions of paragraph 1 above, if upon or at any time following the Commencement Date any Relevant Employee claims that their employment should have or has transferred to the Provider as a result of the provisions of the TUPE Regulations, then:

2.1.1. the Provider will, within 5 Working Days of becoming aware of that fact, notify the Authority in writing;

2.1.2.the Authority may offer employment to that Relevant Employee on the same terms and conditions as applied to that employee immediately before the Commencement Date, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Provider;

2.1.3.if such offer of employment is accepted by the Relevant Employee, the Provider shall immediately release the Relevant Employee from its employment and the Authority shall assume responsibility as the sole employer of that Relevant Employee;

2.1.4.if after the period referred to in paragraph 2.1.2 no such offer has been made, or such offer has been made but not accepted by the Relevant Employee, the Provider may within 5 Working Days give notice to terminate the employment of the Relevant Employee,

and, subject to the Provider's compliance with paragraphs 2.1.1 to 2.1.4, the Authority will indemnify the Provider in full against any and all losses, liabilities, fines, damages, costs and expenses, including legal fees, disbursements and costs of investigation, litigation, settlement, judgement, interest and penalties incurred by the Provider in relation to the Relevant Employee whether arising directly or indirectly out of or in connection with such termination or otherwise, and against any sums payable to or in relation to the Relevant Employee in respect of his/her employment from the Commencement Date to the date of such termination.

2.2. Where reasonably required do to so by the Provider, the Authority will assist the Provider in taking and/or defending any proceedings by and/or against the Provider in connection with the termination of the Relevant Employee's employment in accordance with paragraph 2.1.

2.3. The indemnity in paragraph 2.1 and the provisions of paragraph 2.2 shall not apply to (i) any claim for discrimination in relation to any alleged act or omission of the Provider, (ii) any claim that the termination of employment was unfair because the Provider failed to follow a fair dismissal procedure or (iii) any termination of a Relevant Employees employment which occurs later than 3 months from the Commencement Date.

2.4. If the Provider does not comply with paragraph 2.1, all employee liabilities in relation to the Relevant Employee shall remain with the Provider, the indemnity in paragraph

2.1 shall not apply, and the Provider shall indemnify the Authority against any liabilities that the Authority may incur in respect of any such transferred Relevant Employees.

3. No Staff Transfer on Exit

3.1. During the Term, the Provider agrees to arrange (and to procure that its subcontractors of whatever tier arrange) its workers in such a way that no individual who is either employed or engaged by the Provider (or by any subcontractor of the Provider of whatever tier) is at any time wholly or mainly assigned to the provision of the Services and, consequently, that no contract of employment of any individual and no liabilities in respect of any individual's employment will transfer from the Provider (or its subcontractors of whatever tier) to any Replacement Provider pursuant to the TUPE Regulations on the expiry or termination of this Agreement (whether whole or in part), or otherwise.

3.2. Notwithstanding the provisions of paragraphs 1 and 3.1 above, if at any time during the Term or on the expiry or termination of this Agreement (whether whole or in part) and/or upon any transfer of the Services (whether in whole or in part) to any Replacement Provider, the employment of any Outgoing Employees transfers or is alleged to have transferred to any Replacement Provider in accordance with the TUPE Regulations or otherwise, then:

3.2.1.the Authority shall use reasonable endeavours to procure that the Replacement Provider will, promptly on becoming aware of that fact, notify the Authority and the Provider in writing;

3.2.2.the Provider may offer employment to that Outgoing Employee on the same terms and conditions as applied to that employee immediately before the Transfer Date, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Replacement Provider;

3.2.3.if such offer of employment is accepted by the Outgoing Employee, the Authority shall use reasonable endeavours to procure that the Replacement Provider shall immediately release the Outgoing Employee from its employment and the Provider shall assume responsibility as the sole employer of that Outgoing Employee;

3.2.4.if after the period referred to in paragraph 3.2.2 no such offer has been made, or such offer has been made but not accepted by the Outgoing Employee, the Replacement Provider may within 5 Working Days give notice to terminate the employment of the Outgoing Employee;

and, subject to the Replacement Provider's compliance with paragraphs 3.2.1 to 3.2.4, the Provider will indemnify and keep indemnified the Authority and/or the Replacement Provider against any and all losses, liabilities, fines, damages, costs and expenses, including legal fees, disbursements and costs of investigation, litigation, settlement, judgement, interest and penalties in relation to such Outgoing Employees, whether arising directly or indirectly out of or in connection with such termination or otherwise, and against any sums payable to or in relation to the Outgoing Employee in respect of his/her employment from the Transfer Date to the date of such termination.

- 3.3. The indemnity in paragraph 3.2 shall not apply to (i) any claim for discrimination in relation to any alleged act or omission of the Replacement Provider, (ii) any claim that the termination of employment was unfair because the Replacement Provider failed to follow a fair dismissal procedure or (iii) any termination of a Relevant Employees employment which occurs later than 3 months from the Transfer Date.
- 3.4. Without prejudice to paragraph 3.2 above, should any Outgoing Employees successfully claim during the Term or on the expiry or termination of this Agreement (whether whole or in part) and/or upon any transfer of the Services (whether whole or in part) that their employment has transferred to any Replacement Provider (whether pursuant to TUPE or otherwise) and regardless of whether the Replacement Provider (as appropriate) exercises its right to terminate any Outgoing Employees' employment pursuant to clause 3.2 above, the Provider will:
- 3.4.1. ensure that full payment is made to the Outgoing Employees in respect of any wages, salary, accrued holiday pay, bonus or any other payments accrued by or owed to the Outgoing Employees up to the date of the transfer of their employment to the Replacement Provider, as appropriate (the "**Transfer Date**"); and
- 3.4.2. indemnify and keep indemnified the Authority and any Replacement Provider against any and all losses, liabilities, fines, damages, costs and expenses, including legal fees, disbursements and costs of investigation, litigation, settlement, judgement, interest and penalties in relation to such Outgoing Employee as a result of any actual or alleged act, fault or omission of the Provider (including without limitation, any breach of Regulations 11 and 13 of the TUPE Regulations) relating to the employment of the Outgoing Employees up to and including the Transfer Date.

- 3.5. When reasonably required to do so by the Authority and/or any Replacement Provider, the Provider will assist the Authority and/or any Replacement Provider in defending any proceedings against the Authority and/or any Replacement Provider in connection with any litigation pursued against them by any Outgoing Employees.
- 3.6. If at any point the Replacement Provider accepts the employment of any Outgoing Employee, the Outgoing Employee shall be treated as an employee of the Replacement Provider from the Transfer Date and paragraph 3.2 shall cease to apply.
- 3.7. The Provider shall promptly provide the Authority and any Replacement Provider, in writing such information as is necessary to enable the Authority and/or the Replacement Provider to carry out their respective duties under regulation 13 of the TUPE Regulations. The Authority shall procure that the Replacement Provider, shall promptly provide to the Provider in writing such information as is necessary to enable the Provider to carry out their respective duties under regulation 13 of the TUPE Regulations.
- 3.8. Subject to paragraph 3.7, the Authority shall use reasonable endeavours to procure that the Replacement Provider indemnifies the Provider against any employee liabilities arising from or as a result of any act or omission, whether occurring before, on or after the Transfer Date, of the Replacement Provider in respect of any Outgoing Employee.
- 3.9. The indemnity in paragraph 3.8 shall not apply to the extent that the employee liabilities arise or are attributable to an act or omission of the Provider whether occurring or having its origin before, on or after the Transfer Date, including any employee liabilities arising from the failure by the Provider to comply with its obligations under the TUPE Regulations.

Schedule F – Exit Management

1. INTRODUCTION

1.1 Purpose

This Schedule F describes the responsibilities of the Provider and the Authority to facilitate the orderly transfer from the Services and Solution to a replacement solution and services to be provided by any Replacement Provider in accordance with clause 32 of the Agreement on termination or expiration of the Agreement.

2. BUSINESS OBJECTIVES

2.1 Key Business Objectives

The key business objectives of this Schedule F are:

- To minimise the impact of termination on the ongoing service provided to members, the Authority and any third parties associated with the Services.
- To set out the termination assistance required to effect an orderly service transfer.
- To ensure the continuous provision of business as usual Services (and Solution availability) during the exit period to the Service Levels detailed in Schedule B.
- To minimise any disruption, reputational damage and costs to all concerned parties.

2.2 Governing Principles

Governance/ Approach:

Overall governance of the exit process will be provided by a mutually agreed Steering Committee, as defined in Paragraph 3.5 (*Governance*) of this Schedule F. The Authority and Provider agree that they will each appoint a project manager (on such basis as agreed by the Authority and Provider), to be in charge of the Exit Management Plan implementation. The project managers will act in good faith in order to build and manage the successful completion of the Exit Management Plan.

Robust and recognised programme management disciplines and approaches will be used and be commensurate with any change programme of similar size, scope and risk.

Acceptance criteria for each deliverable and phase of completion will be defined and reported against the plan and acceptance criteria. Appropriate resources will be made available for activities.

Risk Management:

Care should be taken to avoid compounding risks. If feasible, the exit should be envisioned and agreed by the Authority and the Provider to avoid other planned significant changes. Where the exit is the result of an unsuccessful completion of a change or is required to occur during a change due to circumstances beyond the reasonable control of any or all of the Provider and the Authority, the Authority and Provider will work together to define and implement a suitable solution.

Communications/ Confidentiality:

Each party will take a professional and reasonable approach to communication with both internal and external stakeholders. Specific care, consideration and all reasonable precautions will be taken when issuing communications to external parties or that could be made available to external parties, to ensure that the content is clear, fair and objective.

Due consideration will be given to agreeing appropriate confidentiality agreements with third parties to protect the confidentiality of the Provider and the Authority.

Data and Knowledge

Appropriate controls need to be in place to protect proprietary information, processes and systems. Data transfer for any purpose will be in the form of extracts of the required information from the Provider Systems, in a format reasonably required by the Authority. The Authority and Provider recognise the importance of knowledge transfer relating to Authority Data and the Provider shall ensure that a full handover with the Replacement Provider will be conducted.

3. EXIT MANAGEMENT PLAN OVERVIEW

3.1 Overview and roadmap

The following phases have been identified as key to completion of an exit. While shown in series, it is feasible that there will be overlaps between these phases, once detailed planning has been completed. A brief description of each of the phases follows:

- (a) **Mobilisation:** Initiation and set up of the exit planning;
- (b) **Internal Planning:** Planning to define the detailed timeline for the detailed Exit Management Plan, including milestones, deliverables, dependencies and acceptance criteria;
- (c) **Joint Planning:** Merger and agreement of plans from all entities; finalisation of all aspects of Exit Management Plan;
- (d) **Finalise Negotiations:** This phase will conclude all items remaining for negotiation;
- (e) **Execution:** Execution of all work items for exit;
- (f) **Review:** Joint review of the exit management;
- (g) **Sign off:** Sign off of all required activities as complete; all acceptance criteria as having been met.

3.2 Exit Period

The Provider shall ensure that the services provided by it under the Exit Management Plan are completed in accordance with the timetable agreed in the Exit Management Plan and in accordance with the acceptance criteria as agreed between the parties. The Authority shall (and shall use reasonable endeavours to procure that the Replacement Provider shall) perform its obligation under the detailed Exit Management Plan in accordance with the timetable agreed in the Exit Management Plan.

3.4 Regulatory Authorities

The Provider will provide any additional information required by the Authority (both before and during the exit period) in order for the Authority to meet its regulatory requirements. This may include (without limitation) providing the Pensions Regulator

with copies of the Exit Management Plan, answering the regulator's questions, providing details on progress and time tables for exit, and an audit of exit activities.

3.5 Governance

Where reasonably requested by the Authority a steering committee ("**Steering Committee**") made up of representatives of the Authority, the Company, the Provider and any advisors nominated by the Authority and the Provider will meet ("**Initial Exit Meeting**").

The Steering Committee will appoint a joint project team ("**Project Team**"), agree the applicable termination assistance fee and nominate a suitably experienced and qualified person as a project manager from each of the Authority, the Company and the Provider to be a point of contact with responsibility for all matters relating to the Exit Management Plan. They will control all changes to plans, deliverables and acceptance criteria, whilst ratifying completion of all activities and deliverables against acceptance criteria. They will also be responsible for all programme level risk and issue resolution.

Additional points:

- The Authority will appoint a chair of the Steering Committee.
- The Project Team is placed under the supervision of the Steering Committee.
- The Provider's representative and the personnel engaged in providing the Services will participate in and support the governance arrangements.
- The Project Team would be asked to firstly define the programme to be undertaken, including the development of a programme initiation document (PID) to include scope definition and detailed Exit Management Plan (including work plans, timelines, dependencies resources, assumptions, costs, risks and proposals for arbitration for each topic to be covered (processes, employees, finance, legal, tax)).
- Each work stream should have a clearly identified leader responsible for all aspects covered by that work stream.
- Formal acceptance criteria must be defined for all deliverables associated with the Exit Management Plan to allow objective measurement of completion.

- The Project Team will have the total support from required specialists on all sides to cope with each of the related topics (legal, human, business, finance, tax, etc.).

The Project Team will assign roles and low-level responsibilities and define work streams to ensure a smooth migration. Where the Project Team identifies a conflict, it shall report the conflict to the Steering Committee with a recommendation whether the conflict warrants an appropriate change to the Exit Management Plan. The Project Team should not be able to override the Exit Management Plan, which forms part of the Agreement, without progressing through the Variation process.

4. EXIT MANAGEMENT PLAN IMPLEMENTATION

4.1 Timetable for Transfer of Services to the Replacement Provider

The Project Team will agree the timetable for the transfer of Services as part of the low-level detail of the detailed Exit Management Plan.

4.2 Security and Risk

The Project Team will hold a risk workshop within thirty (30) calendar days (or such other length of time as agreed by the parties) of its appointment, to identify if any additional risks (associated with the transfer of the Services), have arisen since the creation of the detailed Exit Management Plan and to develop a plan to mitigate such project risks. The Project Team will hold progress risk workshops at regular intervals during the exit period to provide an update on the risks and agree mitigation plans and to identify any new risks and corresponding mitigation plans.

4.3 Transfer of documentation, information, records and other data and Provider Developed Materials

Documentation, information, records and other data relating to the Services will be provided by the Provider to the Authority (or the Replacement Provider (if applicable)) in line with a timetable to be agreed by the Project Team and in the Provider's standard format. The high level process will be documented in the detailed Exit Management Plan. The Authority or the Replacement Provider should confirm that the transferred items have been successfully received and read, and are in the format agreed by the

Provider and the Authority (as applicable) and have not been corrupted during extraction or transfer, before the Provider destroys any files in accordance with any contractual requirements.

4.4 Return of Other Party's Property

Subject to the provisions of the Agreement and unless otherwise provided in the Exit Management Plan, each party will, by the dates agreed by the Project Team, return to the other party (unless requested by the other party to erase or destroy):

- Information of the other party that is deemed confidential and has not been agreed to be retained by the possessing party;
- Intellectual property;
- Hardware and Software (if applicable);
- Documentation relating to security procedures;
- Documentation, materials and data (including the Authority Data) relating to the other party, save for data, documents and materials that have been agreed to be retained by a party or as may be required for legal or regulatory requirements.

The parties will co-operate with each other to provide hard copies of these items if required, otherwise soft copies will suffice. Each party will certify to the other in writing that this has been completed.

4.5 Confidentiality Contract

The Authority recognises that the Provider will require a Replacement Provider to sign a confidentiality agreement provided by the Provider protecting the Provider's Confidential Information. The Authority will ensure that any such Replacement Provider commits to a confidentiality agreement prior to commencement of interaction with the Provider.

4.6 Escalation

Any issue that cannot be resolved by the Project Team will be escalated via the dispute resolution process in accordance with the Agreement.

Ensure Data "Recovery" retains integrity

Cooperation with provider

Be explicit regarding “no costs”

Pay for anything above and beyond

? Attending boards and reports - virtual attendance at meetings on reasonable notice

Mutual Escalation points – Key people provisions – Like for Better!

ANNEX 1 EXIT MANAGEMENT PLAN PRINCIPLES

The Exit Management Plan shall include the following principles unless otherwise agreed with the Authority.

Phase	Action Required
Project Initiation and Mobilisation	<ul style="list-style-type: none">– Hold project initiation meetings with all stakeholders– Agree scope of project– Agree roles and responsibilities– Establish initial risk and issues log– Agree format and frequency of all ongoing meetings– Agree escalation process– Agree and sign-off detailed exit plan– Exit governance
Termination Costs	<ul style="list-style-type: none">– Establish estimated costs associated with termination– Agree 'termination assistance fee' (if applicable) with Authority and supporting payment milestones
IT	<p>Data exchange</p> <ul style="list-style-type: none">– Confirm scope of data to exchange

Phase	Action Required
	<ul style="list-style-type: none"> – Confirm dates for data exchange – dry run(s) – Secure resource for dry run(s) – Transaction volumes confirmed – Agree media and format for test files and other logistics including compliance with appropriate standards for data handling and transfer.
	<p>Initial data test dry run</p> <ul style="list-style-type: none"> – Produce test data (including historical data) – Resolve queries – Dry runs completed – Scope of data (live and historic) decision made based on proved timings
	<p>Send test data file</p> <ul style="list-style-type: none"> – Produce test data file – Issue resolution – Sign off test data file – ready for live
	<p>Document and agree approach to full dress rehearsal and live transfer</p>

Phase	Action Required
	<ul style="list-style-type: none"> – Confirm resourcing required to support dress rehearsal – Plan and timings for dress rehearsal data exchange – Plan and timings for live transfer – Agree plan for dress rehearsal data exchange – Draft plan for live transfer – Agree plan for live transfer
	<p>Execute dress rehearsal data exchange</p> <ul style="list-style-type: none"> – Produce test data for full dress rehearsal – Send data to Replacement Provider – Resolve any queries – Input to dress rehearsal report
	<p>Live data transfer</p> <ul style="list-style-type: none"> – Forecast and secure resources – Circulate out-of-hours contact details for personnel – Confirm data quality assessment – Live data ready – Live data to Replacement Provider

Phase	Action Required
	<ul style="list-style-type: none"> – Resolve any queries raised and Replacement Provider signs off volumes, audit totals – Sign-off live transfer – Test any transitional services to ensure working correctly
Contingency Plan	Contingency plan should things go wrong on day of transfer– parallel runs.
Post- Exit Review	TO BE AGREED

Schedule G – Security

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

Breach of Security	means the occurrence of: a) any unauthorised access to or use of the Services, the Premises and/or any ICT, information or data (including the Confidential Information and the Authority Data) used by the Authority and/or the Provider in connection with this Agreement; and/or b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the Provider in connection with this Agreement.
ISMS	the information security management system developed by the Provider in accordance with paragraph 2 (ISMS) of this Schedule, as updated from time to time in accordance with this Schedule;
Security Tests	has the meaning given in paragraph 5.1 of this Schedule (Testing of the ISMS).
Variation Procedure	means the procedure set out clause 34 of the Agreement.

2. ISMS

2.1 By the date specified in the Implementation Plan the Provider shall develop and submit to the Authority for the Authority's approval an information security management system for the purposes of this Agreement, which:

2.1.1 if required by the Implementation Plan, shall have been tested in accordance with Schedule A (Acceptance Procedure); and

2.1.2 shall comply with the requirements of paragraphs 2.3 to 2.5 of this Schedule (Security).

2.2 The Provider acknowledges that the Authority places great emphasis on the confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and that the Provider shall be responsible for the effective performance of the ISMS.

2.3 The ISMS shall:

2.3.1 unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, the Provider System and any ICT, information and data (including the Authority's Confidential Information and the Authority Data) to the extent used by the Authority or the Provider in connection with this Agreement;

2.3.2 meet the relevant standards in ISO/IEC 27001; and

2.3.3 at all times provide a level of security which:

- (a) is in accordance with Good Industry Practice, Law and this Agreement;
- (b) complies with the Security Policy;
- (c) meets any specific security threats to the ISMS;
- (d) complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph 6 of this Schedule (Compliance of the ISMS With ISO/IEC 27001);
- (e) complies with the Security Requirements as set out in Annex 1 (Security) to this Schedule; and
- (f) complies with the Authority's ICT policies.

2.4 The references to standards, guidance and policies set out in paragraph 2.3 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 Provider from time to time.

2.5 In the event that the Provider becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in paragraph 2.3 of this Schedule, the Provider shall immediately notify the Authority Project Manager of such inconsistency and the Authority Project Manager shall, as soon as practicable, notify the Provider as to which provision the Provider shall comply with.

2.6 If the ISMS submitted to the Authority pursuant to paragraph 2.1 of this Schedule is approved by the Authority, it shall be adopted by the Provider immediately and thereafter operated and maintained in accordance with this Schedule. If the ISMS is not approved by the Authority, the Provider shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for approval. The parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the parties may agree in writing) from the date of the first submission of the ISMS to the Authority. If the Authority does not approve the ISMS following its resubmission, the matter shall be referred for Expert Determination in accordance with clause 37. No approval to be given by the Authority pursuant to this paragraph 2 of this Schedule may be unreasonably withheld or delayed. However, any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in paragraphs 2.3 to 2.5 of this Schedule shall be deemed to be reasonable.

2.7 Approval by the Authority of the ISMS pursuant to paragraph 2.6 of this Schedule or of any change or amendment to the ISMS shall not relieve the Provider of its obligations under this Schedule.

3. SECURITY MANAGEMENT PLAN

3.1 Within thirty (30) days after the Commencement Date, the Provider shall prepare and submit to the Authority an initial security management plan. The parties shall, acting in good faith, discuss and seek to agree the contents of the initial security management plan. If the parties are unable to agree the contents of the initial security management plan within sixty (60) days of the Commencement Date, either party may refer the matter for Expert Determination in accordance with clause 37. The Provider shall then prepare and submit to the Authority for approval in accordance with paragraph 3 of this Schedule a fully developed, complete and up-to-date security management plan

(**"Security Management Plan"**) which shall comply with the requirements of paragraph 3.2 of this Schedule within 30 days of the Go-Live Date for the Solution.

3.2 The Security Management Plan shall:

- 3.2.1 be based on the initial security management plan;
- 3.2.2 comply with the Security Policy;
- 3.2.3 unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Authority Premises, the Provider System and any ICT, information and data (including the Authority's Confidential Information and the Authority Data) to the extent used by the Authority or the Provider in connection with this Contract;
- 3.2.4 set out the security measures to be implemented and maintained by the Provider in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Schedule (including the requirements set out in paragraph 2.3 of this Schedule);
- 3.2.5 be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards; and
- 3.2.6 be written in plain English in language which is readily comprehensible to the staff of the Provider and the Authority engaged in the Services and shall reference only documents which are in the possession of the Authority or whose location is otherwise specified in this Schedule.

3.3 If the Security Management Plan submitted to the Authority pursuant to paragraph 3.1 of this Schedule is approved by the Authority, it shall be adopted by the Provider immediately and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not approved by the Authority, the Provider shall amend it within ten (10) Working Days of a notice of non-approval from the Authority

and re-submit it to the Authority for approval. The parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the parties may agree in writing) from the date of the first submission to the Authority of the Security Management Plan. If the Authority does not approve the Security Management Plan following its resubmission, the matter shall be referred for Expert Determination in accordance with clause 37. No approval to be given by the Authority pursuant to this paragraph may be unreasonably withheld or delayed. However, any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 3.2 of this Schedule shall be deemed to be reasonable.

3.4 Approval by the Authority of the Security Management Plan pursuant to paragraph 3.3 of this Schedule or of any change or amendment to the Security Management Plan shall not relieve the Provider of its obligations under this Schedule.

4. AMENDMENT AND REVISION OF THE ISMS AND SECURITY MANAGEMENT PLAN

4.1 The ISMS and Security Management Plan shall be fully reviewed and updated by the Provider from time to time and at least annually to reflect:

- 4.1.1 emerging changes in Good Industry Practice;
- 4.1.2 any change or proposed change to the Provider System, the Services and/or associated processes;
- 4.1.3 any new perceived or changed security threats; and
- 4.1.4 any reasonable request by the Authority.

4.2 The Provider shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Authority. The results of the review shall include, without limitation:

- 4.2.1 suggested improvements to the effectiveness of the ISMS;
- 4.2.2 updates to the risk assessments;

4.2.3 proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and

4.2.4 suggested improvements in measuring the effectiveness of controls.

4.3 Subject to paragraph 4.4 of this Schedule, any change or amendment which the Provider proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to paragraph 4.1 of this Schedule, a Authority request, change to Annex 1 of this Schedule (Security) or otherwise) shall be subject to the Variation procedure set out in clause 34 of the Agreement and shall not be implemented until approved in writing by the Authority.

4.4 The Authority may, where it is reasonable to do so, approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than set out in the Variation procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Agreement.

5. TESTING OF THE ISMS

5.1 The Provider shall conduct tests of the ISMS ("Security Tests") from time to time and at least annually and additionally after any change or amendment to the ISMS or the Security Management Plan. Security Tests shall be designed and implemented by the Provider so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority. Subject to compliance by the Provider with the foregoing requirements, if any Security Tests adversely affect the Provider's ability to deliver the Services so as to meet the Service Levels, the Provider shall be granted relief against any resultant under-performance for the period of the Security Tests.

5.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Provider shall provide the Authority with the results of such Security Tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.

5.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to this Agreement, the Authority and/or its authorised representatives shall be entitled, at any time and without giving notice to the Provider, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Provider's compliance with the ISMS and the Security Management Plan. The Authority may notify the Provider of the results of such tests after completion of each such test.

5.4 Where any Security Test carried out pursuant to paragraphs 5.1 or 5.3 of this Schedule reveals any actual or potential breach of security, the Provider shall promptly notify the Authority of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Provider proposes to make in order to correct such failure or weakness. Subject to the Authority's prior written approval, the Provider shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or Security Requirements (as set out in Annex 1 (Security) to this Schedule) or the requirements of this Schedule, the change to the ISMS or Security Management Plan shall be at no cost to the Authority.

5.5 If any repeat Security Test carried out pursuant to paragraph 5.4 of this Schedule reveals an actual or potential breach of security exploiting the same root cause failure, such circumstance shall constitute a material Default of this Agreement.

6. COMPLIANCE OF THE ISMS WITH ISO/IEC 27001

6.1 The Authority shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001.

6.2 If, on the basis of evidence provided by such security audits, it is the Authority's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the Provider, then the Authority shall notify the Provider of the same and give the Provider a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001. If the Provider does not become

compliant within the required time then the Authority shall have the right to obtain an independent audit against these standards in whole or in part.

6.3 If, as a result of any such independent audit as described in paragraph 6.2 of this Schedule the Provider is found to be non-compliant with the principles and practices of ISO/IEC 27001 then the Provider shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.

7. BREACH OF SECURITY

7.1 Either Party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any breach of security or any potential or attempted breach of security.

7.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 7.1 of this Schedule, the Provider shall:

7.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Authority) necessary to:

- (a) remedy such breach of security or any potential or attempted breach of security or protect the integrity of the ISMS against any such breach of security or any potential or attempted breach of security; and
- (b) prevent a further breach of security or any potential or attempted breach of security in the future exploiting the same root cause failure; and

7.2.2 as soon as reasonably practicable, provide to the Authority full details (using such reporting mechanism as defined by the ISMS) of the breach of security or the potential or attempted breach of security, including a root cause analysis where required by the Authority.

7.3 In the event that such action is taken in response to a breach of security or potential or attempted breach of security that demonstrates non-compliance of the ISMS with the Security Policy or Security Requirements (as set out in Annex 1 (Security) to this

Schedule) or the requirements of this Schedule, then any required change to the ISMS shall be at no cost to the Authority.

Annex 1 (to Schedule G)

[Security Requirements – to be completed by the Authority]

Schedule H – Provider Business Continuity and Disaster Recovery Plan

Schedule I – Authority Responsibilities

To be agreed with the Provider following award of contract.

Schedule J – Provider Solution

[Schedule K – Escrow Agreement]

Schedule L – Maintenance Agreement / SLA for Support

Schedule M – COTS Software Usage Terms