

Dated

2025

AGREEMENT

Relating to

Operational Asset Works Management Systems

BETWEEN

NATIONAL HIGHWAYS LIMITED

AND

BRIGHTLY SOFTWARE LIMITED

CORE TERMS



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THIS AGREEMENT is made on

2025

BETWEEN

- (1) **National Highways Limited** a company registered in England and Wales under company number 09346363 whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ (the “**Customer**”); and
- (2) **Brightly Software Limited** a company registered in England and Wales under company number 12838751 whose registered office is at Pinehurst 2 Pinehurst Road, Farnborough, Hampshire, United Kingdom, GU14 7BF (the “**Supplier**”)

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

INTRODUCTION

- (A) The Customer is responsible for operating, maintaining and improving the Strategic Road Network in England. The Customer’s strategy and business plan set out a clear aim of ‘safe roads, reliable journeys, informed travellers. This aim is supported by the prime objective of delivering a high-quality service to all customers by:
 - Reducing congestion and improving reliability;
 - Improving road safety;
 - Respecting the environment; and
 - Seeking and responding to feedback from customers.
- (B) The Customer wishes to appoint a supplier to provide asset management software to support the maintenance and upkeep of its highways asset.
- (C) The Customer wishes to appoint the Supplier to provide the Services on the terms of this Agreement.

IT IS AGREED as follows:

A. PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the context otherwise requires, capitalised expressions shall have the meanings set out in **Schedule 1 (Definitions)** or the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in **Schedule 1 (Definitions)** or relevant Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In this Agreement, unless the context otherwise requires:
 - 1.3.1 the singular includes the plural and vice versa;

- 1.3.2 reference to a gender includes the other gender and the neuter;
- 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
- 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- 1.3.5 the words “**include**”, “**including**”, “**other**”, “**in particular**”, “**for example**” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “**without limitation**”;
- 1.3.6 references to “**writing**” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- 1.3.7 references to “**representations**” shall be construed as references to present facts, to “**warranties**” as references to present and future facts and to “**undertakings**” as references to obligations under this Agreement;
- 1.3.8 references to “**Clauses**” and “**Schedules**” are, unless otherwise provided, references to the Clauses and Schedules of this Agreement and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear; and
- 1.3.9 the headings in this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- 1.3.10 references to this Agreement are references to this Agreement as amended from time to time.
- 1.4 The Customer shall be deemed not to be in Default pursuant to this Agreement to the extent that any such Default is due to the Default of the Supplier.
- 1.5 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyper link is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Customer and the Parties shall update the Agreement with a reference to the replacement hyperlink.
- 1.6 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.6.1 the Clauses and **Schedule 1 (Definitions)**
 - 1.6.2 **Schedule 2 (Services)**;
 - 1.6.3 any other Schedules and their Annexes; and
 - 1.6.4 any other document referred to in the Agreement.
- 1.7 The Schedules and their Annexes form part of this Agreement.

2. DUE DILIGENCE

2.1 The Supplier acknowledges that:

- 2.1.1 the Customer has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;
- 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information and that it has entered into this Agreement in reliance on its own due diligence alone;
- 2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Customer before the Commencement Date) of all relevant details, including 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 Operating Environment;
 - (b) operating processes and procedures and the working methods of the Customer;
 - (c) ownership, functionality, capacity, condition and suitability for use in the provision of the Services of the Customer Assets; and
 - (d) existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Agreement and/or which the Supplier will require the benefit of for the provision of the Services; and
- 2.1.4 it has advised the Customer in writing of:
 - (a) each aspect, if any, of the Operating Environment 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.
- 2.1.5 the Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:
 - (a) unsuitable aspects of the Operating Environment;
 - (b) misinterpretation of the requirements of the Customer in this Agreement; and/or
 - (c) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

3. SPIRIT OF TRUST AND CO-OPERATION

- 3.1 The Customer and the Supplier shall act as stated in this Agreement and in a spirit of mutual trust and cooperation.

4. REPRESENTATIONS AND WARRANTIES

4.1 Each Party represents and warranties that:

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

4.2 The Supplier represents and warrants that:

- 4.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 4.2.2 it has full capacity and authority and all necessary authorisations, consents (including, where its procedures so require, the consent of its Parent Undertaking), licences, permissions and regulatory approvals to enter into this Agreement;
- 4.2.3 its execution, delivery and performance of its obligations under this Agreement does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;
- 4.2.4 as at the Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement;
- 4.2.5 all Supplier Personnel assigned to the performance of the Services have the necessary qualifications, skills and experience for the proper performance of the Services;
- 4.2.6 as at the Commencement Date, it has notified the Customer in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non-Compliance;
- 4.2.7 it has and shall continue to have all necessary rights in and to the Software, the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Customer which are necessary for the performance of the Supplier's obligations under this Agreement including the receipt of the Services by the Customer. In the event that any breach of this warranty gives rise to an IPR Claim the Customer's exclusive

- remedy and Supplier's entire liability shall be as set out in Clause 29.9;
- 4.2.8 it shall use the best applicable and available techniques and standards and will perform the Services with all reasonable care, skill and diligence, and according to Good Industry Practice.
- 4.2.9 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Customer's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Customer;
- 4.2.10 not used;
- 4.2.11 not used;
- 4.2.12 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- 4.2.13 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- 4.2.14 for the Term and for a period of twelve (12) months after the termination or expiry of this Agreement the Supplier shall not employ or offer employment to any staff of the Customer which have been associated with the provision of the Services without Approval, which shall not be unreasonably withheld. However, this **Clause 4.2.14** shall not preclude the Supplier's rights to (i) make generalised searches for employees by the use of advertisements in the media (including by any recruitment agency), (ii) hire any employee of the Customer who approaches the Supplier on an unsolicited basis; or (iii) solicit for employment or hire any such employee who ceases to be employed by the Customer
- 4.3 Each of the representations and warranties set out in **Clauses 4.1** and **4.2** shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Agreement.
- 4.4 If at any time a Party becomes aware that a representation or warranty given by it under **Clauses 4.1** and **4.2** has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 4.5 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Supplier which constitutes a material Default.

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

5. **GUARANTEE**

- 5.1 Not used.

- 5.2 Not used.

- 5.3 Notwithstanding that the Customer has not required that the Supplier procure that a guarantor execute and deliver to the Customer a Guarantee on or before the date of this Agreement and without prejudice to any right of termination that the Customer may have pursuant to **Clause 37.5 (Termination on Change of Control)**, in the event of a change of Control of the Supplier:

5.3.1 the Customer may require that a Guarantee be provided by a person that, as a consequence of the change of Control, Controls the Supplier or who is otherwise the Ultimate Parent Undertaking of the Supplier; and

5.3.2 subject to **Clause 5.4**, the Supplier shall, within twenty (20) Working Days of being so required by the Customer, procure that such Guarantor shall:

- (a) execute and deliver to the Customer the Guarantee; and
- (b) deliver to the Customer either a certified copy extract of the board minutes of the Guarantor approving the execution of the Guarantee or a certified copy of a document or certificate authorising the signatory on the Guarantee to execute the Guarantee on behalf of the Guarantor in a form acceptable to the Customer (acting reasonably).

For the avoidance of any doubt the Customer shall not be obliged to exercise the rights set out in this **Clause 5.3** to require a Guarantor, or the execution and / or delivery of a Guarantee, within any specified period of time following the change of Control or change in the Ultimate Parent Undertaking of the Supplier, or at all.

- 5.4 If any Guarantor is not a company incorporated in and subject to the laws of England and Wales, the Supplier shall deliver to the Customer (at the same time as delivery of the executed Guarantee and certified copy board minutes extract) a Legal Opinion from a lawyer or law firm which is:

5.4.1 qualified and registered to practise in the jurisdiction in which the Guarantor is incorporated; and

5.4.2 acceptable to the Customer.

The Legal Opinion must be addressed to the Customer on a full reliance basis and the liability of the lawyer or law firm giving the opinion must not subject to any financial limitation unless otherwise agreed by the Customer in writing.

B. **DURATION OF THIS AGREEMENT**

6. **TERM**

6.1 This Agreement shall come into force on the Commencement Date and unless terminated at an earlier date by operation of Law or in accordance with **Clause 37 (Customer Termination Rights)**, **38 (Supplier Termination Rights)** or **39 (Termination by Either Party)**, terminate:

- (a) at the end of the Initial Term; or
- (b) if the Customer elects to extend the Initial Term by the Extension Period by giving the Supplier at least thirty (30) Working Days' notice before the end of the Initial Term, at the end of the Extension Period.

C. **PERFORMANCE**

7. **THE SERVICES**

7.1 **Provision of the Services**

7.1.1 The Supplier acknowledges and agrees that the Customer relies on the skill and judgment of the Supplier in the provision of the Services and the performance of its obligations under this Agreement.

7.1.2 The Supplier shall ensure that the Services:

- (a) comply in all respects with any description of the Services in **Schedule 2 (Services)** or elsewhere in this Agreement; and
- (b) are supplied in accordance with the provisions of this Agreement.

7.1.3 The Supplier shall perform its obligations under this Agreement in accordance with:

- (a) all applicable Law;
- (b) Good Industry Practice;
- (c) the Standards;
- (d) the Security Policy;
- (e) the Quality Plans; and
- (f) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of **Clauses 7.1.3(a) to (e)**.

7.1.4 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Agreement;
- (b) subject to **Clause 20.1 (Variation Procedure)**, obtain, and maintain throughout the duration of this Agreement all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- (c) ensure that:
 - (i) the Supplier Solution and the Software is and shall continue to be COTS based and not bespoke and

- maintained and supported by the Supplier or applicable third party as COTS (unless otherwise agreed by the Customer);
- (ii) to the extent reasonably practicable, the release of any new Supplier Software or upgrade to any Supplier Software complies with the interface requirements of the Customer and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Customer three (3) months before the release of any new Supplier Software or Upgrade;
 - (iii) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
 - (iv) any products or services recommended or otherwise specified by the Supplier for use by the Customer in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the requirements of the Customer;
 - (v) the Supplier System and Supplier Assets will be free of all encumbrances (except as agreed in writing with the Customer); and
 - (vi) the Services are fully compatible with any Customer Software, Customer System, Customer Property or Customer Assets described in **Schedule 2 (Services)** (or elsewhere in this Agreement) or otherwise used by the Supplier in connection with this Agreement;
- (d) minimise any disruption to the Sites Services, the ICT Environment and/or the Customer's operations when providing the Services;
 - (e) ensure that any Documentation and training provided by the Supplier to the Customer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
 - (f) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the Expiry Date for any reason, to enable the timely transition of the supply of the Services (or any of them) to the Customer and/or to any Replacement Supplier;
 - (g) assign to the Customer, or if it is unable to do so, shall (to the extent it is legally able to do so) hold on trust for the sole benefit of the Customer, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables and/or the Services. Where any such warranties are held on trust, the Supplier shall enforce such warranties in accordance

with any reasonable directions that the Customer may notify from time to time to the Supplier;

- (h) provide the Customer with such assistance as the Customer may reasonably require during the Term in respect of the supply of the Services;
- (i) deliver the Services in a proportionate and efficient manner;
- (j) ensure that neither it, nor any of its Affiliates, embarrasses the Customer or otherwise brings the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Supplier's obligations under this Agreement; and
- (k) gather, collate and provide such information and co-operation as the Customer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement.

7.1.5 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-Contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

7.2 Supply of Goods

7.2.1 Where, as part of the Services, the Supplier is to sell Goods to the Customer:

- (a) the relevant Goods and their prices shall be as set out in **Schedule 2 (Services)** and **Schedule 3 (Charging, Payment and Invoicing)** respectively;
- (b) the Supplier shall supply and, where relevant, install the Goods in accordance with **Schedule 2 (Services)** and any applicable manufacturer's specification ("**Relevant Specification**");
- (c) the Supplier shall ensure that the Goods are free from material defects in design, materials and workmanship, are of satisfactory quality and conform with the Relevant Specification and remain so for twelve (12) months after delivery;
- (d) if following inspection or testing, or at any other time within twelve (12) months of delivery, the Customer considers that the Goods do not conform with **Clause 7.2.1 (c)**, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance; and
- (e) without prejudice to any other rights or remedies of the Customer:
 - (i) risk in the Goods shall pass to the Customer at the time of delivery; and
 - (ii) ownership of the Goods shall pass to the Customer at the time of payment.

7.3 Optional Services

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

7.3.2 Following receipt of the Customer's notice pursuant to **Clause 7.3.1**:

- (a) the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Variation Procedure, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Optional Services have already been agreed;
- (b) any additional charges for the Optional Services shall be incorporated in the Charges as specified in **Schedule 3 (Charging, Payment and Invoicing)**; and
- (c) the Supplier shall, from the date agreed in the Optional Services Implementation Plan, provide the relevant Optional Services.

8. PERFORMANCE OF THE SERVICES

8.1 **Not used**

8.2 **Not used**

8.3 **Supplier Solution warranty**

8.3.1 The Supplier warrants to the Customer that all components of the Supplier Solution including the Software shall:

- (a) be free from material design and programming errors resulting from Supplier negligence or wilful misconduct;
- (b) perform in all material respects in accordance with and provide the functions and facilities set out in the relevant specifications and requirements contained in **Schedule 2 (Services)** and Documentation; and
- (c) not infringe any Intellectual Property Rights.

8.4 **Obligation to Remedy of Default in the Supply of the Services**

8.4.1 Subject to **Clauses 29.9.2** and **29.9.3 (IPR Indemnity)** and without prejudice to any other rights and remedies of the Customer howsoever arising (including under **Clause 34 (Customer Remedies for Default)**), the Supplier shall, where practicable:

- (a) remedy any breach of its obligations in **Clauses 7** and **8** within three (3) Working Days of becoming aware of the relevant Default or being notified of the Default by the Customer or within such other time period as may be agreed with the Customer (taking into account the nature of the breach that has occurred); and
- (b) meet all the costs of, and incidental to, the performance of such remedial work.

8.5 **Continuing Obligation to Provide the Services**

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

- (a) any withholding or deduction by the Customer of any sum due to the Supplier pursuant to the exercise of a right of the Customer to such withholding or deduction under this Agreement;

the existence of an unresolved Dispute,

unless the Supplier is entitled to terminate this Agreement under **Clause 38.1 (Termination on Failure to Pay)** for failure by the Customer to pay undisputed Charges.

9. STANDARDS AND QUALITY

- 9.1 The Supplier shall at all times during the Term comply with the Standards and maintain, where applicable, accreditation with the relevant Standards' authorisation body.
- 9.2 If so required by the Customer the Supplier shall develop, within a reasonable time period, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").
- 9.3 The Supplier shall seek Approval (the decision of the Customer to Approve or not shall not be unreasonably withheld or delayed) of the Quality Plans before implementing them. The Supplier acknowledges and accepts that Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Agreement.
- 9.4 Throughout the Term, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by the Customer, of the Services. The adoption of any such new or emergent standard or changes to existing Standards shall be agreed in accordance with the Variation Procedure.
- 9.5 Where a new or emergent standard is to be developed or introduced by the Customer, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or the Customer's receipt of the Services is explained to the Customer (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.
- 9.6 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Commencement Date, then the later Standard or best practice shall be adopted by the Supplier.
- 9.7 Following the approval by the Customer of the Quality Plans:
 - 9.7.1 the Supplier shall implement all Deliverables in accordance with the Quality Plans; and
 - 9.7.2 any Variation to the Quality Plans shall be agreed in accordance with the Variation Procedure.
- 9.8 The Supplier shall ensure that the Supplier Personnel shall at all times during the Term:

- 9.8.1 be appropriately experienced, qualified and trained to supply the Services in accordance with this Agreement;
- 9.8.2 apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Services; and
- 9.8.3 obey all lawful instructions and reasonable directions of the Customer and provide the Services to the reasonable satisfaction of the Customer.

For any breach of this **Clause 9.8**, the Customer's initial remedy and Supplier's initial liability shall be the reperformance of the applicable Services.

- 9.9 Where a standard, policy or document is referred to in **Schedule 7, (Standards)** by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Customer and the Parties shall agree the impact of such change.

10. KEY PERFORMANCE INDICATORS AND SERVICE CREDITS

- 10.1 The Parties shall comply with the provisions of **Schedule 6 (Key Performance Indicators, Service Credits and Performance Monitoring)**.
- 10.2 The Supplier shall at all times during the Term provide the Services to meet or exceed the Available Hours of Operation and other requirements of **Schedule 6 (Key Performance Indicators, Service Credits and Performance Monitoring)**.
- 10.3 The Supplier acknowledges that any failure to meet Available Hours of Operation and other requirements of **Schedule 6 (Key Performance Indicators, Service Credits and Performance Monitoring)** may have a material adverse impact on the business and operations of the Customer and that it shall entitle the Customer to the rights set out in the provisions of **Schedule 6 (Key Performance Indicators, Service Credits and Performance Monitoring)** including the right to any Service Credits.
- 10.4 The Parties acknowledge and agree that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Customer as a result of the Supplier's failure to meet any Available Hours of Operation and comply with the other requirements of **Schedule 6 (Key Performance Indicators, Service Credits and Performance Monitoring)**.

11. CRITICAL KPI FAILURE

- 11.1 On the occurrence of a Critical KPI Failure the Customer shall have the right to terminate this Agreement (pursuant to **Clause 37.2.1(a) (Termination for Material Default)**) and/or to claim damages from the Supplier for material Default as a result of such Critical KPI Failure.
- 11.2 The Supplier:
 - 11.2.1 agrees that the application of **Clause 11.1** is commercially justifiable where a Critical KPI Failure occurs; and

11.2.2 acknowledges that it has taken legal advice on the application of **Clause 11.1** and has had the opportunity to price for that risk when calculating the Charges.

12. BUSINESS CONTINUITY AND DISASTER RECOVERY

12.1 The Parties shall comply with the provisions of **Schedule 10 (Business Continuity and Disaster Recovery)**.

13. DISRUPTION

13.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Agreement it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.

13.2 The Supplier shall as soon as reasonably practicable inform the Customer of any actual or potential industrial action, whether such action be by the Supplier Personnel or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Agreement.

13.3 In the event of industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under this Agreement.

13.4 If the Supplier is temporarily unable to fulfil the requirements of this Agreement owing to disruption of normal business solely caused by the Customer, an appropriate allowance by way of an extension of time will be Approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

14. SUPPLIER NOTIFICATION OF CUSTOMER CAUSE

14.1 Without prejudice to any other obligations of the Supplier in this Agreement to notify the Customer in respect of a specific Customer Cause or Customer Default (including the notice requirements under **Clause 38.1.1 (Termination on Failure to Pay)**), the Supplier shall notify the Customer as soon as reasonably practicable ((and in any event within two (2) Working Days of the Supplier becoming aware)) that a Customer Cause has occurred or is reasonably likely to occur, giving details of:

14.1.1 the Customer Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Agreement; and

14.1.2 any steps which the Customer can take to eliminate or mitigate the consequences and impact of such Customer Cause; and

14.1.3 use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Customer Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

15. CONTINUOUS IMPROVEMENT

- 15.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the provision of the Services in accordance with this Schedule 17 (Continuous Improvement).
- 15.2 If the Customer wishes to incorporate any improvement identified by the Supplier, the Customer shall request a Variation in accordance with the Variation Procedure and **Schedule 17 (Continuous Improvement)**.

D. GOVERNANCE

16. CONTRACT MANAGEMENT AND PERFORMANCE MONITORING

- 16.1 The Parties shall comply with the provisions of **Schedule 18 (Contract Management)** in relation to the management and governance of this Agreement.
- 16.2 Unless otherwise Approved or notified by the Customer, the Supplier shall comply with the performance monitoring requirements set out in **Schedule 6 (Key Performance Indicators, Service Credits and Performance Monitoring)**.
- 16.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure, monitor and report on the Supplier's performance of the provision of the Services against the applicable Key Performance Indicators at a level of detail sufficient to verify compliance with the Key Performance Indicators. Unless the Customer specifies otherwise, the Supplier shall obtain Approval of the relevant measuring and monitoring tools and procedures prior to using the same.
- 16.4 **Off-shore Working**
 - 16.4.1 The Supplier shall be entitled to provide the Services through a delivery model which utilises both on-shore and off-shore staff. Notwithstanding the foregoing (and subject to **Clause 16.4.2**), the Supplier shall not perform any Service or element of a Service from location outside the UK (that is not an Approved Offshore Location) without obtaining the Customer's prior written approval to do so under **Clause 16.4.4**.
 - 16.4.2 The Supplier shall not be entitled to provide any part of the Services from location outside the UK until either:
 - (a) the Supplier has gained prior approval from the Customer for offshoring information in accordance with the Customer's "**NHPOL0107 Offshoring Policy**". The Customer may request the Supplier to provide any information required to support the approvals process for offshoring information; or
 - (b) the Customer has confirmed in writing to the Supplier that approval for offshoring information in accordance with the Customer's NHPOL0107 Offshoring Policy , is not required.
 - 16.4.3 The Supplier shall provide the Customer with any information required to allow the Customer pursue approval for offshoring information in accordance with **Clause 16.4.2**.

16.4.4 If the Supplier wishes to perform any Service or element of a Service from a location outside the UK that is not an Approved Offshore Location it must:

- (a) provide such information that the Customer requests; and
- (b) undertake and successfully pass the requirements of the Customer's Risk Assessment, in relation to that offshore location. If the Customer's Risk Assessment is successful, and the Customer's consent is given in relation to that offshore location it will become or remain (as applicable) an Approved Offshore Location.

17. REPRESENTATIVES

- 17.1 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.
- 17.2 The initial Supplier Representative shall be defined in Schedule 4 (Supplier Matters)]. Any change to the Supplier Representative shall be agreed between the Parties.
- 17.3 The Customer shall notify the Supplier of the identity of the initial Customer Representative within five (5) Working Days of the Commencement Date. The Customer may, by written notice to the Supplier, revoke or amend the authority of the Customer Representative or appoint a new Customer Representative.

18. RECORDS AND AUDIT ACCESS

- 18.1 The Supplier shall keep and maintain for seven (7) years after the Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Agreement including the Services provided under it, any Sub-Contracts and the amounts paid by the Customer.
- 18.2 The Supplier shall:
 - 18.2.1 keep the records and accounts referred to in **Clause 18.1** in accordance with Good Industry Practice and Law; and
 - 18.2.2 afford any Auditor access to the records and accounts referred to in **Clause 18.1** at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Term and the period specified in **Clause 18.1**, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Agreement including for the following purposes to:
 - (a) verify the accuracy of the Charges and any other amounts payable by the Customer under this Agreement (and proposed or actual variations to them in accordance with this Agreement);
 - (b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;

- (c) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
 - (d) identify or investigate an actual or suspected impropriety or accounting mistakes or any breach or threatened Breach of Security and in these circumstances the Customer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (e) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Sub-Contractors or their ability to perform the Services;
 - (f) obtain such information as is necessary to fulfil the Customer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (g) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
 - (h) carry out the Customer's internal and statutory audits and to prepare, examine and/or certify the Customer's annual and interim reports and accounts;
 - (i) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
 - (j) not used;
 - (k) verify the accuracy and completeness of any information delivered or required by this Agreement;
 - (l) not used;
 - (m) not used;
 - (n) review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
 - (o) review the Supplier's compliance with the Standards;
 - (p) inspect the Customer Assets, including the Customer's IPRs, equipment and facilities, for the purposes of ensuring that the Customer Assets are secure and that any register of assets is up to date; and/or
 - (q) review the integrity, confidentiality and security of the Customer Data.
- 18.3 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Customer.
- 18.4 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable cooperation and assistance in:

- 18.4.1 all reasonable information requested by the Customer within the scope of the audit;
 - 18.4.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and
 - 18.4.3 access to the Supplier Personnel.
- 18.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this **Clause 18**, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

19. EARLY WARNING

- 19.1 Without prejudice to any other provision of this Agreement, the Supplier shall, and the Customer may, give an early warning by notifying the other as soon as possible after either becomes aware of any:
- 19.1.1 material detrimental change in the financial standing of the Supplier, including:
 - (a) the Supplier issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
 - (b) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier;
 - (c) the Supplier committing a material breach of covenant to its lenders;
 - (d) a Key Sub-contractor notifying the Customer that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or
 - (e) the credit rating of the Supplier with any established and reputable ratings agency dropping below the applicable level as at the Commencement Date; or
 - 19.1.2 other matter which could:
 - (a) increase or reduce the Charges;
 - (b) adversely affect the performance of the Services;
 - (c) impair the Customer's ability to use the IT Environment or otherwise adversely affect the Customer's business operations; or
 - (d) lead to a Service Failure or likely Service Failure.
- 19.2 If the Supplier or the Customer considers that a matter notified is sufficiently important to require an early warning meeting, it may instruct the other to attend such a meeting.
- 19.3 At an early warning meeting those who attend will cooperate in:
- 19.3.1 making and considering proposals for how the effect of each matter which has been notified as an early warning can be avoided or reduced, including, where required by the Customer, preparation by

the Supplier for Approval by the Customer of a remediation plan in respect thereof;

19.3.2 seeking solutions that will bring advantage to the Parties; and

19.3.3 deciding upon actions which they will take and who, in accordance with this Agreement, will take them.

19.4 The Supplier will:

19.4.1 record the proposals considered and decisions taken at an early warning meeting and will give a copy of his record to the Customer; and

19.4.2 comply with the provisions of any remediation plan Approved by the Customer as referred to in **Clause 19.3.1**.

20. CHANGE

20.1 Variation Procedure

20.1.1 Subject to the provisions of this **Clause 20.1** and of **Schedule 3 (Charging, Payment and Invoicing)**, either Party may request a variation to this Agreement provided that such variation does not amount to a material change of this Agreement within the meaning of the Procurement Act 2023 and associated regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".

20.1.2 A Party may request a Variation by completing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.

20.1.3 The Customer may require the Supplier to carry out an impact assessment of the Variation on the Services (the "**Impact Assessment**"). The Impact Assessment shall be completed in good faith and shall include:

- (a) details of the impact of the proposed Variation on the Services and the Supplier's ability to meet its other obligations under this Agreement.
- (b) details of the cost of implementing the proposed Variation;
- (c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party (any increase or decrease in the Charges must be reasonable and proportionate);
- (d) a timetable for the implementation, together with any proposals for the testing of the Variation; and
- (e) such other information as the Customer may reasonably request in (or in response to) the Variation request.

20.1.4 The Parties may agree to adjust the time limits specified in the Variation request to allow for the preparation of the Impact Assessment.

20.1.5 Subject to **Clause 20.1.4**, the receiving Party shall respond to the Variation Request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Customer having regard to the nature of the Services and the proposed Variation.

20.1.6 In the event that:

- (a) the Supplier is unable to agree to or provide the Variation; and/or
- (b) the Parties are unable to agree a change to the Charges that may be included in a request of a Variation or response to it as a consequence thereof,

the Parties shall continue to perform their respective obligations under this Agreement without the Variation.

20.1.7 If the Parties agree the Variation, the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Agreement.

20.2 Legislative Change

20.2.1 The Supplier shall neither be relieved of its obligations under this Agreement nor be entitled to an increase in the Charges as the result of a:

- (a) General Change in Law;
- (b) Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.

20.2.2 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in **Clause 20.2.1(b)**), the Supplier shall:

- (a) notify the Customer as soon as reasonably practicable of the likely effects of that change including:
 - (i) whether any Variation is required to the provision of the Services, the Charges or this Agreement; and
 - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to meet the Available Hours of Operation and other requirements; and
- (b) provide to the Customer with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided, has been taken into account in amending the Charges.

20.2.3 Any change in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in **Clause 20.2.1(b)**) shall be implemented in accordance with the Variation Procedure.

E. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

21. CHARGES AND PAYMENT

21.1 Charges

- 21.1.1 In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Customer shall pay the undisputed Charges in accordance with the pricing and payment profile and the invoicing procedure in **Schedule 3 (Charging, Payment and Invoicing)**.
- 21.1.2 Except as otherwise expressly provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under this Agreement.
- 21.1.3 If the Customer fails to pay any undisputed Charges properly invoiced under this Agreement the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

21.2 VAT

- 21.2.1 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a Valid Invoice.
- 21.2.2 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this **Clause 21.2 (VAT)** shall be paid in cleared funds by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

21.3 Retention and Set Off

- 21.3.1 The Customer may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Customer.
- 21.3.2 If the Customer wishes to exercise its right pursuant to **Clause 21.3.1** it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Customer's reasons for retaining or setting off the relevant Charges.
- 21.3.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

21.4 Foreign Currency

21.4.1 Any requirement of Law to account for the Services in any currency other than Sterling, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Customer.

21.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with **Clause 21.4.1** by the Supplier.

21.5 **Income Tax and National Insurance Contributions**

21.5.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Agreement the Supplier shall:

- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003, the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to income tax, and National Insurance contributions (including IR35); and
- (b) indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Supplier or any Supplier Personnel.

21.5.2 At any time during the Term, the Customer may specify information that the Supplier must provide with regard to the Supplier, the Supplier Personnel, the Workers, or the Supply Chain Intermediaries and set a deadline for responding, which:

- (a) demonstrates that the Supplier, Supplier Personnel, Workers, or Supply Chain Intermediaries comply with the legislation specified in Clause 21.5.1(a), or why those requirements do not apply; and
- (b) assists with the Customer's due diligence, compliance, reporting, or demonstrating its compliance with any of the legislation in Clause 21.5.1(a).

21.6 The Customer may supply any information they receive from the Supplier under Clause 21.5.2 to HMRC for revenue collection and management and for audit purposes.

21.7 The Supplier must inform the Customer as soon as reasonably practicable if there any Workers or Supplier Personnel providing services to the Customer who are contracting, begin contracting, or stop contracting via an intermediary which meets one of conditions A-C set out in Section 61N of the Income Tax (Earnings and Pensions) Act 2003 and/or Regulation 14 of the Social Security Contributions (Intermediaries) Regulations 2000.

21.8 In the event that any one of the Supplier Personnel is a Worker as defined in **Schedule 1 (Definitions)**, and that particular Worker is liable to be taxed in the UK in respect of any consideration it receives relating to the Services, then the Supplier shall ensure that its contract with the Worker includes the following requirements:

- (a) that the Worker must comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration;
- (b) that the Worker must comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to national insurance contributions in respect of that consideration;
- (c) that the Customer may, at any time during Term, request that the Worker provide information which demonstrates how the Worker complies with the above requirements (a) and (b), or why those requirements do not apply to it. In such case, the Customer may specify the information which the Worker must provide and the period within which that information must be provided;
- (d) that the Worker's contract may be terminated at the Customer's request if:
 - (i) the Worker fails to provide information requested by the Customer within the time specified by the Customer; and/or
 - (ii) the Worker provides information which the Customer considers is inadequate to demonstrate how the Worker complies with requirements (a) or (b) or confirms that the Worker is not complying with those requirements; and.

21.8.2 that the Customer may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

22. PROMOTING TAX COMPLIANCE

22.1 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

22.1.1 notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and

22.1.2 promptly provide to the Customer:

- (a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (b) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.

22.2 In the event that the Supplier fails to comply with this **Clause 22** and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable, then the Customer reserves the right to terminate this Agreement for material Default.

F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS

23. KEY ROLES

- 23.1 The Supplier shall appoint Supplier to each of the key roles listed in **Schedule 4 (Supplier Matters)** from the Commencement Date.
- 23.2 The Supplier shall ensure that the Key Roles are fulfilled at all times during the Term and shall notify the Customer of the names and contact details of the Supplier Personnel performing the Key Roles at any time upon request and promptly whenever any change is made.
- 23.3 The Customer may identify any further roles as being Key Roles and subject to agreement to the same by the Supplier..
- 23.4 Not used.
- 23.5 The Supplier shall:
 - 23.5.1 notify the Customer promptly of the absence of any performing Key Roles (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - 23.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - 23.5.3 ensure that all Supplier Personnel performing a Key Role:
 - (a) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (b) are fully competent to carry out the tasks assigned to the Key Role; and
 - 23.5.4 shall and shall procure that any Sub-Contractor shall not remove any Key Roles during the Term without Approval.

24. SUPPLIER PERSONNEL

24.1 Supplier Personnel

24.1.1 The Supplier shall:

- (a) provide a list of the names of all Supplier Personnel requiring admission to Customer Premises, specifying the capacity in which they require admission and giving such other particulars as the Customer may reasonably require;
- (b) ensure that all Supplier Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with the HMG Baseline Personnel Security Standard found at https://assets.publishing.service.gov.uk/media/5b169993ed915d2cbae4af03/HMG_Baseline_Personnel_Security_Standard_-_May_2018.pdf, as replaced or updated from time to time;

- (iii) comply with all reasonable requirements of the Customer concerning conduct at the Customer Premises, including the security requirements set out in **Schedule 8 (Security)**; and
 - (iv) obey all lawful instructions and reasonable directions of the Customer and provide the Services to the reasonable satisfaction of the Customer.
- (c) subject to **Schedule 16 (Staff Transfer)**, retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Customer;
- (d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier;
- (e) not used
- (f) not used
- (g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- (h) procure that the Supplier Personnel shall vacate the Customer Premises immediately upon the Expiry Date.

24.1.2 If the Customer reasonably believes that any of the Supplier Personnel are unsuitable to access Customer Premises to undertake work in respect of this Agreement, it may refuse admission to the relevant person(s). The decision of the Customer as to whether any person is to be refused access to the Customer Premises shall be final and conclusive.

24.1.3 Where, during the Term, the Supplier or a Sub-contractor need to hire Supplier Personnel for a role based in the United Kingdom, the role should be published on the Government's 'Find a Job' website and include the location at which Supplier Personnel would be expected to perform the role.

24.2 Apprenticeships

Without prejudice to its other obligations under this Agreement, the Supplier shall employ best endeavours to:

- 24.2.1 appoint and deliver the number of new apprenticeships through this Agreement in each Agreement Year equivalent to two and a half per cent (2.5%) of the total number of Supplier Personnel in each Agreement Year, ensuring that all such apprenticeships meet the approved apprenticeship standards (see <https://www.gov.uk/government/collections/apprenticeship-standards> and any later revisions) or any alternative graduate scheme that has been approved as apprenticeships by the Institute of Apprenticeships;
- (a) make available to the Supplier Personnel information about the Government's apprenticeship programme and wider skills opportunities; and

- (b) use reasonable endeavours to provide work experience placements for 14 to 16 year olds, work experience placements for other ages, student sandwich/gap year placements and graduate placements in relation to this Agreement.

25. SUPPLY CHAIN RIGHTS AND PROTECTION

25.1 Appointment of Sub-Contractors

25.1.1 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:

- (a) manage any Sub-Contractors in accordance with Good Industry Practice;
- (b) comply with its obligations under this Agreement in the delivery of the Services; and
- (c) assign, novate or otherwise transfer to the Customer or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Agreement.

25.1.2 The Supplier must ensure that it does not at any time during the Agreement enter into a Sub-Contract with:

- (a) any supplier that is on the debarment list on the basis of a mandatory exclusion ground within the meaning of the Procurement Act 2023 and associated regulations; or
- (b) any supplier that is on the debarment list on the basis of a discretionary exclusion ground within the meaning of the Procurement Act 2023 and associated regulations, unless the Supplier has obtained the Customer's prior written consent to the appointment of the relevant proposed Sub-Contractor.

25.1.3 Prior to sub-contacting any of its obligations under this Agreement the Supplier shall notify the Customer in writing of:

- (a) the proposed Sub-Contractor's name, registered office and company registration number;
- (b) the scope of any Services to be provided by the proposed Sub-Contractor; and
- (c) where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Customer that the proposed Sub-Contract has been agreed on "arm's-length" terms.

25.1.4 If requested by the Customer within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to **Clause 25.1.3**, the Supplier shall also provide:

- (a) a copy of the proposed Sub-Contract;
- (b) any further information reasonably requested by the Customer; and

- (c) details of whether the Supplier considers that an exclusion ground within the meaning of the Procurement Act 2023 and any associated regulations does or may apply to the Sub-Contractor.

25.1.5 The Customer may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to **Clause 25.1.3** (or, if later, receipt of any further information requested pursuant to **Clause 25.1.4**), object to the appointment of the relevant Sub-Contractor they consider that:

- (a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Services or may be contrary to the interests respectively of the Customer under this Agreement;
- (b) the proposed Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers;
- (c) the proposed Sub-Contractor employs unfit persons; and/or
- (d) the proposed Sub-Contractor is an excluded or excludable supplier within the meaning of Procurement Act 2023 and any associated regulations,

in which case, the Supplier shall not proceed with the proposed appointment.

25.1.6 If:

- (a) the Customer has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
 - (i) the Supplier's notice issued pursuant to **Clause 25.1.2**; and
 - (ii) any further information requested by the Customer pursuant to **Clause 25.1.3**; and
- (b) the proposed Sub-Contract is not a Key Sub-Contract which shall require the written consent of the Customer in accordance with **Clause 25.2 (Appointment of Key Sub-Contractors)**.

the Supplier may proceed with the proposed appointment.

25.1.7 If a Sub-Contractor is to be appointed under this Agreement, then the Customer may, in accordance with Section 72 of the Procurement Act 2023, request that the Supplier enters into a legally binding arrangement with the proposed Sub-Contractor within such reasonable period after the Commencement Date as may be specified by the Customer and agreed with Supplier, subject to the Supplier's reasonable approval of such Sub-Contractor. Such approval shall not be unreasonably withheld or delayed by the Supplier.

25.1.8 If the Supplier does not enter into a legally binding agreement in accordance with Clause 25.1.7 the Customer may:

- (a) terminate this Agreement and the consequences of termination set out in Clauses 41.1.1(b) to 41.1.1(g) shall apply; or
- (b) require the Supplier to enter into a legally binding agreement with an alternate Sub-Contractor, and agreed with Supplier, and subject to the Supplier's reasonable approval of such Sub-

Contractor. Such approval shall not be unreasonably withheld or delayed by the Supplier.

25.2 Appointment of Key Sub-Contractors

25.2.1 The Customer has consented to the engagement of the Key Sub-Contractors listed in **(Supplier Matters)**.

25.2.2 Where the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Customer (the decision will not be unreasonably withheld or delayed). The Customer may reasonably withhold its consent to the appointment of a Key Sub-Contractor if it considers that:

- (a) the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Services or may be contrary to its interests;
- (b) the proposed Key Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers;
- (c) the proposed Key Sub-Contractor employs unfit persons; and/or
- (d) the proposed Sub-Contractor is an excluded or excludable supplier within the meaning of Procurement Act 2023 and any associated regulations,

25.2.3 Except where the Customer has given their prior written consent under **Clause 25.2.1**, the Supplier shall ensure that each Key Sub-Contract shall include:

- (a) provisions which will enable the Supplier to discharge its obligations under this Agreement;
- (b) a right under CRTPA for the Customer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Customer;
- (c) a provision enabling the Customer to enforce the Key Sub-Contract as if it were the Supplier;
- (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Customer or any Replacement Supplier;
- (e) obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Agreement in respect of:
 - (i) data protection requirements set out in **Clauses 30.1 (Security Requirements), 30.3 (Protection of Customer Data) and 30.7 (Protection of Personal Data)**;
 - (ii) FOIA requirements set out in **Clause 30.6 (Freedom of Information)**;
 - (iii) the obligation not to embarrass the Customer or otherwise bring the Customer into disrepute set out in **Clause 7.1.4(j) (Provision of Services)**;

- (iv) the keeping of records in respect of the Services being provided under the Key Sub-Contract; and
- (v) the conduct of audits set out in **Clause 18 (Records and Audit Access)**;
- (f) provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Customer under **Clauses 37 (Customer Termination Rights), 39 (Termination by Either Party) and 41 (Consequences of Expiry or Termination)** of this Agreement ;
- (g) a provision restricting the ability of the Key Sub-Contractor to Sub- all or any part of the provision of the Services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Customer;
- (h) a provision, where a provision in **Schedule 16 (Staff Transfer)** imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, requiring the Key Sub-Contractor to provide such indemnity, undertaking or warranty to the Customer, Replacement Supplier or Replacement Sub-Contractor as the case may be.

25.3 Supply Chain Protection

25.3.1 The Supplier shall employ best endeavours that all Sub-Contracts contain a provision:

- (a) requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed
- (b) a right for the Customer to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (c) requiring the Sub-Contractor to include any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by sub-clauses (a) and (b) directly above.

Also, any invoices submitted by a Sub-Contractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.

25.3.2 The Supplier must ensure that all Sub-Contractors are paid, in full:

- (a) before the end of the period of thirty (30) days beginning on the day on which an invoice is received by the Supplier in respect of the sum due; or
- (b) if later, by the date on which the payment falls due in accordance with the invoice,

subject to the invoice being verified by the Supplier as valid and undisputed. If this does not happen, the Customer can publish the details of the late payment or non-payment.

- 25.3.3 The Supplier shall ensure that a term equivalent to Clause 25.3.2 is included in each Sub-Contract in its supply chain, such that each Sub-Contractor is obliged to include those terms in any of its own Sub-Contracts in the supply chain for the delivery of this Contract. References to the “Supplier” and “Sub-Contractor” in Clause 25.3.2 are to be replaced with references to the respective Sub-Contractors who are parties to the relevant contract.
- 25.3.4 Notwithstanding any provision of **Clauses 30.4 (Confidentiality)** and **31 (Publicity and Branding)** if the Supplier notifies the Customer that the Supplier has failed to pay an undisputed Sub-Contractor’s invoice within thirty (30) days of receipt, or the Customer otherwise discovers the same, the Customer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).
- 25.3.5 At the end of each Agreement Year, at its own expense, the Supplier will provide a report to the Customer setting out a summary of its compliance with Clause 25.3.2, such report to be certified by the Supplier’s Authorised Representative as being accurate and not misleading.

25.4 Termination of Sub-Contracts

25.4.1 The Customer may require the Supplier to terminate:

- (a) a Sub-Contract where:
 - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Customer's right of termination pursuant any of the termination events in **Clause 37 (Customer Termination Rights)** except **Clause 37.6 (Termination Without Cause)**; and/or
 - (ii) the relevant Sub-Contractor or its Affiliates embarrassed the Customer or otherwise brought the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Sub-Contractor’s obligations in relation to the Services or otherwise; and/or
- (b) a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:
 - (i) the Customer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Customer has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Customer was given notice of the Change of Control.

25.5 Competitive Terms

25.5.1 If the Customer is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Customer may:

- (a) require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Customer in respect of the relevant item; or
- (b) subject to **Clause 25.4 (Termination of Sub-Contracts)**, enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.

25.5.2 If the Customer exercises the option pursuant to **Clause 25.5.1**, then the Charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.

25.5.3 The Customer's right to enter into a direct agreement for the supply of the relevant items is subject to:

- (a) the Customer shall make the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
- (b) any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

25.6 Not used

25.7 Not used

25.8 Retention of Legal Obligations

25.8.1 Notwithstanding the Supplier's right to sub-contract pursuant to this **Clause 25 (Supply Chain Rights and Protection)**, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

G. PROPERTY MATTERS

26. CUSTOMER PREMISES

26.1 Licence to occupy Customer Premises

26.1.1 Any Customer Premises shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Agreement. The Supplier shall have the use of such Customer Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Agreement and in accordance with **Schedule 11 (Exit Management)**.

- 26.1.2 The Supplier shall limit access to the Customer Premises to such Supplier Personnel as is necessary to enable it to perform its obligations under this Agreement and the Supplier shall co-operate (and ensure that the Supplier Personnel co-operate) with such other persons working concurrently on such Customer Premises as the Customer may reasonably request.
- 26.1.3 Save in relation to such actions identified by the Supplier in accordance with **Clause 2.1.3(a) (Due Diligence)** and set out in this Agreement, should the Supplier require modifications to the Customer Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Supplier's expense. The Customer shall undertake any modification work which it approves pursuant to this **Clause 26.1.3** without undue delay. Ownership of such modifications shall rest with the Customer.
- 26.1.4 The Supplier shall observe and comply with such rules and regulations as may be in force at any time for the use of such Customer Premises and conduct of personnel at the Customer Premises as determined by the Customer, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier Personnel other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 26.1.5 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Supplier or the Supplier Personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Agreement the Customer retains the right at any time to use any Customer Premises in any manner it sees fit.

26.2 **Security of Customer Premises**

- 26.2.1 The Customer shall be responsible for maintaining the security of the Customer Premises in accordance with the Security Policy. The Supplier shall comply with the Security Policy and any other reasonable security requirements of the Customer while on the Customer Premises.
- 26.2.2 The Customer shall afford the Supplier upon Approval (the decision to Approve or not will not be unreasonably withheld or delayed) an opportunity to inspect its physical security arrangements.

27. **CUSTOMER PROPERTY**

- 27.1 Where the Customer issues Customer Property free of charge to the Supplier such Customer Property shall be and remain the property of the Customer and the Supplier irrevocably licences the Customer and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Customer Property.
- 27.2 The Supplier shall not in any circumstances have a lien or any other interest on the Customer Property and at all times the Supplier shall possess the Customer Property as fiduciary agent and bailee of the Customer.
- 27.3 The Supplier shall take all reasonable steps to ensure that the title of the Customer to the Customer Property and the exclusion of any such lien or other

interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Customer's request, store the Customer Property separately and securely and ensure that it is clearly identifiable as belonging to the Customer.

- 27.4 The Customer Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Customer otherwise within five (5) Working Days of receipt.
- 27.5 The Supplier shall maintain the Customer Property in good order and condition (excluding fair wear and tear) and shall use the Customer Property solely in connection with this Agreement and for no other purpose without Approval.
- 27.6 The Supplier shall ensure the security of all the Customer Property whilst in its possession, either on the Sites or elsewhere during the supply of the Services, in accordance with the Customer's Security Policy and the Customer's reasonable security requirements from time to time.
- 27.7 The Supplier shall be liable for all loss of, or damage to the Customer Property, (excluding fair wear and tear), unless such loss or damage was solely caused by a Customer Default. The Supplier shall inform the Customer immediately of becoming aware of any defects appearing in or losses or damage occurring to the Customer Property.

28. NOT USED

H. INTELLECTUAL PROPERTY AND INFORMATION

29. INTELLECTUAL PROPERTY RIGHTS

29.1 Allocation of title to IPR

29.1.1 Save as expressly granted elsewhere under this Agreement:

- (a) the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including in the:
 - (i) Supplier Software;
 - (ii) Project Specific IPR;
 - (iii) Specially Written Software;
 - (iv) Supplier Background IPR;
 - (v) Third Party Software; and
 - (vi) Third Party IPR;
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including in the:
 - (i) Customer Software;
 - (ii) Customer Background IPR; and
 - (iii) Customer Data.

29.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in **Clause 29.1.1**, it shall assign in writing such Intellectual Property

Rights as it has acquired to the other Party on the request of the other Party (whenever made).

29.1.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

29.2 The Supplier will not include any Supplier Background IPRs or Third Party IPR in any release or Customer bespoke Deliverable the Intellectual Property Rights in which are to be assigned to the Customer under this Agreement. For clarity, the Supplier's IPR, including, but not limited to, all associated software, interfaces, and functionality interfaces, updates, upgrades, and documentation, whether existing as of the date of this Agreement or developed thereafter, shall remain the exclusive property of the Supplier and is licensed, not assigned, to Customer in accordance with the terms of this Agreement.

29.3 **Licences granted by the Supplier: Specially Written Software, Project Specific IPR, Supplier Software and Supplier Background IPR**

29.3.1 The Supplier hereby grants to the Customer a royalty-free and nonexclusive and non-transferable license to access and (in the case of **Clauses 29.3.1(a), (b) and (c)**) irrevocable licence to use for the Term of this Agreement:

- (a) the Source Code and the Object Code of Specially Written Software for any purpose including the right to load, execute, interpret, store, transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate);
- (b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the **"Software Supporting Materials"**);
- (c) the Project Specific IPR for any purpose including the right to copy, adapt, publish (including on the IT Environment) and distribute the Project Specific IPR;
- (d) the Supplier Software for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Customer's business or function including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display); and
- (e) the Supplier Background IPR and the Documentation for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Customer's business or function.

The Supplier:

- (f) shall inform the Customer of all Specially Written Software and any element of Project Specific IPR that constitutes a modification or enhancement to Supplier Software or Third Party Software;

- (g) shall deliver to the Customer the Specially Written Software and the software element of Project Specific IPR in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the Commencement Date in respect of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Customer;
- (h) without prejudice to **Clause 29.6 (Third Party IPR and Third Party Software)**, shall provide full details to the Customer of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs; and
- (i) acknowledges and agrees that the ownership of the media referred to in **Clause 29.3.1(g)** shall vest in the Customer upon their receipt by the Customer.

29.3.2 At any time during the Term or following the Expiry Date, the Supplier may terminate a licence granted in respect of the Supplier Software under **Clause 29.3.129.3.1(d)** or the Supplier Background IPR under **Clause 29.3.1(e)** by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if there is a material breach by the Customer of the terms of **Clause 29.3.1(d)** or **29.3.1(e)** (as the case may be) which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Customer written notice specifying the breach and requiring its remedy.

29.3.3 In the event the licence of the Supplier Software or the Supplier Background IPR is terminated pursuant to **Clause 29.3.2**, the Customer shall:

- (a) immediately cease all use of the Supplier Software or the Supplier Background IPR (as the case may be);
- (b) at the discretion of the Supplier, return or destroy documents and other tangible materials that contain any of the Supplier Software and/or the Supplier Background IPR, provided that if the Supplier has not made an election within six (6) Months of the termination of the licence, the Customer may destroy the documents and other tangible materials that contain any of the Supplier Software and/or the Supplier Background IPR (as the case may be); and
- (c) ensure, so far as reasonably practicable, that any Supplier Software and/or Supplier Background IPR that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Customer) from any computer, word processor, voicemail system or any other device containing such Supplier Software. and/or Supplier Background IPR.

29.4 Customer's right to authorise third party contractor use

29.4.1 The Customer may authorise a third party contractor to it to use the Software including:

- (a) the rights granted under **Clauses 29.3.1(a) to 29.3.1(e)** provided that:
 - (i) the authorisation is on terms no broader than those granted to the Customer; and
 - (ii) the authorisation only authorises the third party to use the rights licensed in **Clauses 29.3.1(a) to 29.3.1(e)** for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Customer's business or function.

29.5 Customer's right to assign/novate licences

29.5.1 With Supplier's prior written approval (not to be unreasonably withheld or delayed), the Customer:

- (a) may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to **Clauses 29.3.1(d) and 29.3.1(e)** to:
 - (i) a Central Government Body; or
 - (ii) to any body (including any private sector body subject to applicable regulatory approvals) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer;
- (b) where any change in the legal status of the Customer which means that it ceases to be a public body shall not affect the validity of any licence granted in **Clauses 29.3.1(d) or 29.3.1(e)**. If the Customer ceases to be a public body the successor body to the Customer shall still be entitled to the benefit of the licences granted in **Clauses 29.3.1(d) and 29.3.1(e)**; and
- (c) may assign, novate or otherwise transfer its rights and obligations under the licences granted in **Clauses 29.3.1(a), 29.3.1(b) and 29.3.1(c)**.

29.5.2 If a licence granted in either **Clause 29.3.1(d) or 29.3.1(e)** is novated under **Clause 29.5.1(a)**, the rights acquired by the transferee shall not extend beyond those previously enjoyed by the Customer.

29.6 Third Party IPR and Third Party Software

29.6.1 If applicable, the Supplier shall employ best endeavours to procure that the owners or the authorised licensors of any Third Party IPR and any Third Party Software which is not commercial off-the-shelf software grant a direct licence to the Customer on terms at least equivalent to those set out in **Clauses 29.3.1(d) and 29.3.1(e), Clause 29.4 (Customer's right to authorise third party contractor use) and Clause 29.5.1(a) (Customer's right to assign/novate licences)**. If the Supplier cannot obtain for the Customer a licence materially in accordance with the licence terms set out in **Clauses 29.3.1(d) and 29.3.1(e) (Supplier Software and Supplier Background IPR), Clause 29.4 (Customer's right to authorise**

third party contractor use) and **Clause 29.5.1(a) (Customer's right to assign/novate licences)** in respect of any such Third Party IPR and/or Third Party Software, the Supplier shall:

- (a) notify the Customer in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
- (b) only use such Third Party IPR and/or Third Party Software if the Customer Approves the terms of the licence from the relevant third party.

29.6.2 Where applicable, the Supplier shall procure that the owners or the authorised licensors of any Third Party Software which is commercial off-the-shelf software grants a direct licence to the Customer on terms no less favourable than such software is usually made available.

29.7 Licence granted by the Customer

29.7.1 The Customer hereby grants to the Supplier a royalty-free, nonexclusive, non-transferable licence during the Term to use the Customer Software, the Customer Background IPR and the Customer Data solely to the extent necessary for providing the Services in accordance with this Agreement including the right to grant sub-licences to Sub-Contractors provided that:

- (a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in **Clause 30.4 (Confidentiality)**; and
- (b) the Supplier shall not without Approval use the licensed materials for any other purpose or for the benefit of any person other than the Customer.

29.7.2 The Customer gives no warranty as to the suitability of any IPRs licensed to the Supplier hereunder. Any such licence:

- (a) may include the right to grant sub-licences to Sub-Contractors engaged in providing any of the Services (or part thereof) provided that any such Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as in **Clause 30.4 (Confidentiality)** and that any such subcontracts will be nontransferable and personal to the relevant Sub-Contractor; and
- (b) is granted solely to the extent necessary for the provision of the Services in accordance with this agreement. The Supplier will ensure that the Sub-Contractors do not use the licensed materials for any other purpose.

29.7.3 Subject to the above Clause, the Supplier will (i) ensure that no unlicensed software is interfaced with or embedded within any Customer Software or Deliverable and (ii) notify the Customer of any new Open Source Software (other than the Open Source Software approved by the Customer and specified in **Schedule 9 (Software)**) interfacing with or embedded within any Customer Software or Deliverable.

29.8 Termination of licenses

- 29.8.1 As applicable to this Agreement, the licence granted to the Customer shall terminate automatically on the Expiry Date and the Customer shall immediately cease all access and use of (i) Supplier Software, (ii) the Project Specific IPR, (iii) Specially Written Software, (iv) Supplier Background IPR, (v) Third Party Software and (vi) Third Party IPR.
- 29.8.2 The Supplier shall comply with the requirements of **Schedule 11 (Exit Management)**.
- 29.8.3 The licence granted pursuant to **Clause 29.7.1 (Licence granted by the Customer)** and any sub-licence granted by the Supplier in accordance with **Clause 29.7.1 (Licence granted by the Customer)** shall terminate automatically on the Expiry Date and the Supplier shall:
- (a) immediately cease all use of the Customer Software, the Customer Background IPR and the Customer Data (as the case may be);
 - (b) at the discretion of the Customer, return or destroy documents and other tangible materials that contain any of the Customer Software, the Customer Background IPR and the Customer Data, provided that if the Customer has not made an election within six (6) months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Customer Software, the Customer Background IPR and the Customer Data (as the case may be); and
 - (c) ensure, so far as reasonably practicable, that any Customer Software, Customer Background IPR and Customer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Customer Software, Customer Background IPR and/or Customer Data.

29.9 IPR Indemnity

- 29.9.1 The Supplier shall during and after the Term, on written demand indemnify the Customer against all Losses incurred by, awarded against or agreed to be paid by the Customer (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- 29.9.2 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:
- (a) procure for the Customer the right to continue using the relevant item which is subject to the IPR Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

- (ii) the replaced or modified item does not have an adverse effect on any other Services or the ICT Environment;
- (iii) there is no additional cost to the Customer; and
- (iv) the terms and conditions of this Agreement shall apply to the replaced or modified Services.

29.9.3 If the Supplier elects to procure a licence in accordance with **Clause 29.9.2(a)** or to modify or replace an item pursuant to **Clause 29.9.2(b)** but this has not avoided or resolved the IPR Claim, then:

- (a) the Customer may terminate this Agreement by written notice with immediate effect; and
- (b) without prejudice to the indemnity set out in **Clause 29.9.1**, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute services and software including the additional costs of procuring, implementing and maintaining the substitute items.

29.9.4 The provisions of **Clauses 29.9.1 to 29.9.3** (inclusive) shall not apply to the extent that any IPR Claim is caused by any use by or on behalf of the Customer of the Software, or the use of the Customer Software by or on behalf of the Supplier, in either case in a manner not reasonably to be inferred from the description of the Services in **Schedule 2 (Services)** or the provisions of this Agreement .

29.9.5 The Customer agrees that:

- (a) it will notify the Supplier in writing of any IPR Claim;
- (b) Supplier shall have sole authority to defend or settle the IPR Claim;
- (c) it will allow the Supplier to conduct all negotiations and proceedings and will provide the Supplier with such reasonable assistance required by the Supplier including all requested information (including information about Customer's use of the Software and Services), each at the Supplier's cost, regarding the IPR Claim; and
- (d) it will not, without first consulting with the Supplier, agree to make any payment or make an admission relating to the IPR Claim.

29.9.6 The Supplier shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute. The Supplier shall not settle or compromise any IPR Claim without the Customer's Approval (not to be unreasonably withheld or delayed).

29.10 **Not Used**

29.11 **Software as a Service**

29.11.1 Where the Parties agree in writing that any Software shall be provided by way of Software as a Service, or where it is indicated under **Schedule 9 (Software)** that any Software shall be provided by way of Software as a Service, the Customer acknowledges that, as a consequence:

- (a) except for Specially Written Software:
 - (i) it will not be provided with a physical copy of such Software;
and
 - (ii) use of such Software is restricted to use by way of Software as a Service;
- (b) any reference to a perpetual licence granted to the Customer under this Agreement in relation to Software to be provided as Software as a Service in accordance with this **Clause 29.11** shall be construed as a licence for the term of this Agreement only;
and the provisions of this **Clause 29** shall be construed accordingly; and
- (c) in respect of any Third Party Software for which, pursuant to **Clause 29.6.1(b)**, the Customer has approved licence terms which are not royalty or payment free, the Supplier will pay all royalties and any other fees due and payable pursuant to such licence terms during the Term on behalf of the Customer.

29.11.2 The Supplier agrees to provide the Customer with all software keys, access codes and/or other login requirements as necessary to access and use any Software provided by way of Software as a Service, as listed in Schedule 9 (Software).

30. SECURITY AND PROTECTION OF INFORMATION

30.1 Security Requirements

- 30.1.1 The Supplier shall comply with the Security Policy and the requirements of **Schedule 8 (Security)** including the Security Management Plan (if any) and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 30.1.2 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 30.1.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Services it may propose a Variation to the Customer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be subject to the Variation Procedure.
- 30.1.4 Until and/or unless a change to the Charges is agreed by the Customer pursuant to the Variation Procedure the Supplier shall continue to provide the Services in accordance with its existing obligations.
- 30.1.5 Any system development by the Supplier must also comply with the government's '10 Steps to Cyber Security' guidance; as amended from time to time and currently available at: <https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>

30.2 Malicious Software

- 30.2.1 The Supplier shall, as an enduring obligation throughout the Term use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Parties).
- 30.2.2 Notwithstanding **Clause 30.2.1**, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the provision of the Services to its desired operating efficiency.
- 30.2.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of **Clause 30.2.2** shall be borne by the Parties as follows:
- (a) by the Supplier, where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (except where the Customer has waived the obligation set out in **Clause 30.2.1**) or the Customer Data (whilst the Customer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Supplier; and
 - (b) by the Customer if the Malicious Software originates from the Customer Software (in respect of which the Customer has waived its obligation set out in **Clause 30.2.1**) or the Customer Data (whilst the Customer Data was under the control of the Customer).

30.3 Protection of Customer Data

- 30.3.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 30.3.2 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise Approved by the Customer.
- 30.3.3 To the extent that the Customer Data is held and/or Processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format (if any) specified in this Agreement and in any event as specified by the Customer from time to time in writing.
- 30.3.4 The Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 30.3.5 The Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site at an Approved location in accordance with any BCDR Plan or otherwise. The Supplier shall ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) at all times upon request and are delivered to the Customer at no less than

six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).

- 30.3.6 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan (if any).
- 30.3.7 If at any time the Supplier suspects or has reason to believe that the Customer Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.
- 30.3.8 If the Customer Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Customer may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in **Schedule 10 (Business Continuity and Disaster Recovery)** or as otherwise required by the Customer, and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Customer's notice; and/or
 - (b) itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in **Schedule 10 (Business Continuity and Disaster Recovery)** or as otherwise required by the Customer.

30.4 Confidentiality

- 30.4.1 For the purposes of this **Clause 30.4**, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 30.4.2 Except to the extent set out in this **Clause 30.4** or where disclosure is expressly permitted elsewhere in this Agreement the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
 - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
 - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
 - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in

any form of any of the Disclosing Party's Confidential Information.

30.4.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

- (a) the Recipient is required to disclose the Confidential Information by Law, including if the information is Transparency Information, provided that **Clause 30.6 (Freedom of Information)** shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Agreement;
 - (ii) the examination and certification of the Customer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer is making use of any Services provided under this Agreement; or
 - (iii) the conduct of a Central Government Body review in respect of this Agreement; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

30.4.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

30.4.5 Subject to **Clauses 30.4.2** and **30.4.7**, the Supplier may only disclose the Confidential Information of the Customer on a confidential basis to:

- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement; and
- (b) its professional advisers for the purposes of obtaining advice in relation to this Agreement.

30.4.6 Where the Supplier discloses Confidential Information of the Customer pursuant to this **Clause 30.4.5**, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

30.4.7 The Customer may disclose the Confidential Information of the Supplier:

- (a) to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
- (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in **Clause 30.4.7(a)** (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement; or
- (f) to a proposed transferee, assignee or novatee of, or successor in title to the Customer,

and for the purposes of the foregoing, references to disclosure **30.4.5** on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this Clause.

30.4.8 Nothing in this **Clause 30.4** shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

30.4.9 In the event that the Supplier fails to comply with **Clauses 30.4.2** to **30.4.5**, the Customer reserves the right to terminate this Agreement for material Default.

30.5 Transparency

30.5.1 .

- (a) In accordance with a reasonable timetable and in any event within five (5) Working Days of a request from the Customer, the Supplier must give the Customer full co-operation and information needed so the Customer can publish the Transparency Information. Any such cooperation and information from the Supplier shall be provided at no additional cost;
- (b) Not used;
- (c) Not used.

30.5.2 Within three (3) months of the Commencement Date the Supplier shall provide to the Customer for its Approval (such Approval not to be unreasonably withheld or delayed) draft reports for the purposes of preparing Transparency Information, including without limitation the information (once approved, the "**Transparency Reports**"):

Title	Content	Format	Frequency
Performance Management	List of KPIs and performance levels achieved against these	Portable digital format (and any other 'open' formats as specified under the government policies from time to time)	Monthly
	Plans for management of underperformance		
Change			
Charges	Amount paid to the Supplier		Monthly
Prompt payment	Prompt payment of Sub-Contractors' invoices		Annual
Major Sub-Contractors	Identities and roles of the Key Sub-contractors		Annual
Technical	Services provided by the Service Provider Resource plans Service improvement plans		Annual
Termination / Expiry	For the purpose of publishing the relevant notice under the Procurement Act 2023		In accordance with the Agreement

30.5.3 If the Customer rejects any draft Transparency Report, the Supplier shall submit a revised version of the relevant report for further Approval by the Customer within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Customer. If the Parties fail to agree on a draft Transparency Report the Customer shall determine what should be included.

30.5.4 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Customer at the frequency referred to in **Clause 30.5.4.**

30.5.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.

30.6 Freedom of Information

30.6.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its Information disclosure obligations under the FOIA and EIRs. Any such assistance and cooperation from the Supplier shall be provided at no additional cost;
- (b) transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- (c) provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

30.6.2 The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so, and shall take into account any agreed Commercially Sensitive information, but (notwithstanding any other provision in this Agreement) the Customer shall be responsible for determining in its sole discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

30.7 Protection of Personal Data

30.7.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in **Schedule 15 (Data Processing)** by the Customer and may not be determined by the Supplier.

30.7.2 The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

30.7.3 The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;

- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks. Including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

30.7.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) Process that Personal Data only in accordance with **Schedule 15 (Data Processing)** unless the Supplier is required to do otherwise by Law. If it is so required, the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the Supplier Personnel do not process Personal Data except in accordance with this Agreement) and in particular **Schedule 15 (Data Processing)**;
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Supplier's duties under this **Clause 30**;
 - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Subprocessor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not make a Restricted Transfer unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

- (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer as determined by the Customer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
 - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) at the written direction of the Customer, delete or return Personal Data (any copies of it) to the Customer on termination of this Agreement unless the Supplier is required by Law to retain the Personal Data.

30.7.5 Subject to **Clause 30.7.6** the Supplier shall notify the Customer immediately if it;

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligation under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory body in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

30.7.6 The Supplier's obligation to notify under **Clause 30.7.5** shall include the provision of further information to the Customer in phases, as details become available.

30.7.7 Taking into account the nature of processing, the Supplier shall provide the Customer with full assistance in relation to either Party's obligations under the Data Protection Legislation and any complaint, communication or request made under **Clause 30.7.5** (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

- (a) the Customer with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonable requested by the Customer to enable the Customer to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

- (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Customer following a Data Loss Event;
 - (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 30.7.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless;
- (a) the Customer determines that the processing is not occasional;
 - (b) the Customer determines the processing includes special categories of data or Personal Data relating to criminal convictions and offences, each as referred to in Data Protection Legislation; and
 - (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 30.7.9 The Supplier shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 30.7.10 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 30.7.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
- (a) notify the Customer in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Customer;
 - (c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this **Clause 30.7** such that they apply to the Sub-processor; and
 - (d) provide the Customer with such information regarding the Subprocessor as the Customer may reasonably require.
- 30.7.12 The Supplier shall remain fully liable for all acts or omissions of any Subprocessor.
- 30.7.13 The Customer may, at any time on not less than thirty (30) Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard Clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement), in accordance with and subject to the applicable legislation.
- 30.7.14 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Customer may on not less than thirty (30) Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance of the Information Commissioner's Office.

31. PUBLICITY AND BRANDING

31.1 The Supplier shall not:

- 31.1.1 make any press announcements or publicise this Agreement in any way; or
- 31.1.2 use the Customer's name or brand in any promotion or marketing or announcement of orders,
- 31.1.3 without Approval (the decision of the Customer to Approve or not shall not be unreasonably withheld or delayed).

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

I. LIABILITY AND INSURANCE

32. LIABILITY

32.1 Unlimited Liability

32.1.1 Neither Party excludes or limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- (b) bribery or Fraud by it or its employees;
- (c) breach of any obligation as to title implied by section 2 of the Supply of Goods and Services Act 1982; or
- (d) any liability to the extent it cannot be excluded or limited by Law.

32.1.2 The Supplier does not exclude or limit its liability in respect of the indemnity in **Clause 29.9 (IPR Indemnity)** and in each case whether before or after the making of a demand pursuant to the indemnity therein.

32.2 Financial Limits

32.2.1 Subject to **Clause 32.1.1 (Unlimited Liability)**, the Supplier's total aggregate liability:

- (a) in respect of all Service Credits shall be subject to **Schedule 6**;
- (b) subject to **Clause 32.2.1(c)** in relation to all other Losses incurred by the Customer under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed:
 - (i) in relation to any Defaults occurring from the Commencement Date to the end of the first Agreement Year [REDACTED]; and

- (ii) in relation to any Defaults occurring in each subsequent Agreement Year, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]; and
- (c) in respect of any breach of its obligations under **Clause 30.7**
[REDACTED]

32.2.2 Subject to **Clauses 32.1.1 (Unlimited Liability)** and without prejudice to its obligation to pay the undisputed Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all Losses as a result of Customer Default shall be limited to:

- (a) in relation to any Customer Default occurring from the Commencement Date to the end of the first Agreement Year, a sum equal to the Estimated Year 1 Charges;
- (b) in relation to any Customer Default occurring in each subsequent Agreement Year that commences during the remainder of the Term, a sum equal to the Charges payable to the Supplier under this Agreement in the previous Agreement Year; and
- (c) in relation to any Customer Default occurring in each Agreement Year that commences after the end of the Term, a sum equal to the Charges payable to the Supplier under this Agreement in the last Agreement Year commencing during the Term.

32.3 Non-recoverable Losses

32.3.1 Subject to **Clause 32.1.1 (Unlimited Liability)** neither Party shall be liable to the other Party for any:

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

32.4 Recoverable Losses

32.4.1 Subject to **Clause 32.2.1 (Financial Limits)**, and notwithstanding **Clause 32.3.1 (Non-recoverable Losses)**, the Supplier acknowledges that the Customer may, amongst other things, recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of a Default by the Supplier:

- (a) any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) not used;
- (d) any compensation or interest paid to a third party by the Customer; and
- (e) any fine, penalty or costs incurred by the Customer pursuant to Law.

32.5 Miscellaneous

32.5.1 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement.

32.5.2 Any Deductions shall not be taken into consideration when calculating the Supplier's liability under **Clause 32.2.1 (Financial Limits)**.

33. INSURANCE

33.1 Without limitation to the generality of **Clause 33.2**, the Supplier shall ensure that it maintains the policy or policies of insurance as are stipulated in **Schedule 19 (Insurance Requirements)**. The Supplier shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.

33.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.

33.3 The Supplier shall effect and maintain the policy or policies of insurance referred to in **Clauses 33.1** and **33.2** above for three (3) years after the Expiry Date.

33.4 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in **Clauses 33.1** and **33.2** 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.

33.5 Not used.

33.6 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liability under this Agreement. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Agreement.

33.7 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

J. REMEDIES AND RELIEF

34. CUSTOMER REMEDIES FOR DEFAULT

34.1 Remedies

34.1.1 Without prejudice to any other right or remedy of the Customer howsoever arising (including under **Schedule 6 (Key Performance**

Indicators, Service Credits and Performance Monitoring), if the Supplier commits any Default of this Agreement then the Customer may (whether or not any part of the Services have been Delivered) do any of the following:

- (a) at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (and where such Default is capable of remedy), in accordance with the Customer's instructions;
- (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Services comply with this Agreement;
- (c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
 - (i) instruct the Supplier to comply with the Rectification Plan Process;
 - (ii) suspend this Agreement (whereupon the relevant provisions of **Clause 40 (Partial Termination, Suspension and Partial Suspension)** shall apply); or
 - (iii) without terminating or suspending the whole of this Agreement terminate or suspend this Agreement in respect of part of the provision of the Services only (whereupon the relevant provisions of **Clause 40 (Partial Termination, Suspension and Partial Suspension)** shall apply);

34.2 Rectification Plan Process

34.2.1 Where the Customer has instructed the Supplier to comply with the Rectification Plan Process pursuant to **Clause 34.1.1(c)(i)**:

- (a) the Supplier shall submit a draft Rectification Plan to the Customer for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) from the date of Customer's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Customer's request for a draft Rectification Plan.
- (b) the draft Rectification Plan shall set out:
 - (i) full details of the Default that has occurred, including a root cause analysis;
 - (ii) the actual or anticipated effect of the Default; and
 - (iii) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).

- 34.2.2 The Supplier shall promptly provide to the Customer any further documentation that the Customer requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with **Schedule 12 (Dispute Resolution Procedure)**.
- 34.2.3 The Customer may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- (a) is insufficiently detailed to be capable of proper evaluation;
 - (b) will take too long to complete;
 - (c) will not prevent reoccurrence of the Default; and/or
 - (d) will rectify the Default but in a manner which is unacceptable to the Customer.
- 34.2.4 The Customer shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Customer rejects the draft Rectification Plan, the Customer shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Customer for review within five (5) Working Days (or such other period as agreed between the Parties) of the Customer's notice rejecting the first draft.
- 34.2.5 If the Customer consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

35. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE

35.1 If the Supplier has failed to:

- 35.1.1 provide the Services in accordance with the Key Performance Indicators;
- 35.1.2 comply with its obligations under this Agreement,
- (each a "Supplier Non-Performance"), and can demonstrate that the Supplier Non-Performance would not have occurred but for a Customer Cause, then (subject to the Supplier fulfilling its obligations in **Clause 14 (Supplier Notification of Customer Cause)**):
- (a) the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Customer Cause;
 - (b) the Customer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Agreement pursuant to **Clause 37 (Customer Termination Rights)** except **Clause 37.6 (Termination Without Cause)**; and/or
 - (c) where the Supplier Non-Performance constitutes a KPI Failure:
 - (i) the Supplier shall not be liable to accrue Service Credits; and

- (ii) the Supplier shall be entitled to invoice for the Charges for the provision of the relevant Services affected by the Customer Cause,

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

- 35.2 In order to claim any of the rights and/or relief referred to in **Clause 35.1**, the Supplier shall:

35.2.1 comply with its obligations **under Clause 14 (Notification of Customer Cause)**; and

35.2.2 within ten (10) Working Days of becoming aware that a Customer Cause has caused, or is likely to cause, a Supplier Non-Performance, give the Customer notice (a “**Relief Notice**”) setting out details of:

- (a) the Supplier Non-Performance;
- (b) the Customer Cause and its effect on the Supplier's ability to meet its obligations under this Agreement; and
- (c) the relief claimed by the Supplier.

- 35.3 Following the receipt of a Relief Notice, the Customer shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Customer Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Customer Cause and its entitlement to relief, consulting with the Supplier where necessary.

- 35.4 Without prejudice to **Clauses 8.5 (Continuing obligation to provide the Services)**, if a Dispute arises as to:

35.4.1 whether a Supplier Non-Performance would not have occurred but for a Customer Cause; and/or

35.4.2 the nature and/or extent of the relief claimed by the Supplier,

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

- 35.5 Any Variation that is required to the Charges pursuant to this **Clause 35** shall be implemented in accordance with the Variation Procedure..

36. FORCE MAJEURE

- 36.1 Subject to the remainder of this **Clause 36** (and, in relation to the Supplier, subject to its compliance with its obligations in **Clause 12 (Business Continuity and Disaster Recovery)**), a Party may claim relief under this **Clause 36** from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

- 36.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 36.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this **Clause 36** to the extent that consequences of the relevant Force Majeure Event:
- 36.3.1 are capable of being mitigated by the provision of any Services including the Business Continuity Services and compliance with the BCDR Plan, but the Supplier has failed to do so; and/or
 - 36.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.
- 36.4 Subject to **Clause 36.5**, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 36.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 36.6 Where, as a result of a Force Majeure Event:
- 36.6.1 an Affected Party fails to perform its obligations in accordance with this Agreement then during the continuance of the Force Majeure Event:
 - (a) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure unless the provision of the Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and
 - (b) the Supplier shall not be liable for any Default and the Customer shall not be liable for any Customer Default arising as a result of such failure;
 - 36.6.2 the Supplier fails to perform its obligations in accordance with this Agreement:
 - (a) the Customer shall not be entitled:
 - (i) during the continuance of the Force Majeure Event to exercise its step-in rights under **Clause 34.1.1(b)** and **34.1.1(c) (Customer Remedies for Default)** as a result of such failure;
 - (ii) not used; and
 - (iii) to receive Service Credits or claim damages as compensation for a Critical KPI Failure pursuant to **Clause**

11 (Critical KPI Failure) to the extent that a KPI Failure or Critical KPI Failure has been caused by the Force Majeure Event; and

- (b) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be provided in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.

36.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.

36.8 Relief from liability for the Affected Party under this **Clause 36** shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under **Clause 36.7**.

K. TERMINATION AND EXIT MANAGEMENT

37. CUSTOMER TERMINATION RIGHTS

37.1 Termination in Relation to Guarantee

37.1.1 Where this Agreement is conditional upon the Supplier has procured a Guarantee pursuant to **Clause 5 (Guarantee)**, the Customer may terminate this Agreement by issuing a Termination Notice to the Supplier where:

- (a) the Guarantor withdraws the Guarantee for any reason whatsoever;
- (b) the Guarantor is in breach or anticipatory breach of the Guarantee;
- (c) an Insolvency Event occurs in respect of the Guarantor;
- (d) the Guarantee becomes invalid or unenforceable for any reason whatsoever,

and in each case the Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Customer, or

- (e) the Supplier fails to provide the documentation required by **Clause 5.1** by the date so specified by the Customer.

37.2 Termination on Material Default

37.2.1 The Customer may terminate this Agreement for material Default by issuing a Termination Notice to the Supplier where:

- (a) the Supplier commits a Critical KPI Failure;
- (b) the representation and warranty given by the Supplier pursuant to **Clause 4.2.5 (Representations and Warranties)** is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable;
- (c) as a result of any Defaults, the Customer incurs Losses in any Agreement Year which exceed 80% of the value of the Supplier's

aggregate annual liability limit for that Agreement Year as set out in **Clauses 32.2.1(a) and 32.2.1(b) (Liability)**;

- (d) the Customer expressly reserves the right to terminate this Agreement for material Default, including pursuant to any of the following **Clauses 11.1 (Critical KPI Failure), 18.5 (Records and Audit Access), 22 Promoting Tax Compliance, 30.4.9 (Confidentiality) or 46.6.2 (Prevention of Fraud and Bribery)** where applicable;
- (e) the Supplier commits any material Default of this Agreement which is not, in the reasonable opinion of the Customer, capable of remedy; and/or
- (f) the Supplier commits a Default, including a material Default, which in the opinion of the Customer is remediable but has not remedied such Default to the satisfaction of the Customer in accordance with the Rectification Plan Process;

37.2.2 For the purpose of **Clause 37.2.1**, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

37.3 Termination in Relation to Financial Standing

37.3.1 The Customer may terminate this Agreement by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Customer there is a material detrimental change in the financial standing of the Supplier, including as set out in **Clause 19.1.1 (Early Warning)**, which:

- (a) adversely impacts on the Supplier's ability to supply the Services under this Agreement; or
- (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Services under this Agreement.

37.4 Termination on Insolvency

37.4.1 The Customer may terminate this Agreement by issuing a Termination Notice to the Supplier where an Insolvency Event affecting the Supplier occurs.

37.5 Termination on Change of Control

37.5.1 The Supplier shall notify the Customer immediately in writing and as soon as the Supplier is aware (or ought reasonably to be aware) that is anticipating, undergoing, undergoes or has undergone a change of Control or of the Guarantor otherwise ceasing to be the Ultimate Parent Undertaking of the Supplier or there otherwise being any change of Ultimate Parent Undertaking and provided such notification does not contravene any Law.

37.5.2 The Supplier shall ensure that any notification made pursuant to **Clause 37.5.1** shall set out full details of the change of Control including the circumstances suggesting and/or explaining change of Control and the identity of the new controller or Ultimate Parent

Undertaking (as applicable) and shall provide such information as to their financial standing as the Customer may reasonably request.

37.5.3 The Customer may terminate this Agreement under **Clause 37.5** by issuing a Termination Notice to the Supplier within six (6) months of:

- (a) being notified in writing that a change of Control of the Supplier is in contemplation, planned or has occurred; or
- (b) where no notification has been made, the date that the Customer becomes aware that a change of Control of the Supplier is in contemplation, planned or has occurred,

but shall not be permitted to terminate where an Approval was granted prior to the change of Control.

37.6 Termination Without Cause

37.6.1 The Customer shall have the right to terminate this Agreement at any time by issuing a Termination Notice to the Supplier giving written notice and this Agreement shall terminate on the date specified in the Termination Notice

37.7 Termination in Breach of the Act

37.7.1 The Customer may terminate this Agreement immediately by issuing a Termination Notice to the Supplier on the occurrence of any of the following statutory provisions contained in the Procurement Act 2023:

- (a) In accordance with Section 78 and/or Section 79 (where applicable) of the Procurement Act 2023, and provided that the requirements of Section 78(7) of the Procurement Act 2023 have been met, where:
 - (i) the Customer considers that the Agreement was awarded or modified in material breach of the Procurement Act 2023 or regulations made under it;
 - (ii) the Supplier has, since the award of the Agreement become an excluded supplier or excludable supplier (including by reference to an associated person) as set out in Section 57 of the Procurement Act 2023 and provided that the conditions in Section 78(8) (where applicable) of the Procurement Act 2023 have been met; and/or
 - (iii) any Sub-Contractor has, since the award of the Agreement, become an excluded supplier or excludable supplier as defined in Section 57 of the Procurement Act 2023 and provided that the conditions in Section 78(3) to 78(8) of the Procurement Act have been met;
- (b) If the Supplier fails to enter into a legally binding agreement with any Sub-Contractor in accordance with Section 72 of the Procurement Act 2023.
- (c) Where any Sub-Contractor has, since the award of the Agreement, become an excluded supplier or excludable supplier as defined in Section 57 of the Procurement Act 2023, provided that prior to exercising its right of termination under this Clause 37.1.3 the Customer:

- (i) has notified the Supplier of its intention to terminate under this Clause, and why the Customer has decided to terminate the Agreement;
- (ii) has given the Supplier reasonable opportunity to make representations about whether this Clause applies and the Customer's decision to terminate; and
- (iii) has given the Supplier a reasonable opportunity to end its Sub-Contract with the excluded or excludable supplier, and if necessary, find an alternative Sub-Contractor.

37.8 Termination in relation to performance for health and safety measured under the Collaborative Performance Framework

37.8.1 The Customer may terminate this Agreement by issuing a Termination Notice to the Supplier in the event that the Supplier's performance for health and safety measured under the Collaborative Performance Framework (or any performance mechanism or framework that replaces it) two (2) months after implementing a Rectification Plan to improve its performance in relation to health and safety remains at an unacceptable score.

37.9 Termination in relation to Tax Compliance

37.9.1 The Customer may terminate this Agreement by issuing a Termination Notice to the Supplier in the event that:

- (a) The warranty given by the Supplier pursuant to **Clause 4.2.5** is materially untrue; or
- (b) The Supplier commits a material breach of its obligations to notify the Customer of any Occasion of Tax Non-Compliance as required **by Clause 22**; or
- (c) The Supplier fails to provide details of proposed mitigating factors as required by **Clause 22.1.2(a)** which in the reasonable opinion of the Customer, are acceptable.

37.10 Termination in relation to legal challenge

37.10.1 In the event of legal challenge to the award of the Agreement being issued within six (6) months and two (2) days of the execution of the Agreement (including, but not limited to, a challenge under the Procurement Act 2023 and associated regulations or by way of Judicial Review), the Customer may terminate this Agreement without compensation, except with respect to Services already provided, by issuing a Termination Notice to the Supplier.

38. SUPPLIER TERMINATION RIGHTS

38.1 Termination on Failure to Pay

38.1.1 The Supplier may, by issuing a Termination Notice to the Customer, terminate this Agreement if the Customer fails to pay an undisputed

sum properly due to the Supplier under this Agreement which in aggregate exceeds an amount equivalent to one (1) month's average Charges and such undisputed sum remains outstanding for forty (40) Working Days ("**Undisputed Sums Time Period**") after the receipt by the Customer of a written notice of non-payment from the Supplier (specifying the amount outstanding and that failure to pay may result in termination of the Agreement) and this Agreement shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice).

38.1.2 The Supplier must not suspend the supply of the Services unless the Supplier is entitled to terminate in accordance with **Clause 38.1.1** for the Customer's failure to pay undisputed sums of money.

39. TERMINATION BY EITHER PARTY

39.1 Termination for continuing Force Majeure Event

39.1.1 Either Party may, by, by issuing a Termination Notice to the other Party terminate this Agreement if, in accordance with **Clause 36.6.1 (Force Majeure)**.

40. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

40.1 Where the Customer has the right to terminate this Agreement the Customer shall be entitled to terminate or suspend all or part of this Agreement provided always that, if the Customer elects to terminate or suspend this Agreement in part, the parts of this Agreement not terminated or suspended can, in the Customer's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Agreement.

40.2 Any suspension of this Agreement under **Clause 40.1** shall be for such period as the Customer may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Customer.

40.3 The Parties shall seek to agree the effect of any Variation necessitated by a partial termination, suspension or partial suspension in accordance with the Variation Procedure, including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Services and the Charges, provided that the Supplier shall not be entitled to:

40.3.1 an increase in the Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Customer's termination rights under **Clause 37 (Customer Termination Rights)** except **Clause 37.6 (Termination Without Cause)**; and

40.3.2 reject the Variation.

41. CONSEQUENCES OF EXPIRY OR TERMINATION

41.1 **Consequences of termination under Clauses 37.1 (Termination in Relation to Guarantee), 37.2 (Termination on Material Default), 37.3 (Termination in Relation to Financial Standing), 37.4 (Termination on Insolvency), 37.5 (Termination on Change of Control), 37.7 (Termination in Breach of the Act) (excluding Clause 37.7.1(a)(i)), 37.8 (Termination in**

relation to performance for health and safety measured under the Collaborative Performance Framework) and 37.9 (Termination in relation to Tax Compliance)

41.1.1 Where the Customer terminates (in whole or in part) this Agreement under any of the Clauses referred to in **Clause 41.1**, all of the following apply:

- (a) the Supplier is responsible for the Customer's reasonable costs of procuring Replacement Services for the rest of the Term;
- (b) the Customer's payment obligations under the terminated Agreement stop immediately;
- (c) accumulated rights of the Parties are not affected;
- (d) the Supplier must promptly delete or return the Customer Data except where required to retain copies by Law, other than Customer Data (i) that is Personal Data in respect of which the Supplier is a Controller; and (ii) in respect of which the Supplier has rights to hold the Customer Data independently of this Agreement;
- (e) the Supplier must promptly return any of the Customer's property provided under the terminated Agreement;
- (f) the Supplier must, at no cost to the Customer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier); and
- (g) the Supplier must repay to the Customer all the Charges that it has been paid in advance for Services that it has not provided as at the date of termination or expiry.

41.2 Consequences of termination under Clauses 37.6 (Termination without Cause) and 38.1 (Termination on Failure to Pay)

41.2.1 Where:

- (a) the Customer terminates (in whole or in part) this Agreement under **Clause 37.6 (Termination without Cause)**; or
- (b) the Supplier terminates this Agreement pursuant to **Clause 38.1 (Termination on Failure to Pay)**, the Customer shall reimburse the Supplier in respect of any reasonable and proven Losses relating to:
 - (c) (i) redundancy of Supplier Personnel dedicated to performance of the Services who cannot reasonably be deployed and do not transfer to a Replacement Supplier;
 - (d) (ii) amounts payable by the Supplier to its Sub-Contractors for terminating relevant Sub-Contracts as a direct result of the early termination of this Agreement; and
 - (e) (iii) Costs incurred by the Supplier in the performance of this Agreement to the extent that the same remain as at the date of termination to be recovered through Charges that but for the termination of this Agreement would have been payable by the

Customer after the date of termination in accordance with **Schedule 3 (Charging, Payment and Invoicing)**.

which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Agreement, provided that the Supplier takes all reasonable steps to mitigate such Losses, including by:

- (f) the appropriation of assets, employees and resources for other purposes;
- (g) at the Customer's request, assigning any Sub-Contracts to the Customer or a third party acting on behalf of the Customer; and
- (h) in relation to Sub-Contracts that are not to be assigned to the Customer or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.

The Supplier shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as the Customer may require, reasonably and actually incurred by the Supplier as a result of termination under **Clause 37.6 (Termination without Cause)**.

41.2.2 The Customer shall not be liable under **Clause (f)** to pay any sum which:

- (a) was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the Supplier under this Agreement exceeds the total sum that would have been payable to the Supplier if this Agreement had not been terminated.

41.2.3 Payment by the Customer of Losses in accordance with **Clause 41.2.1** shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Customer pursuant to under **Clause 37.6 (Termination without Cause)** or the Supplier pursuant to **Clause 38.1 (Termination on Failure to Pay)** (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

41.3 **Consequences of termination under Clause 39.1 (Termination for Continuing Force Majeure Event) and Clause 37.7.1(a)(i)**

41.3.1 If either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to **Clause 39.1 (Termination for Continuing Force Majeure Event)** or the Customer terminates under **Clause 37.7.1(a)(i)**:

- (a) each party must cover its own Losses; and
- (b) Clauses 41.1.1(b) to 41.1.1(g) apply.

41.4 **Consequences of Termination for Any Reason**

41.4.1 Save as otherwise expressly provided in this Agreement:

- (a) termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- (b) termination of this Agreement shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under **Clauses 18 (Records and Audit Access), 29 (Intellectual Property Rights), 30.4 (Confidentiality), 30.6 (Freedom of Information) 30.7 (Protection of Personal Data), 32 (Liability), 41 (Consequences of Expiry or Termination), 47 (Severance), 49 (Entire Agreement), 50 (Third Party Rights) 52 (Dispute Resolution) and 53 (Governing Law and Jurisdiction)**, and the provisions of **Schedule 1 (Definitions), Schedule 3 (Charging, Payment and Invoicing), Schedule 11 (Exit Management), Schedule 13 (Dispute Resolution Procedure), Schedule 16 (Staff Transfer)** and, without limitation to the foregoing, any other provision of this Agreement which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Expiry Date.

41.5 Exit management

- 41.5.1 The Parties shall comply with the exit management provisions set out in **Schedule 11 (Exit Management)**.

L. MISCELLANEOUS AND GOVERNING LAW

42. COMPLIANCE

42.1 Health and Safety

- 42.1.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
 - (a) all applicable Law regarding health and safety; and
 - (b) the Customer's health and safety policy (as provided to the Supplier from time to time) whilst at the Customer Premises.
- 42.1.2 Each Party shall promptly notify the other of as soon as possible of any health and safety incidents or material health and safety hazards at the Customer Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement
- 42.1.3 While on the Customer Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Supplier Personnel and other persons working there and any instructions from the Customer on any necessary associated safety measures.

42.2 Equality and Diversity

- 42.2.1 The Supplier shall:

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

42.3 **Official Secrets Act and Finance Act**

42.3.1 The Supplier shall comply with the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

42.4 **Environmental Requirements**

42.4.1 The Supplier shall, when working on the Sites, perform its obligations under this Agreement in accordance with the Environmental Policy of the Customer.

42.4.2 The Customer shall provide a copy of its written Environmental Policy (if any) to the Supplier upon the Supplier's written request.

43. **ASSIGNMENT AND NOVATION**

43.1 The Supplier shall not assign, novate, Sub-Contract or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement or any part of it without Approval.

43.2 Upon written approval of Supplier, not to be unreasonably withheld or delayed, the Customer may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Agreement or any part thereof to:

43.2.1 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 Customer; or

43.2.2 any private sector body, subject to prior regulatory approval as applicable, which substantially performs the functions of the Customer,

and the Supplier shall, at the Customer's request, enter into a novation agreement in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this **Clause 43.2**.

43.3 If the Customer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a private sector in accordance with **Clause 43.2.2** (the "Transferee" in the rest of this Clause) the right of termination of the Customer in **Clause 37.4 (Termination on Insolvency)** shall be available to the Supplier in the event of insolvency of the Transferee (as if

the references to Supplier in **Clause 37.4 (Termination on Insolvency)** and to Supplier or Guarantor in the definition of Insolvency Event were references to the Transferee).

44. WAIVER AND CUMULATIVE REMEDIES

- 44.1 The rights and remedies under this Agreement may be waived only by notice in accordance with **Clause 51 (Notices)** and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of.
- 44.2 Unless otherwise provided in this Agreement rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

45. RELATIONSHIP OF THE PARTIES

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

46. EXCLUSIONS

- 46.1 During the Term the Supplier shall notify the Customer as soon as reasonably practicable if:
- 46.1.1 the Supplier considers that an exclusion ground within the Procurement Act 2023 and any associated regulations applies to the Supplier, including where the Supplier is put on the debarment list or becomes an excluded or excludable supplier by virtue of any associated persons or subcontractors where information relating to such was provided under Section 28 of the Procurement Act 2023; and/or
 - 46.1.2 there are any changes to the Supplier's associated persons within the meaning of the Procurement Act 2023.
- 46.2 If the Supplier notifies the Customer in accordance with Clause 46.1.1 then the Supplier must promptly provide any information the Customer reasonably requests in relation to the notification, including information to support an assessment of whether the circumstances giving rise to the exclusion ground are continuing or likely to occur again.
- 46.3 If the Supplier notifies the Customer in accordance with Clause 46.1.2 above then the Supplier must promptly provide any information reasonably requested by the Customer in relation to the change to the Supplier's associated persons, including any information set out in the Procurement Regulations 2024.
- 46.4 The Customer may terminate this Agreement if:
- 46.4.1 the Supplier has failed to provide notification under Clause 46.1.1 as soon as reasonably practicable after the Supplier become aware that an

exclusion ground within the Procurement Act 2023 and any associated regulations does or may apply to the Supplier;

46.4.2 the Supplier has failed to provide notification under Clause 46.1.2 as soon as reasonably practicable after the Supplier becoming aware of any changes to the Supplier's associated persons within the meaning of the Procurement Act 2023; and/or

46.4.3 any notification or information provided by the Supplier under Clause 46.1, 46.2 and/or 46.3 is incomplete, inaccurate or misleading,

and the consequences of termination set out in Clause 37.1.1 shall apply.

46.5 Clause 46.4 is without prejudice to the Customer's rights to terminate the Contract in accordance with Clause

47. SEVERANCE

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

47.2 In the event that any deemed deletion under **Clause 47.1** is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.

47.3 If the Parties are unable to resolve the Dispute arising under this **Clause 47** within twenty (20) Working Days of the date of the notice given pursuant to **Clause 47.2**, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this **Clause 47**.

48. FURTHER ASSURANCES

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

49. ENTIRE AGREEMENT

49.1 This Agreement and the documents referred to in it constitute the entire agreement between the Parties in respect of the matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

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

- 49.3 Nothing in this **Clause 49** shall exclude any liability in respect of misrepresentations made fraudulently.

50. THIRD PARTY RIGHTS

- 50.1 The provisions of paragraph 2.3 of Part C and paragraphs 1.4, 2.3 and 2.8 of Part E of **Schedule 16 (Staff Transfer)** where applicable ("**Third Party Provisions**") confer benefits on persons named in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CTRPA.
- 50.2 Subject to **Clause 50.1** a person who is not a Party to this has no right under the CTRPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 50.3 No Third-Party Beneficiary may enforce, or take any step to enforce, any Third-Party Provision without the prior written consent of the Customer, which may, if given, be given on and subject to such terms as the Customer may determine.
- 50.4 Any amendments or modifications to this Agreement may be made, and any rights created under **Clause 50.1** may be altered or extinguished, by the Parties without the consent of any Third-Party Beneficiary.

51. NOTICES

- 51.1 All notices under this Agreement shall be in writing and be served by email unless it is not practicable to do so to the named person listed below. If it is not practicable for a notice to be served by email, notices must be served by means of personal delivery or Royal Mail Signed ForTM 1st Class or other prepaid, next Working Day service.
- 51.2 The following table sets out the respective deemed time and proof of service for such notices:

Manner of Delivery	Deemed time of delivery	Proof of Service
Email	9.00am on the first Working Day after sending.	Dispatched [as a pdf attachment] to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For TM 1 st Class or other prepaid, next Working Day	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

service providing proof of delivery	9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	
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- 51.3 This **Clause 51** does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure).

For the purposes of this **Clause 51**, the relevant contact, address and email address of each Party are set out below:

	Supplier	Customer
Contact	[REDACTED]	[REDACTED]
Addresses	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
Email	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]

52. DISPUTE RESOLUTION

- 52.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.
- 52.2 The Supplier shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.

53. GOVERNING LAW AND JURISDICTION

- 53.1 This Agreement and any issues, Disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 53.2 Subject to **Clause 52 (Dispute Resolution)** and **Schedule 12 (Dispute Resolution Procedure)** (including the Customer's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

54. CONFLICT OF INTEREST

- 54.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Personnel are placed in the position of an actual or potential Conflict of Interest.
- 54.2 The Supplier must promptly notify and provide details to the Customer if an actual, perceived or potential Conflict of Interest happens or is expected to happen.
- 54.3 The Customer will consider whether there are any reasonable steps that can be put in place to mitigate an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Customer, such steps do not or will not resolve an actual or potential Conflict of Interest, the Customer may terminate its Agreement immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest and, subject to Clause 54.4 where the reason for the unresolvable actual or potential Conflict of Interest is in the reasonable opinion of the Customer
- (a) outside of the control of the Supplier, Clauses 41.1.1(b) to 41.1.1(g) shall apply; or
 - (b) within the control of the Supplier, the whole of Clause 41.1.1 shall apply.
- 54.4 Where the Supplier has failed to notify the Customer about an actual or potential Conflict of Interest and the Customer terminates under Clause 54.3, the whole of Clause 41.1.1 shall apply.

Signed on behalf of the parties the date stated at the beginning of this Agreement

Signed for and on behalf of

NATIONAL HIGHWAYS LIMITED

.....

acting by its authorised signatory

Name:

Date:

Signed for and on behalf of

BRIGHTLY SOFTWARE LIMITED

.....

Acting by its director/officer

Name:

Date:

SCHEDULE 1

DEFINITIONS

In accordance with **Clause 1 (Definitions and Interpretations)** of this Agreement including its recitals the following expressions shall have the following meanings:

"ADMM"	means the Customer's Asset Data Management Manual (ADMM) published at https://standardsforhighways.co.uk/ha/standards/admm/index.htm ;
"Affected Party"	means the party seeking to claim relief in respect of a Force Majeure;
"Affiliates"	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
"Agreement "	means this agreement between the Customer and the Supplier
"Agreement Year"	means a consecutive period of twelve (12) Months commencing on the Commencement Date or each anniversary thereof;
"API" or "Application Programming Interface"	means application programming interface, an industry standard term meaning software which allows two programs/applications to exchange data;
"Approval"	means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;
"Approved Offshore Location"	the Supplier premises outside of the UK which have been approved by the Customer following the Commencement Date in accordance with the procedure set out in Clause 16.4.4 (Offshore Working) ;
"Asset"	means a resource that is owned and/or managed by the Customer;
"Asset Management"	means documents that set out how assets are to be managed for a specific area or route, for a rolling five (5) year time period;
"Auditor"	means: a) the Customer's internal and external auditors;

	<ul style="list-style-type: none"> b) the Customer's statutory or regulatory auditors; c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; d) HM Treasury or the Cabinet Office; e) any party formally appointed by the Customer to carry out audit or similar review functions; and f) successors or assigns of any of the above;
"BCDR Plan"	means the plan prepared pursuant to paragraph 2 of Schedule 10 (Business Continuity and Disaster Recovery) , as may be amended from time to time;
"BIM Level 2"	Business Information Modelling Level 2 involves developing building information in a collaborative 3D environment with data attached, but created in separate discipline models;
"Business Continuity Services"	has the meaning given to it in paragraph 4.2.2 of Schedule 10 (Business Continuity and Disaster Recovery) ;
"Cabinet Office"	the corporate headquarters for the UK government;
"Central Government Body"	<p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency;
"Change in Law"	means any change in Law which impacts on the supply of the Services and performance of the terms which comes into force after the Commencement Date;
"Charges"	means the prices payable to the Supplier by the Customer under this Agreement as set out in Schedule 3 (Charging, Payment and Invoicing) , for the full and proper performance by the Supplier of its obligations under this Agreement less any Deductions;
"Commencement Date"	means 25 June 2025;
"Commercially Sensitive Information"	means the Confidential Information listed in Part C of Schedule 4 (Supplier Matters) (if any) comprising of a

	commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;
"Comparable Supply"	means the supply of Services to another customer of the Supplier that are the same or similar to the Services;
"Confidential Information"	means the Customer's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;
"Confirm OnDemand"	the Customer's current routine maintenance management system;
"Conflict of Interest"	a direct or indirect conflict between the financial, professional or personal interests of the Supplier or the Supplier Personnel and the duties owed to the Customer under this Agreement, in the reasonable opinion of the Customer;
"Continuous Improvement Plan"	has the meaning given in Schedule 17 (Continuous Improvement) ;
"Control"	means control as defined in section 1124 and 450 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;
"Costs"	<p>means the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:</p> <ul style="list-style-type: none"> a) the cost to the Supplier or the Key Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including: <ul style="list-style-type: none"> i) base salary paid to the Supplier Personnel; ii) employer's national insurance contributions; iii) pension contributions; iv) car allowances; v) any other contractual employment benefits; vi) staff training; vii) work place accommodation; viii) work place IT equipment and tools reasonably necessary to provide the Services (but not including items included within limb (b) below); and

	<p>ix) reasonable recruitment costs, as agreed with the Customer;</p> <p>b) costs incurred in respect of those Supplier Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Customer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;</p> <p>c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Services;</p> <p>but excluding:</p> <p>a) Overhead;</p> <p>b) financing or similar constraints;</p> <p>c) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term whether in relation to Supplier Assets or otherwise;</p> <p>d) taxation;</p> <p>e) fines and penalties; and</p> <p>f) non-cash items (including depreciation, amortisation, impairments and movements in provisions);</p>
"COTS"	means commercial off the shelf, being software or hardware that is ready-made, readily available for sale, lease, or license and can be used without development;
"Critical KPI Failure"	means any instance of critical KPI failure specified in Annex 1 of Schedule 6 (Key Performance Indicators, Service Credits and Performance Monitoring) ;
"Crown"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Crown Body"	means any department, office or executive agency of the Crown;

"CRTPA"	means the Contracts (Rights of Third Parties) Act 1999;
"Customer Assets"	means the Customer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Customer and which is or may be used in connection with the provision of the Services;
"Customer Background IPR"	<p>means:</p> <ul style="list-style-type: none"> a) IPRs owned by the Customer before the Commencement Date, including IPRs contained in any of the Customer's Know-How, documentation, processes and procedures; b) IPRs created by the Customer independently of this Agreement; and/or c) Crown Copyright which is not available to the Supplier otherwise than under this Agreement; <p>but excluding IPRs owned by the Customer subsisting in the Customer Software;</p>
"Customer Cause"	<p>means any material breach by the Customer of any of the Customer Responsibilities, except:</p> <ul style="list-style-type: none"> a) as the result of any act or omission by the Customer to which the Supplier has given its prior consent; or b) where caused by the Supplier, any Sub-Contractor or any Supplier Personnel;
"Customer Data"	<p>means:</p> <ul style="list-style-type: none"> a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Customer's Confidential Information, and which: <ul style="list-style-type: none"> i) are supplied to the Supplier by or on behalf of the Customer; or ii) the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or b) any Personal Data for which the Customer is the Data Controller;
"Customer Default"	means any breach of the obligations of the Customer (including but not limited to including abandonment of this Agreement in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Customer, its employees, servants or agents howsoever arising in connection with or in relation

	to the subject-matter of this Agreement and in respect of which the Customer is liable to the Supplier;
"Customer Premises"	means premises owned, controlled or occupied by the Customer which are made available for use by the Supplier or its Sub-Contractors for provision of the Services (or any of them);
"Customer Property"	means the property, other than real property and IPR, including the Customer System issued or made available to the Supplier by the Customer in connection with this Agreement;
"Customer Representative"	means the representative appointed by the Customer from time to time in relation to this Agreement;
"Customer Responsibilities"	means the responsibilities of the Customer set out in the paragraph 4 of Schedule 2 (Services) ;
"Customer Software"	means any software identified as such in Schedule 9 (Software) together with all other software which is not identified as such in Schedule 9 (Software) but which is owned by or licensed to the Customer and which is or will be used by the Supplier for the purposes of providing the Services;
"Customer System"	means the Customer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer or the Supplier in connection with this Agreement which is owned by or licensed to the Customer by a third party and which interfaces with the Supplier System or which is necessary for the Customer to receive the Services;
"Customer's Confidential Information"	means: <ul style="list-style-type: none"> a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Customer (including all Customer Background IPR and Project Specific IPR); b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Customer's attention or into the Customer's possession in connection with this Agreement; and c) information derived from any of the above;
"Customer's Data Lake"	means the Customer's repository of data stored in its original format (raw data format). It can contain

	structured, semistructured and unstructured data. Data in the data lake is not defined until it is needed;
“Customer’s Risk Assessment”	means the full risk assessment and security review carried out by the Customer which is in line with the Customer’s NHPOL0107 Offshoring Policy , as later amended or replaced;
“DaaS” or “Data-as-a-Service”	means the Customer's business-wide platform for collating data in the cloud for the purpose of reporting, analysing and sharing data;
“Data Administrator”	means individual(s) responsible for managing data and ensuring the quality and fitness for purpose of the Customer's data;
"Data Controller"	has the meaning given to it in the Data Protection Act 2018, as amended from time to time;
“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
"Data Processor"	has the meaning given to it in Data Protection Legislation, as amended from time to time;
“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
"Data Protection Legislation" or “DPA 2018”	<p>the UK GDPR;</p> <p>the DPA 2018 to the extent that it relates to processing of personal data and privacy;</p> <p>all applicable Law about the processing of personal data and privacy; and</p> <p>(to the extent that it applies) the EU GDPR</p>
“Data Snapshots”	means a read-only static view of the data in a database taken at a specific point in time that is used to return the database (or system) to the same state it was in when the snapshot was taken. Data Snapshots are fast efficient methods used for rollback protection;
"Data Subject"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Data Subject Request"	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;

“Data Warehouse”	means the industry standard term for a business intelligence data management system which is designed to enable and support business intelligence activities, especially analytics and consolidates large amounts of data from multiple sources;
“DBFOs”	Design Build Fund and Operate: refers to the concessionaire contractor who manages the M25 motorway;
“Decision Support Tools”	means the tool used to make decisions about the long-term management of the asset;
“Deductions”	means all Service Credits or any other deduction which the Customer is paid or is payable under this Agreement;
"Default"	means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Agreement in breach of its terms) or any other default (including material Default) after the words, act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Agreement and in respect of which the Supplier is liable to the Customer;
"Defect"	means any of the following: <ul style="list-style-type: none"> a) any error, damage or defect in the manufacturing of a Deliverable; or b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Customer or the Documentation (including any adverse effect on response times); or d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Customer or the Documentation (including any adverse effect on response times);
"Deliverable"	means: <ul style="list-style-type: none"> a) an item or feature in the supply of the Services (including any Goods) delivered or to be delivered by the Supplier at any stage during the performance of this Agreement; and / or

	b) a tangible work product, professional service, outcome or related material or item (including any Goods) that is to be achieved or delivered to the Customer by the Supplier as part of the Services as defined in Schedule 2 (Services) ;
"Disaster"	means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable for the period of ten (10) days (for the purposes of this definition the "Disaster Period");
"Disaster Recovery Services"	means the services embodied in the processes and procedures for restoring the provision of Services following the occurrence of a Disaster, as detailed further in Schedule 10 (Business Continuity and Disaster Recovery) ;
"Disclosing Party"	has the meaning given to it in Clause 30.4.1 (Confidentiality) ;
"Dispute"	means any dispute, difference or question of interpretation arising out of or in connection with this Agreement including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Dispute Notice"	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in Schedule 12 (Dispute Resolution Procedure) ;
"Documentation"	means all documentation as: <ul style="list-style-type: none"> a) is required to be supplied by the Supplier to the Customer under this Agreement; b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services; c) is required by the Supplier in order to provide the Services; and/or d) has been or shall be generated for the purpose of providing the Services;

"DOTAS"	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance contributions (;
"Due Diligence Information"	means any information supplied to the Supplier by or on behalf of the Customer prior to the Commencement Date;
"Electronic Invoice Standard"	<p>in relation to an electronic invoice means a form that:</p> <ul style="list-style-type: none"> a) complies with the standard for electronic invoicing approved and issued by the British Standards Institution in the document numbered BS EN 16931-1:2017 (Electronic invoicing - Part 1: Semantic data model of the core elements of an electronic invoice); and b) uses a syntax which is listed as a syntax that complies with that standard in the document numbered PD CEN/TS 16931-2:2017 (Electronic invoicing - Part 2: List of syntaxes that comply with EN 16931-1) approved and issued by the British Standards Institution;
"Employee Liabilities"	<p>means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:</p> <ul style="list-style-type: none"> a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; b) unfair, wrongful or constructive dismissal compensation; c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; d) compensation for less favourable treatment of part-time workers or fixed term employees;

	<p>e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Customer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;</p> <p>f) claims whether in tort, contract or statute or otherwise;</p> <p>g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</p>
"Employment Regulations"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;
"Environment Agency"	the UK government's agency responsible for protecting and improving the environment;
"Environmental Information Regulations or EIRs"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
"Environmental Policy"	means to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Customer;
"Estimated Year 1 Charges"	means £2,592,106.34, the sum in pounds estimated by the Customer to be payable by it to the Supplier as the total aggregate Charges from the Commencement Date until the end of the first Agreement Year;
"Exit Plan"	a plan produced by the Supplier during the Term in accordance with Schedule 11 (Exit Management) ;
"Expedited Dispute Timetable"	means the timetable set out in paragraph 2.7 of Schedule 12 (Dispute Resolution Procedure) ;
"Expiry Date"	<p>means:</p> <p>a) the end date of the Initial Term or the Extension Period; or</p>

	b) if this Agreement is terminated before the date specified in (a) above, the earlier date of termination of this Agreement;
"Extension Period"	means a period of one (1) year from the end of the Initial Term;
"First Line"	the first level in a hierarchy of support groups which provides investigation and resolution of Incidents within the Supplier Solution. First Line support registers and classifies Incidents, and resolves Incidents for which there is a known solution or procedural responses to identifiable issues, in order to restore operation of the Supplier Solution as quickly as possible. First Line support will triage Incidents to Second Line support where no resolution can be achieved and where there is no previously identified solution or procedural responses. First Line support also keeps users informed about the status of the Incident;
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under that 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"	<p>means any event, occurrence, circumstance, matter or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none"> a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Agreement; b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; c) acts of the Crown, local government or Regulatory Bodies; d) fire, flood or any disaster; and e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding: <ul style="list-style-type: none"> i) any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act,

	<p>neglect or failure to take reasonable precautions against it by the Party concerned; and</p> <p>iii) any failure of delay caused by a lack of funds; and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party;</p>
"Force Majeure Notice"	means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
"Former Supplier"	means a supplier supplying the Services to the Customer before the Commencement Date or the Relevant Transfer Date (as applicable) that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
"Fraud"	means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
"GDS"	means Government Digital Services (GDS) Standards, available at https://www.gov.uk/service-manual/servicestandard ;
"General Anti-Abuse Rule"	means (a) the legislation in Part 5 of the Finance Act 2013 and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"General Functional Requirements"	means a type of requirement that describes the service or functions that the Software must provide. These services or functions are in terms of outputs or behaviours required;
"General Change in Law"	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"GIS"	Geographical Information Systems;
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the exercise of 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 within the relevant industry or business sector;

"Goods"	means any goods or equipment to be sold by the Supplier to the Customer as set out in Schedule 2 (Services) ;
"Government"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Guarantee"	means a deed of guarantee that may be required under this Agreement in favour of the Customer in the form set out Schedule 14 (Guarantee) granted pursuant to Clause 5.3 (Guarantee) ;
"Guarantor"	the person (if any) as may be required to provide a Guarantee pursuant to Clause 5.3 (Guarantee);
"GUI"	Graphical user interface;
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C-255/02 Halifax and others;
"HMRC"	means His Majesty's Revenue and Customs;
"ICT Environment"	means the Customer System and the Supplier System;
"Impact Assessment"	has the meaning given to it in Clause 20.1.3 (Variation Procedure) ;
"Incident"	has the meaning given in Schedule 6 (Key Performance Indicators, Service Credits and Performance Monitoring)
"Information"	has the meaning given to it under section 84 of the Freedom of Information Act 2000;
"Initial Term"	means a period starting on the Commencement Date and ending three (3) years after the Commencement Date;
"Input"	means putting data into a target (i.e. database, data store, file directory etc);
"Insolvency Event"	means, in respect of the Supplier or Guarantor (as applicable): <ul style="list-style-type: none"> a) 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 b) 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

	<p>than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</p> <p>c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working 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</p> <p>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</p> <p>e) 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</p> <p>f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</p> <p>g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or</p> <p>h) any event analogous to those listed in limbs (a) to (g) (inclusive) occurs under the law of any other jurisdiction;</p>
"Intellectual Property Rights" or "IPR"	<p>means</p> <p>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
"IPR Claim"	<p>means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the</p>

	Customer in the fulfilment of its obligations under this Agreement (including the Software);
"IT Change Management"	the standardised methods and procedures used for efficient and prompt handling of all changes to IT software and infrastructure, in order to minimise the number and impact of any related incidents upon service;
"IT Environment"	means the Customer System and the Supplier System;
"IT Service Management"	the entirety of activities, directed by policies, organised and structured in processes and supporting procedures that are performed by the Supplier to design, plan, deliver, operate and control IT services offered to users;
"KPI Failure"	means a failure to meet the KPI Performance Measure in respect of a Key Performance Indicator;
"KPI Measurement Period"	in relation to a Key Performance Indicator, the period over which the Supplier's performance is measured as set out against the relevant Key Performance Indicator in Annex 2 of Schedule 6 (Key Performance Indicators, Service Credits and Performance Monitoring) ;
"Key Performance Indicators" or "KPI"	means any key performance indicators applicable to the provision of the Services under this Agreement (as specified in Annex 2 of Schedule 6 (Key Performance Indicators, Service Credits and Performance Monitoring));
"KPI Performance Measure"	shall be as set out against the performance criterion applicable to the relevant Key Performance Indicator described in Annex 2 of Schedule 6 (Key Performance Indicators, Service Credits and Performance Monitoring) or the Collaborative Performance Framework, as applicable;
"Key Role(s) "	has the meaning given to it in Clause 23.1 (Key Roles) ;
"Key Sub-Contract"	means each Sub-Contract with a Key Sub-Contractor;
"Key Sub-Contractor"	means any Sub-Contractor: <ul style="list-style-type: none"> a) which, in the opinion of the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or b) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Agreement;
"Know-How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but

	excluding know-how already in the other Party's possession before the Commencement Date;
“Knowledge Articles”	information stored in a searchable digital form acting as an information source to the reader, offering answers to common questions about the Services;
“Land Registry”	means His Majesty's Land Registry a non-ministerial department;
"Law"	means any law and any legally binding rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body and any legally binding industry code of conduct or guideline, in each case which applies to one or each of the Parties or relates to the subject matter or performance of the Agreement and which is in force from time to time;
“LDM” or “Logical Data Model”	means an abstract of the structure of the data/information domain for the Supplier System representing the definition, characteristics and relationships of the data in conceptual, technical and business perspectives independent from technology, organisation and data storage constraints;
“Legal Opinion”	<p>means a legal opinion in a form acceptable to the Customer which confirms that the method of execution of the Guarantee is valid and binding under applicable local law and in particular provides:</p> <ul style="list-style-type: none"> a) confirmation that: <ul style="list-style-type: none"> i) the Guarantor is a corporation duly incorporated in the relevant jurisdiction, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated; ii) the Guarantor has full power to execute, deliver, enter into and perform its obligations under the Guarantee, iii) all necessary corporate, shareholder and other action required to authorise the execution and delivery by the Guarantor of the Guarantee and the performance by it of its obligations under it have been duly taken; iv) execution by the proposed signatories in accordance with the method of execution proposed will constitute valid execution by the Guarantor; v) the execution and delivery by the Guarantor of the Guarantee and the performance of its

	<p>obligations under it will not conflict with or violate:</p> <ul style="list-style-type: none"> (1) the constitutional documents of the Guarantor; (2) any provision of the laws of the jurisdiction in which it is incorporated, (3) any order of any judicial or other authority in the jurisdiction in which it is incorporated; or (4) any mortgage, contract or other undertaking which is binding on the bidder or its assets; and <p>vi) (assuming that it is binding under English law) the Guarantee constitutes legal, valid and binding obligations of the Guarantor enforceable in accordance with its terms,</p> <p>b) notification of any other formalities to be complied with under local law which may be necessary to enforce the Guarantee in the Guarantor's place of incorporation, including notarisation, legalisation or registration of the Guarantee;</p> <p>c) notification of whether withholding is required to be made by the Guarantor in relation to any monies payable to Customer under the Guarantee;</p> <p>d) confirmation of whether the Customer will be deemed to be resident or domiciled in the foreign jurisdiction by reason of its entry into the Guarantee; and</p> <p>e) confirmation that the Guarantor and its assets are not entitled to immunity from suit, pre-judgment attachment or restraint or enforcement of a judgment on grounds of sovereignty or otherwise in the courts of England and Wales in respect of proceedings against it in relation to the Guarantee;</p>
"Live Environment"	operational or production environment in which a system or software (or a discrete part of such system or software) is available for the processing of live business transactions or is otherwise in live use;
"Losses"	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;

"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;
"Month"	means a calendar month and "Monthly" shall be interpreted accordingly;
"National Insurance"	contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);
"New Release"	means an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
"Object Code"	means software and/or data in machine-readable, compiled object code form;
"Occasion of Tax Non Compliance"	<p>means:</p> <ul style="list-style-type: none"> a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or b) any tax return of the Supplier's submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion;

“Open API”	means publicly available application programming interface that allows access to a software application or web service;
“Open API Specification”	is a specification for machine-readable interface files for describing, producing, consuming, and visualizing restful web services;
“Open Geospatial Consortium”	an international voluntary consensus standards organization;
"Open Source Software"	means computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;
“Open Web Platform”	means the collection of open (royalty-free) technologies which enables the public internet;
"Operating Environment"	means the Customer System and the Sites;
“Optional Services”	means the services described as such in Schedule 2 (Services) which are to be provided by the Supplier if required by the Customer in accordance with Clause 7.3 (Optional Services) ;
“Ordnance Survey”	the national mapping agency for Great Britain;
“Organisational Unit”	means a subdivision of National Highways used for managing maintenance . i.e. area or region;
"Other Supplier"	means any supplier to the Customer (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
"Overhead"	means those amounts which are intended to recover a proportion of the Supplier's or the Key Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of “Costs”;
“Parent Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;
"Party"	means the Customer or the Supplier and "Parties" shall mean both of them;

"Performance Monitoring Reports"	has the meaning given to it in paragraph 3.2 in Annex 1 of Schedule 6 (Key Performance Indicators, Service Credits and Performance Monitoring) ;
"Performance Review Meetings"	has the meaning given to it in paragraph 3.3 of Annex 1 of Schedule 6 (Key Performance Indicators, Service Credit and Performance Monitoring) ;
"Personal Data"	takes the meaning given it in the UK GDPR or the EU GDPR as the context requires;
"Pre-Production Environments"	development environment, and staging environments used for testing of the Supplier System and training of the Supplier Personnel and Customer staff, that resembles a Live Environment as closely as possible;
"Problem"	a cause, or potential cause, of one or more Incidents;
"Processing"	has the meaning given to it in UK GDPR or the EU GDPR as the context requires but, for the purposes of this Agreement it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;
"Progressive Web App"	web apps that use emerging web browser APIs and features along with traditional progressive enhancement strategy to bring a native app-like user experience to cross-platform web applications;
"Project Specific IPR"	means: <ul style="list-style-type: none"> a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and/or b) IPR in or arising as a result of the performance of the Supplier's obligations under this Agreement and all updates and amendments to the same; but shall not include the Supplier Background IPR or the Specially Written Software;
"Quality Plans"	shall have the meaning given in Clause 9.2 (Standards and Quality) ;
"Recipient"	has the meaning given to it in Clause 30.4.1 (Confidentiality) ;
"Records Management"	means the management of official National Highways records;
"Records Management Team"	means the team in National Highways responsible for the management of National Highways Records;

“Recovery Point Objective”	the maximum allowable data loss that is acceptable for the Supplier System;
"Rectification Plan"	means the rectification plan pursuant to the Rectification Plan Process;
"Rectification Plan Process"	means the process set out in Clause 34.2 (Rectification Plan Process) ;
"Related Supplier"	means any person who provides Services to the Customer which are related to the Services from time to time;
“Release”	a Release (as defined in ITIL) is one or more changes that are built, tested and deployed together;
"Relevant Tax Authority"	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
"Relevant Transfer"	means a transfer of employment to which the Employment Regulations applies;
"Relevant Transfer Date"	means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
"Relief Notice"	has the meaning given to it in Clause 35.2.2 (Supplier Relief Due to Customer Cause) ;
"Replacement Services"	means any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services and which the Expiry Date, whether those services are provided by the Customer internally and/or by any third party;
"Replacement Sub-Contractor"	means a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such subcontractor);
"Replacement Supplier"	means any third party provider of Replacement Services appointed by or at the direction of the Customer from time to time or where the Customer is providing Replacement Services for its own account, shall also include the Customer;
"Request for Information"	means a request for information or an apparent request relating to this Agreement or the provision of the Services or an apparent request for such information under the FOIA or the EIRs;
“RESTful”	an API which uses the REST architectural constraints;

“Restricted Transfer”	means a transfer of Personal Data processed in connection with the Supplier’s obligations under this Agreement which is undergoing processing or which is intended to be processed after transfer, to a country or territory to which such transfer is prohibited or subject to any requirement to take additional steps to adequately protect the Personal Data for the transfer to be lawful under the Data Protection Legislation;
“Second Line”	the second level in a hierarchy of support groups which provides investigation and resolution of Incidents within the Supplier Solution. Second Line support aims to resolve all Incidents which cannot be solved immediately by First Line support. Second Line support will resolve application configuration issues which do not involve code changes to the Supplier System, shall address issues for which there is a known workaround that may be applied, or propose a workaround to address issues, in order to restore operation of the Supplier Solution as quickly as possible. Second Line support will assign Incidents to Third Line support which they cannot resolve or where code changes to the Supplier System are required;
"Security Management Plan"	means the Supplier's security management plan prepared pursuant to paragraph 4 of Schedule 8 (Security) a draft of which has been provided by the Supplier to the Customer in accordance with paragraph 4 of Schedule 8 (Security) and as updated from time to time;
"Security Policy"	means the Customer's security policy in force as at the Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
“Service Desk”	a communications centre that provides a single point of contact (SPOC) between an organisation and its users, employees and the Customer. The purpose of a service desk is to ensure that users receive appropriate help in a timely manner;
"Service Credits"	means any service credits specified in Annex 2 of Schedule 6 (Key Performance Indicators, Service Credits and Performance Monitoring) being payable by the Supplier to the Customer in respect of any failure by the Supplier to meet one or more Key Performance Indicators;
"Service Failure"	means an unplanned failure and interruption to the provision of the Services, reduction in the quality of the

	provision of the Services or event which could affect the provision of the Services in the future;
"Service Manual"	the GDS guidance for building UK government digital services located at https://www.gov.uk/service-manual ;
"Service Period"	has the meaning given to in Schedule 6 (Key Performance Indicators, Service Credits and Performance Monitoring) ;
"Service Transfer"	means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;
"Service Transfer Date"	means the date of a Service Transfer;
"Services"	means the services to be provided by the Supplier to the Customer as referred to in Schedule 2 (Services) and those services which are deliverable by the Supplier;
"SFTP"	Secure File Transfer Protocol;
"Sites"	means any premises (including the Customer Premises, the Supplier's premises or third party premises): <ul style="list-style-type: none"> a) from, to or at which: <ul style="list-style-type: none"> i) the Services are (or are to be) provided; or ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or b) where: <ul style="list-style-type: none"> i) any part of the Supplier System is situated; or ii) any physical interface with the Customer System takes place;
"Software"	means Specially Written Software, Supplier Software and Third Party Software and any other applications provided by the Supplier to the Customer pursuant to this Agreement;
"Software as a Service" or "SaaS"	means a method of software delivery and licensing in which software is provided to the market as a service and is accessed online via a subscription, rather than bought and installed on individual computers;
"Software Supporting Materials"	has the meaning given in Clause 29.3.1(b) (Intellectual Property Rights);
"Source Code"	means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical

	information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
"Specially Written Software"	means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Agreement including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Agreement and including software identified as such in the Schedule 9 (Software) ;
"Specific Change in Law"	means a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply;
"Staffing Information"	has the meaning give to it in Schedule 16 (Staff Transfer);
"Standards"	means any: <ul style="list-style-type: none"> a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with; b) standards detailed by the Customer in Schedule 7 (Standards) or agreed between the Parties from time to time; or c) any relevant Government codes of practice and guidance applicable from time to time as the Supplier would reasonably and ordinarily be expected to comply with
"Strategic Asset Management Plans" or "(SAMP)"	means documents that set out how the assets are to be managed nationally, for a rolling five (5) year time period;
"Strategic Road Network"	the motorways and all-purpose trunk roads that are managed by the Customer;
"Sub-Contract"	means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof or facilities, services necessary for the provision of the Services or any part thereof or necessary for the management, direction or

	control of the provision of the Services or any part thereof;
"Sub-Contractor"	means any third party engaged by the Supplier, including any Key Sub-Contractor, from time to time under a Sub-Contract permitted pursuant to this Agreement or its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;
"Subsidiary Undertaking"	the meaning set out in section 1162 of the Companies Act 2006;
"Supplier Assets"	means all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Customer Assets;
"Supplier Background IPR"	means <ul style="list-style-type: none"> a) Intellectual Property Rights owned by or licensed to the Supplier (whether prior to the Commencement Date or otherwise), for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or b) Intellectual Property Rights created by the Supplier independently of this Agreement, but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;
"Supplier Personnel"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of the Supplier's obligations under this Agreement;
"Supplier Equipment"	means the Supplier's hardware, computer and telecoms devices, equipment, infrastructure, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under this Agreement;
"Supplier Non-Performance"	has the meaning given to it in Clause 35.1 (Supplier Relief Due to Customer Cause) ;
"Supplier Representative"	means the representative appointed by the Supplier named in the Clause 17.2 (Representatives) as may be changed by agreement between the Parties;
"Supplier Software"	means any software which is proprietary to the Supplier (or an Affiliate of the Supplier) and identified as such in the Schedule 9 (Software) together with all other such

	software which is not identified in the Schedule 9 (Software) but which is or will be used by the Supplier or any Sub-Contractor for the purposes of providing the Services or is embedded in and in respect of such other software as required to be licensed in order for the Customer to receive the benefit of and/or make use of the Services;
"Supplier Solution"	means the Supplier's solution for the Services, Software and other Customer requirements set out in Schedule 2 (Services) including any Annexes of that Schedule;
"Supplier System"	means the information and communications technology system used by the Supplier in supplying the Services, including the Supplier Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Customer System);
"Supply Chain Intermediary"	any entity (including any company or partnership) in an arrangement with a Worker, where the Worker performs or is under an obligation personally to perform, services for the Customer;
"Supply Chain Transparency Reports"	means reports setting out the following information in respect both of this Agreement and for the Supplier as a whole for the applicable Customer financial year: <ul style="list-style-type: none"> a) estimated total contract revenue (£) to be received; b) total value of Sub-Contracted revenues (£); c) total value of Sub-Contracted revenues to SMEs (as defined by the Customer from time to time) (£); and d) total value of Sub-Contracted revenues to VCSEs (as defined by the Customer from time to time) (£);
"Term"	means the term of this Agreement from the Commencement Date until the Expiry Date;
"Termination Assistance Period"	has the meaning given to it in Schedule 11 (Exit Management) ;
"Termination Notice"	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination;
"Third Line"	the third level in a hierarchy of support groups which provides investigation and resolution of Incidents within the Supplier Solution. Third Line support aims to resolve all Incidents which cannot be solved immediately by First Line or Second Line support. Third Line support shall

	resolve Incidents where workarounds or code changes to the Supplier System are required, in order to restore operation of the Supplier Solution as quickly as possible;
"Third Party IPR"	means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
"Third Party Software"	means any software identified as such in the Schedule 9 (Software) together with all other software which is not listed in the Schedule 9 (Software) which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which is or will be used by the Supplier for the purposes of providing the Services;
"Training Needs Analysis"	a document describing the different user types who require training and the types of training that each of the users need in order to be able to operate the Supplier Solution as their role requires;
"Transferring Supplier Employees"	means those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.
"Transparency Information"	<p>means:</p> <ul style="list-style-type: none"> a) any information permitted or required to be published by the Procurement Act 2023, any regulations published under it, and any Procurement Policy Notes, subject to any exemptions set out in Sections 94 and 99 of the Procurement Act 2023 which shall be determined by the Customer taking into account account Part C (Commercially Sensitive Information) of Schedule 4 (Supplier Matters); b) any information about this Agreement, including the content of this Agreement requested and required to be disclosed under FOIA or the EIRs, and any changes to this Agreement agreed from time to time, subject to any relevant exemptions, which shall be determined by the Customer taking into account Part C (Commercially Sensitive Information) of Schedule 4 (Supplier Matters); c) any information which is published in accordance with guidance issued by His Majesty's Government, from time to time; and d) any of the information that the Customer is permitted or required to publish by the Procurement Act 2023, any regulations published under it and any Procurement Policy Notes, relating to the performance of the Supplier against any KPI and

	any information contained in any Performance Monitoring Reports (as that term is defined in Schedule 6 (Key Performance Indicators, Service Credits and Performance Monitoring)), subject to any exemptions set out in Sections 94 and 99 of the Procurement Act 2023, or under the provisions of FOIA, which shall be determined by the Customer taking into account Commercially Sensitive Information (if any) listed in Part C (Commercially Sensitive Information) of Schedule 4 (Supplier Matters) ;
“Transparency Reports”	has the meaning given in Clause 30.5.4 (Transparency) ;
“UK GDPR”	has the meaning as set out in Section 3(10) of the DPA 2018, supplemented by Section 205(4) of the DPA 2018;
“Ultimate Parent Undertaking”	a Parent Undertaking of the relevant person which is not a Subsidiary Undertaking of any other person;
"Undisputed Sums Time Period"	has the meaning given to it Clause 38.1.1 (Termination on Failure to Pay) ;
"Update"	means in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
"Upgrade"	means any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during Term;
"Valid Invoice"	means an invoice issued by the Supplier to the Customer that complies with the invoicing procedure in Schedule 3 (Charging, Payment and Invoicing) ;
"Variation"	has the meaning given to it in Clause 20.1 (Variation Procedure) ;
"Variation Form"	means the form set out in Schedule 13 (Variation Procedure) ;
"Variation Procedure"	means the procedure set out in Clause 20.1 (Variation Procedure) ;
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
“Web Content Accessibility Guidelines” or “WCAG”	published guidelines covering a range of recommendations to make web pages more accessible

	to users with visual, hearing, cognitive or mobility difficulties;
“WMS”	Web Map Service;
“Worker”	any individual that personally performs, or is under an obligation personally to perform services for the Customer;
"Working Day"	means any Day other than a Saturday or Sunday or public holiday in England and Wales;
“World Wide Web Consortium (W3C)”	the main international standards organization for the world wide web; and
“XSP”	cross sectional position.

SCHEDULE 2

1. PART A - SERVICES INTRODUCTION

- 1.1 This schedule specifies the intended scope of the Services to be provided by the Supplier under this Agreement and a description of what each of the Services entails.
- 1.2 The requirements for the Services have been categorised under the following headings:
- 1.2.1 Services, comprising the elements as set out in paragraph 2;
 - 1.2.2 Optional Services, comprising the elements as set out in paragraph 3; and
 - 1.2.3 Customer Responsibilities, comprising the elements as set out in paragraph 4.

2. SERVICES

2.1 Introduction

The Customer wishes to appoint a supplier to provide asset management software to support the maintenance and upkeep of its highways asset.

2.2 Capabilities and features

- 2.2.1. Capabilities are high-level elements of the Services that are required to be delivered as part of the Services. The requirements have been set at a high level, using capabilities and features.

Ref	Capability
CP1	Hierarchical asset data: Input, storage and retrieval
CP2	Manual import/export
CP3	Consumption of WMS for ConfirmConnect (Mobile) and use of Confirm API's as per Confirm specification.
CP4	Mapping interface
CP5	Network referencing/segmentation of the network
CP6	Notifications
CP7	Records Management

CP8	Reporting
CP9	Role-based access
CP10	Searches
CP11	Web-based access (read and write)
CP12	Report against multiple networks
CP13	Administrative area-based access (e.g. maintenance areas)
CP14	Client install limited to the Citrix Workspace app for Confirm Host, and the ConfirmConnect application via the AppStore or Google Play for mobile devices.

Table 1

2.2.2. User requirements for the Services cover six themes:

- a) *Manage asset information*: covers activities in support of the collection, update, validation, assurance and storage of inventory and condition data as well as supplementary data such as drawings or reports. These tasks are common to all asset management systems and manifest in similar ways across systems and asset classes;
- b) *Manage asset risk*: covers activities in support of the management of risks associated with the included asset register, e.g. pollution, flooding, and the Strategic Road Network resilience. These elements address assets as well as associated, cross asset risks contained in priority registers.
- c) *Maintain assets*: these tasks address the management recording and evidencing of operational maintenance information;
- d) *Provide asset information*: this theme covers facilities provided by a system for sharing of data to support and inform onward analysis by users unfamiliar with the discipline. These data may be in support of Decision Support Tools, scheme proposals, or for commercial costing or accounting purposes;
- e) *Reporting*: data that supports and informs the development and assessment of performance indicators against operational targets, professional standards or regulatory requirements; and
- f) *Design and build*: data that supports the design, construction and commissioning of new assets.

2.3 Non-functional requirements

2.3.1. The non-functional features for the Services which are met by the Software are shown in ANNEX A.

2.3.2. The Supplier shall maintain all Software used to meet all the requirements in ANNEX A. **2.4. Asset-specific requirements**

2.4.1. The functional features for the Services which are met by the Software are shown in ANNEX B respectively.

2.4.2. The Supplier shall maintain all Software used to meet all the requirements in ANNEX B. **2.5. General functional requirements**

2.5.1. The Supplier Solution shall meet (through development, customisation and/or configuration) all the General Functional Requirements shown in ANNEX D.

2.6. System requirements

User interface

2.3.1. The user interface for the Supplier Solution shall be browser-based and shall work with Open Web Platform, World Wide Web Consortium (W3C) standards-compliant (cross browser), and cross-platform compliant web browsers (e.g. Google Chrome and Firefox).

2.3.2. The Supplier shall provide a user interface for the Supplier Solution to meet (or exceed) Level AA of the Web Content Accessibility Guidelines (WCAG) 2.1 (W3C Recommendation June 2018).

2.3.3. The Supplier shall ensure the Supplier Solution is accessible to users who have communication difficulties stemming from a protected characteristic as set out in the Equality Act, with the outcome not being inferior in terms of quality or standard.

2.3.4. The Supplier shall ensure that the user interface for the Supplier Solution is consistent as to the design of controls, warnings, indicators and layout of presentation elements.

2.3.5. The Supplier shall ensure that the user interface for the Supplier Solution draws the natural focus of the user to the place where attention is required to complete the required operational task.

2.3.6. The Supplier shall ensure that the screen lay-out supports the user in the processes of completing the required operational task.

2.3.7. The Supplier shall ensure that colour is used in presentation of information to support the user in the processes of completing the required operational task.

2.3.8. The Supplier shall provide a user interface for the Supplier Solution to support the avoidance of erroneous Input e.g. through the use of data validation, on screen tips and context dependent help being available.

2.3.9. The Supplier shall provide a user interface for the Supplier Solution to support experienced users by providing quick entry Input means.

- 2.3.10. The Supplier shall provide a user interface for the Supplier Solution so as to support the overall objectives for efficiency by providing an efficient experience for users so as to minimise the delays in performing tasks. This shall include as a minimum: a) consideration of the number of clicks to carry out processes;
- b) presentation of information as to be readily identifiable as to its relevance;
 - c) grouping of related functions so as to simplify processes;
 - d) pre-filling of screens as users progress through standard workflows;
 - e) consistency; and
 - f) effective use of role based access control, single sign on and other measures to remove any need for users to re-authenticate needlessly.

Architecture

- 2.3.11. The Supplier Solution shall be compliant with Government Digital Service technology and digital standards as identified in Schedule 7 (Standards).
- 2.3.12. The Supplier Solution shall be supplied as a cloud-based software service.
- 2.3.13. The Supplier shall ensure that the Supplier Solution is designed in accordance with Schedule 8 (Security) Annex 1 Security Requirements.
- 2.3.14. The Supplier shall ensure that it complies with the Customer's procedures for safeguarding the connection and the format of transmitted data exchanged electronically.
- 2.3.15. The Supplier shall ensure that the Supplier Solution complies with industry open standards.
- 2.3.16. The Supplier shall ensure that the Supplier Solution exposes its main functions as services.
- 2.3.17. The Supplier shall ensure that the Supplier Solution exposes, uses and integrates services provided by other (external) systems.
- 2.3.18. The Supplier shall ensure that the Supplier Solution exposes, uses and integrates data provided by other (external) systems.
- 2.3.19. The Supplier shall ensure that the Supplier Solution has provisions for legacy integration using mechanisms such as an adapter framework.
- 2.3.20. The Supplier shall ensure that the Supplier Solution has a flexible and open software architecture.
- 2.3.21. The Supplier shall ensure that the Supplier Solution consists of discrete pieces of software (modules) that provide application functionality through well-defined services to other modules and applications.
- 2.3.22. The Supplier shall ensure that the Supplier Solution modules provide services that impose low consumer coupling and that themselves are decoupled from its surrounding environment.

- 2.3.23. The Supplier shall ensure that the Supplier Solution modules provide services that are described in such a way, so they can be used by an (expert) third party.
- 2.3.24. The Supplier shall ensure that the Supplier Solution modules provide services that are published using the Open API Specification.
- 2.3.25. The Supplier Solution architecture shall support the Customer vision to provide Data-as-a-Service (DaaS).
- 2.3.26. The Supplier Solution will provide APIs that will allow other applications direct access to data at source or will allow data to be extracted into the Customer's Data Lake or Data Warehouse. The asset system is in tier 1 of the model ('Asset Inventory Systems', see Figure 1 below).

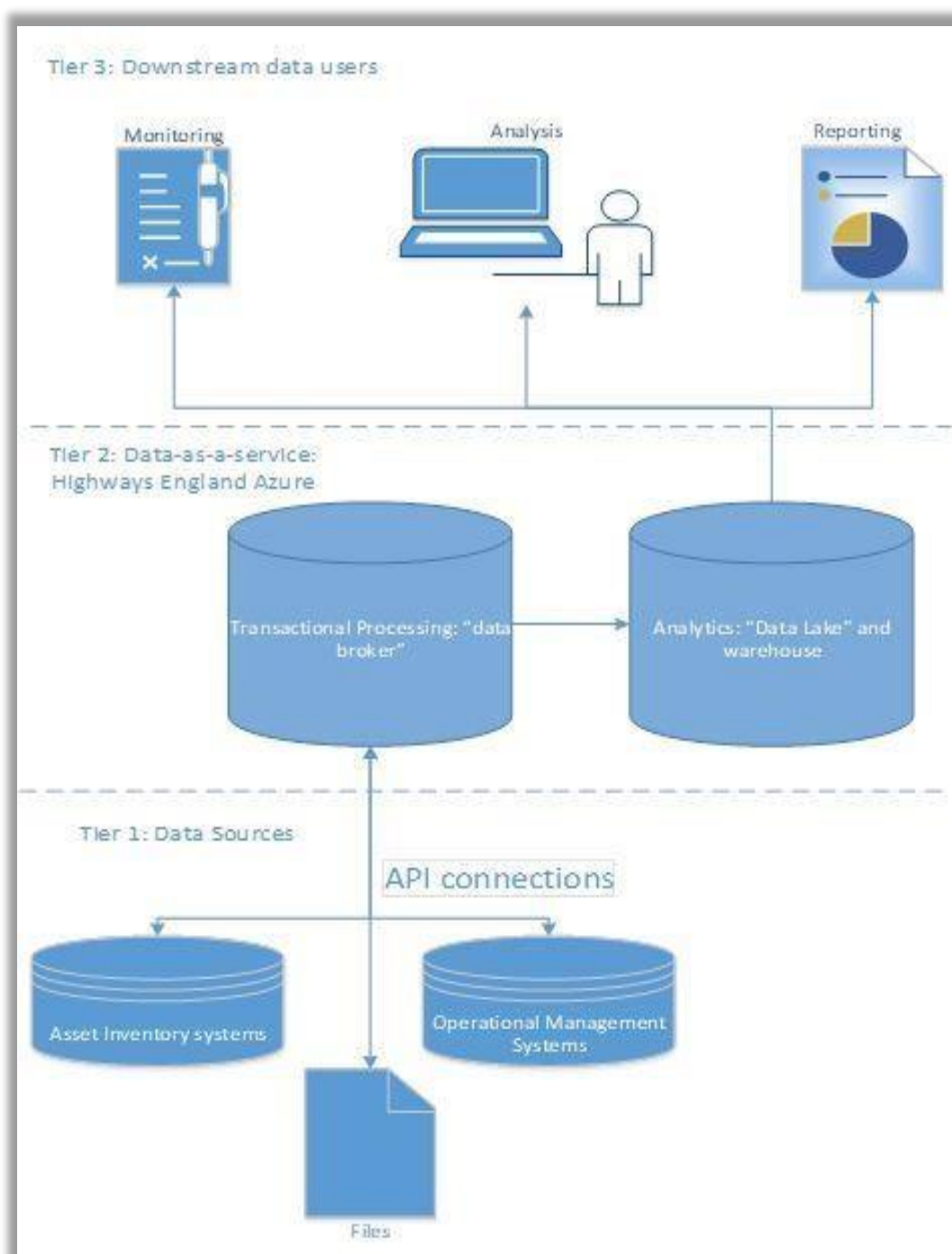


Figure 1: Customer Vision – DaaS

Storage

2.3.27. Confirm provides 4GB storage per user as a default which is incrementally reduced / increased according to the registered user license profile. Storage capacity is automatically monitored and flagged for review via your designated account manager should it exceed or near capacity. Additional storage can be purchased via the Supplier from AWS at the Customer's cost and applied to the environment on the Customer's behalf upon request.

Bandwidth

- 2.3.28. The Supplier Solution shall be capable of managing the traffic in accordance with the number of] concurrent users indicated in the table at paragraph 3.2 of Schedule 3 (Charging, Payment and Invoicing) carrying out mixed tasks with variable transaction volumes, such that the user experience is acceptable for normal web application usage. Any change to the number of users agreed at the Effective Date shall be subject to the Variation Procedure.
- 2.3.29. Typical tasks performed via the Supplier Solution will be:
- a) viewing the map interface;
 - b) searching for data;
 - c) viewing report records;
 - d) job scheduling and
 - e) downloading data.

Mobile data capture

- 2.3.30. The Supplier Solution shall provide and maintain a mobile data capture capability for asset inspections.
- 2.3.31. The Customer shall provide and maintain their own hardware for mobile data capture, if required by the Customer. The hardware shall be to an agreed specification..

Software for records management

- 2.3.32. The Supplier Solution shall enable the Customer (and its supply chain) to manage its records for submission in a PDF format.

Technical skills and experience

- 2.3.33. The Supplier shall provide Supplier Personnel with the following technical skills and experience:
- a) agile software development;
 - b) software engineering;
 - c) GUI ergonomics;
 - d) process mapping;
 - e) use-case scenario mapping;
 - f) knowledge of GIS;
 - g) computer programming;
 - h) database design;
 - i) data analysis;
 - j) writing user guidance;
 - k) Records Management;
 - l) communication;
 - m) task prioritisation; and

n) configuration management.

2.3.34. The following roles shall be deemed Key Roles for the purposes of this Agreement:

- a) Supplier Representative;
- b) Project Manager;
- c) the Supplier Personnel with responsibility for data architecture;
- d) the Supplier Personnel with responsibility for data design; and
- e) the Supplier Personnel with responsibility for data processing.

2.7. Liaison with the Customer

2.7.1. The Data Administrator for Records Management shall liaise with the Customer's Records Management Team as required by the Customer.

2.7.2. The Data Administrator for Records Management shall check and review reports issued by the Customer and its supply chain, prior to arranging for upload into the Supplier Solution.

2.8. Data quality

2.8.1. The Supplier shall make adequate provision to ensure that the quality of the data is maintained during data entry, storage and retrieval. Audits will be carried out by the Customer to check data quality.

2.8.2. The Data Administrator for Records Management shall carry out quality checks on the data held and generally assist the Customer with the management of its records. The checks shall be agreed with the Customer.

2.9. Data quality management requirements

2.9.1. The Supplier Solution shall:

- a) enable an audit of all actions by specific user ID;
- b) enable and apply the Customer's retention and disposal schedule to the information stored in the Supplier Solution as outlined in Schedule 7 (Standards) Annex 2;
- c) enable secure deletion of information where the information is overwritten so it cannot be restored once the retention period has expired and the information deleted;
- d) enable the ability to ring-fence records (legally called applying a "hold") to prevent their destruction when required for legal purposes without the need to cease destructions on the remainder of the Supplier Solution;
- e) enable reporting of what has been deleted from the Supplier Solution, when and by whom (user ID); and
- f) enable the ability to manage systems access and restricting activity (e.g. the ability to delete information).

2.10. General management

- 2.10.1. The Supplier shall undertake all the IT Service Management (ITSM) general management practices set out in ITIL 4 and the standards in paragraph 7 of Schedule 7 (Standards) in order to deliver the Services.
- 2.10.2. The Supplier's Key Roles for the delivery of the Services shall be based in the United Kingdom.
- 2.10.3. The Supplier shall have an appropriate number of suitably skilled and experienced Supplier Personnel to operate the Supplier Solution ten (10) hours five (5) Working Days per week.
- 2.10.4. The Supplier shall give access and notify users within two (2) Working Days of any such request.
- 2.10.5. The Supplier shall provide training on all relevant elements of the Supplier Solution to users.
- 2.10.6. The Supplier shall provide ongoing training of the Supplier Solution informed by the Training Needs Analysis.
- 2.10.7. The Supplier shall provide refresher training with each upgrade or change to the Supplier Solution or its functionality.
- 2.10.8. The Supplier shall provide Documentation to accompany all training courses covering all relevant aspects of the course material.
- 2.10.9. The Supplier shall produce and maintain Knowledge Articles for the Supplier Solution.
- 2.10.10. The Supplier shall provide details to the Customer every month on user satisfaction in accordance with the GDS Service Manual.

2.11. Service Management

- 2.11.1. The Supplier shall undertake all the IT Service Management (ITSM) service management practices set out in ITIL 4 and the standards in paragraph 7 of Schedule 7 (Standards) in order to deliver the Services.
- 2.11.2. The Services shall be operational ten (10) hours a day, each Working Day of the year following the Commencement Date.
- 2.11.3. The Supplier shall provide a notification by email or telephone of any outage.
- 2.11.4. The Supplier Solution shall broadcast a status upon shut down and/or re-start to all relevant users.
- 2.11.5. Software application errors in the Supplier Solution shall be logged through an agreed ITSM process that is controlled from receipt of the initial fault report to fix of the Software.
- 2.11.6. The Supplier Solution shall have a function that logs all commands generated by the software applications/modules and the users.
- 2.11.7. The Supplier shall automate monitoring of the Supplier Solution to optimise the delivery of the Services.
- 2.11.8. The Supplier shall self-monitor its Services to support performance reporting as agreed between the Customer and the Supplier, including as set out in Schedule 6 (Performance Levels) of this Agreement.

- 2.11.9. The Supplier shall undertake IT Change Management in accordance with ITIL 4.
- 2.11.10. The Supplier shall provide a UK-located Service Desk aligned to ITIL 4 practices, accessible as a minimum, via phone and e-mail, and which shall serve as a single point of contact users for all IT Service Management queries relating First Line, Second Line, and Third Line support of the Supplier Solution.
- 2.11.11. The Supplier shall monitor and manage IT infrastructure and information assets.
- 2.11.12. The Supplier shall log Incidents and Problems and associated updates with the Service Desk.
- 2.11.13. The Supplier shall store and maintain records of all communications including, as a minimum, details and categorisation of what was received or sent, the communications transmitted, the date and time of communications received or sent, and user details.
- 2.11.14. The Supplier shall store data and information in persistent storage that allows for efficient retrieval to support data analysis.
- 2.11.15. The Supplier shall provide Supplier Solution configuration documentation and release notes for each Release.
- 2.11.16. The Supplier Solution shall be resilient to multiple and cascading subsystem failures.
- 2.11.17. The Supplier shall provide a Disaster recovery site in accordance with Good Industry Practice and the requirements of Schedule 10 (Business Continuity & Disaster Recovery) to allow full recovery of the Services should the primary site fail.
- 2.11.18. The Disaster recovery site shall be kept at a safe distance in accordance with Good Industry Practice to eliminate the risk of both sites being made unavailable at the same time due to any unforeseen Disaster.
- 2.11.19. The Supplier shall activate the Disaster recovery site within twelve (12) hours of the Disaster.
- 2.11.20. The Supplier shall take a full backup of the Customer Data every twenty four (24) hours and send the backup off-site to ensure minimum Data loss.
- 2.11.21. The Supplier Solution backed up Customer Data shall be made available to the Customer on request.
- 2.11.22. The Supplier Solution shall deliver a maximum Recovery Point Objective of one (1) hour.
- 2.11.23. The Supplier Solution shall be capable of 'rolling back' to a known working state should the introduction of an upgrade or enhancement be found to be causing Incidents and Problems in the Live Environment.
- 2.11.24. The Supplier shall employ Supplier Personnel with appropriate information security management skills and experience to liaise with the Customer on a regular basis.

- 2.11.25. The Supplier shall provide an access control mechanism whereby access to the Supplier Solution is controlled.
- 2.11.26. The Supplier shall provide appropriate protection from unauthorised access to the Supplier Solution.
- 2.11.27. The Supplier shall enable access to Customer Data using controlled access permissions.
- 2.11.28. The Supplier shall operate an IT Service Management toolset in delivery of its IT Service Management activities and provide access to the IT Service Management toolset to the Customer.

2.12. Technical management

- 2.12.1. The Supplier shall undertake all the IT Service Management (ITSM) technical management practices set out in ITIL 4 and the standards in paragraph 7 of Schedule 7 (Standards) in order to deliver the Services.
- 2.12.2. The Supplier shall provide Pre-Production Environments that simulate live functionality.
- 2.12.3. The Supplier shall maintain a minimum of one (1) Pre-production Environments, to support development, testing and training, that are distinct and separate from the Live Environment to support Supplier Solution development before release into the Live Environment.
- 2.12.4. The Supplier shall conduct training in the Pre-production Environments and will not use the Live Environment for the conduct of training.
- 2.12.5. The Supplier's Pre-production Environments shall be updated to represent the relevant elements of the Live Environment and shall include any test harnesses, simulators and hardware/or software updates required.
- 2.12.6. The Supplier's Pre-production Environments shall use Good Industry Practice test automation tools to reduce the cost.
- 2.12.7. The Supplier's Pre-production Environments shall be correctly configured and available on an ongoing basis.
- 2.12.8. The Supplier's Pre-production Environments shall be maintained so as to generate consistent results that will allow new outputs to be comparable to baseline results.
- 2.12.9. The Supplier shall make available sufficient business and operational IT equipment (hardware and software), IT processing power, IT storage and IT bandwidth to deliver the Services.
- 2.12.10. The Supplier Solution will be scalable to support an additional one hundred (100) concurrent users as required by the Customer over the Term.
- 2.12.11. The Supplier will implement and deploy Software enhancements and fixes to the Supplier Solution in accordance with ITIL 4.

3. OPTIONAL SERVICES

- 3.1 A list of requirements to be delivered as part of the Optional Services is shown in ANNEX E.

4. CUSTOMER RESPONSIBILITIES

4.1 The Customer shall:

- a) perform those obligations of the Customer which are set out in the Clauses of the Agreement and the paragraphs of the Schedules.
- b) use its reasonable endeavours to provide the Supplier with access to appropriate members of the Customer's staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;
- c) provide sufficient and suitably qualified staff to fulfil the Customer's roles and duties under this Agreement as defined in Schedule 4 (Supplier Matters);
- d) use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Agreement provided that such documentation, data and/or information is available to the Customer and is authorised for release by the Customer;
- e) procure for the Supplier such agreed access and use of the Customer Premises (as a licensee only) and facilities (including relevant IT systems) as is reasonably required for the Supplier to comply with its obligations under this Agreement, such access to be provided during the Customer's normal working hours on each Working Day or as otherwise agreed by the Customer (such agreement not to be unreasonably withheld or delayed);
- f) cooperate in the review of all Documentation and Deliverables submitted to the Customer by the Supplier; and
- g) act reasonably in relation to any request to provide support for resolving any issues.

4.2 The Customer shall, in relation to this Agreement perform the Customer Responsibilities identified as such in this Agreement, the details of which are set out below

Ref	Relevant schedule	Customer Responsibility
1.	Schedule 2	The Customer shall use reasonable endeavours to ensure its staff attend training courses provided by the Supplier to timescales agreed with the Supplier.
2.	Schedule 2	The Customer shall make available the asset data and information held by the Customer to enable the Supplier Solution to collect asset data and information in accordance with this Schedule.

3.	Schedule 2	The Customer shall provide the Customer Assets in line with reasonable and agreed lead times as agreed in any implementation plan for additional services.
4.	Schedule 2	The Customer shall provide the interface specifications to the Customer System.
5.	Schedule 2	The Customer will provide access to relevant parts of the Customer System to enable the Supplier to conduct testing and other similar activities.
6.	Schedule 2	The Customer will facilitate meetings between any third parties to define mutually acceptable interface formats.
7.	Schedule 2	<p>The Customer will facilitate the cooperation of any replacement supplier in relation to:</p> <ul style="list-style-type: none"> • knowledge transfer; and • transfer of Documentation.
8.	Schedule 2	The Customer will facilitate necessary transitional and operational discussions between the Supplier, any replacement supplier, and any other applicable third parties as required.

PART B – ANCILLARY TERMS FOR THE SUPPLIER SOLUTION

5. ADDITIONAL DEFINITIONS FOR PART B ONLY

5.1 For the purposes of this Part B only, the following terms have the following meanings:

“AUP” means the Supplier’s Acceptable Use Policy available at <https://www.siemens.com/sw-terms/aup> and incorporated into this Agreement by this reference;

“**Cloud Services**” means online services provided within the Offering;

“**Documentation**” means the instructions for use, learning materials, technical and functional documentation, and API information made available by the Supplier with the applicable Offering, in print, online, or embedded as

part of a help function, which may be updated by the Supplier from time to time;

“Offering” means the Supplier Solution;

“Software” means software licensed by the Supplier under this Agreement and made available for download or otherwise delivered to Customer for installation, including updates, modifications, design data, and all copies thereof, associated software-based APIs, scripts, toolkits, libraries, reference or sample code, and similar materials.

6. USE OF OFFERINGS

6.1 Use Rights

- 6.1.1. For Cloud Services contained within an Offering, the Supplier grants the Customer a nonexclusive, nontransferable, limited right to access and use such Cloud Services for the Customer’s internal business purposes, solely in accordance with the terms of this Agreement. For Software and Documentation contained within an Offering, the Supplier grants the Customer a nonexclusive, nontransferable, non-sublicensable, limited license to use the Documentation and install and use Software for the Customer’s internal business purposes during the duration of this Agreement, solely in accordance with the terms of this Agreement.

6.2 Users

- 6.2.1. The Customer will ensure that any access or use of an Offering on the Customer’s behalf, at the Customer’s invitation, or by invitation of a Customer user, complies with the Customer’s obligations under this Agreement. If the Customer becomes aware of any violation of this Agreement by a user or any unauthorized access to any user account, the Customer will immediately notify the Supplier and terminate the relevant user or user account’s access to Offerings. The Customer is responsible for any act or failure to act by any user or any person using or accessing the account of a user in connection with this Agreement. The Customer acknowledges and agrees that users who submit declarations, notifications, or orders to the Supplier are acting on the Customer’s behalf. If a Customer affiliate accesses or uses an Offering, the Supplier may enforce its rights directly against that affiliate.

6.3 General Use Restrictions

- 6.3.1. Except as authorized in this Agreement, the Customer will not, and will not permit any person or entity to, (i) resell, transfer, sublicense, publish, loan, or lease any Offering, or use any Offering for the benefit of any third party without the prior written consent of the Supplier, (ii) modify, alter, tamper with, repair, or create derivative works of any Offering, (iii) reverse engineer, disassemble, decompile, or otherwise attempt to discover the source code of any Offering, (iv) use any Offering in a manner that could subject such Offering to any open source software license that conflicts with this Agreement or that does not otherwise apply to such Offering, (v) use any Offering for the purpose of developing or enhancing any product that is competitive with such Offering, or (vi) remove any proprietary notices or legends contained in or affixed to any Offering. The Customer will only use APIs identified as 'published' in the Documentation, and only as described therein to support the authorized use of Offerings. The Customer may copy Software or Documentation only as required to support use of the Offering as expressly authorized in this Agreement, and will ensure that any such copy includes all proprietary notices contained in the Software or Documentation or affixed thereto as received from the Supplier. The restrictions set out in this paragraph do not apply to the extent they conflict with mandatory applicable law.

6.4 Security of Customer Services

- 6.4.1. The Customer is responsible for the security of the Customer systems, including Software on the Customer's systems, and will take commercially reasonable steps to exclude malware, viruses, spyware, and Trojans from the Customer's systems.

7. ADDITIONAL TERMS FOR CLOUD SERVICES

7.1 Acceptable Use Policy; Indemnity

- 7.1.1. The Customer will comply, and ensure that all users of any Offering comply, with the AUP. Subject to clause 32 of this Agreement, the Customer will indemnify the Supplier, its affiliates, its subcontractors, and their representatives against any claims, damages, fines, and cost (including attorney's fees and expenses) arising from (i) any violation of the AUP by the Customer or any user, (ii) any violation of laws, regulations, or rights of others by the Customer's or any user's use of any Offering, or (iii) Customer Content.

7.2 Ownership and Use of Customer Content

- 7.2.1. The Supplier will not acquire any title to or ownership of Customer Content by virtue of this Agreement. The Supplier and its subcontractors will use Customer Content only for the purpose of providing Offerings, or as otherwise permitted by this Agreement or agreed by the parties. The Customer is responsible for the content, management, transfer, use, accuracy, and quality of Customer Content and the means by which the Customer acquires such Customer Content. The Supplier recommends that the Customer confirms the geographic area in which Customer Content will be stored, which may be outside the country in which the Customer is located. The Customer will ensure that Customer Content can be processed and used as contemplated by this Agreement without violating any rights of others or any laws or regulations.

7.3 Protection of Customer Content

- 7.3.1. Cloud Services will be provided using processes and safeguards designed to protect the integrity and confidentiality of Customer Content, including encryption of data in transit and at rest. Some Cloud Services may provide features that allow the Customer to share Customer Content with third parties or make Customer Content public through use of certain Cloud Services. If the Customer elects to use such features, Customer Content may be accessed, used, and shared by third parties to whom the Customer provides such access or shares such Customer Content, and the Customer's election to use such features is at its sole discretion and risk.

8. WARRANTIES AND DISCLAIMERS

8.1 Cloud Services Warranty

- 8.1.1. Subject to the terms of the Agreement, the Supplier warrants that Cloud Services will perform substantially in accordance with the features and functionalities described in the Documentation. To the extent permissible under applicable law, as the Supplier's entire liability and the Customer's sole and exclusive remedy for a breach of this warranty, at Siemens' option (i) the Supplier will use commercially reasonable efforts to restore the non-conforming Cloud Services so that they comply with this warranty, or (ii) if such restoration would not be commercially reasonable, the Supplier may terminate the Order for the non-conforming Offering and refund any prepaid fees for such Offering on a pro-rata basis for the remainder of the term of the Agreement (excluding any extension period, unless the extension period has been exercised by the Customer). The warranty for Cloud Services excludes (a) No-Charge Offerings and Previews, and (b) issues, problems, or

defects arising from Customer Content, Third Party Content, or use of Cloud Services not in accordance with the terms of this Agreement.

9. INTELLECTUAL PROPERTY INFRINGEMENT INDEMNITY

9.1 Infringement Claim Indemnity

- 9.1.1. The Supplier will indemnify and defend, at its expense, any action brought against the Customer to the extent that it is based on a claim that the Offering infringes any copyright, any trade secret, or a patent or trademark issued or registered by the United States, Japan, or a member of the European Patent Organization, and will pay all damages finally awarded against the Customer by a court of competent jurisdiction or agreed in a settlement, provided that the Customer gives Supplier (i) prompt written notice of the claim, (ii) all requested information and reasonable assistance related to the claim and (iii) sole authority to defend or settle the claim. Siemens will not admit liability or incur obligations on the Customer's behalf without the Customer's prior written consent, which will not be unreasonably withheld.

10. EXPORT CONTROLS AND SANCTIONS COMPLIANCE INFRINGEMENT INDEMNITY

10.1 General

- 10.1.1. The Customer shall comply with all applicable sanctions, embargoes, and (re-)export control laws and regulations, and, in any event, with those of the European Union, the United States of America and any locally applicable jurisdiction (collectively "**Export Regulations**").

10.2 Checks for Goods and Services

- 10.2.1. Prior to any transaction by the Customer concerning goods (including Hardware, Documentation and technology) delivered by the Supplier, or services (including Professional Services, maintenance and technical support) performed by the Supplier to a third party, the Customer shall check by appropriate measures that (i) the Customer's use, transfer, or distribution of such goods and services, the brokering of contracts or the provision of other economic resources in connection with goods and services will not be in violation of any Export Regulations, also taking into account any prohibitions to circumvent these (e.g., by undue diversion); (ii) the goods and services are not intended or provided for prohibited or unauthorized non-civilian purposes (e.g. armaments, nuclear technology, weapons, or any other usage in the field of defense and military); and (iii) the Customer has

screened all direct and indirect parties involved in the receipt, use, transfer, or distribution of the goods and services against all applicable restricted party lists of the Export Regulations concerning trading with entities, persons and organizations listed therein.

10.3 **Non – Acceptable Use of Software and Cloud Services**

- 10.3.1. The Customer shall not, unless permitted by the Export Regulations or respective governmental licenses or approvals, (i) download, install, access or use the Software or Cloud Services from or in any location prohibited by or subject to comprehensive sanctions or subject to license requirements according to the Export Regulations; (ii) grant access to, transfer, (re-)export (including any ‘deemed (re-)exports’), or otherwise make available the Software or Cloud Services to any entity, person, or organization identified on a restricted party list of the Export Regulations, or owned or controlled by a listed party; (iii) use the Software or Cloud Services for any purpose prohibited by the Export Regulations (e.g. use in connection with armaments, nuclear technology or weapons); (iv) upload to the Cloud Services platform any Customer Content unless it is non-controlled (e.g. in the EU: AL = N; in the U.S.: ECCN = N or EAR99); or (v) facilitate any of the aforementioned activities by any user. The Customer shall provide all users with all information necessary to ensure compliance with the Export Regulations.

10.4 **Semiconductor Development**

- 10.4.1. The Customer will not, without advance written authorization from the Supplier, use Offerings for the development or production of integrated circuits at any semiconductor fabrication facility located in China meeting the criteria specified in the U.S. Export Administration Regulations, 15 C.F.R. 744.23.

10.5 **No (Re-)Export to Russia or Belarus**

- 10.5.1. The Customer shall not export or re-export, directly or indirectly, to the Russian Federation or Belarus or for use in the Russian Federation or Belarus any Offerings supplied by the Supplier in connection with this Agreement. The Customer shall undertake its best efforts to ensure that the purpose of this paragraph is not frustrated by third parties, including authorized solution partners. The Customer shall establish and maintain an adequate monitoring mechanism to detect conduct by any third parties that would frustrate the purpose of this paragraph.

10.6 **Information**

- 10.6.1. Upon request by the Supplier, the Customer shall promptly provide the Supplier with all information pertaining to users, the intended use, and the location of use, or the final destination (in the case of Hardware, Documentation and technology) of the Offerings. The Customer will notify the Supplier prior to the Customer disclosing any information to the Supplier that is defense-related or requires controlled or special handling pursuant to applicable government regulations and will use the disclosure tools and methods specified by the Supplier.

10.7 Indemnification

- 10.7.1. Subject to clause 32 of this Agreement, the Customer will indemnify and hold harmless the Supplier, its affiliates, subcontractors, and their representatives against any claims, damages, fines, and costs (including attorney's fees and expenses) relating in any way to Customer's noncompliance with this paragraph 10, including the Customer's and its users' and third party business partners' violation or alleged violation of any Export Regulations and the Customer will compensate the Supplier all losses and expenses resulting thereof.

10.8 Reservation

- 10.8.1. The Supplier shall not be obligated to fulfill this Agreement if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions. Customer acknowledges that the Supplier may be obliged under the Export Regulations to limit or suspend access by the Customer and/or users to the Offerings.

10.9 Compliance with paragraph 10

- 10.9.1. For the purposes of complying with the Customer's obligations in "Checks for Goods and Services" the Customer understands, and the Supplier agrees that its obligations to carry out any checks and screenings should be limited to conducting an assessment under all applicable UK export control laws and regulations.

ANNEX A – OPERATIONAL NON-FUNCTIONAL FEATURES

Ref	Feature description	Grouping
NF1	System to identify what data has been changed, by whom, and when.	Data quality
NF2	Customer to configure Organisational Unit access controls to data.	Data quality
NF3	Customer to configure “function-based” access controls to data.	Data quality
NF4	Consumption but not provision of WMS for use with mobile devices using ConfirmConnect if required.	Data quality
NF5	API information for the bulk download and upload of data.	Data quality
NF6	Ensure system can be accessed in "modern" web browsers.	Data quality
NF7	Use open standards and file formats.	Data quality
NF8	Enable data view at a specific date (“flash query”).	Data quality
NF9	Ensure single source of data (normalised).	Data quality
NF10	Implement schema based on review of Logical Data Model.	Data quality
NF11	Enable Strategic Road Network updates at monthly intervals.	Data quality
NF12	Enable the capture of usage information to support benefits realisation.	Data quality
NF13	Ensure appropriate level of security in accordance with the principle of least privilege.	Data quality
NF14	Read only and read/write access controlled at role or Customer area level.	Data quality

NF15	Client install limited to the Citrix Workspace app for Confirm Host, and the ConfirmConnect application via the AppStore or Google Play for mobile devices.	Data quality
Ref	Feature description	Grouping
NF16	Connected Strategic Road Network model.	Data quality
NF17	Be able to derive values based on knowledge of algorithms and Inputs.	Data quality
NF18	Provide online support manual.	Data quality
NF19	Provide backup and recovery.	Data quality
NF20	Provide adequate bandwidth to enable satisfactory user experience.	Data quality
NF21	Provide adequate storage.	Data quality
NF22	Comply with the workflow and authorisation requirements associated with the asset delivery model.	Data quality
NF23	Provide an ergonomic user interface.	Data quality
NF24	System to be available between 24 hours a day, 7 days a week and in accordance with Schedule 6 (Service Levels, Service Credits & Performance Monitoring).	Data quality
NF25	Provide relational data models for storage and retrieval of the following data.	Data quality
NF26	Index data for fast searching.	Data quality

ANNEX B – OPERATIONAL ASSET FUNCTIONAL FEATURES

Ref	Feature description	Functional grouping
MP1	Display thematic mapping of asset inventory and condition data.	Mapping
MP2	Display 3rd party mapping e.g. aerial photography.	Mapping
MP3	Display Ordnance Survey base map.	Mapping
MP4	Map interface to allow users to interact with the map and features including:	Mapping
MP5	Map interface to allow users to select features from a map and drill down to the feature details.	Mapping
MP6	Map interface to allow the users to show selected features on a map.	Mapping
MP7	Show multi-tier legend.	Mapping
MP8	Allow general user to turn on/off layers.	Mapping
MP9	Allow general user to query layer.	Mapping
MP10	Show WMS getFeatureinfo.	Mapping
MP11	Show WMS legends.	Mapping
MP12	Select by line and buffer.	Mapping
MP13	Allow general user to select by point and buffer.	Mapping
MP14	Display open source base mapping.	Mapping
SR1	Search facilities to enable users to find asset information based on one or more criteria.	Searching and reporting

SR2	Search facilities to enable the user to search and report data at fixed date points.	Searching and reporting
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Ref	Feature description	Functional grouping
SR3	Search facilities to allow the user to compare data between two fixed date points.	Searching and reporting
SR4	Search facilities to allow the user to report on data items to check against data quality requirements.	Searching and reporting
SR5	Ability to output search results to a map.	Searching and reporting
SR6	Search of text content of report records in PDF format.	Searching and reporting
SR7	Save preferences across sessions.	Searching and reporting
SR8	Allow the general user to download search results in csv format.	Searching and reporting
SR9	Enable fuzzy searching.	Searching and reporting
SR10	Capture and store data for reporting on scheduled, automated basis.	Searching and reporting
SR11	Create scheduled reports.	Searching and reporting
SR12	Store scheduled reports.	Searching and reporting
SR13	Create automated scheduled report to multiple email addresses.	Searching and reporting

SR14	Provide general user control over chart axes, size, legends, colours etc.	Searching and reporting
DS1	Hold asset inventory, condition, inspection, construction and maintenance data as required by the Customer.	Data storage
DS2	Store reporting data at set intervals (Data Snapshots).	Data storage
DS3	Store attached files to assets in common formats (jpg. pdf, zip. etc).	Data storage

Ref	Feature description	Functional grouping
DS4	Store (non-attached) files in common formats (pdf. xls, zip. etc).	Data storage
DS5	Store attached files to report records.	Data storage
DS6	Asset maintenance form (historic) data.	Data storage
DS7	Asset surveys.	Data storage
DS9	Asset Incidents.	Data storage
DS10	Off-Strategic Road Network assets.	Data storage
DS11	Point and line assets.	Data storage
DS12	Definable pick lists for specific attributes.	Data storage
DS13	Enter/amend/delete data via handheld device.	Data storage
DS14	Download and upload of data from a handheld device.	Data storage
DS15	Records Management, including disposition schedules and actions.	Data storage

DS16	Able to store data relating to the Strategic Road Network, including DBFOs.	Data storage
DS17	Capture update and disposal metadata (who & when).	Data storage
DS18	Provide error handling and reporting on data upload.	Data storage
DS19	Provide software for mobile data capture solution for use on iOS, Android and/or Windows Tablet devices as supplied by National Highways	Data storage
DS20	Link records and documents to assets and observations.	Data storage

Ref	Feature description	Functional grouping
IN1	Configuration of NH's current ADMM upon release	Interoperability
IN3	Download and upload of data to mobile software or hardware.	Interoperability
IN4	Facility for download of files in common formats (txt. xls, etc).	Interoperability
IN5	Facility to check and upload AGS (3.1 and 4+) format files as defined at AGS – Association of Geotechnical and Geoenvironmental Specialists – AGS 4 Data Format	Interoperability
IN6	Enable extraction of selected data fields from AGS data to populate structured data tables.	Interoperability
IN7	Bulk upload (admin only).	Interoperability
IN8	Bulk download.	Interoperability
IN9	RESTful service (GET only).	Interoperability
IN10	WMS consumption.	Interoperability

TD1	Mobile software to enable collection of asset inventory and condition data.	Tools data quality
TD3	Bulk update facility.	Tools data quality
TD4	Format and data validation check of AGS data (versions 3 and 4).	Tools data quality
TD5	User guidance accessible via the interface.	Tools data quality
TD6	A standard set of queries at maintenance area level.	Tools data quality
TD7	Data validation on data entry.	Tools data quality
TD8	An electronic records management system compliant with Customer Standards.	Tools data quality
Ref	Feature description	Functional grouping
TD9	Tool for indexing technical reports for storage and retrieval.	Tools data quality
TD10	Standard data quality assessment tools.	Tools data quality
TD11	Dynamic data validation.	Tools data quality
TD12	Cross attribute validation and cross item validation.	Tools data quality
TD13	Mobile data capture for assets.	Tools data quality

ANNEX C – OPERATIONAL ASSET-SPECIFIC FUNCTIONAL REQUIREMENTS

Ref	Business need ID	Functional requirement	Functional grouping
DRG-FR-003	A.3	Record inventory and condition data as required in the ADMM.	Collect asset info
DRG-FR-004	A.4	Capability to record and update condition and inventory features as items and sets within a linear asset.	Collect and update asset info
DRG-FR-005	A.5	Capability to record inventory information in third dimension e.g. pipe and filter material vertically through layers.	Collect asset info
DRG-FR-006	A.5	Functionality to grade subsurface asset material.	Collect asset info
DRG-FR-010	A.8	Personal settings persist between sessions, e.g. when logging in to the system it displays the same location and layer state as when the user logged out.	User
DRG-FR-012	A.10	Support validation of asset information in the Live Environment.	Validate asset info
DRG-FR-013	A.11	Provide ability to record data quality issues.	Validate asset info
DRG-FR-014	A.12	Store end date/archive asset information.	Archive asset info
DRG-FR-016	A.13	Store safety and maintenance information.	Store asset info
DRG-FR-018	A.13	Access Land Registry information as well as easements as map layers.	Store asset info
DRG-FR-019	A.13	Store ownership information of assets.	Store asset info

DRG-FR-020	A.13	Store maintenance responsibility of assets.	Store asset info
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Ref	Business Functional requirement	Functional grouping need ID	
DRG-FR-023	A.17	Enable interoperability with the Customer's DaaS via APIs. Data replication to occur at least daily.	Maintain data storage standards
DRG-FR-030	B.22	Record and report on incident management.	Oversee risk/incident assessments
DRG-FR-032	B.23	Store and update priority asset register (includes Z list assets from Environment Agency).	Maintain asset risk info
DRG-FR-040	B.26	Support priority asset site-specific assessment.	Perform site specific assessments
DRG-FR-041	B.26	Store and update priority asset register.	Perform site specific assessments
DRG-FR-044	B.26	Recording XSP of assets.	Perform site specific assessments
DRG-FR-046	B.26	Support priority flooding assessment.	Perform site specific assessments
DRG-FR-049	B.28	Record and report flood incidents on flood register.	Record incidents, assess impacts
DRG-FR-051	B.28	Record details of flood status.	Record incidents, assess impacts

DRG-FR-052	B.28	Record new entry on spill register.	Record incidents, assess impacts
Ref	Business need ID	Functional requirement	Functional grouping
DRG-FR-057	C.29	Support Strategic Asset Management Plans.	Develop, maintain and update AMP
DRG-FR-059	C.30	Support, monitor and report on asset maintenance and serviceability.	Oversee maintenance
DRG-FR-060	C.31	Support activity planning by holding access information, particularly for off-Strategic Road Network assets.	Schedule and manage maintenance
DRG-FR-063	C.33	Record asset maintenance.	Record maintenance outcomes
DRG-FR-070	A.1	Provide asset performance and condition reporting	Collect, update, validate, archive and store asset data
DRG-FR-073	A.12	Batch data edit and archive.	Archive asset information
DRG-FR-075	B.23	Priority asset baseline reassessment.	Update priority asset registers
DRG-FR-081	B.28	Spills and accident incident.	Record incidents
DRG-FR-098	E.41	Provide reports to support to Asset Management Plans.	Review asset information

ANNEX D - OPERATIONAL GENERAL FUNCTIONAL REQUIREMENTS

Ref	Business need ID	Functional requirement	Functional grouping
GEN-FR-001	INT.1	Asset information to replicate system representation of Customer-origin data e.g. Asset inventory and condition lines that follow the Strategic Road Network.	Interoperability
GEN-FR-003	INT.3	Enable access to APIs to allow the development of mobile data capture. APIs to include round tripping of data.	Interoperability
GEN-FR-004	INT.4	Automated push and ad-hoc pull data between the service and the Customer's DaaS as required on a nightly basis. Details of the API to be provided. Incremental changes only.	Interoperability
GEN-FR-005	INT.5	Provide the ability for users to access (read only) all "live" data via the Confirm DataWarehouse	Interoperability
GEN-FR-006	INT.6	Provide mobile data capture software	Interoperability
GEN-FR-007	INT.7	Provide the ability to group Asset objects by relevance to a business activity. E.g. reports or assets associated to a project.	Interoperability/reporting

ANNEX E - OPTIONAL REQUIREMENTS

Ref	Business need ID	Functional requirement	Functional grouping
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OPT-FR-001	OPT.1	Provide the ability to export asset, inventory and condition data as open-standard geospatial data (Open Geospatial Consortium) GIS formats e.g. GeoPackage etc. To include polylines shaped to the Strategic Road Network, not just start and end co-ordinates.	Interoperability
OPT-FR-002	OPT.2	Create mobile data capture software for the iOS (Apple) platform.	Interoperability
OPT-FR-003	OPT.3	Create mobile data capture software for the Progressive Web App platform.	Interoperability
OPT-FR-008	OPT.8	Provide output of map to A4 and A3 frame template.	User interface
OPT-FR-009	OPT.9	Enable persistence of user-settings between sessions.	User interface
OPT-FR-010	OPT.10	Provide additional functionality as per the Confirm Roadmap and associated software upgrades/releases for the period of the agreement.	Future user requirements

ANNEX F - MANDATORY THIRD PARTY SOFTWARE

PDF Toolkit (Desktop)		Used to package PDF reports for import into the system.	1	As per Licence Agreement	1	Non-COTS	As per Licence Agreement
Microsoft Windows 2019	Microsoft	Windows Host Operating System	7	None within the bounds of the licence	7	COTS	Monthly Rental
SQL Server Enterprise 2017	Microsoft	Highly Available Relational Database Server	2	None within the bounds of the licence	2	COTS	Monthly Rental
ArcGIS Enterprise	ESRI	Highly Available GIS Mapping Server	2	None within the bounds of the licence	2	COTS	Annual Subs
ArcGIS Professional	ESRI	GIS Desktop Map Authoring	1	None within the bounds of the licence	1	COTS	Annual Subs
ArcGIS JavaScript SDK	ESRI	Front-end GIS mapping library	1	None within the bounds of the licence	1	COTS	Annual Subs

Docker / Docker Swarm	Docker (Opensource)	Container Platform / Orchestration	Apache License 2.0	None currently identified	6	Non-COTS	N/A
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Centos (Linux)	Opensource	Docker Host Operating System	GNU Lesser General Public License 2	None currently identified	6	Non-COTS	N/A
VM hypervisor	VMWare	Virtualisation Software	1	None within the bounds of the licence	1	COTS	Monthly Rental
Kestrel	Microsoft (Opensource)	HTTP Web server.NET Core	Apache License 2.0	None currently identified	16	Non-COTS	N/A
Nginx	F5 (Opensource)	HTTP Web server Linux	BSD 2clause License	None currently identified	1	Non-COTS	N/A
NET Core	NET Foundation (Opensource)	.NET Framework used for Microservices	Microsoft Public License (Ms-PL)	None currently identified	16	Non-COTS	N/A
NET Standard	NET Foundation (Opensource)	.NET Framework used for Mobile	Microsoft Public License (Ms-PL)	None currently identified	1	Non-COTS	N/A

Angular	Google (Opensource)	Front-end design framework	MIT License	None currently identified	1	Non-COTS	N/A
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Kendo UI	Telerik	UI Controls	1	None within the bounds of the licence	1	COTS	Annual Subs
MVVM Cross	NET Foundation	MVVM Framework for Mobile	Microsoft Public License (Ms-PL)	None currently identified	1	Non-COTS	N/A
ArcGIS.NET SDK	ESRI	Mobile GIS mapping library	TBC	None within the bounds of the licence	TBC	COTS	Annual Subs (TBC)
DocNet	Opensource	PDF Editing Library	MIT License	None currently identified	1	Non-COTS	N/A
CSVHelper	Opensource	CSV Manipulation Library	Apache License 2.0	None currently identified	1	Non-COTS	N/A

NetTopologySuite	Opensource	Geometry Manipulation Library	GNU Lesser General Public License	None currently identified	1	Non-COTS	N/A
LibTiff.Net	Opensource	Image Manipulation Library	BSD 3clause License	None currently identified	1	Non-COTS	N/A
SkiaSharp	Opensource	Image Manipulation Library	MIT License	None currently identified	1	Non-COTS	N/A
Ngx Extended PDF	Opensource	Angular PDF Viewer	Apache License 2.0	None currently identified	1	Non-COTS	N/A

SCHEDULE 3
CHARGING, PAYMENT AND INVOICING

1. **DEFINITIONS**

In this Schedule, the following definitions shall apply:

“Supporting Documentation” sufficient information in writing to enable the Customer reasonably to assess whether the Charges and other sums due from the Customer detailed in the information are properly payable, including copies of any relevant receipts where applicable;

PART A

Pricing

1. APPLICABLE PRICING MECHANISM

- 1.1 The Charges shall be per the Supplier's rates and prices specified in Part B.
- 1.2 Each Charge shall be a "Firm Price" and the provisions of paragraph 2 shall apply.

2. FIRM PRICE CHARGES

- 2.1 Charges calculated by reference to a Firm Price pricing mechanism shall not be subject to increase by way of indexation.

PART B

Charges

3. CHARGES

3.1 The Charges consist of an annual licence fee for use of the Software and to include all Services other than Optional Services (unless expressly stated otherwise in this Schedule) as follows:

3.1.1 for Agreement Year 1 - £ £2,592,106.34; and

3.1.2 for Agreement Year 2 – £ £2,592,106.34

3.1.3 for Agreement Year 3 - £2,592,106.34

3.2

[REDACTED]

Detail	Users	Unit Price £/month	Total Price £/month	Total Price £/year
[REDACTED]				
[REDACTED]				
[REDACTED]				
[REDACTED]				
[REDACTED]				
[REDACTED]				
[REDACTED]				
[REDACTED]				
[REDACTED]				
[REDACTED]				
[REDACTED]				
[REDACTED]				
[REDACTED]				
[REDACTED]				
[REDACTED]				

[REDACTED]

[REDACTED]

3.3 The Charges are fixed for the Initial Term, which is three (3) years.

3.4 If the Customer exercises its right to extend the Agreement pursuant to **Clause 6.1(b) (Term)** the Supplier shall use its best endeavours to maintain Charges at the levels set out in this paragraph 3 for the Extension Period, in respect of Agreement Year 4 (as applicable). In any event where price increases are mandated by Supplier and upon the Agreement anniversary, Supplier maintains the right to increase the Charges and other applicable fees in connection with the Extension Period. The Charges increase each year may not exceed 4% in respect of such year.

3.5 The Charges set out in this paragraph 3 are payable monthly instalments.

3.6 Any Service Credits that accrue during a Service Period shall be deducted from any Charges payable in the succeeding Service Period to which they relate.

4. **OPTIONAL SERVICES**

If the Customer gives notice pursuant to **Clause 7.3.1 (Optional Services)** that it requires the Supplier to provide any or all of the Optional Services, Charges for the relevant Optional Services shall be calculated reference to the Supplier's published Price book/rates at the time a quotation is provided. For reference, the Supplier's current day rates are published and can be found and procured either directly or within GCloud 14 here:
<https://assets.applytosupply.digitalmarketplace.service.gov.uk/g-cloud-14/documents/720062/831684615759285-sfia-rate-card-2024-05-03-1638.pdf>

5. **TRAINING**

5.1 Access to Confirm Learn is as follows [REDACTED]
[REDACTED]

PART C

Adjustments to the Charges

6. **SERVICE CREDITS**

- 6.1 Service Credits shall be calculated in accordance with the provisions of **Schedule 6 (Service Levels, Service Credits & Performance Monitoring)**.
- 6.2 The liability of the Supplier in respect of Service Credits shall be subject to Schedule 6.
- 6.3 Service Credits are a reduction of the Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.
- 6.4 Service Credits shall be shown as a deduction from the amount due from the Customer to the Supplier in an invoice for the Service Period succeeding the Service Period to which they relate.

7. **CHANGES TO CHARGES**

- 7.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with the Variation Procedure.

PART D

NOT USED

PART E

Invoicing and Payment Terms

1. SUPPLIER INVOICES

1.1 The Supplier shall:

- 1.1.1 prepare and provide to the Customer for approval of the format a template invoice within ten (10) Working Days of the Commencement Date which shall include, as a minimum, the details set out in paragraph 1.2 together with such other information as the Customer may reasonably require to assess whether the Charges that will be detailed therein are properly payable; and
- 1.1.2 make such amendments as may be reasonably required by the Customer if the template invoice outlined in paragraph 1.1.1 is not approved by the Customer.

1.2 As applicable, the Supplier shall ensure that each invoice contains the following information:

- 1.2.1 the date of the invoice;
- 1.2.2 a unique invoice number;
- 1.2.3 the Service Period or other period(s) to which the relevant Charge(s) relate;
- 1.2.4 the correct reference for this Agreement;
- 1.2.5 the reference number of the purchase order (blanket purchase number (BPA)) to which it relates (if any);
- 1.2.6 the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
- 1.2.7 a description of the Services;
- 1.2.8 the pricing mechanism used to calculate the Charges;
- 1.2.9 the total Charges gross and net of any applicable deductions and, separately, any VAT or other sales tax payable in respect of each of the same;
- 1.2.10 details of any Service Credits, or similar deductions that shall apply to the Charges detailed on the invoice;
- 1.2.11 reference to any reports required by the Customer in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Customer in respect of the Services);

- 1.2.12 a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;
 - 1.2.13 the banking details for payment to the Supplier via electronic transfer of funds;
 - 1.2.14 where the Services have been structured into separate Service lines, the information shall be broken down in each invoice per Service line; and
 - 1.2.15 includes the minimum required information set out in Section 68(9) of the Procurement Act 2023.
- 1.3 Any assessment by the Customer as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Customer any other documentation reasonably required by the Customer from time to time to substantiate an invoice.
- 1.4 The Supplier shall submit all invoices and Supporting Documentation to: invoices@nationalhighways.co.uk along with a copy (again including any Supporting Documentation) to the Customer Representative.
- 1.5 All Supplier invoices shall be expressed in sterling.
- 1.6 The Customer shall regard an invoice as valid only if it complies with the provisions of this Part E. Where any invoice does not conform to the Customer's requirements set out in this Part E. the Customer shall return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements. If there's an invoice dispute, the Customer must pay the undisputed portion of the amount and return the invoice within ten (10) Working Days of the invoice date. The Customer will provide a covering statement with proposed amendments and the reason for any non-payment. The Supplier must notify the Customer within ten (10) Working Days of receipt of the returned invoice if it accepts the amendments. If it does then the Supplier must provide a replacement valid invoice with the response.
- 1.7 If the Customer fails to consider and verify an invoice in accordance with paragraph 1.6, the invoice shall be regarded as valid and undisputed for the purpose of paragraph 2.1 after a reasonable time has passed.
- 1.8 The Customer shall accept for processing any electronic invoice that complies with the Electronic Invoice Standard, provided that it is valid and undisputed.
- 2. **PAYMENT TERMS**
- 2.1 Subject to the relevant provisions of this Schedule, the Customer must pay the Supplier:
 - i before the end of the period of thirty (30) days beginning with the day on which the invoice is received by the Customer in respect of the sum; or

- ii if later, by that date on which the payment falls due in accordance with the invoice,

subject to the invoice being verified by the Customer as valid and undisputed.

- 2.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

SCHEDULE 4

SUPPLIER MATTERS

1. INTRODUCTION

1.1 This Schedule specifies:

- 1.1.1 in Part A, the Key Roles in accordance with **Clause 23 (Key Roles)**;
- 1.1.2 in Part B, the Key Sub-Contractors in accordance with **Clause 25.2 (Appointment of Key Sub-Contractors)**; and
- 1.1.3 in Part C, Commercially Sensitive Information.

PART A: KEY ROLES

KEY ROLE	NAME OF KEY PERSONNEL	RESPONSIBILITIES/ AUTHORITIES
Account relationship and commercial management	██████████	Management of the National Highways and Confirm Solutions Limited Commercial relationship. Primary communication point and account management for all aspects of the relationship
Professional Services Lead	██████████	Professional Services Project Management lead for Confirm delivery into National Highways
Senior Consultant	██████████	Lead Professional Services consultant and SME for Confirm Professional Services Delivery into National Highways
Financial Director	██████████	Point of escalation for financial matters
UK Sales Director	██████████	Escalation
CSC Director	██████████	Escalation

PART B: KEY SUB-CONTRACTORS

KEY SUB-CONTRACTOR NAME AND ADDRESS (IF NOT THE SAME AS THE REGISTERED OFFICE)	REGISTERED OFFICE AND COMPANY NUMBER	RELATED PRODUCT / SERVICE DESCRIPTION	KEY ROLE IN DELIVERY OF SERVICES
Amazon Web Services, London Region.	60 Holburn Viaduct, London UK 410 Terry Avenue N Seattle, Washington, United States	AWS Hosted Infrastructure	Hosting provider for all Information Technology infrastructure, DR and related content for the delivery of Confirm OnDemand to National Highways.

PART C: COMMERCIALLY SENSITIVE INFORMATION

COMMERCIALLY SENSITIVE ITEMS	RATIONALE	DURATION OF CONFIDENTIALITY
All commercial costs	Commercial costs and structure if public would be anticompetitive and would provide competitor advantage within our peer market both for the National Highways Solution and external market as a whole.	Perpetual
Supplier information that if disclosed would likely prejudice the Supplier's legitimate commercial interests, including, but not limited to commercial and financial Information	any information disclosed by the Supplier relating to Supplier's business operations, technical infrastructure, financial models, pricing structures, profit margins, customer	Perpetual

	acquisition costs, product roadmaps, development methodologies, security protocols, third-party relationships, or strategic plans that is either: (i) marked as "Commercially Sensitive"; (ii) identified in writing as commercially sensitive within 14 days of disclosure; or (iii) would reasonably be considered confidential or sensitive in nature given its content and the competitive marketplace in which the Supplier operates.	
Confirm OnDemand IPR infrastructure and architecture	IPR, Infrastructure and architecture if public would be anticompetitive and would provide competitor advantage within our peer market both for the National Highways Solution and external market as a whole	Perpetual
Brightly Software Limited and Confirm Solutions Data Protection, Data and security policies and documents, including certifications.	Should this information be public there is a potential increase to risk of exploitation by cyber attack.	Perpetual

SCHEDULE 5

NOT USED

SCHEDULE 6

KEY PERFORMANCE INDICATORS, SERVICE CREDITS AND PERFORMANCE MONITORING

Definitions. For the purposes of this Agreement, the following terms shall have the corresponding definitions:

“Available Hours of Operation” shall mean twenty-four (24) hours per day, seven (7) days per week exclusive of Scheduled Downtime, described in Section 2, below, and downtime arising from causes beyond the reasonable direct control of Supplier, such as the interruption or failure of telecommunications or digital transmission links, hostile network attacks or a Force Majeure, as set out in Clause 36 of the Agreement;

“Available Hours of Support” shall mean Monday through Friday from 9:00 to 17:30, excluding UK bank holidays and Christmas day and New Years’ day, during which time Customer may obtain technical support for the Services;

“Incident” shall mean there is a problem discovered in the production environment of the applicable Service causing the Service to become unavailable or exhibit incorrect behaviour. A common root cause shall be a single Incident;

“Response” shall mean with respect to any Incident submitted to Supplier by Customer, Supplier’s acknowledgement of each Incident or support request.

“Scheduled Downtime” shall mean the 4 hour period from 6:00 AM to 10:00 AM GMT, each Sunday. When extended maintenance, beyond the 4 hour period, is required by Supplier, time may be extended with prior 48 hour minimum notification from Supplier.

“Service” shall mean the subscription services offered by Supplier as more fully described in the Agreement;

“Service Disruption” shall mean downtime arising from causes beyond the reasonable direct control of Supplier, such as the interruption or failure of telecommunications or digital transmission links, hostile network attacks or a Force Majeure event as described in the Agreement.

“Service Period” shall mean, with respect to a calendar month, the total amount of time in such calendar month (measured in minutes), determine on a twenty-four (24) hours a day, seven (7) days a week basis.

“Transaction” shall mean the submission and processing of each individual Customer Data to the Service or the response to each individual Customer Data or user query submitted to the Service, as may be more fully described in the Documentation.

ANNEX 1

KEY PERFORMANCE INDICATORS FOR ON DEMAND SERVICE

Capitalized terms used in this Schedule and not otherwise defined have the meaning assigned to them in the Agreement. Supplier shall provide the Service in accordance with the terms described in this Schedule and the Agreement.

1. Availability

Supplier warrants that the Service will be available 98% of the Available Hours of Operation, except as provided below. Availability will be calculated on a Service Period basis. The formula used to calculate Availability is:

$$\left\{ \frac{(\text{Service Period} - \text{Unexpected Downtime})}{(\text{Service Period})} \right\} * 100$$

Unexpected Downtime = any minutes when the Service is inaccessible by Customer at the fault of Supplier, except for Scheduled Downtime and Service Disruption.

2. Service Credits

During any Service Period if Supplier does not meet Availability as described above, Supplier will credit the Customer with the relevant percentage as shown in the table below of the Charges paid in respect of the applicable Service Period:

Unexpected Downtime %	% of the Charges
<=2%	0.00%
>2% and <=5%	10.00%
>5% and <=10%	25.00%
>10% and <=15%	37.50%
> 15%	50.00%

If Supplier's Availability falls below eighty five percent (85%) for 2 or more consecutive Service Periods this shall be deemed to be a "**Critical KPI Failure**" entitling the Customer to terminate the Agreement pursuant to Clause 37.2.1(a) (Termination for Material Default) of the Agreement, in which case Supplier will refund to Customer any prepaid but unused Charges for the remainder of the Term following the date of termination.

3. P1, P2, P3 and P4 Incidents

3.1 The Parties agree that any occurrence of an Incident (as described in Table B in Annex 2 of this Schedule) shall be a KPI Failure in respect of which Service Credits shall accrue to the Supplier and shall be calculated in accordance with Table B in Annex 2 of this Schedule.

4. Performance Monitoring and Performance Review

3.2 Within twenty (20) Working Days of the Commencement Date the Supplier shall provide the Customer with details of how the process in respect of the monitoring and reporting of Key Performance Indicators will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.

3.3 The Supplier shall provide the Customer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process agreed pursuant to paragraph 3.1 of this Annex 1 and with such frequency as shall be agreed between the Parties pursuant to paragraph 3.1 of this Annex 1 to enable the Customer to assess the Supplier's performance against each Key Performance Indicator in each KPI Measurement Period. The Performance Monitoring Reports shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:

- 3.3.1 for each Key Performance Indicator, the actual performance achieved against the KPI Performance Measure for the relevant Service Period and, where a Measurement Period has ended in the period covered by the Performance Monitoring Report, the most recently ended Measurement Period;
- 3.3.2 a summary of all failures to achieve Key Performance Indicators that occurred during that Service Period;
- 3.3.3 details of any Critical KPI Failures;
- 3.3.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
- 3.3.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Key Performance Indicators to which the Service Credits relate; and
- 3.3.6 such other details as the Customer may reasonably require from time to time.

- 3.4 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a Monthly basis. The Performance Review Meetings will be the forum for the review by the Supplier and the Customer of the Performance Monitoring Reports. The Performance Review Meetings shall:
- 3.4.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier at such location and time (within normal business hours) as the Customer shall reasonably require;
 - 3.4.2 be attended by the Supplier's Representative and the Customer's Representative; and
 - 3.4.3 be fully minuted by the Supplier and the minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Customer's Representative and any other recipients agreed at the relevant meeting.
- 3.5 The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Customer's Representative at each meeting.
- 3.6 The Supplier shall provide to the Customer such documentation as the Customer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.
- 3.7 Table A in Annex 2 of this Schedule below describes how the levels of performance under the KPI Performance Measures will be mapped to the performance ratings prescribed under regulation 39(5) of the Procurement Regulations 2024. The mapping set out in that table will be applied by the Customer when publishing relevant Transparency Information relating to the Performance Indicators and/or the Supplier's performance against the relevant KPIs pursuant to Section 52(3) and/or Section 71(2) of the Procurement Act 2023 and the associated regulations.
- 3.8 The Supplier acknowledges and agrees that, each time the Customer conducts an assessment of the Supplier's performance against a Key Performance Indicator, the Customer may publish information as required by Law in relation to that assessment.
- 5. Satisfaction Surveys**

The Customer may undertake satisfaction surveys in respect of the Supplier's provision of the Deliverables. The Customer shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Deliverables which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.

ANNEX 2

KEY PERFORMANCE INDICATORS - SUPPORT CAPABILITY STATEMENT FOR TECHNICAL SUPPORT

Table AKPI	KPI Performance Measure - Detail	Ratings to be applied for the purpose of paragraph 3.6 of this Schedule
System availability	System availability as set out in Annex 1 of this Schedule	Good: 98% of the Available Hours of Operation
		Approaching target: 95% of the Available Hours of Operation
		Requires improvement: 92% of the Available Hours of Operation
		Inadequate: 90% of the Available Hours of Operation
Scheduled downtime	Scheduled downtime only within agreed 4 hour weekly window, changes to be notified within 48 hours	Good: 95% of scheduled downtime hours kept within agreed window 99% notifications of extension or change received with 48 hours
		Approaching target: 92% of scheduled downtime hours kept within agreed window 95% notifications of extension or change received with 48 hours
		Requires improvement: 90% of scheduled downtime hours kept within agreed window

		92% notifications of extension or change received with 48 hours
		Inadequate: 85% of scheduled downtime hours kept within agreed window
		90% notifications of extension or change received with 48 hours
		Good: 100% fixes applied within 6 months of identification
		50% applied within 3 months of identification
		Approaching Target: 98% fixes applied within 6 months of identification
		45% applied within 3 months of identification
Vulnerability Resolution Timeline	Vulnerability fixes for critical and high vulnerabilities (as determined by their CVSS Scores) to take no longer than 6 months from identification to implement in all environments	
		Requires Improvement: 95% fixes applied within 6 months of identification
		40% applied within 3 months of identification
		Inadequate: 90% fixes applied within 6 months of identification
		35% applied within 3 months of identification

TABLE B – ADDITIONAL KPI’S IN RELATION TO THE PERFORMANCE OF THE SUPPLIER SOLUTION – P1, P2, P3 AND P4 INCIDENTS

SEVERITY LEVEL:	DESCRIPTION OF INCIDENT:	TARGET RESPONSE:	EXPECTED ACTION:	PERFORMANCE BENCHMARK	SERVICE CREDIT
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P1 CRITICAL	<p>Mission-critical emergency</p> <p>System down: business critical or common operations halted – mission critical systems with a direct impact on the organization.</p> <p>No workaround is available at the time of the call.</p>	Immediate < 30 minutes	<p>Critical Incident are worked on continuously during office hours until a workaround is found.</p> <p>Critical issues are immediately escalated to the Managing Director of Global Support and after 24 hours to the Senior VP of Global Operations.</p> <p>A dedicated team comprising technical support staff, QA engineers, and/or developers, as appropriate, work to identify the source of the problem and if necessary, create a workaround or other resolution in</p>	<p>Please refer to the Availability section – 98.0%</p> <p>Maximum of 3 Incidents per Service Period.</p>	<p>Please refer to the Service Credits section</p> <p>1% Service Credit gained for each P1 Incident over the KPI Performance Measure. I.e. if 4 P1 Incidents occur, the calculation will be 1 multiplied by 1% of the Charges for the Service Period to reflect the KPI Failure.</p>
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SEVERITY LEVEL:	DESCRIPTION OF INCIDENT:	TARGET RESPONSE:	EXPECTED ACTION:	PERFORMANCE BENCHMARK	SERVICE CREDIT
			order to restore mission-critical operations in the shortest time possible. At that point the severity level is downgraded.		
P2 High	<p>Severe loss or reduction of service</p> <p>A major function is experiencing a reproducible problem which causes major inconvenience: business critical or common operations fail consistently: application crashes readily: application exhibits systemwide problems</p>	Within 4 hours	Technical Rep will engage with global technical support staff, QA engineers and/or developers as appropriate to identify the source of the problem and if necessary, create a workaround or other resolution in order to restore normal business operations as soon as possible.	Maximum of 10 Incidents per Service Period	<p>0.3% Service Credit gained for each P2 Incident over the KPI Performance Measure. I.e. if 11 P2 Incidents occur, the calculation will be 1 multiplied by</p> <p>0.3% of the Charges for the Service Period to reflect the KPI Failure.</p>

SEVERITY LEVEL:	DESCRIPTION OF INCIDENT:	TARGET RESPONSE:	EXPECTED ACTION:	PERFORMANCE BENCHMARK	SERVICE CREDIT
P3 Medium	<p>Minor loss or reduction of service</p> <p>A fundamental function is experiencing an intermittent problem, or a business critical or common operation occasionally fails: a less common operation fails consistently, is of medium inconvenience.</p>	<p>Within 2 Working Days</p>	<p>Supplier will use commercially reasonable efforts to provide an acceptable workaround and incorporate a solution to the problem in the earliest possible scheduled maintenance or product release. You can contact Technical</p>	<p>Maximum of 30 Incidents per Service Period</p>	<p>0.2% Service Credit gained for each P3 Incident over the KPI Performance Measure. I.e. if 31 P3 Incidents occur, the calculation will be 1 multiplied by 0.2% of the Charges for the Service Period to reflect the KPI Failure.</p>

SEVERITY LEVEL:	DESCRIPTION OF INCIDENT:	TARGET RESPONSE:	EXPECTED ACTION:	PERFORMANCE BENCHMARK	SERVICE CREDIT
P4 Low	<p>Minor inconvenience of service</p> <p>A less common operation fails occasionally, and low inconvenience matters. Low effort workaround available</p> <p>Where system is working as designed, incident will not be included</p>	<p>Within 4 Working Days</p>	<p>Support to monitor the status of any bug.</p> <p>Supplier will use commercially reasonable efforts to provide a workaround. When appropriate, we will log the issue as a bug and provide you with a tracking number, or as a feature request, then try to incorporate a solution to the problem in a future product release. You can contact Technical Support to monitor the status of any bug.</p>	<p>Maximum of 50 Incidents per Service Period</p>	<p>0.2% Service Credit gained for each P4 Incident over the KPI Performance Measure. I.e. if 51 P4 Incidents occur, the calculation will be 1 multiplied by 0.2% of the Charges for the Service Period to reflect the KPI Failure.</p>

SCHEDULE 7

STANDARDS

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

Retention Period”	the period of time for which Customer Data generated by the Services shall be retained before deletion;
Standards Hub”	the Government’s open and transparent standards adoption process as documented at http://standards.data.gov.uk/ ; and
Suggested Challenge”	a submission to suggest the adoption of new or emergent standards in the format specified on Standards Hub.

2. GENERAL

- 2.1. Throughout the Term of this Agreement, the Parties shall monitor and notify each other of any new or emergent standards which could affect the Supplier’s provision, or the Customer’s receipt, of the Services. Any changes to the Standards, including the adoption of any such new or emergent standard, shall be agreed in accordance with the Variation Procedure.
- 2.2. Where a new or emergent standard is to be developed or introduced by the Customer, the Supplier shall be responsible for ensuring that the potential impact on the Supplier’s provision, or the Customer’s receipt, of the Services is explained to the Customer (in a reasonable timeframe), prior to the implementation of the new or emergent standard.
- 2.3. Where Standards referenced conflict with each other or with Good Industry Practice, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require the prior written agreement of the Customer and shall be implemented within an agreed timescale.
- 2.4. Where there is any conflict between this **Schedule 7** and any provision of **Schedule 2 (Services)**, then the latter shall prevail.

3. TECHNOLOGY AND DIGITAL SERVICES PRACTICE

- 3.1. The Supplier shall (when designing, implementing and delivering the Services) adopt the applicable elements of HM Government’s Technology Code of Practice as documented at <https://www.gov.uk/service-manual/technology/code-of-practice.html>.

4. OPEN DATA STANDARDS & STANDARDS HUB

- 4.1. The Supplier shall comply to the extent within its control with UK Government’s Open Standards Principles as documented at www.gov.uk/government/publications/open-standards-principles, as they

relate to the specification of standards for software interoperability, data and document formats in the IT Environment.

- 4.2. Without prejudice to the generality of paragraph 2.2, the Supplier shall, when implementing or updating a technical component or part of the Software or Supplier Solution where there is a requirement under this Agreement or opportunity to use a new or emergent standard, submit a Suggested Challenge compliant with the UK Government's Open Standards Principles (using the process detailed on Standards Hub and documented at <http://standards.data.gov.uk/>). Each Suggested Challenge submitted by the Supplier shall detail, subject to the security and confidentiality provisions in this Agreement, an illustration of such requirement or opportunity within the IT Environment, Supplier Solution and Government's IT infrastructure and the suggested open standard.
- 4.3. The Supplier shall ensure that all documentation published on behalf of the Customer pursuant to this Agreement is provided in a non-proprietary format (such as PDF or OpenDocument Format (ISO 26300 or equivalent)) as well as any native file format documentation in accordance with the obligation under paragraph 4.1 to comply with the UK Government's Open Standards Principles, unless the Customer otherwise agrees in writing.

5. TECHNOLOGY ARCHITECTURE STANDARDS

- 5.1. The Supplier shall produce full and detailed technical architecture documentation for the Supplier Solution in accordance with Good Industry Practice. If documentation exists that complies with TOGAF 9.1 or its equivalent, then this shall be deemed acceptable.

6. ACCESSIBLE DIGITAL STANDARDS

- 6.1. The Supplier shall comply with (or with equivalents to):
- 6.1.1. the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.1 Conformance Level AA and future versions as updated from time to time; and
 - 6.1.2. an ISO/IEC 13066-1: 2011 Information Technology – Interoperability with assistive technology (AT) – Part 1: Requirements and recommendations for interoperability.

7. SERVICE MANAGEMENT STANDARDS

- 7.1. Subject to paragraphs 2 to 4 (inclusive), the Supplier shall reference relevant industry and HM Government standards and best practice guidelines in the management of the Services, including the following and/or their equivalents:
- 7.1.1. ITIL v4;
 - 7.1.2. ISO/IEC 20000-1:2018 "Information Technology — Service management — Part 1";

- 7.1.3. ISO/IEC 20000-2:2019 “Information technology — Service management — Part”;
 - 7.1.4. ISO 10007:2017 “Quality management systems — Guidelines for configuration management); and
 - 7.1.5. ISO 22313:2020 “Security and resilience. Business continuity management systems. Guidance on the use of ISO 22301” and ISO/IEC 27031:2011 and ISO 22301:2019.
- 7.2. For the purposes of management of the Services and delivery performance the Supplier shall make use of software that complies with Good Industry Practice including availability, change, incident, knowledge, problem, release and deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management. If such software has been assessed under the ITIL Software Scheme as being compliant to “Bronze Level”, then this shall be deemed acceptable.

8. ENVIRONMENTAL STANDARDS

- 8.1. The Supplier warrants that it may obtain ISO 14001 (or equivalent) certification for its environmental management, if applicable, and shall comply with and maintain certification requirements throughout the Term. The Supplier shall follow a sound environmental management policy, ensuring that any Goods and the Services are procured, produced, packaged, delivered, and are capable of being used and ultimately disposed of in ways appropriate to such standard.
- 8.2. If applicable, the Supplier shall comply with relevant obligations under the Waste Electrical and Electronic Equipment Regulations 2013 and subsequent replacements.
- 8.3. If applicable, the Supplier shall (when designing, procuring, implementing and delivering the Services) ensure compliance with Article 6 and Annex III of the Energy Efficiency Directive 2012/27/EU and subsequent replacements.
- 8.4. If applicable, the Supplier shall comply with the EU Code of Conduct on Data Centres’ Energy Efficiency. The Supplier shall ensure that any data centre used in delivering the Services are registered as a participant under such Code of Conduct.
- 8.5. If applicable, the Supplier shall comply with the Customer and HM Government’s objectives to reduce waste and meet the aims of the Greening Government: IT strategy contained in the document “Greening Government: ICT Strategy issue (March 2011)”.
- 8.6. The Supplier shall meet the applicable Government Buying Standards applicable to Services which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>.

9. HARDWARE SAFETY STANDARDS

9.1. If applicable, the Supplier shall comply with those standards relevant to the provision of the Services, including the following or their equivalents:

- 9.1.1. any new hardware required for the delivery of the Services (including printers), shall conform to BS EN IEC 62368-1:2020+A11:2020 or subsequent replacements. In considering where to site any such hardware, the Supplier shall consider the future working user environment and shall position the hardware sympathetically, wherever possible;
- 9.1.2. any new audio, video and similar electronic apparatus required for the delivery of the Services, shall conform to the following standard: BS EN IEC 62368-1:2020+A11:2020 or any subsequent replacements;
- 9.1.3. any new laser printers or scanners using lasers, required for the delivery of the Services, shall conform to BS EN 60825-1:2014 or any subsequent replacements;
- 9.1.4. any new apparatus for connection to any telecommunication network and required for the delivery of the Services, shall conform to the following safety Standard: BS EN 62949:2017 or any subsequent replacements.

9.2. Where required to do so as part of the Services, the Supplier shall perform electrical safety checks in relation to all equipment supplied under this Agreement in accordance with the relevant health and safety regulations.

10. NOT USED

Not used

11. PERSONAL DATA RETENTION POLICIES

11.1. The Supplier shall comply with the Customer's data retention policy in Annex 2 to this Schedule.

12. SUPPLIER CODE OF CONDUCT

12.1. In February 2019, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government which can be found online at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1163536/Supplier_Code_of_Conduct_v3.pdf

The Customer expects to meet, and expects its suppliers and subcontractors to meet, the standards set out in that Code.

ANNEX 1

NOT USED

ANNEX 2 – PERSONAL DATA RETENTION POLICY

1. OVERVIEW

This document sets out the Retention Periods for data processed by the Supplier for delivery of the Services. The Retention Periods set out in this document reflect current requirements which may be subject to change.

2. PERSONAL DATA RETENTION BY DATA ITEM

Data Item	Retention Period
Users' Personal Data from use of the Services	Personal Data will be retained for the Term and upon exit, will be provided to Customer for their storage thereafter following the Expiry Date

SCHEDULE 8

SECURITY

1. DEFINITIONS

1.1 In this Schedule, the following definitions apply:

“Anti-Malicious Software”	means software that scans for and identifies possible Malicious Software in the IT Environment;
“Breach of Security”	<p>(a) an event that results, or could result, in:</p> <p>(b) any unauthorised access to or use of the Customer Data, the Services and/or the Information Management System; and/or</p> <p>(c) the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including any copies of such Information or data, used by the Customer and/or the Supplier in connection with this Agreement;</p>
“Certification Requirements”	means the information security requirements set out in paragraph 66 ;
“CHECK Service Provider”	means a company which has been certified by the National Cyber Security Centre, holds "Green Light" status and is authorised to provide the IT Health Check services required by paragraph 7.1;
“CREST Service Provider”	means a company with a SOC Accreditation from CREST International;
“Cyber Essentials”	means the Cyber Essentials certificate issued under the Cyber Essentials Scheme;
“Cyber Essentials Plus”	means the Cyber Essentials Plus certificate issued under the Cyber Essentials Scheme;

“Cyber Essentials Scheme”		means the Cyber Essentials scheme operated by the National Cyber Security Centre;
“Higher Risk Sub-Contractor”		means a Sub-Contractor that Processes Customer Data, where that data includes either: <ul style="list-style-type: none"> (a) the Personal Data of 1000 or more individuals in aggregate during the period between the Commencement Date and the date on which this Agreement terminates in accordance with Clause 6.1; or (b) Special Category Personal Data;
“Incident Process”	Management	means the process which the Supplier shall implement immediately after it becomes aware of a Breach of Security which is intended to restore normal operations as quickly as possible, minimising any adverse impact on the Customer Data, the Customer, the Services and/or users of the Services and which shall be prepared by the Supplier in accordance with paragraph 44 using the template set out in Annex 3 ;
“Information Assessment”	Assurance	means the set of policies, procedures, systems and processes which the Supplier shall implement, maintain and update in accordance with paragraph 4 in order to manage, mitigate and, where possible, avoid Information security risks including cyber-attacks, hacks, data leaks, Personal Data Breaches and/or theft and which shall be prepared by the Supplier using the template set out in Annex 3 ;
“Information System”	Management	means <ul style="list-style-type: none"> (a) those parts of the Supplier System, and those of the Sites, that the Supplier or its Sub-contractors will use to provide the parts of the Services that require Processing Customer Data; and

			(b) the associated Information assets and systems (including organisational structure, controls, policies, practices, procedures, processes and resources);
“Information Security Approval Statement”			means a notice issued by the Customer which sets out the Information risks which the Supplier has identified as being associated with using the Information Management System and confirms that: <ul style="list-style-type: none"> (a) the Customer is satisfied that the identified risks have been adequately and appropriately addressed; (b) the Customer has accepted the residual risks; and (c) the Supplier may use the Information Management System to Process Customer Data;
“IT Health Check”			has the meaning given in paragraph 7.1 ;
“Medium Risk Sub-Contractor”			means a Sub-Contractor that Processes Customer Data, where that data <ul style="list-style-type: none"> (a) includes the Personal Data of between 100 and 999 individuals (inclusive) in the period between the Commencement Date and the date on which this Agreement terminates in accordance with Clause 6.1; and (b) does not include Special Category Personal Data;
“Personal Data Breach”			has the meaning given in the the UK GDPR or the EU GDPR as the context requires;
“Personal Data Processing Statement”			means a document setting out: <ul style="list-style-type: none"> (a) the types of Personal Data which the Supplier and/or its Sub-Contractors Processes or will Process under this Agreement;

- (b) the categories of Data Subjects whose Personal Data the Supplier and/or its Sub-Contractors Processes or will Process under this Agreement;
- (c) the nature and purpose of such Processing;
- (d) the locations at which the Supplier and/or its Sub-Contractors Process Personal Data under this Agreement; and
- (e) the Protective Measures that the Supplier and, where applicable, its Sub-Contractors have implemented to protect Personal Data Processed under this Agreement against a Breach of Security (insofar as that Breach of Security relates to data) or a Personal Data Breach;

“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;

“Required Register”

Changes

mean the register within the Security Management Plan which is to be maintained and updated by the Supplier and which shall record each of the changes that the Supplier shall make to the Information Management System, and/or the Security Management Plan as a consequence of the occurrence of any of the events set out in **paragraph 5.25.2** together with the date by which such change shall be implemented and the date on which such change was implemented;

“Security Plan”	Management	means the document prepared by the Supplier using the template in Annex 3 comprising: <ul style="list-style-type: none">(a) the Information Assurance Assessment;(b) the Personal Data Processing Statement;(c) the Required Changes Register; and(d) the Incident Management Process;
“Special Category Personal Data”		means the categories of Personal Data set out in article 9(1) of the UK GDPR;

2 INTRODUCTION

2.1 This Schedule sets out:

- 2.1.1 the arrangements the Supplier must implement before, and comply with when, providing the Services and performing its other obligations under this Agreement to ensure the security of the Customer Data and the Information Management System;
- 2.1.2 the Certification Requirements applicable to the Supplier and each of those Sub-Contractors which Processes Customer Data;
- 2.1.3 The security requirements in **Annex 1**, with which the Supplier must comply;
- 2.1.4 the tests which the Supplier shall conduct on the Information Management System during the Term;
- 2.1.5 the Supplier's obligations to:
 - 2.1.5.1 return or destroy Customer Data at the Customer's written request on the expiry or earlier termination of this Agreement; and
 - 2.1.5.2 prevent the introduction of Malicious Software into the Supplier System, and to scan for, contain the spread of, and minimise the impact of Malicious Software which is introduced into the Supplier System in **paragraph 10**; and
 - 2.1.5.3 report Breaches of Security to the Customer.

3. PRINCIPLES OF SECURITY

- 3.1 The Supplier acknowledges that the Customer places great emphasis on the confidentiality, integrity and availability of the Customer Data and, consequently on the security of:
 - 3.1.1 the Sites;
 - 3.1.2 the IT Environment;
 - 3.1.3 the Information Management System; and
 - 3.1.4 the Services.
- 3.2 Notwithstanding the involvement of the Customer in assessing the arrangements which the Supplier implements to ensure the security of the Customer Data and the Information Management System, the Supplier shall be, and shall remain, responsible for:
 - 3.2.1 the security, confidentiality, integrity and availability of the Customer Data whilst that Customer Data is under the control of the Supplier or any of its Sub-Contractors; and
 - 3.2.2 the security of the Information Management System.
- 3.3 The Supplier shall:
 - 3.3.1 comply with the security requirements in **Annex 1**; and
 - 3.3.2 ensure that each Sub-Contractor that Processes Customer Data, complies with the Sub-Contractor Security Requirements.
- 3.4 The Supplier shall provide the Customer with access to Supplier Personnel responsible for Information assurance to facilitate the Customer's assessment of the Supplier's compliance with its obligations set out in this Schedule at reasonable times on reasonable notice.
- 4. **INFORMATION SECURITY APPROVAL STATEMENT**
 - 4.1 The Supplier must ensure that it sets out in sufficient detail how it will ensure compliance with the requirements of this Schedule, including any requirements imposed on Sub-Contractors by **Annex 2**, from the Commencement Date.
 - 4.2 The Supplier may not use the Information Management System to Process Customer Data unless and until:
 - 4.2.1.1 the Supplier has procured a Cyber Essentials certification from the National Cyber Security Center; and
 - 4.2.1.2 the Customer has issued the Supplier with an Information Security Approval Statement in accordance with the process set out in this **paragraph 4**.

- 4.3 The Supplier shall document in the Security Management Plan how the Supplier and its Sub-Contractors shall comply with the requirements set out in this Schedule and the Agreement in order to ensure the security of the Customer Data and the Information Management System.
- 4.4 The Supplier shall prepare and submit to the Customer sufficiently in advance of the Milestone Date applicable to the Milestone to which the Security Management Plan relates to enable Achievement of that Milestone by its Milestone Date, the Security Management Plan, which comprises:
- 4.4.1 an Information Assurance Assessment;
 - 4.4.2 the Required Changes Register;
 - 4.4.3 the Personal Data Processing Statement; and
 - 4.4.4 the Incident Management Process.
- 4.5 The Customer shall review the Supplier's proposed Security Management Plan as soon as possible and, in any event within twenty (20) Working Days of receipt and shall either issue the Supplier with:
- 4.5.1 an Information Security Approval Statement, which shall confirm that the Supplier may use the Information Management System to Process Customer Data; or
 - 4.5.2 a rejection notice, which shall set out the Customer's reasons for rejecting the Security Management Plan.
- 4.6 If the Customer rejects the Supplier's proposed Security Management Plan, the Supplier shall take the Customer's reasons into account in the preparation of a revised Security Management Plan, which the Supplier shall submit to the Customer for review within ten (10) Working Days or such other timescale as agreed with the Customer.
- 4.7 The Customer may require, and the Supplier shall provide the Customer and its authorised representatives with:
- 4.7.1 access to the Supplier Personnel;
 - 4.7.2 access to the Information Management System to audit the Supplier and its Sub-Contractors' compliance with this Agreement; and
 - 4.7.3 such other Information and/or Documentation that the Customer or its authorised representatives may reasonably require,
- to assist the Customer to establish whether the arrangements which the Supplier and its Sub-Contractors have implemented in order to ensure the security of the Customer Data and the Information Management System are consistent with the representations in the Security Management Plan. The

Supplier shall provide the access required by the Customer in accordance with this paragraph within ten (10) Working Days of receipt of such request, except in the case of a Breach of Security in which case the Supplier shall provide the Customer with the access that it requires within 24 hours of receipt of such request.

5. COMPLIANCE REVIEWS

5.1 The Supplier shall regularly review and update the Security Management Plan, and provide such to the Customer, at least once each year at the Customer's request and as required by this paragraph.

5.2 The Supplier shall notify the Customer within two (2) Working Days after becoming aware of:

5.2.1 a significant change to the components or architecture of the Information Management System;

5.2.2 a new risk to the components or architecture of the Information Management System;

5.2.3 a vulnerability to the components or architecture of the Service which is classified 'Medium', 'High', 'Critical' or 'Important' in accordance with the classification methodology set out in **paragraph 9.2 of Annex 1** to this Schedule;

5.2.4 a change in the threat profile;

5.2.5 a significant change to any risk component;

5.2.6 a significant change in the quantity of Personal Data held within the Service;

5.2.7 a proposal to change any of the Sites from which any part of the Services are provided; and/or

5.2.8 an ISO27001 audit report produced in connection with the Certification Requirements indicates significant concerns.

5.3 Within ten (10) Working Days of such notifying the Customer or such other timescale as may be agreed with the Customer, the Supplier shall make the necessary changes to the Required Changes Register and submit the updated Required Changes Register the Customer for review and Approval.

5.4 Where the Supplier is required to implement a change, including any change to the Information Management System, the Supplier shall effect such change at its own cost and expense.

6. CERTIFICATION REQUIREMENTS

- 6.1 The Supplier shall be certified as compliant with:
- 6.1.1 ISO/9001:2015; and
 - 6.1.2 Cyber Essentials,
- and shall provide the Customer with a copy of each such certificate of compliance before the Supplier shall be permitted to receive, store or Process Customer Data.
- 6.2 NOT USED.
- 6.3 The Supplier shall ensure that the Supplier and each Sub-Contractor who is responsible for the secure destruction of Customer Data:
- 6.3.1 securely destroys Customer Data only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001:2013; and
 - 6.3.2 are certified as compliant with the NCSC Assured Service (CAS) Service Requirement Sanitisation Standard or an alternative standard as agreed by the Customer.
- 6.4 The Supplier shall provide the Customer with evidence of its compliance with the requirements set out in this **paragraph 6** before the Supplier may carry out the secure destruction of any Customer Data.
- 6.5 The Supplier shall notify the Customer as soon as reasonably practicable and, in any event within two (2) Working Days, if the Supplier ceases to be compliant with the Certification Requirements and, on request from the Customer, shall:
- 6.5.1 immediately cease using the Customer Data; and
 - 6.5.2 NOT USED.
 - 6.5.3 The Customer may agree to exempt, in whole or part, the Supplier or any Sub-Contractor from the requirements of this **paragraph 6**. Any exemption must be in writing to be effective. The Supplier must include the exemption in the Security Management Plan.

7. **SECURITY TESTING**

- 7.1 The Supplier shall, at its own cost and expense procure and conduct:
- 7.1.1 a Cyber Essentials certification from the National Cyber Security Center; and
 - 7.1.2 maintain its current ISO 9001:2015 certification.
- 7.2 The Supplier shall ensure that any testing which could adversely affect the Supplier System shall be designed and implemented by the Supplier so as to

minimise the impact on the delivery of the Services and the date, timing, content and conduct of such tests shall be agreed in advance with the Customer.

- 7.3 If any testing conducted by or on behalf of the Supplier identifies a new risk, new threat, vulnerability or exploitation technique that is categorised as “critical” and has the potential to affect the security of the Information Management System, the Supplier shall within ten (10) Working Days of becoming aware of such risk, threat, vulnerability or exploitation technique provide the Customer with a copy of the test report and:

7.3.1 propose interim mitigation measures to vulnerabilities in the Information Management System known to be exploitable where a security patch is not immediately available; and

7.3.2 where and to the extent applicable, remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Supplier System) within the timescales set out in the test report or such other timescales as may be agreed with the Customer.

- 7.4 The Supplier shall conduct such further tests of the Supplier System as may be required by the Customer from time to time to demonstrate compliance with its obligations set out this Schedule and the Agreement.

- 7.5 The Supplier shall notify the Customer immediately if it fails to, or believes that it will not, mitigate the vulnerability within the timescales set out in **Annex 1** to this Schedule.

8. **SECURITY MONITORING AND REPORTING**

- 8.1 The Supplier shall:

8.1.1 monitor the delivery of assurance activities;

8.1.2 maintain and update the Security Management Plan in accordance with **paragraph 55**;

8.1.3 agree a document which presents the residual security risks to inform the Customer’s decision to give Approval to the Supplier to Process, store and transit the Customer Data;

8.1.4 monitor security risk impacting upon the operation of the Service;

8.1.5 report Breaches of Security in accordance with the approved Incident Management Process;

8.1.6 agree with the Customer the frequency and nature of the security reports to be prepared and submitted by the Supplier to the Customer within twenty (20) Working Days of the Commencement Date.

9. **MALICIOUS SOFTWARE**

- 9.1 The Supplier shall install and maintain Anti-Malicious Software or procure that Anti-Malicious Software is installed and maintained on any part of the Information Management System which may Process Customer Data, and ensure that such Anti-Malicious Software is configured to perform automatic software and definition Updates as well as regular scans of the Information Management System to check for, prevent the introduction of Malicious Software or where Malicious Software has been introduced into the Information Management System, to identify, contain the spread of, and minimise the impact of Malicious Software.
- 9.2 If Malicious Software is found, 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 Customer Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.
- 9.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of **paragraph 9.2** shall be borne by the Parties as follows:
- 9.3.1 by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier or the Customer Data (whilst the Customer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Supplier; and
- 9.3.2 by the Customer, in any other circumstance.

10. **BREACH OF SECURITY**

- 10.1 If either Party becomes aware of a Breach of Security it shall notify the other in accordance with the Incident Management Process.
- 10.2 The Incident Management Process shall, as a minimum, require the Supplier to do the following upon it becoming aware of a Breach of Security or attempted Breach of Security, and the Supplier shall:
- 10.2.1 Immediately take all reasonable steps necessary to:
- 10.2.1.1 minimise the extent of actual or potential harm caused by such Breach of Security;
- 10.2.1.2 remedy such Breach of Security to the extent possible;
- 10.2.1.3 apply a tested mitigation against any such Breach of Security; and

10.2.1.4 prevent a further Breach of Security in the future which exploits the same root cause failure.

10.2.2 notify the Customer within 24 hours of discovery and, in any event, within 48 hours, following the Breach of Security or attempted Breach of Security, provide to the Customer a full incident report detailing the nature of the Breach of Security or attempted Breach of Security, affected data, and corrective measures, including a root cause analysis where required by the Customer.

10.3 In the event that any action is taken in response to a Breach of Security or attempted Breach of Security as a result of non-compliance by the Supplier, its Sub-Contractors and/or all or any part of the Information Management System with this Agreement, then such remedial action shall be completed at no additional cost to the Customer.

11. SOC 2 AUDIT RIGHTS

11.1 The Customer reserves the right to request audits related to the Supplier's SOC 2 compliance. Upon request, the Supplier shall provide access to audit reports, systems, and processes necessary to verify compliance. The Supplier may appoint a third-party auditor to review SOC 2 compliance, with costs borne by the Supplier in the event that material deficiencies are identified.

12. DATA SECURITY AND GDPR COMPLIANCE

12.1 The Supplier shall comply with all applicable data protection legislation, including the UK GDPR and the Data Protection Act 2018. The Supplier shall implement appropriate technical and organizational measures to protect personal data processed on behalf of the Customer.

13. SOC 2 COMPLIANCE

13.1 The Supplier shall maintain compliance with SOC 2 Trust Service Criteria (Security, Availability, and Confidentiality) and shall undergo independent SOC 2 Type II audits annually. The Supplier agrees to provide the Customer with the audit report within 30 days of the audit's completion. Any material deficiencies identified in the audit report shall be addressed through a formal remediation plan, which the Supplier must provide to the Customer within 30 days of notice. Failure to comply with SOC 2 obligations shall constitute a material breach of the Agreement.

ANNEX 1

Security Requirements

1. SECURITY CLASSIFICATION OF INFORMATION

- 1.1 If the provision of the Services requires the Supplier to Process Customer Data which is classified as OFFICIAL-SENSITIVE, the Supplier shall implement such additional measures as agreed with the Customer from time to time in order to ensure that such Information is safeguarded in accordance with the applicable Standards.

2. SUPPLIER END USER DEVICES

- 2.1 The Supplier shall ensure that any Customer Data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the Customer except where the Customer has given its prior written consent to an alternative arrangement.

- 2.2 The Supplier shall ensure that any device which is used to Process Customer Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at:

<https://www.ncsc.gov.uk/collection/end-user-device-security>.

3. NETWORKING

- 3.1 The Supplier shall ensure that any Customer Data which it causes to be transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.

4. PERSONNEL SECURITY

- 4.1 All Supplier Personnel shall be subject to a pre-employment check before they may participate in the provision and or management of the Services. Such pre-employment checks must include all pre-employment checks which are required by the HMG Baseline Personnel Security Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; and, verification of the individual's employment history; verification of the individual's criminal record.
- 4.2 If applicable, the Supplier shall review the roles and responsibilities of the Supplier Personnel who will be involved in the management and/or provision of the Services in order to enable the Customer to determine which roles require additional vetting and a specific national security vetting clearance (e.g. a Counter Terrorist Check; a Security Check). Roles which are likely to require

additional vetting and a specific national security vetting clearance include system administrators whose role would provide those individuals with privileged access to IT systems which Process Customer Data or data which, if it were Customer Data, would be classified as OFFICIAL-SENSITIVE.

- 4.3 The Supplier shall not permit Supplier Personnel who fail the security checks required by **paragraphs 4.1** and **4.24.2** to be involved in the management and/or provision of the Services except where the Customer has expressly agreed in writing to the involvement of the named individual in the management and/or provision of the Services.
- 4.4 The Supplier shall ensure that Supplier Personnel are only granted such access to Customer Data as is necessary to enable the Supplier Personnel to perform their role and to fulfil their responsibilities.
- 4.5 The Supplier shall ensure that Supplier Personnel who no longer require access to the Customer Data (e.g. they cease to be employed by the Supplier or any of its Sub-Contractors), have their rights to access the Customer Data revoked within one (1) Working Day.
- 4.6 The Supplier shall ensure that Supplier Personnel that have access to the Sites, the IT Environment or the Customer Data receive regular training on security awareness that reflects the degree of access those individuals have to the Sites, the IT Environment or the Customer Data.
- 4.7 The Supplier shall ensure that the training provided to Supplier Personnel under **paragraph 4.6** includes training on the identification and reporting fraudulent communications intended to induce individuals to disclose Personal Data or any other Information that could be used, including in combination with other Personal Data or Information, or with other techniques, to facilitate unauthorised access to the Sites, the IT Environment or the Customer Data ("**phishing**").

5. **IDENTITY, AUTHENTICATION AND ACCESS CONTROL**

- 5.1 The Supplier shall operate an access control regime to ensure:
 - 5.1.1 all users and administrators of the Supplier System are uniquely identified and authenticated when accessing or administering the Services; and
 - 5.1.2 all persons who access the Sites are identified and authenticated before they are allowed access to the Sites.
- 5.2 The Supplier shall apply the 'principle of least privilege' when allowing persons access to the Supplier System and Sites so that such persons are allowed access only to those parts of the Sites and the Supplier System they require.
- 5.3 The Supplier shall retain records of access to the Sites and to the Supplier System and shall make such record available to the Customer on request.

6. DATA DESTRUCTION OR DELETION

6.1 The Supplier shall:

- 6.1.1 prior to securely sanitising any Customer Data or when requested the Supplier shall provide the Customer with all Customer Data in an agreed open format;
- 6.1.2 have documented processes to ensure the availability of Customer Data in the event of the Supplier ceasing to trade;
- 6.1.3 securely erase in a manner agreed with the Customer any or all Customer Data held by the Supplier when requested to do so by the Customer;
- 6.1.4 securely destroy in a manner agreed with the Customer, all media that has held Customer Data at the end of life of that media in accordance with any specific requirements in this Agreement and, in the absence of any such requirements, as agreed by the Customer; and
- 6.1.5 implement processes which address the CPNI and NCSC guidance on secure sanitisation.

7. AUDIT AND PROTECTIVE MONITORING

- 7.1 The Supplier shall collect audit records which relate to security events in the Information Management System or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include regular reports and alerts setting out details of access by users of the Information Management System, to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of Customer Data.
- 7.2 The Supplier and the Customer shall work together to establish any additional audit and monitoring requirements for the Information Management System.
- 7.3 The retention periods for audit records and event logs must be agreed with the Customer and documented in the Security Management Plan.

8. LOCATION OF CUSTOMER DATA

- 8.1 The Supplier shall not and shall procure that none of its Sub-Contractors Process Customer Data outside the United Kingdom without the prior written consent of the Customer, which may be subject to conditions.

9. VULNERABILITIES AND CORRECTIVE ACTION

- 9.1 The Customer and the Supplier acknowledge that from time to time vulnerabilities in the Information Management System will be discovered which unless mitigated will present an unacceptable risk to the Customer Data.
- 9.2 The severity of vulnerabilities for COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the Security Management Plan and using the appropriate vulnerability scoring systems including:
- 9.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST at <http://nvd.nist.gov/cvss.cfm>); and
 - 9.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.
- 9.3 Subject to **paragraph 9.4**, the Supplier shall procure the application of security patches to vulnerabilities in the Information Management System within:
- 9.3.1 thirty (30) days after the public release of patches for those vulnerabilities categorised as 'Critical';
 - 9.3.2 Forty-five (45) days after the public release of patches for those vulnerabilities categorised as 'Important'; and
 - 9.3.3 sixty (60) days after the public release of patches for those vulnerabilities categorised as 'Other'.
- 9.4 The timescales for applying patches to vulnerabilities in the Information Management System set out in **paragraph 9.39.3** shall be extended where:
- 9.4.1 the Supplier can demonstrate that a vulnerability in the Information Management System is not exploitable within the context of the Services (e.g. because it resides in a Software component which is not involved in running in the Services) provided such vulnerabilities shall be remedied by the Supplier within the timescales set out in **paragraph 9.3** if the vulnerability becomes exploitable within the context of the Services;
 - 9.4.2 the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of five (5) days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Customer; or
 - 9.4.3 the Customer agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the Security Management Plan.

- 9.5 The Security Management Plan shall include provisions for major version upgrades of all COTS Software to be kept up to date such that all COTS Software are always in mainstream support throughout the Term unless otherwise agreed by the Customer in writing. All COTS Software should be no more than N-1 versions behind the latest software release.

10. **SECURE ARCHITECTURE**

- 10.1 The Supplier shall design the Information Management System in accordance with:

10.1.1 the NCSC "Security Design Principles for Digital Services", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/security-design-principlesdigital-services-main>;

10.1.2 the NCSC "Bulk Data Principles", a copy of which can be found at <https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-main>; and

10.1.3 the NSCS "Cloud Security Principles", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles> and which are summarised below:

10.1.3.1 "Cloud Security Principle 1: data in transit protection" which, amongst other matters, requires that user data transiting networks should be adequately protected against tampering and eavesdropping;

10.1.3.2 "Cloud Security Principle 2: asset protection and resilience" which, amongst other matters, requires that user data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure;

10.1.3.3 "Cloud Security Principle 3: separation between users" which, amongst other matters, requires that a malicious or compromised user of the service should not be able to affect the service or data of another;

10.1.3.4 "Cloud Security Principle 4: governance framework" which, amongst other matters, requires that the Supplier should have a security governance framework which coordinates and directs its management of the Services and Information within it;

10.1.3.5 "Cloud Security Principle 5: operational security" which, amongst other matters, requires that the Services need to be operated and managed securely in order to impede, detect or prevent a Breach of Security;

- 10.1.3.6 "Cloud Security Principle 6: personnel security" which, amongst other matters, requires that where Supplier Personnel have access to Customer Data and/or the Customer System that those personnel be subject to appropriate security screening and regular security training;
- 10.1.3.7 "Cloud Security Principle 7: secure development" which, amongst other matters, requires that the Services be designed and developed to identify and mitigate threats to their security;
- 10.1.3.8 "Cloud Security Principle 8: supply chain security" which, amongst other matters, requires the Supplier to ensure that appropriate security controls are in place with its Sub-Contractors and Other Suppliers;
- 10.1.3.9 "Cloud Security Principle 9: secure user management" which, amongst other matters, requires the Supplier to make the tools available for the Customer to securely manage the Customer's use of the Service;
- 10.1.3.10 "Cloud Security Principle 10: identity and authentication" which, amongst other matters, requires the Supplier to implement appropriate controls in order to ensure that access to Service interfaces is constrained to authenticated and authorised individuals;
- 10.1.3.11 "Cloud Security Principle 11: external interface protection" which, amongst other matters, requires that all external or less trusted interfaces with the Services should be identified and appropriately defended;
- 10.1.3.12 "Cloud Security Principle 12: secure service administration" which, amongst other matters, requires that any ICT system which is used for administration of a cloud service will have highly privileged access to that service;
- 10.1.3.13 "Cloud Security Principle 13: audit information for users" which, amongst other matters, requires the Supplier to be able to provide the Customer with the audit records it needs to monitor access to the Service and the Customer Data held by the Supplier and/or its Sub-Contractors; and
- 10.1.3.14 "Cloud Security Principle 14: secure use of the service" which, amongst other matters, requires the Supplier to educate Supplier Personnel on the safe and secure use of the Information Management System.

ANNEX 2

Security Requirements for Sub-Contractors

1. APPLICATION OF ANNEX

- 1.1 This Annex applies to all Sub-Contractors that Process Customer Data.
- 1.2 The Supplier must:
 - 1.2.1 ensure that those Sub-Contractors comply with the provisions of this Annex; and
 - 1.2.2 keep sufficient records to demonstrate that compliance to the Customer.

2. DESIGNING AND MANAGING SECURE SOLUTIONS

- 2.1 The Sub-Contractor shall implement their solution(s) to mitigate the security risks in accordance with the NCSC's Cyber Security Design Principles <https://www.ncsc.gov.uk/collection/cyber-security-design-principles>.
- 2.2 The Sub-Contractor must assess their systems against the NCSC Cloud Security Principles: <https://www.ncsc.gov.uk/collection/cloud-security?curPage=/collection/cloudsecurity/implementing-the-cloud-security-principles> at their own cost and expense to demonstrate that the people, process, technical and physical controls have been delivered in an effective way. The Sub-Contractor must document that assessment and make that documentation available to the Customer on the Customer's request.

3. DATA PROCESSING, STORAGE, MANAGEMENT AND DESTRUCTION

- 3.1 The Sub-Contractor must not Process any Customer Data outside the United Kingdom. The Customer may permit the Sub-Contractor to Process Customer Data outside the United Kingdom and may impose conditions on that permission, with which the Sub-Contractor must comply. Any permission must be in writing to be effective and sent to DataProtectionAdvice@nationalhighways.co.uk.
- 3.2 The Sub-Contractor must securely erase any or all Customer Data held by the Sub-Contractor when requested to do so by the Customer; and securely destroy all media that has held Customer Data at the end of life of that media in accordance with the NCSC Assured Service (CAS) Service Requirement Sanitisation Standard, or an alternative agreed in writing by the Customer.

4. PERSONNEL SECURITY

4.1 The Sub-Contractor must perform appropriate checks on their staff before they may participate in the provision and or management of the Services. Those checks must include all pre-employment checks required by the HMG Baseline Personnel Security Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; verification of the individual's employment history; and verification of the individual's criminal record. The HMG Baseline Personnel Security Standard is at <https://www.gov.uk/government/publications/government-baselinepersonnel-security-standard>.

4.2 NOT USED.

4.3 Any Sub-contractor staff who will, when performing the Deliverables, have access to a person under the age of 18 years must undergo Disclosure and Barring Service checks.

5. **END USER DEVICES**

5.1 The Sub-Contractor shall ensure that any Customer Data stored (for any period of time) on a mobile, removable or physically uncontrolled device is encrypted. The Sub-Contractor must follow the Information Commissioner's Office guidance on implementing encryption, which can be found at <https://ico.org.uk/for-organisations/guide-to-data-protection/guideto-the-general-data-protection-regulation-gdpr/security/encryption/>.

5.2 The Supplier shall ensure that any device used to Process Customer Data meets all the security requirements set out in the NCSC End User Devices Platform Security Guidance, which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security>.

6. **NETWORKING**

6.1 The Supplier shall ensure that any Customer Data which it causes to be transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.

7. **PATCHING AND VULNERABILITY SCANNING**

7.1 The Sub-contractor must proactively monitor supplier vulnerability websites and ensure all necessary patches and upgrades are applied to maintain security, integrity and availability in accordance with the NCSC Cloud Security Principles.

8. **THIRD PARTY SUB-CONTRACTORS**

8.1 The Sub-contractor must not transmit or disseminate the Customer Data to any other person unless specifically authorised by the Customer. Such authorisation must be in writing to be effective and may be subject to conditions.

- 8.2 The Sub-contractor must not, when performing any part of the Services, use any Software to Process the Customer Data where the licence terms of that software purport to grant the licensor rights to Process the Customer Data greater than those rights strictly necessary for the use of the software.

ANNEX 3

Security Management Plan Template

Security Management Plan Template

[Project/Service and Supplier Name]

1. EXECUTIVE SUMMARY

<This section should contain a brief summary of the business context of the system, any key IA controls, the assurance work done, any off-shoring considerations and any significant residual risks that need acceptance.>

2. SYSTEM DESCRIPTION

2.1 Background

<A short description of the project/product/system. Describe its purpose, functionality, aim and scope.>

2.2 Organisational Ownership/Structure

<Who owns the system and operates the system and the organisational governance structure. This should include how any ongoing security management is integrated into the project governance e.g. how a Security Working Group reports to the project board.>

2.3 Information assets and flows

<The information assets processed by the system which should include a simple high level diagram on one page. Include a list of the type and volumes of data that will be processed, managed and stored within the supplier system. If Personal Data, please include the fields used such as name, address, department DOB, NI number etc.>

2.4 System Architecture

<A description of the physical system architecture, to include the system management. A diagram will be needed here>

2.5 Users

<A brief description of the system users, to include HMG users as well as any service provider users and system managers. If relevant, security clearance level requirements should be included.>

2.6 Locations

<Where the data assets are stored and managed from. If any locations hold independent security certifications (e.g. ISO27001:2013) these should be noted. Any off-shoring considerations should be detailed.>

2.7 Test and Development Systems

<Include information about any test and development systems, their locations and whether they contain live system data.>

2.8 Key roles and responsibilities

<A brief description of the lead security roles such as that of the SIRO, IAO, Security manager, Accreditor>

3. RISK ASSESSMENT

3.1 Assurance Scope

<This section describes the scope of the Assurance for the system. The scope of the assurance assessment should be clearly indicated, with components of the architecture upon which reliance is placed but assurance will not be done clearly shown e.g. a cloud hosting service. A logical diagram should be used along with a brief description of the components.>

3.2 Risk appetite

<A risk appetite should be agreed with the SIRO/SRO and included here.>

3.3 Business impact assessment

<A description of the information assets and the impact of their loss or corruption (e.g. large amounts of Official Sensitive Personal Data the loss of which would be severely damaging to individuals, embarrassing to HMG, and make HMG liable to ICO investigations) in business terms should be included. This section should cover the impact on loss of confidentiality, integrity and availability of the assets. The format of this assessment may be dependent on the risk assessment method chosen.>

3.4 Risk assessment

<The content of this section will depend on the risk assessment methodology chosen, but should contain the output of the formal information risk assessment in a prioritised list using business language. Experts on the system and business process should have been involved in the risk assessment to ensure the formal risk methodology used has not missed out any risks. The example table below should be used as the format to identify the risks and document the controls used to mitigate those risks.>

Risk ID	Inherent risk	Inherent risk level	Vulnerability	Controls	Residual risk level
R1	Internet attackers could hack the system.	Medium	The Service systems are exposed to the internet via the web portal.	C1: Internet-facing firewalls C2: Internet-facing IP whitelist C3: System hardening C4: Protective monitoring C5: Application access control C16: Anti-virus for incoming files C54: Files deleted when processed C59: Removal of departmental identifier	Very low
R2	Remote attackers could intercept or disrupt information crossing the internet.	Medium	File sharing with organisations across the internet.	C9: TLS communications C10: PGP file-sharing	Very low
R3	Internal users could maliciously or accidentally alter bank details.	Medium-High	Users bank details can be altered as part of the normal business function.	C12. System administrators hold SC clearance. C13. All changes to user Information are logged and audited. C14. Letters are automatically sent to users home addresses when bank details are altered. C15. Staff awareness training	Low

3.5 Controls

<The controls listed above to mitigate the risks identified should be detailed. There should be a description of each control, further information and configuration details where relevant, and an assessment of the implementation status of, and assurance in, the control. A sample layout is included below.>

ID	Control title	Control description	Further information and assurance status
C1	Internet-facing firewalls	Internet-facing firewalls are in place between the internet and the system, which restrict access from the internet to the required ports only.	Assured via ITHC firewall rule check
C2	Internet-facing IP whitelist	An IP whitelist is in place for all access from the internet.	Assured via ITHC
C15	Staff awareness training	All staff must undertake annual security awareness training and this process is audited and monitored by line managers.	Assured as part of ISO27001 certification

3.6 Residual risks and actions

<A summary of the residual risks which are likely to be above the risk appetite stated after all controls have been applied and verified should be listed with actions and timescales included.>

4. IN-SERVICE CONTROLS

< This section should describe the controls relating to the information lifecycle, including development, testing, in-service, termination and on-going risk management and accreditation assurance. Details of any formal assurance requirements specified in the contract such as security CHECK testing or maintained ISO27001 certification should be included. This section should include at least:

- 4.1 *information risk management and timescales and triggers for a review;*
- 4.2 *contractual patching requirements and timescales for the different priorities of patch;*
- 4.3 *protective monitoring arrangements to include how anomalous behaviour is identified and acted upon as well as how logging and auditing of user activity is done;*
- 4.4 *configuration and change management;*

- 4.5 *incident management;*
- 4.6 *vulnerability management;*
- 4.7 *user access management; and*
- 4.8 *data sanitisation and disposal.>*

5. **SECURITY OPERATING PROCEDURES (SyOPS)**

< If needed any SyOps requirements should be included and referenced here.>

6. **MAJOR HARDWARE AND SOFTWARE AND END OF SUPPORT DATES**

< This should be a table which lists the end of support dates for hardware and software products and components. An example table is shown below.>

Name	Version	End of mainstream Support/Extended Support	Notes/RAG Status
Server Host	HP XXXX	Feb 2020/ March 2022	

7. **INCIDENT MANAGEMENT PROCESS**

<The Suppliers' process, as agreed with the Customer, should be included here. It must as a minimum include the protocol for how and when incidents will be reported to the Customer and the process that will be undertaken to mitigate the incidents and investigate the root cause.>

8. **SECURITY REQUIREMENTS FOR USER ORGANISATIONS**

<Any security requirements for connecting organisations or departments should be included or referenced here.>

9. **REQUIRED CHANGES REGISTER**

<The table below shows the headings for the Required Changes Register which should be maintained and used to update the contents of this document at least annually.>

Ref	Section	Change	Agreed With	Date agreed	Documentation update	Status
1	6.4	A new Third Party supplier XXXX will be	Customer name	11/11/2018	Jul-2019	Open

performing
the print
capability

10. **PERSONAL DATA PROCESSING STATEMENT**

<This should include: (i) the types of Personal Data which the Supplier and/or its Sub-Contractors are Processing on behalf of the Customer; (ii) the categories of Data Subjects whose Personal Data the Supplier and/or its Sub-Contractors are Processing on behalf of the Customer; the nature and purpose of such Processing; (iii) the locations at which the Supplier and/or its Sub-Contractors Process Customer Data; and, (iv) the Protective Measures that the Supplier and, where applicable, its Sub-Contractors have implemented to protect the Customer Data against a Security Breach including a Personal Data Breach.>

11. **ANNEX A. ISO27001 AND/OR CYBER ESSENTIAL PLUS CERTIFICATES**

<Any certifications relied upon should have their certificates included>

12. **ANNEX B. CLOUD SECURITY PRINCIPLES ASSESSMENT**

<A spreadsheet may be attached>

13. **ANNEX C. PROTECTING BULK DATA ASSESSMENT IF REQUIRED BY THE CUSTOMER**

<A spreadsheet may be attached>

14. **ANNEX E. LATEST ITHC REPORT AND VULNERABILITY CORRECTION PLAN**

SCHEDULE 9

SOFTWARE

1. SPECIALLY WRITTEN SOFTWARE

Software	Supplier (if an Affiliate of the Supplier)	Purpose
N/A		
N/A		

2. SUPPLIER SOFTWARE

Software	Supplier (if an Affiliate of the Supplier)	Purpose	SaaS (Yes/No)	Deposited Software (Yes/No)
CONFIRM / CONFIRM WEB	CONFIRM SOLUTIONS LTD	HOST ASSET MANAGEMENT SOFTWARE	YES	NO
CONFIRM CONNECT	CONFIRM SOLUTIONS LTD	MOBILE ASSET MANAGEMENT SOFTWARE FOR FIELD BASED OPERATIONS	YES	NO
CONFIRM WORKZONE	CONFIRM SOLUTIONS LTD	INTEGRATED WORKS OPTIMISATION SOFTWARE	YES	NO

3. THIRD PARTY SOFTWARE

Software	Third Party Supplier	Purpose	Applicable Licence Terms	SaaS (Yes/No)	Deposited Software (Yes/No)
N/A					
N/A					

4. CUSTOMER SOFTWARE

Software	Third Party Supplier	Details
N/A		
N/A		
N/A		

OPEN SOURCE SOFTWARE

Software	Third Party Supplier	Details	Applicable Licence Terms
██████ ██████████ ██████	████ ████ ██████ ████ ██████ ████████	██████ ██████████ ██████ █████ ██████████	██ ████████████████
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SCHEDULE 10

BUSINESS CONTINUITY AND DISASTER RECOVERY

1. DEFINITIONS

1.1 In this Schedule 10, the following definitions shall apply:

"Business Continuity Plan"	has the meaning given to it in paragraph 2.2.1(b) of this Schedule;
"Disaster Recovery Plan"	has the meaning given to it in 2.2.1(c) of this Schedule;
"Disaster Recovery System"	means the system embodied in the processes and procedures for restoring the provision of Services following the occurrence of a disaster;
"Review Report"	has the meaning given to it in paragraph 6.2 of this Schedule;
"Supplier's Proposals"	has the meaning given to it in paragraph 6.2.3 of this Schedule;

2. BCDR PLAN

2.1 The Supplier shall prepare and deliver to the Customer for the Customer's written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

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

This shall be delivered to the Customer within one (1) Month of the Commencement Date, taking account of the process set out in this Schedule 10.

2.2 The BCDR Plan shall:

- 2.2.1 be divided into three parts:
 - (a) Part A which shall set out general principles applicable to the BCDR Plan;
 - (b) Part B which shall relate to business continuity (the **"Business Continuity Plan"**); and
 - (c) Part C which shall relate to disaster recovery (the **"Disaster Recovery Plan"**); and

- 2.2.2 unless otherwise required by the Customer in writing, be based upon and be consistent with the provisions of paragraphs 3, 4 and 5.
- 2.3 Following receipt of the draft BCDR Plan from the Supplier, the Customer shall:
 - 2.3.1 review and comment on the draft BCDR Plan as soon as reasonably practicable; and
 - 2.3.2 notify the Supplier in writing that it approves or rejects the draft BCDR Plan no later than twenty (20) Working Days after the date on which the draft BCDR Plan is first delivered to the Customer.
- 2.4 If the Customer rejects the draft BCDR Plan:
 - 2.4.1 the Customer shall inform the Supplier in writing of its reasons for its rejection; and
 - 2.4.2 the Supplier shall then revise the draft BCDR Plan (taking reasonable account of the Customer's comments) and shall re-submit a revised draft BCDR Plan to the Customer for the Customer's Approval within twenty (20) Working Days of the date of the Customer's notice of rejection. The provisions of paragraphs 2.3 and 2.4 of this Schedule shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3. BCDR PLAN: PART A - GENERAL PRINCIPLES AND REQUIREMENTS

- 3.1 Part A of the BCDR Plan shall:
 - 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
 - 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Services and any services provided to the Customer by a Related Supplier;
 - 3.1.3 contain an obligation upon the Supplier to liaise with the Customer and (at the Customer's request) any Related Suppliers with respect to issues concerning business continuity and disaster recovery where applicable;
 - 3.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Customer and any of its other Related Supplier in each case as notified to the Supplier by the Customer from time to time;
 - 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a website (with FAQs), email and phone) for both portable and desk top configurations, where required by the Customer;

- 3.1.6 contain a risk analysis, including:
 - (a) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (b) identification of any single points of failure within the provision of Services and processes for managing the risks arising therefrom;
 - (c) identification of risks arising from an Insolvency Event of the Supplier and/or any Key Sub-Contractors;
 - (d) identification of risks arising from the interaction of the provision of Services and with the services provided by a Related Supplier; and
 - (e) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
 - 3.1.7 provide for documentation of processes, including business processes, and procedures;
 - 3.1.8 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-Contractors) and for the Customer;
 - 3.1.9 identify the procedures for reverting to “normal service”;
 - 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;
 - 3.1.11 identify the responsibilities (if any) that the Customer has agreed it will assume in the event of the invocation of the BCDR Plan; and
 - 3.1.12 provide for the provision of technical advice and assistance to key contacts at the Customer as required by the Customer from time to time to inform decisions in support of the Customer’s business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
- 3.2.1 the Services are provided in accordance with this Agreement at all times during and after the invocation of the BCDR Plan;
 - 3.2.2 the adverse impact of any Disaster, service failure, or disruption on the operations of the Customer is minimal as far as reasonably possible;
 - 3.2.3 it complies with the relevant provisions of ISO/IEC 22301 for Business Continuity, and all other industry standards from time to time in force; and
 - 3.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the provision of Services.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Key Performance Indicators or to any increase in the Charges to the extent that a

Disaster occurs as a consequence of any breach by the Supplier of this Agreement .

4. BCDR PLAN: PART B - BUSINESS CONTINUITY PLAN PRINCIPLES AND CONTENTS

4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the provision of Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Customer expressly states otherwise in writing:

- 4.1.1 the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Services; and
- 4.1.2 the steps to be taken by the Supplier upon resumption of the provision of Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

4.2 The Business Continuity Plan shall:

- 4.2.1 address the various possible levels of failures of or disruptions to the provision of Services;
- 4.2.2 set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such goods, services and steps, the “**Business Continuity Services**”);
- 4.2.3 specify any applicable Key Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Key Performance Indicators in respect of the provision of other Services during any period of invocation of the Business Continuity Plan; and
- 4.2.4 clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

5. BCDR PLAN: PART C -DISASTER RECOVERY PLAN PRINCIPLES AND CONTENTS

5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Customer supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.

5.3 The Disaster Recovery Plan shall include the following:

- 5.3.1 the technical design and build specification of the Disaster Recovery System;

- 5.3.2 details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
 - (a) data centre and disaster recovery site audits;
 - (b) backup methodology and details of the Supplier's approach to data backup and data verification;
 - (c) identification of all potential disaster scenarios;
 - (d) risk analysis;
 - (e) documentation of processes and procedures;
 - (f) hardware configuration details;
 - (g) network planning including details of all relevant data networks and communication links;
 - (h) invocation rules;
 - (i) Service recovery procedures; and
 - (j) steps to be taken upon resumption of the provision of Services to address any prevailing effect of the failure or disruption of the provision of Services;
- 5.3.3 any applicable Key Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Key Performance Indicators in respect of the provision of other Services during any period of invocation of the Disaster Recovery Plan;
- 5.3.4 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 5.3.5 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- 5.3.6 testing and management arrangements.

6. REVIEW AND AMENDMENT OF THE BCDR PLAN

- 6.1 The Supplier shall review the BCDR Plan (and the risk analysis on which it is based):
 - 6.1.1 on a regular basis and as a minimum once every six (6) Months;
 - 6.1.2 within three (3) Months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 7; and
 - 6.1.3 where the Customer requests any additional reviews (over and above those provided for in paragraphs 6.1.1 and 6.1.2 of this Schedule) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Customer's written requirements. Prior to starting its

review, the Supplier shall provide an accurate written estimate of the total costs payable by the Customer for the Customer's approval. The costs of both Parties of any such additional reviews shall be met by the Customer except that the Supplier shall not be entitled to charge the Customer for any costs that it may incur above any estimate without the Customer's prior written approval.

6.2 Each review of the BCDR Plan pursuant to paragraph 6.1 of this Schedule shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or, if no such period is required, within such period as the Customer shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Customer a report (a **"Review Report"**) setting out:

- 6.2.1 the findings of the review;
- 6.2.2 any changes in the risk profile associated with the provision of Services; and
- 6.2.3 the Supplier's proposals (the **"Supplier's Proposals"**) for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any goods, services or systems provided by a third party.

6.3 Following receipt of the Review Report and the Supplier's Proposals, the Customer shall:

- 6.3.1 review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
- 6.3.2 notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Customer.

6.4 If the Customer rejects the Review Report and/or the Supplier's Proposals:

- 6.4.1 the Customer shall inform the Supplier in writing of its reasons for its rejection; and
- 6.4.2 the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Customer's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Customer for the Customer's approval within

twenty (20) Working Days of the date of the Customer's notice of rejection. The provisions of paragraphs 6.3 and 6.4 of this Schedule shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

- 6.5 The Supplier shall as soon as is reasonably practicable after receiving the Customer's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

7. TESTING OF THE BCDR PLAN

- 7.1 The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every Agreement Year). Subject to paragraph 7.2 of this Schedule, the Customer may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Customer considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
- 7.2 If the Customer requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Customer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Customer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Customer and shall liaise with the Customer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Customer in this regard. Each test shall be carried out under the supervision of the Customer or its nominee.
- 7.4 The Supplier shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the Customer. Copies of live test data used in any such testing shall be (if so required by the Customer) destroyed or returned to the Customer on completion of the test.
- 7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Customer a report setting out:
- 7.5.1 the outcome of the test;
 - 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - 7.5.3 the Supplier's proposals for remedying any such failures.
- 7.6 Following each test, the Supplier shall take all measures requested by the Customer, (including requests for the re-testing of the BCDR Plan) to remedy

any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Customer, by the date reasonably required by the Customer and set out in such notice.

- 7.7 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Supplier of any of its obligations under this Agreement.
- 7.8 The Supplier shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Customer.

8. INVOCATION OF THE BCDR PLAN

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

SCHEDULE 11

EXIT MANAGEMENT

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Termination Assistance"	means the activities to be performed by the Supplier pursuant to the Exit Plan, and any other assistance required by the Customer pursuant to the Termination Assistance Notice;
"Termination Assistance Notice"	has the meaning given to it in paragraph 4.1 of this Schedule;
"Termination Assistance Period"	means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to paragraph 4.2 of this Schedule;

2. EXIT PLAN

- 2.1 The Supplier shall, within three (3) Months after the Commencement Date, deliver to the Customer an Exit Plan which ensures continuity of service following the Expiry Date and complies with requirements of this Schedule, for agreement with the Customer. Once agreed the Supplier will follow it.
- 2.2 When requested, the Supplier will help the Customer to migrate the Services to a Replacement Supplier in line with the Exit Plan. The Supplier will provide one extract of the data to the Customer e.g. an Oracle.DMP file upon request. Any requirement to maintain SaaS delivery of the solution e.g. Confirm OnDemand will be charged at the prevailing rate. Any professional services assistance request to assist with the Exit Plan will be charged at the prevailing rates. Any exercise will be reviewed and quoted to the Customer before agreement to commence any work.
- 2.3 The Exit Plan to be proposed and quoted for by Supplier, must set out full details of timescales, activities and roles and responsibilities of the Parties for:
- 2.3.1 the transfer to the Customer or a Replacement Supplier, upon execution of a non-disclosure agreement (NDA), of any technical information, instructions, reasonably required by the Customer to enable a smooth migration from the Supplier;
 - 2.3.2 the strategy for exportation and migration of Customer Data from the Supplier System to the Customer or a Replacement Supplier;

- 2.3.3 the transfer of databases to the Customer or a Replacement Supplier;
- 2.3.4 the testing and assurance strategy for exported Customer Data;
- 2.3.5 if relevant, TUPE-related activity to comply with the Employment Regulations; and
- 2.3.6 any other activities and information which is reasonably required to ensure continuity of Services in accordance with Charges for the Services during the Termination Assistance Period and an orderly transition.

Finalisation of the Exit Plan

- 2.4 Within twenty (20) Working Days after service of a Termination Notice by either Party or six (6) Months prior to the expiry of this Agreement, the Supplier will submit for the Customer's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 2.5 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days following its delivery to the Customer then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

3. HANDOVER TO REPLACEMENT SUPPLIER

- 3.1 At least ten (10) Working Days before the Expiry Date, the Supplier must provide any:
 - 3.1.1 data (including Customer Data), Customer Personal Data and Customer Confidential Information in the Supplier's possession, power or control; and
 - 3.1.2 other information reasonably requested by the Customer.
- 3.2 On reasonable notice at any point during the Term and upon execution of an NDA, the Supplier will provide such information (including any access) as the Customer shall reasonably require in order to facilitate the preparation by the Customer of any tender notice or associated tender documents and/or to facilitate any potential Replacement Suppliers undertaking due diligence, including without limitation, such information as is required to be provided under Schedule 16 (Staff Transfer), Customer Information and data about the Services reasonably requested by the Customer (including information on volumes, usage, technical aspects, service performance and staffing). This will help the Customer and/or any potential Replacement Suppliers understand how the Services have been provided and to run a fair competition for a new supplier.
- 3.3 This information must be accurate and complete in all material respects and the level of detail must be sufficient to reasonably enable a third party to prepare an

informed offer for Replacement Services and not be unfairly disadvantaged compared to the Supplier in the buying process.

- 3.4 The Supplier acknowledges that the Customer may disclose the Supplier's Confidential Information (excluding the Supplier's or its Sub-Contractors' prices or costs) to an actual or prospective Replacement Supplier to the extent that such disclosure is necessary in connection with such engagement.

4. TERMINATION ASSISTANCE

- 4.1 The Customer shall be entitled to require the provision of Termination Assistance at any time during the Term by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least three (3) Months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. Termination Assistance is not included in the Charges for this Agreement and any professional services assistance for Termination Assistance will be charged at the then-current prevailing rates. Professional services will be reviewed and quoted to the Customer before agreement to commence any work. The Termination Assistance Notice shall specify:

- 4.1.1 the date from which Termination Assistance is required;
- 4.1.2 the nature of the Termination Assistance required; and
- 4.1.3 the period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the date that the Supplier ceases to provide the Services.

- 4.2 The Customer shall have an option to extend the Termination Assistance Period beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) Months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Customer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier to such effect.

5. TERMINATION ASSISTANCE PERIOD

- 5.1 Throughout the Termination Assistance Period, or such shorter period as the Customer may require and subject to the Exit Plan, the Supplier shall:
- 5.1.1 continue to provide the Services (as applicable) for the Charges and, if required by the Customer pursuant to paragraph 4.1 of this Schedule, provide the Termination Assistance;
 - 5.1.2 in addition to providing the Services and the Termination Assistance, provide to the Customer any reasonable assistance requested by the Customer to allow the Services to continue

- without interruption following the termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Customer and/or its Replacement Supplier;
- 5.1.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 5.1.2 of this Schedule; and
 - 5.1.4 provide the Services and the Termination Assistance at no detriment to the KPI Performance Measures, save to the extent that the Parties agree otherwise in accordance with paragraph 5.3.
- 5.2 Without prejudice to the Supplier's obligations under paragraph 5.1.3 of this Schedule, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in paragraph 5.1.2 of this Schedule without additional costs to the Customer, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Assistance or the Exit Plan shall be subject to the Variation Procedure.
- 5.3 If the Supplier demonstrates to the Customer's reasonable satisfaction that transition of the Services and provision of Termination Assistance during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular KPI Performance Measure(s), the Parties shall vary the relevant KPI Performance Measure(s) and/or the applicable Service Credits to take account of such adverse effect.

SCHEDULE 12

DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

1.1 In this **Schedule 12**, the following definitions shall apply:

"CEDR"	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
"Counter Notice"	has the meaning given to it in paragraph 6.2 of this Schedule;
"Exception"	a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Agreement or in the supply of the Services;
"Expert"	the person appointed by the Parties in accordance with paragraph 5.2 of this Schedule 12 ;
"Mediation Notice"	has the meaning given to it in paragraph 3.2 of this Schedule; and
"Mediator"	the independent third party appointed in accordance with paragraph 4.2 of this Schedule 12 .

2. INTRODUCTION

2.1 If a Dispute arises then:

- 2.1.1 the representative of the Customer and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
- 2.1.2 if such attempts are not successful within a reasonable time either Party may give to the other a Dispute Notice.

2.2 The Dispute Notice shall set out:







- 2.2.1 the material particulars of the Dispute;
- 2.2.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
- 2.2.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 2.6 of this **Schedule 12**, the reason why.

- 2.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.
- 2.4 Subject to paragraph 3.2 of this **Schedule 12**, the Parties shall seek to resolve Disputes:
- 2.4.1 first by commercial negotiation (as prescribed in paragraph 3 of this **Schedule 12**);
- 2.4.2 then by mediation (as prescribed in paragraph 4 of this **Schedule 12**); and
- 2.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6 of this Schedule) or litigation (in accordance with **Clause 53** of this Agreement (Governing Law and Jurisdiction)).
- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5 of this Schedule) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 of this Schedule.
- 2.6 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Customer.
- 2.7 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 or is otherwise specified under the provisions of this Agreement then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:
- 2.7.1 in paragraph 3.2.3, ten (10) Working Days;
- 2.7.2 in paragraph 4.2, ten (10) Working Days;
- 2.7.3 in paragraph 5.2, five (5) Working Days; and
- 2.7.4 in paragraph 6.2, ten (10) Working Days.
- 2.8 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

3. COMMERCIAL NEGOTIATIONS

- 3.1 Following the service of a Dispute Notice, the Customer and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Customer's and the Supplier's Representatives as set out below:

Party	Name	Contact Details
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Customer		 
Supplier		 

3.2 If:

- 3.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
- 3.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3 of this Schedule; or
- 3.2.3 the Parties have not settled the Dispute in accordance with paragraph 3.1 of this Schedule within thirty (30) Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation (a “**Mediation Notice**”) in accordance with paragraph 4 of this Schedule.

4. MEDIATION

- 4.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to be incorporated by reference into this Agreement .
- 4.2 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Mediation Notice then either Party may apply to CEDR to nominate the Mediator.
- 4.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 4.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Variation Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

5. EXPERT DETERMINATION

- 5.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to an ICT technical, financial technical or other aspect of a technical nature (as the Parties may agree) and the Dispute has not been resolved by discussion or mediation, then either Party may request (which

request will not be unreasonably withheld or delayed) by written notice to the other that the Dispute is referred to an Expert for determination.

- 5.2 The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society).
- 5.3 The Expert shall act on the following basis:
- 5.3.1 they shall act as an expert and not as an arbitrator and shall act fairly and impartially;
 - 5.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
 - 5.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make their determination within thirty (30) Working Days of their appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
 - 5.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
 - 5.3.5 the process shall be conducted in private and shall be confidential; and
 - 5.3.6 the Expert shall determine how and by whom the costs of the determination, including their fees and expenses, are to be paid.

6. ARBITRATION

- 6.1 The Customer may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this Schedule.
- 6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Customer of its intentions and the Customer shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 of this Schedule or be subject to the jurisdiction of the courts in accordance with **Clause 53(Governing Law and Jurisdiction)** of this Agreement. The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 6.3 If:
- 6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 of this Schedule shall apply;
 - 6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with **Clause 53** of this Agreement

(Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;

- 6.3.3 the Customer does not serve a Counter Notice within the fifteen (15) Working Days period referred to in paragraph 6.2 of this Schedule, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 of this Schedule or commence court proceedings in the courts in accordance with **Clause 53** of this Agreement (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.
- 6.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3 of this Schedule, the Parties hereby confirm that:
 - 6.4.1 all disputes, issues or claims arising out of or in connection with this Agreement (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**") (subject to paragraphs 6.4.5 to 6.4.7 of this Schedule);
 - 6.4.2 the arbitration shall be administered by the LCIA;
 - 6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - 6.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
 - 6.4.5 the chair of the arbitral tribunal shall be British;
 - 6.4.6 the arbitration proceedings shall take place in London, or otherwise agreed by the Parties, and in the English language; and
 - 6.4.7 the seat of the arbitration shall be London.

7. URGENT RELIEF

- 7.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
 - 7.1.1 for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or
 - 7.1.2 where compliance with paragraph 2.1 of this Schedule and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

SCHEDULE 13
VARIATION PROCEDURE

1. **SCOPE OF SCHEDULE**

- 1.1 This Schedule 13 sets out in Appendix 2 the Variation Form to be used if either Party requests a variation to the Agreement.
- 1.2 The Supplier shall not act on instructions given by a Customer Representative in respect of Variations unless the Customer Representative is acting within the limits of his or her contractual and financial delegation authority specified in Appendix 1 to this Schedule 13. For the avoidance of doubt, a Variation Form will not be validly authorised on behalf of the Customer and the Supplier shall not implement any proposed Variation until the Variation Form is signed and executed on behalf of the Customer by both Customer Representatives responsible for signing Variation Form(s) (acting within the limits of his or her financial delegation authority or contractual delegation authority as set out in to Appendix 1 of this Schedule 13).
- 1.3 The Customer may, by written notice to the Supplier, revoke or amend the authority of any of its representatives or appoint a new representative.

Appendix 1
CUSTOMER REPRESENTATIVES

NAME	ROLE TITLES	RESPONSIBILITIES	FINANCIAL AUTHORITY	CONTRACTUAL AUTHORITY
██████ ██████████	██████████ ██████	██████████	████	████
██████████	██████████	██████████	████	████
██████████ 	██████ ██████████ ██████████	██████████	████	████
██████████ 	██████████ ██████████	██████████	████	████

Appendix 2 VARIATION FORM

Variation Form No:

.....

BETWEEN:

[INSERT name of Customer] ("the Customer")

and

[INSERT name of Supplier] ("the Supplier")

1. This Agreement is varied as follows and shall take effect on the date signed by both Parties:

[INSERT details of the Variation]

2. Words and expressions in this Variation shall have the meanings given to them in this Agreement.
3. This Agreement, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

VARIATION NO.:	FORM	TITLE:	DATE RAISED:
CONTRACT:		TYPE OF VARIATION:	REQUIRED BY DATE:
[KEY DATE: <i>[if any]</i>]			
DETAILED DESCRIPTION OF VARIATION FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:			
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE VARIATION:			
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS):			

SIGNED ON BEHALF OF THE CUSTOMER:	SIGNED ON BEHALF OF THE SUPPLIER:
Signature:_____	Signature:_____
Name:_____	Name:_____
Position:_____	Position:_____
Date:_____	Date:_____
SIGNED ON BEHALF OF THE CUSTOMER:	
Signature:_____	
Name:_____	
Position:_____	
Date:_____	

SCHEDULE 14
DEED OF GUARANTEE

[Insert the name of the Guarantor]

- and -

National Highways Limited

DEED OF GUARANTEE

DEED OF GUARANTEE

THIS DEED is executed as a deed and dated [Insert Date] (the "**Deed**")

BETWEEN:

- (1) **[INSERT NAME OF THE GUARANTOR]** [a company incorporated in [England and Wales] under registered number [insert registered number] whose registered office is at [insert registered office]] **[OR]** [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] (the "**Guarantor**");
- (2) **National Highways LIMITED** a company registered in England and Wales under company number 09346363 whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ (the "**Beneficiary**").

together the "**Parties**" and each a "**Party**".

BACKGROUND:

- (A) The Beneficiary has awarded a contract dated on or around [Insert Date] to Confirm Solutions Ltd (the "**Supplier**") (the "**Guaranteed Agreement**").
.
- (B) The Guarantor has agreed to guarantee the due performance of the Guaranteed Agreement.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

Definitions

- 1.1 The **following** definitions apply in this Deed:

"Business Day"	means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
"Control"	means the power of a person to secure that the affairs of a body corporate are conducted in accordance with the wishes of that person: <ol style="list-style-type: none">(a) by means of the holding of shares or the possession of voting power in relation to that body or any other body corporate; or(b) as a result of any powers conferred by the constitutional or corporate documents, or

any other document regulating that body or
any other body corporate;

**"Guaranteed
Agreement"**

has the meaning given to it in Recital Error!
Reference source not found.;

**"Guaranteed
Obligations"**

has the meaning given to it in Clause 2.1(a);

"Supplier"

has the meaning given to it in Recital (A);

"VAT"

means value added tax or any equivalent tax
chargeable in the UK or elsewhere.

Interpretation

1.2 Unless otherwise stated, any reference in this Deed to:

- (a) the "Guarantor", the "Beneficiary", the "Supplier" or any other person shall be construed so as to include their successors in title, permitted assigns and permitted transferees, whether direct or indirect;
- (b) "assets" includes present and future properties, revenues and rights of every description;
- (c) this "Deed", or any other agreement or instrument is a reference to, this deed or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (d) "indebtedness" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (e) a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (f) the words "including", "includes", "in particular", "for example" or similar shall be construed as illustrative and without limitation to the generality of the related general words; and
- (g) a time of day is a reference to London time.

2 GUARANTEE AND INDEMNITY

2.1 The Guarantor:

- (a) guarantees to the Beneficiary the due and punctual performance of all of the Supplier's present and future obligations under and in connection with the Guaranteed Agreement if and when they become due and performable in accordance with the terms of the Guaranteed Agreement (the “**Guaranteed Obligations**”);
- (b) shall pay to the Beneficiary from time to time on demand all monies (together with interest on such sum accrued before and after the date of demand until the date of payment) that have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement but which has not been paid at the time the demand is made; and
- (c) shall, if the Supplier fails to perform in full and on time any of the Guaranteed Obligations and upon written notice from the Beneficiary, immediately on demand perform or procure performance of the same at the Guarantor's own expense.

2.2 The Guarantor, as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under Clause 2.1, shall indemnify and keep indemnified the Beneficiary in full and on demand from and against all and any losses, damages, costs and expenses suffered or incurred by the Beneficiary arising out of, or in connection with:

- (a) any failure by the Supplier to perform or discharge the Guaranteed Obligations; or
- (b) any of the Guaranteed Obligations being or becoming wholly or partially unenforceable for any reason,
- (c) provided that the Guarantor's liability under this Clause 2.2 shall be no greater than the Supplier's liability under the Guaranteed Agreement was (or would have been had the relevant Guaranteed Obligation been fully enforceable).

3 BENEFICIARY PROTECTIONS

Continuing Guarantee

- 3.1 This Deed is, and shall at all times be, a continuing and irrevocable security until the Guaranteed Obligations have been satisfied or performed in full, and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Beneficiary may at any time hold for the performance of the Guaranteed Obligations and may be enforced without first having recourse to any such security.

Preservation of the Guarantor's liability

- 3.2 The Guarantor's liability under this Deed shall not be reduced, discharged or otherwise adversely affected by:

- (a) any arrangement made between the Supplier and the Beneficiary;
- (b) any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations;
- (c) any alteration in the obligations undertaken by the Supplier whether by way of any variation referred to in Clause 4 or otherwise;
- (d) any waiver or forbearance by the Beneficiary whether as to payment, time, performance or otherwise;
- (e) the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Supplier or any other person;
- (f) any unenforceability, illegality or invalidity of any of the provisions of the Guaranteed Agreement or any of the Supplier's obligations under the Guaranteed Agreement, so that this Deed shall be construed as if there were no such unenforceability, illegality or invalidity;
- (g) any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, Control or ownership, insolvency, liquidation, administration, voluntary arrangement, or appointment of a receiver, of the Supplier or any other person.

Immediate demand

- 3.3 The Guarantor waives any right it may have to require the Beneficiary to proceed against, enforce any other right or claim for payment against, or take any other action against, the Supplier or any other person before claiming from the Guarantor under this Guarantee.

Deferral of rights

- 3.4 Until all amounts which may be or become payable under the Guaranteed Agreement or this Deed have been irrevocably paid in full, the Guarantor shall not, as a result of this Deed or any payment performance under this Deed:

- (a) be subrogated to any right or security of the Beneficiary;
- (b) claim or prove in competition with the Beneficiary against the Supplier or any other person;
- (c) demand or accept repayment in whole or in part of any indebtedness due from the Supplier;
- (d) take the benefit of, share in or enforce any security or other guarantee or indemnity against the Supplier; or
- (e) claim any right of contribution, set-off or indemnity from the Supplier,

without the prior written consent of the Beneficiary (and in such case only in accordance with any written instructions of the Beneficiary).

- 3.5 If the Guarantor receives any payment or other benefit in breach of Clause 3.4, or as a result of any action taken in accordance with a written instruction of the Beneficiary given pursuant to Clause 3.4, such payment or other benefit, and any benefit derived directly or indirectly by the Guarantor therefrom, shall be held by the Guarantor on trust for the Beneficiary applied towards the discharge of the Guarantor's obligations to the Beneficiary under this Deed.

4 VARIATION OF THE GUARANTEED AGREEMENT

- 4.1 The Guarantor confirms that it intends that this Deed shall extend and apply from time to time to any variation, increase, extension or addition of the Guaranteed Agreement, however, fundamental, and any associated fees, costs and/or expenses.

5 PAYMENT AND COSTS

- 5.1 All sums payable by the Guarantor under this Deed shall be paid in full to the Beneficiary in pounds sterling:
- (a) without any set-off, condition or counterclaim whatsoever; and
 - (b) free and clear of any deductions or withholdings whatsoever except as may be required by applicable law which is binding on the Guarantor.
- 5.2 If any deduction or withholding is required by any applicable law to be made by the Guarantor:
- (a) the amount of the payment due from the Guarantor shall be increased to an amount which (after making any deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required; and
 - (b) the Guarantor shall promptly deliver to the Beneficiary all receipts issued to it evidencing each deduction or withholding which it has made.
- 5.3 The Guarantor shall not and may not direct the application by the Beneficiary of any sums received by the Beneficiary from the Guarantor under any of the terms in this Deed.
- 5.4 The Guarantor shall pay interest on any amount due under this Deed at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 5.5 The Guarantor shall, on a full indemnity basis, pay to the Beneficiary on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any VAT on those costs and expenses) which the Beneficiary incurs in connection with:
- (a) the preservation, or exercise and enforcement, of any rights under or in connection with this Deed or any attempt to do so; and

- (b) any discharge or release of this Deed.

6 CONDITIONAL DISCHARGE

- 6.1 Any release, discharge or settlement between the Guarantor and the Beneficiary in relation to this Deed shall be conditional on no right, security, disposition or payment to the Beneficiary by the Guarantor, the Supplier or any other person being avoided, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency for any other reason.
- 6.2 If any such right, security, disposition or payment as referred to in Clause 6.1 is avoided, set aside or ordered to be refunded, the Beneficiary shall be entitled subsequently to enforce this Deed against the Guarantor as if such release, discharge or settlement had not occurred and any such security, disposition or payment has not been made.

7 REPRESENTATIONS AND WARRANTIES

- 7.1 The Guarantor represents and warrants to the Beneficiary that:
 - (a) it is duly incorporated with limited liability and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name, and has power to carry on its business as now being conducted and to own its property and other assets;
 - (b) it has full power under its constitution or equivalent constitutional documents in the jurisdiction in which it is established to enter into this Deed;
 - (c) it has full power to perform the obligations expressed to be assumed by it or contemplated by this Deed;
 - (d) it has been duly authorised to enter into this Deed;
 - (e) it has taken all necessary corporate action to authorise the execution, delivery and performance of this Deed;
 - (f) this Deed when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;
 - (g) all necessary consents and authorisations for the giving and implementation of this Deed have been obtained;
 - (h) that its entry into and performance of its obligations under this Deed will not constitute any breach of or default under any contractual, government or public obligation binding on it; and
 - (i) that it is not engaged in any litigation or arbitration proceedings that might affect its capacity or ability to perform its obligations under this Deed and to the best of its knowledge no such legal or arbitration proceedings have been threatened or are pending against it.

8 ASSIGNMENT

- 8.1 The Beneficiary shall be entitled by notice in writing to the Guarantor to assign the benefit of this Deed at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this Deed.
- 8.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed without the prior written consent of the Beneficiary.

9 VARIATION

- 9.1 No variation of this Deed shall be effective unless it is in writing and signed by the parties.

10 DEMANDS AND NOTICES

- 10.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed shall be in writing, addressed to:
- (a) For the Attention of [Insert details]
 - (b) [Address of the Guarantor in England and Wales]
- 10.2 or such other address in England and Wales as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed as being an address or facsimile number for the receipt of such demands or notices.
- 10.3 Any notice or demand served on the Guarantor or the Beneficiary under this Deed shall be deemed to have been served:
- (a) if delivered by hand, at the time of delivery; or
 - (b) if posted, at 10.00 a.m. on the second Business Day after it was put into the post.
- 10.4 In proving service of a notice or demand on the Guarantor it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter.
- 10.5 Any notice purported to be served on the Beneficiary under this Deed shall only be valid when received in writing by the Beneficiary.

11 ENTIRE AGREEMENT

- 11.1 This Deed constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 11.2 The Guarantor acknowledges that it has not entered into this Deed in reliance upon, nor has it been induced to enter into this Deed by, any representation,

warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed.

12 WAIVER

12.1 No failure or delay by the Beneficiary to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.2 Any waiver by the Beneficiary of any terms of this Deed, or of any Guaranteed Obligations, shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

13 SEVERANCE

13.1 If any provision or part-provision of this Deed is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Deed.

14 THIRD PARTY RIGHTS

14.1 A person who is not a Party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any of its terms but this does not affect any third party right which exists or is available independently of that Act.

15 GOVERNING LAW AND JURISDICTION

15.1 This Deed and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

15.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Deed or its subject matter or formation.

15.3 Nothing contained in Clause 15.2 shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

15.5 The Guarantor irrevocably appoints [Insert name and address of agent] as its agent to receive on its behalf in England or Wales service of any proceedings under this Clause 15. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Guarantor) and shall be valid until such time as the Beneficiary has received prior written notice that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Guarantor shall appoint a substitute acceptable to the Beneficiary and deliver to the Beneficiary the new agent's name and address within England and Wales.

Executed as a deed by [insert the name of the Guarantor] acting by [insert name of Director] a director, in the presence of a witness:

.....
[Signature of Witness]

.....
[Signature of Director]

Name of Director:

.....

Name of Witness:

.....

Address of Witness:

.....

.....

Occupation of Witness:

.....

SCHEDULE 15

DATA PROCESSING

1 Processing Personal Data

- 1.1 This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Customer at its absolute discretion.
- 1.2 The contact details of the Customer's Data Protection Officer are: **Name:**
[REDACTED] **Email:**
[REDACTED]
- 1.3 The contact details of the Supplier's Data Protection Officer are: [REDACTED]
[REDACTED]
- 1.4 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 1.5 Any such further instructions shall be incorporated into this Schedule.
- 1.6 The Processor's Data Privacy Terms shall apply under this Schedule, as made available at
<https://www.siemens.com/global/en/company/about/compliance/dataprivacy/dataprivacyterms/brightly.html>

Description	Details
Identity of Controller for each Category of Personal Data	<p>The Customer is Controller and the Supplier is Processor</p> <p>The Parties acknowledge that in accordance with Clause 30.7.2 to 30.7.14 and for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor of the following Personal Data:</p> <p>The Personal Data transferred/Processed concern the following categories of Personal Data:</p> <ul style="list-style-type: none">• contact and user information, including name, address data, phone number, email address, and time zone;• system access, usage, authorization data, operating data and any system log-files containing Personal Data or any other application-specific data which users enter into the offering; and• where applicable further Personal Data as determined by Customer and its Further Controllers by uploading or

	connecting it to the offerings or otherwise granting access to it via the offerings.
Duration of the processing	<p>For the Term of the Agreement.</p> <p>Customer has the ability to rectify, erase or restrict the Processing of Personal Data via the functionalities of the services, or (ii) Brightly rectifies, erases or restricts the Processing of Personal Data as instructed by Customer.</p>
Nature and purposes of the processing	<p>The nature of the processing includes:</p> <ul style="list-style-type: none"> • data collection, recording, access, porting, rectification, objection and erasure; • automated decision making and profiling; and • restricted processing • to provide the Services, including SaaS or similar Services made available by the Processor. <p>The purposes for the processing of data includes:</p> <ul style="list-style-type: none"> • keeping a record for logging into the Customer System and Supplier System, deleting of user accounts that are no longer in use; • recording of data entries in relation to asset and operational delivery; • enabling the monitoring of the Supplier's performance through the Performance Monitoring System and Performance Monitoring Reports; and • improving the Services based on any feedback gathered as part of the Continuous Improvement Plan
Type of Personal Data	<p>Categories of personal data transferred:</p> <p>The Personal Data transferred/Processed concern the following categories of Personal Data:</p> <ul style="list-style-type: none"> • contact and user information, including name, address data, phone number, email address, and time zone; • system access, usage, authorization data, operating data and any system log-files containing Personal Data or any other application-specific data which users enter into the Offerings; and • where applicable further Personal Data as determined by Customer and its Further Controllers by uploading or connecting it to the Offerings or otherwise granting access to it via the Offerings. <p>Sensitive data transferred (if applicable) The Offerings are not intended for the processing of Sensitive Personal Data and Customer and its Further Controllers shall not transfer, directly or indirectly, any such Sensitive Personal Data to Brightly.</p>

Categories of Data Subject	Staff (including Customer users) and supply chain approved users, including contractors, suppliers, business partners, and other individuals whose Personal Data is stored on the Services and/or is Processed in the context of providing the Services.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	The data will be retained for the Term and upon exit, will be provided to the Customer for their storage thereafter, in accordance with the Agreement.

SCHEDULE 16

STAFF TRANSFER

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

- “Staffing Information”** in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Customer may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:
- (a) their ages, dates of commencement of employment or engagement and gender and place of work;
 - (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
 - (c) the identity of the employer or relevant contracting Party;
 - (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
 - (e) their wages, salaries and profit sharing arrangements as applicable;
 - (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
 - (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);

- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

**“Supplier's Final
Supplier Personnel List”**

a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;

**“Supplier's Provisional
Supplier Personnel List”**

a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list engaged in or wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

2. INTERPRETATION

Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Customer, Replacement Supplier or Replacement Sub-contractor, as the case may be.

PART A: NOT USED

PART B: NOT USED

PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1. PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 The Customer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Customer and/or any Former Supplier.
- 1.2 If any employee of the Customer and/or a Former Supplier claims, or it is determined in relation to any employee of the Customer and/or a Former Supplier, that his/her contract of employment has been transferred from the Customer and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations then:
 - 1.2.1 the Supplier shall, and shall procure that the relevant Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, give notice to the Former Supplier; and
 - 1.2.2 the Customer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Customer or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Customer and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the fifteen (15) Working Day period specified in paragraph 1.2.2:
 - 1.4.1 no such offer of employment has been made;
 - 1.4.2 such offer has been made but not accepted; or
 - 1.4.3 the situation has not otherwise been resolved,the Supplier and/or the Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2. INDEMNITIES

- 2.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to paragraph 2.4, the Customer shall:
 - 2.1.1 indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment

of any employees of the Customer referred to in paragraph 1.2 made pursuant to the provisions of paragraph 1.4 provided that the Supplier takes, all reasonable steps to minimise any such Employee Liabilities; and

- 2.1.2 procure that the Former Supplier indemnifies the Supplier against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier made pursuant to the provisions of paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in paragraph 1.2 is neither re employed by the Customer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the fifteen (15) Working Day period referred to in paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Customer and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Customer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.
- 2.4 The indemnities in paragraph 2.1:
 - 2.4.1 shall not apply to:
 - 2.4.1.1 any claim for:
 - (a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
 - 2.4.2 any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and
 - 2.4.3 shall apply only where the notification referred to in paragraph 1.2.1 is made by the Supplier and/or any Sub-contractor to the Customer and, if applicable, Former Supplier within six months of the Effective Date.

3. PROCUREMENT OBLIGATIONS

Where in this Part C the Customer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Customer's contract with the Former Supplier contains a contractual right in that regard which the Customer may enforce, or otherwise so that it requires only that the Customer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

PART D: NOT USED

PART E: EMPLOYMENT EXIT PROVISIONS

1. PRE-SERVICE TRANSFER OBLIGATIONS

- 1.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:
- 1.1.1 receipt of a notification from the Customer of a Service Transfer or intended Service Transfer;
 - 1.1.2 receipt of the giving of notice of early termination of this Agreement ;
 - 1.1.3 the date which is twelve (12) months before the end of the Term; and
 - 1.1.4 receipt of a written request of the Customer at any time (provided that the Customer shall only be entitled to make one such request in any six month period),
- it shall provide in a suitably anonymised format so as to comply with Data Protection Legislation, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Customer.
- 1.2 At least twenty (20) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Customer or at the direction of the Customer to any Replacement Supplier and/or any Replacement Sub-contractor:
- 1.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
 - 1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Customer shall be permitted to use and disclose information provided by the Supplier under paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.
- 1.4 The Supplier warrants, for the benefit of the Customer, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

- 1.5 From the date of the earliest event referred to in paragraph 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Customer (not to be unreasonably withheld or delayed):
- 1.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
 - 1.5.2 make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
 - 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
 - 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
 - 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
 - 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,
- and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Customer or, at the direction of the Customer, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.
- 1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Customer any information the Customer may reasonably require relating to the manner in which the Services are organised, which shall include:
- 1.6.1 the numbers of employees engaged in providing the Services;
 - 1.6.2 the percentage of time spent by each employee engaged in providing the Services; and
 - 1.6.3 a description of the nature of the work undertaken by each employee by location.

- 1.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Customer, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Customer or, at the direction of the Customer, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
- 1.7.1 the most recent month's copy pay slip data;
 - 1.7.2 details of cumulative pay for tax and pension purposes;
 - 1.7.3 details of cumulative tax paid;
 - 1.7.4 tax code;
 - 1.7.5 details of any voluntary deductions from pay; and
 - 1.7.6 bank/building society account details for payroll purposes.

2. EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 2.1 The Customer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. The Customer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but

untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.

2.3 Subject to paragraph 2.4, the Supplier shall indemnify the Customer and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

2.3.1 any act or omission of the Supplier or any Sub-contractor whether occurring before, on or after the Service Transfer Date;

2.3.2 the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:

2.3.2.1 any collective agreement applicable to the Transferring Supplier Employees; and/or

2.3.2.2 any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;

2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

2.3.4.1 in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and

2.3.4.2 in relation to any employee who is not identified in the Supplier's Final Supplier Personnel list, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Customer and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

2.3.5 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the

- Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel list for whom it is alleged the Customer and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations; and
- 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Customer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
- 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Supplier's Final Personnel list claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel list, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations, then:
- 2.5.1 the Customer shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
- 2.5.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Customer shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the fifteen (15) Working Day period specified in paragraph 2.5.2 has elapsed:
- 2.7.1 no such offer of employment has been made;
 - 2.7.2 such offer has been made but not accepted; or
 - 2.7.3 the situation has not otherwise been resolved
- the Customer shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in paragraph 2.8:
- 2.9.1 shall not apply to:
 - 2.9.1.1 any claim for:
 - (a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or
 - 2.9.1.2 any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
 - 2.9.2 shall apply only where the notification referred to in paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within six months of the Service Transfer Date.

- 2.10 If any such person as is described in paragraphs 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.
- 2.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel list Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- 2.11.1 the Supplier and/or any Sub-contractor; and
 - 2.11.2 the Replacement Supplier and/or the Replacement Sub-contractor.
- 2.12 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Customer and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Customer, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Customer shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to paragraph 2.14, the Customer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:
- 2.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-contractor;
 - 2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - 2.13.2.1 any collective agreement applicable to the Transferring Supplier Employees; and/or
 - 2.13.2.2 any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;

- 2.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 2.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 2.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - 2.13.6.1 in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - 2.13.6.2 in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- 2.13.7 a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and
- 2.13.8 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or

Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

- 2.14 The indemnities in paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

SCHEDULE 17

CONTINUOUS IMPROVEMENT

1. SUPPLIER'S OBLIGATIONS

- 1.1 The Supplier must, throughout the Term, identify new or potential improvements to the provision of the Services with a view to reducing the Customer's costs (including the Charges) and/or improving the quality and efficiency of the Services and their supply to the Customer.
- 1.2 The Supplier must adopt a policy of continuous improvement in relation to the Services, which must include regular reviews with the Customer of the Services and the way it provides them, with a view to reducing the Customer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables. The Supplier and the Customer must provide each other with any information relevant to meeting this objective.
- 1.3 In addition to Paragraph 1.1, the Supplier shall produce at the start of each Agreement Year a plan for improving the provision of Services and/or reducing the Charges (without adversely affecting the performance of this Agreement) during that Agreement Year ("**Continuous Improvement Plan**") for the Customer's Approval. The Continuous Improvement Plan must include, as a minimum, proposals:
 - 1.3.1 identifying the emergence of relevant new and evolving technologies;
 - 1.3.2 changes in business processes of the Supplier or the Customer and ways of working that would provide cost savings and/or enhanced benefits to the Customer (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
 - 1.3.3 new or potential improvements to the provision of the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services; and
 - 1.3.4 measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the Services, and identifying opportunities to assist the Customer in meeting their sustainability objectives.
- 1.4 The initial Continuous Improvement Plan for the first Agreement Year shall be submitted by the Supplier to the Customer for Approval within six (6) Months following the Commencement Date.
- 1.5 The Customer shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. If it is rejected then the Supplier shall, within ten (10) Working Days of receipt of notice of rejection, submit a revised

Continuous Improvement Plan reflecting the changes required. Once Approved, it becomes the Continuous Improvement Plan for the purposes of this Agreement.

- 1.6 The Supplier must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested.
- 1.7 If the Customer wishes to incorporate any improvement into this Agreement, it must request a Variation in accordance with the Variation Procedure and the Supplier must implement such Variation at no additional cost to the Customer.
- 1.8 Once the first Continuous Improvement Plan has been Approved in accordance with Paragraph 1.5:
 - 1.8.1 the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
 - 1.8.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Supplier's progress against the Continuous Improvement Plan.
- 1.9 The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Agreement Year (after the first Agreement Year) in accordance with the procedure and timescales set out in Paragraph 1.3.
- 1.10 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.

SCHEDULE 18

CONTRACT MANAGEMENT

1. DEFINITIONS

In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Operational Board"	the board established in accordance with Paragraph 4.1 of this Schedule;
"Project Manager"	the manager appointed in accordance with Paragraph 2.1 of this Schedule;

2. PROJECT MANAGEMENT

- 2.1 The Supplier and the Customer shall each appoint a Project Manager for the purposes of this Agreement through whom the provision of the Services and the Deliverables shall be managed day-to-day.
- 2.2 The Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Agreement can be fully realised.
- 2.3 Without prejudice to Paragraph 4 below, the Parties agree to operate the boards specified as set out in the Annex to this Schedule.

3. ROLE OF THE SUPPLIER PROJECT MANAGER

- 3.1 The Supplier Project Manager shall be:
 - 3.1.1 the primary point of contact to receive communication from the Customer and will also be the person primarily responsible for providing information to the Customer;
 - 3.1.2 able to delegate his position to another person at the Supplier but must inform the Customer before proceeding with the delegation and it will be delegated person's responsibility to fulfil the Project Manager's responsibilities and obligations;
 - 3.1.3 able to cancel any delegation and recommence the position himself; and
 - 3.1.4 replaced only after the Customer has received notification of the proposed change.
- 3.2 The Customer may provide revised instructions to the Supplier's Project Manager in regards to the Agreement and it will be the Supplier Project Manager's responsibility to ensure the information is provided to the Supplier and the actions implemented.

- 3.3 Receipt of communication from the Supplier Project Manager by the Customer does not absolve the Supplier from its responsibilities, obligations or liabilities under the Agreement.

4. ROLE OF THE OPERATIONAL BOARD

- 4.1 The Operational Board shall be established by the Customer for the purposes of this Agreement on which the Supplier and the Customer shall be represented.
- 4.2 The Operational Board members, frequency and location of board meetings and planned start date by which the board shall be established are set out in Annex A to the Schedule.
- 4.3 In the event that either Party wishes to replace any of its appointed board members, that Party shall notify the other in writing for approval by the other Party (such approval not to be unreasonably withheld or delayed). Each Customer board member shall have at all times a counterpart Supplier board member of equivalent seniority and expertise.
- 4.4 Each Party shall ensure that its board members shall make all reasonable efforts to attend board meetings at which that board member's attendance is required. If any board member is not able to attend a board meeting, that person shall use all reasonable endeavours to ensure that a delegate attends the Operational Board meeting in his/her place (wherever possible) and that the delegate is properly briefed and prepared and that he/she are debriefed by such delegate after the board meeting.
- 4.5 The purpose of the Operational Board meetings will be to review the Supplier's performance under this Agreement. The agenda for each meeting shall be set by the Customer and communicated to the Supplier in advance of that meeting.

5. CONTRACT RISK MANAGEMENT

- 5.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Agreement.
- 5.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Customer, processes for:
- 5.2.1 the identification and management of risks;
 - 5.2.2 the identification and management of issues; and
 - 5.2.3 monitoring and controlling project plans.
- 5.3 The Supplier allows the Customer to inspect at any time within working hours the accounts and records which the Supplier is required to keep.
- 5.4 The Supplier will maintain a risk register of the risks relating to the Agreement which the Customer and the Supplier have identified.

Annex: Operational Boards

The Parties agree to operate the following boards at the locations and at the frequencies set out below:

Confirm User Group (CUG)

Customer

- CUG Chair
- IT Contract manager
- IT Service Delivery manager
- Area/regional representation

Supplier

- Account Director/Customer Engagement Director
- Project Manager
- Lead Consultant

Location: Online.

Frequency: Monthly

Start date: Commencement Date.

Supplier Performance Review

Customer

- CUG Chair
- IT Contract manager
- IT Service Delivery manager

Supplier

- Account Director/Customer Engagement Director
- CSC Director UK
- During escalation – UK Sales Director

Locations: Online.

Frequency: Monthly.

Start date: Commencement Date.

SCHEDULE 19
INSURANCE REQUIREMENTS

PART A: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

1. Insured

The Supplier.

1. Interest

To indemnify the Insured (as specified in paragraph 1 above) in respect of all sums which the Insured (as specified in paragraph 1 above) shall become legally liable to pay as damages, whether contractually or otherwise, including claimant's costs and expenses, in respect of accidental:

(a) death or bodily injury to or sickness, loss of sight, anguish or shock whether mental or otherwise, or illness or disease contracted by any person;

(b) loss of or damage to property;

happening during the period of insurance (as specified in paragraph 5 below) and arising out of or in connection with the provision of the Services and in connection with this Agreement.

2. Limit of indemnity

Not less than five million pounds (£5,000,000) in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but five million pounds (£5,000,000) in respect of any one occurrence and in the aggregate per annum in respect of products and pollution liability (to the extent insured by the relevant policy).

3. Territorial limits

United Kingdom

4. Period of insurance

From the date of this Agreement for the Term and renewable on an annual basis unless agreed otherwise by the Customer in writing.

5. Cover features and extensions

5.1 Indemnity to principals clause under which the Customer shall be indemnified in respect of claims made against the Customer in respect of death or bodily injury or third party property damage arising out of or in connection with the Agreement and for which the Supplier is legally liable;

6. Principal exclusions

6.1 War and related perils;

6.2 Nuclear and radioactive risks;

6.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured (as specified in paragraph 1 above) arising out of and during the course of their employment;

6.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable law in respect of such vehicles;

- 6.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured (as specified in paragraph 1 above);
- 6.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property;
- 6.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel;
- 6.8 Liability arising from contamination and pollution unless caused by a sudden, unintended, unexpected and accidental occurrence;
- 6.9 Liability in respect of loss, damage or destruction to physical property in the care, custody and control of the Insured (as specified in paragraph 1 above) but this exclusion is not to apply to Customer physical property in the care, custody and control of the Supplier.

PART B: PROFESSIONAL INDEMNITY INSURANCE

1. Insured

The Supplier.

2. Interest

To indemnify the Insured (as specified in paragraph 1 above) for all sums which the Insured (as specified in paragraph 1 above) shall become legally liable to pay (including claimant's costs and expenses) as a result of claims first made against the Insured (as specified in paragraph 1 above) during the Period of Insurance (as specified in paragraph 5 below) by reason of any negligent act, error and/or wilful omission arising from or in connection with the provision of the advice and / or professional services and in connection with this Agreement.

3. Limit of indemnity

Not less than one million pounds (£1,000,000) in respect of any one claim and in the aggregate per annum.

4. Territorial limits

United Kingdom

5. Period of insurance

From the date of this Agreement and renewable on an annual basis unless agreed otherwise by the Customer in writing (a) throughout the Term or until earlier termination of this Agreement and (b) for a period of three (3) years after the Expiry Date.

6. Cover features and extensions

6.1 Retroactive cover to apply to any claims made policy wording in respect of this Agreement or retroactive date to be no later than the Commencement Date.

7. Principal exclusions

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

8. Maximum deductible threshold

Not to exceed £35,456 for each and every claim.

PART C: EMPLOYERS' LIABILITY INSURANCE

9. The Supplier shall meet its insurance obligations under applicable Law in full, including, United Kingdom Employers' Liability Insurance.
10. Employers' Liability Insurance to a minimum of £5,000,000 in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period.
11. It is a legal requirement that all companies hold Employer's Liability Insurance of £5,000,000 in respect of any one occurrence the number of occurrences being unlimited in any annual policy period as a minimum.