schedule 2

MODEL CONTRACT

**[Torbay Council]**

**- and -**

**[INSERT NAME OF SERVICE PROVIDER]**

**CONTRACT**

**relating to**

**the provision of Software Application Solutions**

**CONTENTS**

**Clause** **Page No**

[1. INTERPRETATIONS 5](#_Toc240433260)

[2. SOFTWARE APPLICATION SOLUTIONS 6](#_Toc240433261)

[3. STANDARDS AND REGULATIONS 7](#_Toc240433262)

[4. ACCEPTANCE AND TITLE AND RISK 8](#_Toc240433263)

[5. CHARGES 8](#_Toc240433264)

[6. CONTRACT MANAGEMENT 9](#_Toc240433265)

[7. ALTERNATIVE CLAUSES AND ADDITIONAL CLAUSES 9](#_Toc240433266)

[8. AMENDMENTS TO THIS CONTRACT 9](#_Toc240433267)

[9. COMMUNICATIONS 9](#_Toc240433268)

[10. TERM AND TERMINATION 10](#_Toc240433269)

[11. CONSEQUENCES OF TERMINATION AND EXPIRY 13](#_Toc240433270)

[12. WARRANTIES AND REPRESENTATIONS 14](#_Toc240433271)

[13. LIMITATION OF LIABILITY 16](#_Toc240433272)

[14. CUSTOMER DATA 17](#_Toc240433273)

[15. PROTECTION OF PERSONAL DATA 18](#_Toc240433274)

[16. SECURITY REQUIREMENTS AND STAFF VETTING 21](#_Toc240433275)

[17. INTELLECTUAL PROPERTY RIGHTS AND INDEMNITY 22](#_Toc240433276)

[18. CONFIDENTIALITY 26](#_Toc240433277)

[19. FREEDOM OF INFORMATION 28](#_Toc240433278)

[20. PUBLICITY 29](#_Toc240433279)

[21. DISPUTE RESOLUTION 29](#_Toc240433280)

[22. INSURANCE 31](#_Toc240433281)

[23. RECOVERY OF SUMS DUE 31](#_Toc240433282)

[24. STATUTORY REQUIREMENTS 31](#_Toc240433283)

[25. STATUTORY INVALIDITY 32](#_Toc240433284)

[26. ENVIRONMENTAL REQUIREMENTS 32](#_Toc240433285)

[27. DISCRIMINATION AND EQUALITY 32](#_Toc240433286)

[28. TUPE (*For Contracts where TUPE is not intended to apply at commencement)* 32](#_Toc240433287)

[29. OFFICIAL SECRETS ACTS 33](#_Toc240433288)

[30. CORRUPT GIFTS AND PAYMENTS OF COMMISSION 34](#_Toc240433289)

[31. TRANSFER AND SUB-CONTRACTING 34](#_Toc240433290)

[32. RIGHTS OF THIRD PARTIES 37](#_Toc240433291)

[33. ACCESS TO CUSTOMER PREMISES 37](#_Toc240433292)

[34. SEVERABILITY 38](#_Toc240433293)

[35. AUDIT 38](#_Toc240433294)

[36. FORCE MAJEURE 39](#_Toc240433295)

[37. LEGISLATIVE CHANGE 41](#_Toc240433296)

[38. WAIVER AND CUMULATIVE REMEDIES 41](#_Toc240433297)

[39. LAW AND JURISDICTION 41](#_Toc240433298)

[40. ENTIRE AGREEMENT 42](#_Toc240433299)

[41. FURTHER ASSURANCES 42](#_Toc240433300)

[42. RELATIONSHIP OF THE PARTIES 42](#_Toc240433301)

[2. ACCEPTANCE PROCEDURES – BASIC PARAMETERS 91](#_Toc240433302)

[3. ACCEPTANCE PROCEDURES & ACCEPTANCETEST CRITERIA 92](#_Toc240433303)

[2. CONTRACT COMMENCEMENT 115](#_Toc240433304)

[3. DURING THE TERM 116](#_Toc240433305)

[4. SERVICE TRANSFER 116](#_Toc240433306)

[2. LIQUIDATED DAMAGES 117](#_Toc240433307)

ANNEX A TO THE CONTRACT CLAUSES

**CONTRACT SCHEDULES**

1. Interpretations
2. The Ordered Software Application Solutions, Service Levels, Service Credits and Implementation Plan
3. The Charges and Charges Variation Procedure
4. Invoicing Procedure
5. Acceptance Procedures
6. Contract and Service Management
7. Contract Change Procedure
8. Sub-Contractors
9. Dispute Resolution Procedure
10. Commercially Sensitive Information
11. Exit and Service Transfer Arrangements
12. Standards and Regulations
13. Title and Risk
14. Liquidated Damages
15. BCDR Plan
16. Security Management Plan
17. Software and Software Licence Terms
18. Pensions
19. Insurances

THIS CONTRACT is made on the [ ] day of [ ] 200[ ]

**BETWEEN**

**(1)** [\*\*\* **insert name of CUSTOMER** \*\*\*]of [\*\*\* insert address \*\*\*](the “**CUSTOMER**”); and

**(2)** [\*\*\* **insert name of SERVICE PROVIDER** \*\*\*], a company registered in [\*\*\* insert country \*\*\*] under company number [\*\*\* insert number \*\*\*] and whose registered office is at [\*\*\* insert address \*\*\*] (the “**SERVICE PROVIDER**”).

**WHEREAS**

1. The Lords Commissioners of Her Majesty’s Treasury as represented by Buying Solutions being a separate trading fund of Her Majesty’s Treasury without separate legal personality (the “**AUTHORITY**”) selected service providers, including the SERVICE PROVIDER, to provide software application solutions.
2. The SERVICE PROVIDER undertook to provide the same on the terms set out in a framework agreement number RM713 dated 17th December 2009 (the “**Framework Agreement**”).
3. The AUTHORITY established a set of framework agreements, including the Framework Agreement, in consultation with and for the benefit of public sector bodies. The AUTHORITY has overall responsibility for management of those framework agreements.
4. The AUTHORITY and the SERVICE PROVIDER agree that public sector bodies within the UK may enter into contracts under the Framework Agreement.
5. The CUSTOMER is granted rights by the AUTHORITY in accordance with the Contracts (Rights of Third Parties) Act 1999 to enter into a contract under the Framework Agreement pursuant to an Order served by the CUSTOMER on the SERVICE PROVIDER.
6. The CUSTOMER served an Order for the software application solutions on the SERVICE PROVIDER on [\*\*\* insert date \*\*\*].
7. The SERVICE PROVIDER confirmed its agreement to the terms of the Order and its acceptance of the Order and hereby duly executes this Contract.
8. The terms of this Contract replace the terms of any documentation leading to the execution of this Contract.

**IT IS AGREED AS FOLLOWS:**

1. INTERPRETATIONS
   1. As used in this Contract:
      1. the terms and expressions set out in Schedule 2-1 shall have the meanings ascribed therein;
      2. the masculine includes the feminine and the neuter;
      3. the singular includes the plural and vice versa;
      4. the Recitals shall form part of and be incorporated into this Contract; and
      5. the words “include”, “includes”, “including” “for example”, “in particular” and words of similar effect are to be construed as if they were immediately followed by the words “without limitation”.
   2. A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
   3. A reference to any document other than as specified in Clause  shall be construed as a reference to the document as at the Effective Date.
   4. Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.
   5. References to “Clauses” and “Schedules” are, unless otherwise provided, references to the Clauses of and Schedules to this Contract. References to “paragraphs” are, unless otherwise provided, references to paragraphs of the Schedule in which the references are made.
   6. Terms or expressions contained in this Contract which are capitalised but which do not have an interpretation in Schedule 2-1 shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning.
   7. Without prejudice to Clause , in the event and to the extent only of any conflict or inconsistency in the provisions of the Clauses of this Contract and the provisions of the Schedules, the following order of precedence shall prevail:
      1. the Clauses, including Annex A thereto;
      2. Schedule 2-1; and
      3. the remaining Schedules.
2. SOFTWARE APPLICATION SOLUTIONS
   1. This Contract governs the overall relationship of the SERVICE PROVIDER and the CUSTOMER with respect to the provision of the Ordered Software Application Solutions. The CUSTOMER has ordered the Ordered Software Application Solutions specified in Schedule 2-2 and the SERVICE PROVIDER shall provide those Ordered Software Application Solutions:
      1. in accordance with the provisions of this Contract if those Ordered Software Application Solutions are to be sold by the SERVICE PROVIDER and purchased by the CUSTOMER; and
      2. in accordance with the provisions of this Contract and any other terms and conditions as are agreed between the CUSTOMER and the SERVICE PROVIDER and any third party (if any) if the Ordered Goods are to be leased to the CUSTOMER.
   2. Nothing in this Contract shall create an exclusive relationship between the SERVICE PROVIDER and the CUSTOMER for the provision of any or all Software Application Solutions.
   3. The SERVICE PROVIDER shall provide the Ordered Software Application Solutions in accordance with:
      1. any agreed timetable and Implementation Plan; and
      2. the relevant Service Levels at all times throughout the Term of this Contract.

[Any failure to meet any agreed timetable and Implementation Plan shall entitle the CUSTOMER to Liquidated Damages calculated in accordance with the provisions of Schedule 2-15.] Any failure to meet Service Levels shall entitle the CUSTOMER to Service Credits calculated in accordance with the provisions of Schedule 2-2.

* 1. In the provision of the Ordered Software Application Solutions, should the SERVICE PROVIDER become aware of any breach in its provision of the Ordered Software Application Solutions, the SERVICE PROVIDER shall, where such breach is capable of remedy, at its own expense use all reasonable endeavours to remedy the same as soon as is reasonably practicable.
  2. If required by the CUSTOMER, the SERVICE PROVIDER shall prepare a Service Transfer Plan for review by the CUSTOMER no later than three (3) months after the Effective Date and at regular intervals thereafter as specified in Schedule 2-11.
  3. The SERVICE PROVIDER accepts responsibility for all damage to, shortage or loss of, the Ordered Goods if:
     1. the same is notified to the SERVICE PROVIDER within three (3) Working Days of receipt of the Ordered Goods by the CUSTOMER; and
     2. the Ordered Goods have been handled by the CUSTOMER in accordance with the SERVICE PROVIDER’s instructions.
  4. Where the SERVICE PROVIDER accepts responsibility under Clause it shall, at its sole option, replace or repair the Ordered Goods (or part thereof) which have been proven, to the SERVICE PROVIDER’s reasonable satisfaction, to have been lost or damaged in transit.
  5. The SERVICE PROVIDER shall not replace any parts or components of the Ordered Goods used for the provision of the Ordered Software Application Solutions with parts or components that are of lower quality or which are unsuitable for use in their designed purpose either by a CUSTOMER or a replacement service provider, prior to the expiry or termination (howsoever arising) of this Contract.

1. STANDARDS AND REGULATIONS
   1. The SERVICE PROVIDER shall provide the Ordered Software Application Solutions and meet its responsibilities and obligations hereunder in accordance with the Standards and Regulations.
   2. The SERVICE PROVIDER shall discuss with the CUSTOMER any conflict that the SERVICE PROVIDER reasonably believes that there is or will be between any of the Standards and Regulations or between any of the Standards and Regulations and any other obligation under this Contract, and shall comply with the CUSTOMER’s decision on the resolution of that conflict.
2. ACCEPTANCE AND TITLE AND RISK
   1. The Acceptance Procedures for the Ordered Software Application Solutions are set out in Schedule 2-5.
   2. The ownership and passing of title and risk from one party to another is specified in Schedule 2-13.
3. CHARGES
   1. Charges
      1. The Charges for the Ordered Software Application Solutions are set out in Schedule 2-3.
      2. In consideration of the SERVICE PROVIDER’s provision of the Ordered Software Application Solutions as set out in the Order and in accordance with the terms and conditions of this Contract, the CUSTOMER shall pay the Charges to the SERVICE PROVIDER.
      3. The SERVICE PROVIDER shall invoice the CUSTOMER for the Charges in accordance with the provisions of Schedule 2-4. All such invoices shall be payable by the CUSTOMER within twenty eight (28) Days of the date of issue of the invoice.
      4. The Charges are exclusive of Value Added Tax. The CUSTOMER shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by law from time to time.
      5. The SERVICE PROVIDER shall continuously indemnify the CUSTOMER against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the CUSTOMER at any time in respect of the SERVICE PROVIDER’s failure to account for or to pay any Value Added Tax relating to payments made to the SERVICE PROVIDER under this Contract. Any amounts due under this Clause  shall be paid in cleared funds by the SERVICE PROVIDER to the relevant authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the CUSTOMER.
      6. Interest shall be payable on any late payments of the Charges under this Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
      7. The SERVICE PROVIDER shall accept payment electronically via BACS.
      8. If at any time during the Term the SERVICE PROVIDER reduces its charges for any Software Application Solutions offered under the Framework Agreement in accordance with the terms of the Framework Agreement, the SERVICE PROVIDER shall immediately reduce the Charges for such Software Application Solutions (where such Software Application Solutions form part of the Ordered Software Application Solutions) under this Contract by the same amount.
   2. Euro
      1. In the event that the United Kingdom joins the Economic and Monetary Union (and provided always that the exchange rate for conversion between Sterling and the Euro has been fixed), the CUSTOMER shall at any time thereafter upon three (3) months notice to the SERVICE PROVIDER, be entitled to require the SERVICE PROVIDER at no additional charge to convert the Charges from Sterling into Euros (in accordance with EC Regulation number 1103/97). The SERVICE PROVIDER shall thereafter submit valid invoices denominated in Euros.
   3. Charges Variation
      1. The Charges may only be varied in accordance with the provisions of the Charges Variation Procedure.
   4. Benchmarking
      1. The parties shall comply with their obligations set out in Schedule 2-3 in relation to benchmarking (if this is required by the CUSTOMER) of the Ordered Software Application Solutions (or any part thereof).
4. CONTRACT MANAGEMENT
   1. The SERVICE PROVIDER and the CUSTOMER shall comply with their respective contract management obligations set out in Schedule 2-6.
5. ALTERNATIVE CLAUSES AND ADDITIONAL CLAUSES
   1. The Alternative Clauses and/or Additional Clauses specified in Annex A to the Clauses shall apply.
6. AMENDMENTS TO THIS CONTRACT
   1. No amendment to the provisions of this Contract, other than a variation of the Charges in accordance with the Charges Variation Procedure, shall be effective unless made in accordance with the Contract Change Procedure specified in Schedule 2-7.
7. COMMUNICATIONS
   1. Except as otherwise expressly provided, no communication from one party to the other shall have any validity under this Contract unless it is signed and made in writing by or on behalf of the party sending such communication.
   2. Except as otherwise expressly provided, any notice or other communication whatsoever which either the CUSTOMER or the SERVICE PROVIDER is required or authorised by this Contract to give or make to the other shall be given or made by first class post in a prepaid letter, addressed to the other at the address specified in Clause . If that letter is not returned as being undelivered, that notice or communication shall be deemed, for the purposes of this Contract, to have been given or made two (2) Working Days after dispatch by the sender.
   3. For the purposes of Clause  the address of each party shall be:

For the CUSTOMER:

[\*\*\*insert contact name/job title and address\*\*\*]

Telephone Number: [\*\*\* insert \*\*\*]

For the SERVICE PROVIDER:

[\*\*\*insert contact name/job title and address\*\*\*]

Telephone Number: [\*\*\* insert \*\*\*]

1. TERM AND TERMINATION
   1. This Contract shall take effect on the Effective Date and shall expire on:
      1. the date specified in the Order; or
      2. seven (7) years after the Effective Date,

### whichever is the earlier, unless terminated earlier pursuant to this Clause .

* 1. The CUSTOMER may at any time by notice in writing terminate this Contract as from the date of service of such notice, or a later date specified in such notice, if any of Termination Events occur.
  2. Termination Events
     1. A change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the SERVICE PROVIDER or its Parent Company where the proposed new owner has:

#### been convicted of a criminal offence relating to the conduct of its business or profession; or

#### committed an act of grave misconduct in the course of its business or profession; or

#### failed to comply with any obligations relating to the payment of any taxes or social security contributions; or

#### made any serious misrepresentations in the tendering process for any project or matter in which the public sector has or had a significant participation; or

#### failed to obtain any necessary licences or membership of any relevant body.

* + 1. A change of control, as defined in Clause  and there are reasonable grounds for the CUSTOMER to withhold its consent relating to the financial standing of the new owner, any security concerns arising from the new ownership or issues relating to the provision of the Ordered Software Application Solutions by the new owner.
    2. Any of the events listed in Clauses  to  (inclusive) occur in relation to or in respect of the SERVICE PROVIDER itself, or if the CUSTOMER has reasonable grounds to object to the SERVICE PROVIDER arising from security concerns in respect of the SERVICE PROVIDER.
    3. The SERVICE PROVIDER:

#### being an individual, or where the SERVICE PROVIDER is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport so to do, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986, or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993, or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him on behalf of his creditors, or any similar event occurs under the law of any other jurisdiction; or

#### being a company, passes a resolution, or the Court makes an order that the SERVICE PROVIDER or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the SERVICE PROVIDER or its Parent Company (or an application for the appointment of an administrator is made or notice to appoint an administrator is given in relation to the SERVICE PROVIDER or its Parent Company), or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the SERVICE PROVIDER or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (except where the claim is made under Section 123(1)(a) and is for an amount of less than ten thousand pounds (£10,000)) or any similar event occurs under the law of any other jurisdiction.

* + 1. Where the circumstances detailed in Clauses  or or paragraph 2.7.2 of Schedule 2-5 arise.
    2. Failure to remedy a breach of warranties in accordance with the provisions of Clause .
  1. For the purposes of Clause , the following shall be disregarded:
     1. any change in beneficial or legal ownership of any shares that are listed on a stock exchange resulting in the relevant shareholding being less than or equal to five per cent (5%) of the total issued share capital; and
     2. any transfer of shares or of any interest in shares by a person to its Affiliate where such transfer forms part of a bona fide reorganisation or restructuring.
  2. Without prejudice to the provisions of Clause  or , the CUSTOMER may at any time by notice in writing terminate this Contract or any part of the Ordered Software Application Solutions forthwith if the SERVICE PROVIDER is in material Default of any obligation under this Contract and:
     1. the material Default is capable of remedy and the SERVICE PROVIDER shall have failed to remedy the material Default within thirty (30) Days of written notice to the SERVICE PROVIDER specifying the material Default and requiring its remedy; or
     2. the material Default is not capable of remedy.
  3. Without prejudice to the provisions of Clause  or , where the CUSTOMER considers that the SERVICE PROVIDER has committed a Persistent Breach in relation to this Contract or any part thereof (including any part of the Ordered Software Application Solutions), the CUSTOMER shall be entitled to serve a notice on the SERVICE PROVIDER:
     1. specifying that it is a formal warning notice;
     2. giving reasonable details of the breach; and
     3. stating that such breach is a breach which, if it recurs or continues, may result in a termination of this Contract or that part of the Ordered Software Application Solutions affected by such breach.
  4. If, thirty (30) Days after service of a formal warning notice as described in Clause , the SERVICE PROVIDER has failed to demonstrate to the satisfaction of the CUSTOMER that the breach specified has not continued or recurred and that the SERVICE PROVIDER has put in place measures to ensure that such breach does not recur, then the CUSTOMER may deem such failure shall be a material Default not capable of remedy for the purposes of Clause .
  5. The SERVICE PROVIDER shall promptly notify the CUSTOMER in writing on each occasion of the occurrence of any of the events specified in Clause .
  6. The CUSTOMER shall only be permitted to exercise its rights pursuant to Clause  for six (6) months after service of a notice by the SERVICE PROVIDER pursuant to Clause  relative to each such change of control and shall not be permitted to exercise such rights where the CUSTOMER has agreed in advance in writing to the particular change of control and such change of control takes place as proposed.
  7. The termination (howsoever arising) or expiry of this Contract pursuant to this Clause  shall be without prejudice to any rights of either the CUSTOMER or the SERVICE PROVIDER that shall have accrued before the date of such termination or expiry.
  8. Save as aforesaid, the SERVICE PROVIDER shall not be entitled to any payment from the CUSTOMER after the termination (howsoever arising) or expiry of this Contract.

1. CONSEQUENCES OF TERMINATION AND EXPIRY
   1. Notwithstanding the service of a notice to terminate this Contract or any part thereof, the SERVICE PROVIDER shall continue to provide the Ordered Software Application Solutions until the date of expiry or termination (howsoever arising) of this Contract (or any part thereof) or such other date as required under this Clause  and the provisions of Schedule 2-11.
   2. Within ten (10) Working Days of the earlier of the date of expiry or termination (howsoever arising) of this Contract, the SERVICE PROVIDER shall return to the CUSTOMER any data (including CUSTOMER Data) and CUSTOMER Confidential Information in the SERVICE PROVIDER’s possession, power or control, either in its then current format or in a format nominated by the CUSTOMER (in which event the CUSTOMER will reimburse the SERVICE PROVIDER’s pre-agreed and reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the CUSTOMER, save that it may keep one copy of any such data or information for a period of up to twelve (12) months to comply with its obligations under Clause , or such period as is necessary for such compliance.
   3. Within ten (10) Working Days of the date of expiry or termination (howsoever arising) of this Contract, the SERVICE PROVIDER shall return to the CUSTOMER any sums prepaid in respect of Ordered Software Application Solutions not provided by the date of expiry or termination (howsoever arising).
   4. The CUSTOMER and the SERVICE PROVIDER shall comply with the Exit and Service Transfer Arrangements.
   5. The CUSTOMER shall for a period of twelve (12) months following expiry or termination (howsoever arising) of this Contract (or until the date on which the SERVICE PROVIDER fulfils all its duties and responsibilities pursuant to the Exit and Service Transfer Arrangements, if later) be entitled to require access to data or information arising from the Ordered Software Application Solutions from the SERVICE PROVIDER.
   6. The provisions of:
      1. Clauses ,  to (inclusive), , , , , , , , to (inclusive);
      2. Schedules 2-1, 2-9 and 2-11; and
      3. any other Clause or Schedule of this Contract which by its terms is to be performed or observed notwithstanding termination (howsoever arising) or expiry or which is expressed or by implication is to survive termination or expiry),

shall survive the termination (howsoever arising) or expiry of this Contract.

1. WARRANTIES AND REPRESENTATIONS
   1. The SERVICE PROVIDER warrants and represents that:
      1. it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform this Contract and that this Contract is executed by a duly authorised representative of the SERVICE PROVIDER;
      2. this Contract shall be performed in compliance with all Laws as amended from time to time;
      3. it shall perform its obligations hereunder (including the provision of the Ordered Software Application Solutions) by using appropriately experienced, qualified and trained SERVICE PROVIDER Personnel and Sub-Contractors;
      4. it shall discharge its obligations hereunder (including the provision of the Ordered Software Application Solutions) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures;
      5. for the duration of the Term, all SERVICE PROVIDER Personnel used to provide the Ordered Software Application Solutions will be vetted in accordance with Good Industry Practice, the Security Policy and the Standards and Regulations;
      6. it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary for the performance of this Contract and the use of the Ordered Software Application Solutions by the CUSTOMER;
      7. it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive element (including any Malicious Software) into the Ordered Software Application Solutions, systems, data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the CUSTOMER;
      8. it shall take all measures to avoid any and all data loss and data corruption during the provision of the Ordered Software Application Solutions in accordance with Good Industry Practice;
      9. it shall take all measures to avoid the failure or reduced performance (in whole or in part) of the Ordered Software Application Solutions;
      10. the Ordered Software Application Solutions are and will continue to be during the Term:

#### of satisfactory quality;

#### in conformance with the relevant specifications set out in this Contract, the relevant Order and (if applicable) the manufacturer’s specifications and documentation;

#### free from material programming errors and material defects in design, manufacture or materials throughout the applicable warranty period, as specified in the Catalogue; and

#### where Ordered Goods are supplied by way of sale and purchase they shall be supplied with full title guarantee.

* + 1. this Contract is established on the terms and conditions of the Model Contract without amendment thereto save for the necessary information to complete that Model Contract as specified in the Order placed by the CUSTOMER. In the event and to the extent only of any conflicts between this Contract and the Model Contract:

#### where the conflict is due to the addition of Special Terms, this Contract shall prevail over the Model Contract; otherwise

#### the Model Contract shall prevail over this Contract.

* 1. The SERVICE PROVIDER acknowledges that any breach of the warranties in Clause  shall be remedied as a matter of urgency at no cost to the CUSTOMER. Failure to remedy (if capable of remedy) such to comply with Clause  within five (5) Working Days of notification by the CUSTOMER shall constitute a breach of this Contract entitling the CUSTOMER to terminate in accordance with Clause .
  2. Except as expressly stated in this Contract, all warranties and conditions, whether express or implied by statute, common law or otherwise (including fitness for purpose) are hereby excluded to the extent permitted by Law.
  3. The CUSTOMER and the SERVICE PROVIDER each warrants to the other that it has undertaken all requisite corporate and other action to approve the entering into and performance of this Contract.

1. LIMITATION OF LIABILITY
   1. Neither the CUSTOMER nor the SERVICE PROVIDER excludes or limits liability to the other for:
      1. death or personal injury caused as a result of its negligence;
      2. any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
      3. fraud or fraudulent misrepresentation; or
      4. any other liability which cannot be excluded or limited by Law.
   2. Nothing in this Clause  shall be taken as limiting the liability of the SERVICE PROVIDER in respect of Clauses , to (inclusive) and and the TUPE indemnities under Schedule 2-11.
   3. In respect of any claims of liability arising out of the wilful default (including wilful Default) of the SERVICE PROVIDER, its Sub-Contractors or the SERVICE PROVIDER Personnel, the SERVICE PROVIDER will have unlimited liability for all reasonably foreseeable loss suffered by the CUSTOMER as a result of such act, omission or event giving rise to the claim.
   4. Subject always to the provisions of Clauses ,  and , the aggregate liability of either the CUSTOMER or the SERVICE PROVIDER to the other for each year of this Contract under or in relation to this Contract:
      1. for all direct loss of or damage to the tangible property of the other shall in no event exceed five (5) million pounds; and
      2. in respect of all other claims, losses or damages, whether arising from breach of contract, misrepresentation (whether tortuous or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equivalent to one hundred and twenty five percent (125%) of the Charges paid or payable to the SERVICE PROVIDER in the year of this Contract, as calculated as at the date of the event giving rise to the claim under consideration (or if such event occurs in the first twelve (12) months of the Term, the amount estimated to be paid in the first twelve (12) months of the Term).
   5. Subject always to the provisions of Clauses ,  and , in no event shall either the CUSTOMER or the SERVICE PROVIDER be liable to the other for:
      1. indirect, incidental, punitive or consequential loss or damage; and/or
      2. loss of profits, business, revenue or goodwill,

and in both cases, even if that party was aware of the possibility of such loss or damage to the other.

* 1. Subject always to the provisions of Clauses , , and , the provisions of Clause 13.5 shall not be taken as limiting the right of either the CUSTOMER or the SERVICE PROVIDER to claim from the other for:
     1. additional operational and administrative costs and expenses;
     2. any costs or expenses rendered nugatory; and/or
     3. damage due to the loss of data, but only to the extent that such losses relate to the costs of working around any loss of data and the direct costs of recovering or reconstructing such data,

resulting directly from any act or omission of the other party.

* 1. For the purposes of this Clause , “year of this Contract” shall mean a period of twelve (12) months commencing on the Effective Date or on any anniversary of that date thereafter.
  2. The CUSTOMER and the SERVICE PROVIDER expressly agree that should any limitation or provision contained in this Clause  be held to be invalid under any Law it shall to that extent be deemed omitted but if either of them thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

1. CUSTOMER DATA
   1. The SERVICE PROVIDER shall not delete or remove any proprietary notices contained within or relating to the CUSTOMER Data.
   2. The SERVICE PROVIDER shall not store, copy, disclose, or use the CUSTOMER Data except as necessary for the performance by the SERVICE PROVIDER of its obligations under this Contract or as otherwise expressly authorised in writing by the CUSTOMER.
   3. To the extent that CUSTOMER Data is held and/or processed by the SERVICE PROVIDER, the SERVICE PROVIDER shall supply that CUSTOMER Data to the CUSTOMER as requested by the CUSTOMER in the format specified in Schedule 2-6.
   4. The SERVICE PROVIDER shall take responsibility for preserving the integrity of CUSTOMER Data and preventing the corruption or loss of CUSTOMER Data.
   5. The SERVICE PROVIDER shall perform secure back-ups of all CUSTOMER Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the BCDR Plan. The SERVICE PROVIDER shall ensure that such back-ups are available to the CUSTOMER at all times upon request and are delivered to the CUSTOMER at no less than the period specified in Schedule 2-6.
   6. The SERVICE PROVIDER shall ensure that any system on which the SERVICE PROVIDER holds any CUSTOMER Data, including back-up data, is a secure system that complies with the Security Policy.
   7. If the CUSTOMER Data is corrupted, lost or sufficiently degraded as a result of the SERVICE PROVIDER's Default so as to be unusable, the CUSTOMER may:
      1. require the SERVICE PROVIDER (at the SERVICE PROVIDER's expense) to restore or procure the restoration of CUSTOMER Data to the extent and in accordance with the requirements specified the BCDR Plan and the SERVICE PROVIDER shall do so as soon as practicable but not later than the period specified in Schedule 2-6; and/or
      2. itself restore or procure the restoration of CUSTOMER Data, and shall be repaid by the SERVICE PROVIDER any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the BCDR Plan.
   8. If at any time the SERVICE PROVIDER suspects or has reason to believe that CUSTOMER Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the SERVICE PROVIDER shall notify the CUSTOMER immediately and inform the CUSTOMER of the remedial action the SERVICE PROVIDER proposes to take.
2. PROTECTION OF PERSONAL DATA
   1. With respect to the parties' rights and obligations under this Contract, the parties agree that the CUSTOMER is the Data Controller and that the SERVICE PROVIDER is the Data Processor.
   2. The SERVICE PROVIDER shall:
      1. Process the Personal Data only in accordance with instructions from the CUSTOMER (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the CUSTOMER to the SERVICE PROVIDER during the Term);
      2. Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Ordered Software Application Solutions or as is required by Law or any Regulatory Body;
      3. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
      4. take reasonable steps to ensure the reliability of any SERVICE PROVIDER Personnel who have access to the Personal Data;
      5. obtain prior written consent from the CUSTOMER in order to transfer the Personal Data to any Sub-Contractors or Affiliates for the provision of the Ordered Software Application Solutions;
      6. ensure that all SERVICE PROVIDER Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause ;
      7. ensure that none of the SERVICE PROVIDER Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the CUSTOMER;
      8. notify the CUSTOMER (within five (5) Working Days) if it receives:

#### a request from a Data Subject to have access to that person's Personal Data; or

#### a complaint or request relating to the CUSTOMER's obligations under the Data Protection Legislation;

* + 1. provide the CUSTOMER with full cooperation and assistance in relation to any complaint or request made, including by:

#### providing the CUSTOMER with full details of the complaint or request;

#### complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the CUSTOMER's instructions;

#### providing the CUSTOMER with any Personal Data it holds in relation to a Data Subject (within the timescales required by the CUSTOMER); and

#### providing the CUSTOMER with any information requested by the CUSTOMER;

* + 1. permit the CUSTOMER or the [\*\*\* insert representative \*\*\*] (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with Clause , the SERVICE PROVIDER's data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the CUSTOMER to enable the CUSTOMER to verify and/or procure that the SERVICE PROVIDER is in full compliance with its obligations under this Contract;
    2. provide a written description of the technical and organisational methods employed by the SERVICE PROVIDER for processing Personal Data (within the timescales required by the CUSTOMER); and
    3. not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Effective Date, the SERVICE PROVIDER (or any Sub-Contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area, the following provisions shall apply:

#### the SERVICE PROVIDER shall submit an Contract Change Note to the CUSTOMER which shall be dealt with in accordance with the Contract Change Procedure and Clauses to below;

#### the SERVICE PROVIDER shall set out in its Contract Change Note (and/or impact assessment) details of the following:

#### (a) the Personal Data which will be Processed and/or transferred outside the European Economic Area;

#### (b) the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the European Economic Area;

#### (c) any Sub-Contractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; and

#### (d) how the SERVICE PROVIDER will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the CUSTOMER’s compliance with the Data Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the European Economic Area;

#### in providing and evaluating the Contract Change Note, the parties shall ensure that they have regard to and comply with then-current CUSTOMER, Government and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the European Economic Area and/or overseas generally; and

#### the SERVICE PROVIDER shall comply with such other instructions and shall carry out such other actions as the CUSTOMER may notify in writing, including:

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

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

* 1. The SERVICE PROVIDER shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the CUSTOMER to breach any of its applicable obligations under the Data Protection Legislation.

1. SECURITY REQUIREMENTS AND STAFF VETTING
   1. The SERVICE PROVIDER shall comply, and shall procure the compliance of the SERVICE PROVIDER Personnel, with the Security Policy and the Security Management Plan and the SERVICE PROVIDER shall ensure that the Security Management Plan produced by the SERVICE PROVIDER fully complies with the Security Policy.
   2. The CUSTOMER shall notify the SERVICE PROVIDER of any changes or proposed changes to the Security Policy.
   3. If the SERVICE PROVIDER believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Ordered Software Application Solutions it may submit a Contract Change Note. In doing so, the SERVICE PROVIDER must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Contract Change Procedure.
   4. Until and/or unless a change to the Charges is agreed by the CUSTOMER pursuant to Clause the SERVICE PROVIDER shall continue to provide the Ordered Software Application Solutions in accordance with its existing obligations.
   5. The SERVICE PROVIDER 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 to check for, contain the spread of, and minimise the impact of Malicious Software in the ICT Environment (or as otherwise agreed by the parties).
   6. Notwithstanding Clause , 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 Ordered Software Application Solutions to their desired operating efficiency.
   7. Any cost arising out of the actions of the parties taken in compliance with the provisions of Clause shall be borne by the parties as follows:
      1. by the SERVICE PROVIDER where the Malicious Software originates from the SERVICE PROVIDER Software, the Third Party Software supplied by the SERVICE PROVIDER (except where the CUSTOMER has waived the obligation set out in Clause ) or the CUSTOMER Data (whilst the CUSTOMER Data was under the control of the SERVICE PROVIDER) unless the SERVICE PROVIDER can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the CUSTOMER when provided to the SERVICE PROVIDER; and
      2. 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 ) or the CUSTOMER Data (whilst the CUSTOMER Data was under the control of the CUSTOMER).
   8. The SERVICE PROVIDER shall comply with the Staff Vetting Procedures in respect of all SERVICE PROVIDER Personnel employed or engaged in the provision of the Ordered Software Application Solutions. The SERVICE PROVIDER confirms that all SERVICE PROVIDER Personnel employed or engaged by the SERVICE PROVIDER at the Effective Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
   9. The SERVICE PROVIDER shall provide training on a continuing basis for all SERVICE PROVIDER Personnel employed or engaged in the provision of the Ordered Software Application Solutions in compliance with the Security Policy and Security Management Plan.
2. INTELLECTUAL PROPERTY RIGHTS AND INDEMNITY
   1. Save as granted under this Contract, neither the CUSTOMER nor the SERVICE PROVIDER shall acquire any right, title or interest in the other’s Pre-Existing Intellectual Property Rights. The SERVICE PROVIDER acknowledges that the CUSTOMER Data is the property of the CUSTOMER and the CUSTOMER hereby reserves all Intellectual Property Rights which may subsist in the CUSTOMER Data.
   2. The SERVICE PROVIDER shall ensure that no unlicensed software or open source software (other than the Open Source Ordered Software) is interfaced with or embedded within any software which is proprietary to the CUSTOMER or which is developed by or on behalf of the SERVICE PROVIDER under this Contract.
   3. The CUSTOMER acknowledges that the Open Source Ordered Software is subject to the open source licensing terms set out in Schedule 2-17 and that the Intellectual Property Rights in the Open Source Ordered Software are owned by a variety of third parties.
   4. The SERVICE PROVIDER will convey to the CUSTOMER the Open Source Ordered Software and associated documentation (including technical specifications, user manuals, operating manuals, process definitions and procedures) on the applicable open source licence terms set out in Annex B of Schedule 2-17.
   5. All Contract Generated Intellectual Property Rights, other than rights in software described in Clause , shall be proprietary to and owned by the CUSTOMER and the SERVICE PROVIDER shall enter into such documentation and perform such acts as the CUSTOMER shall request to properly vest such Contract Generated Intellectual Property Rights in the CUSTOMER. Accordingly, the SERVICE PROVIDER hereby assigns (by way of present assignment of future Contract Generated Intellectual Property Rights) all such Intellectual Property Rights and shall make available to the CUSTOMER a copy of the source code of the Contract Generated Intellectual Property Rights.
   6. Where the applicable open sourcing licensing terms set out in Annex B of Schedule 2-17 require that relevant Contract Generated Intellectual Property Rights shall be subject to licensing on the same terms as set out in such open source licensing terms the CUSTOMER shall take all steps necessary to comply with the licensing terms, including making available the source code of the Contract Generated Intellectual Property Rights where required by the applicable open source licensing terms.
   7. Where the applicable open source licensing terms set out in Schedule 2-17 do not require that any relevant Contract Generated Intellectual Property Rights shall be subject to licensing on the same terms as set out in such open source licensing terms, the CUSTOMER shall be entitled at its discretion either:
      1. to take all steps necessary to place the Contract Generated Intellectual Property Rights into open source, including complying with the applicable licensing terms and making available the source code of the Contract Generated Intellectual Property Rights; or
      2. otherwise (in which case the CUSTOMER will licence the SERVICE PROVIDER to use and modify the Contract Generated Intellectual Property Rights to the extent necessary to perform its obligations under this Contract).
   8. The SERVICE PROVIDER:
      1. hereby grants to the CUSTOMER a licence to use the SERVICE PROVIDER Software on its standard licence terms (set out in Annex A to Schedule 2-17);
      2. notwithstanding the provisions of Clause 17.5, hereby grants to the CUSTOMER a non-exclusive perpetual licence to use and copy any Specially Written Software;
      3. shall procure that the owners or the authorised licensors of any Third Party Software hereby grant a licence to the CUSTOMER on the Third Party Software owner’s standard licence terms (as set out in Annex B of Schedule 2-17); and
      4. hereby grants to the CUSTOMER a non-exclusive licence to copy the descriptions of the Ordered Software Application Solutions, including technical specifications, user manuals, operating manuals, process definitions and procedures, for any purpose that is connected with or otherwise incidental to the exercise of the rights granted to the CUSTOMER under this Clause .
   9. To the extent that the SERVICE PROVIDER creates any materials (in whatever form or media), outside the scope of the open source licensing terms, including training, marketing, promotional or publicity materials, relating to the provision of the Ordered Software Application Solutions (“**Materials**”) it shall provide copies of all Materials to the CUSTOMER promptly and the SERVICE PROVIDER hereby grants to the CUSTOMER a royalty free, irrevocable, non-exclusive licence for such term as the CUSTOMER shall require to use all and any Intellectual Property Rights in the Materials as it shall reasonably require with the ability to sub-licence the same.
   10. The SERVICE PROVIDER shall ensure and procure that the availability, provision and use of the Catalogue and Ordered Software Application Solutions and the performance of the SERVICE PROVIDER’s responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.
   11. The SERVICE PROVIDER shall indemnify the CUSTOMER against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the:
       1. availability, provision or use of the Catalogue and/or Ordered Software Application Solutions (or any parts thereof); and
       2. performance of the SERVICE PROVIDER’s responsibilities and obligations hereunder.
   12. The SERVICE PROVIDER shall promptly notify the CUSTOMER if any claim or demand is made or action brought against the SERVICE PROVIDER for infringement or alleged infringement of any Intellectual Property Right that may affect the availability, provision or use of the Catalogue and/or Ordered Software Application Solutions (or any parts thereof) and/or the performance of the SERVICE PROVIDER’s responsibilities and obligations hereunder.
   13. The CUSTOMER shall promptly notify the SERVICE PROVIDER if any claim or demand is made or action brought against the CUSTOMER to which Clause  may apply. The SERVICE PROVIDER shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and the CUSTOMER hereby agrees to grant to the SERVICE PROVIDER exclusive control of any such litigation and such negotiations.
   14. The CUSTOMER shall at the request of the SERVICE PROVIDER afford to the SERVICE PROVIDER all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the CUSTOMER to which Clause  may apply or any claim or demand made or action brought against the SERVICE PROVIDER to which Clause  may apply. The SERVICE PROVIDER shall reimburse the CUSTOMER for all costs and expenses (including legal costs and disbursements on a solicitor and client basis) incurred in so doing.
   15. Except where required by Law, the CUSTOMER shall not make any admissions that may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right to which Clause  may apply or any claim or demand made or action brought against the SERVICE PROVIDER to which Clause  may apply.
   16. If a claim or demand is made or action brought to which Clause , and/or may apply, or in the reasonable opinion of the SERVICE PROVIDER is likely to be made or brought, the SERVICE PROVIDER may at its own expense and within a reasonable time either:
       1. modify any or all of the affected Catalogue and/or Ordered Software Application Solutions without reducing the performance and functionality of the same, or substitute alternative goods and/or services of equivalent performance and functionality for any or all of the affected Catalogue and/or Ordered Software Application Solutions, so as to avoid the infringement or the alleged infringement, provided that:

#### the terms herein shall apply mutatis mutandis to such modified or substituted goods and/or services;

#### such substitution shall not increase the burden on the CUSTOMER; and

#### such modified or substituted goods and/or services items shall be acceptable to the CUSTOMER, such acceptance not to be unreasonably withheld; or

* + 1. procure a licence to use the Catalogue and/or Ordered Software Application Solutions on terms that are reasonably acceptable to the CUSTOMER; and
    2. in relation to the performance of the SERVICE PROVIDER’s responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations.
  1. The provisions of Clauses  and shall not apply insofar as any such claim or demand or action is in respect of any:
     1. use by the CUSTOMER of the Catalogue and/or Ordered Software Application Solutions in combination with any item, good or service not supplied or approved by the SERVICE PROVIDER (or its Sub-Contractors) where such use of the Ordered Software Application Solutions directly gives rise to the claim, demand or action; or
     2. modification carried out by or on behalf of the CUSTOMER to the Catalogue and/or any Ordered Software Application Solutions provided under this Contract if such modification is not authorised by the SERVICE PROVIDER (or its Sub-Contractors) in writing; or
     3. use by the CUSTOMER of the Catalogue and/or Ordered Software Application Solutions in a manner not reasonably to be inferred from the specification or requirements of the CUSTOMER.
  2. In the event that the SERVICE PROVIDER has availed itself of its rights to modify the Catalogue and/or Ordered Software Application Solutions or to supply substitute goods and/or services pursuant to Clause  or to procure a licence under Clause  and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, then the SERVICE PROVIDER shall have no further liability in respect of the said claim, demand or action.
  3. In the event that a modification or substitution in accordance with Clause  above is not possible so as to avoid the infringement, or the SERVICE PROVIDER has been unable to procure a licence in accordance with Clause :
     1. the CUSTOMER shall be entitled to terminate this Contract pursuant to Clause ; and
     2. the SERVICE PROVIDER shall be liable for the value of the additional costs incurred in implementing and maintaining replacement services.
  4. Clauses  and set out the entire financial liability of the SERVICE PROVIDER with regard to the infringement of any Intellectual Property Right by the availability, provision or use of the Catalogue and/or Ordered Software Application Solutions (or any parts thereof) and/or the performance of the SERVICE PROVIDER’s responsibilities and obligations hereunder. This shall not affect the SERVICE PROVIDER’s financial liability for other Defaults or causes of action that may arise hereunder.
  5. The CUSTOMER warrants that the SERVICE PROVIDER’s use of any third party item supplied directly by the CUSTOMER in accordance with any instructions given by the CUSTOMER in connection with the use of such item shall not cause the SERVICE PROVIDER to infringe any third party’s Intellectual Property Rights in such item.

1. CONFIDENTIALITY
   1. Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall:
      1. treat the other party's Confidential Information as confidential and safeguard it accordingly; and
      2. not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
   2. Clause shall not apply to the extent that:
      1. such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause ;
      2. such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
      3. such information was obtained from a third party without obligation of confidentiality;
      4. such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
      5. it is independently developed without access to the other party's Confidential Information.
   3. The SERVICE PROVIDER may only disclose the CUSTOMER Confidential Information to the SERVICE PROVIDER Personnel who are directly involved in the provision of the Ordered Software Application Solutions and who need to know the information, and shall ensure that such SERVICE PROVIDER Personnel are aware of and shall comply with these obligations as to confidentiality.
   4. The SERVICE PROVIDER shall not, and shall procure that the SERVICE PROVIDER Personnel do not, use any of the CUSTOMER Confidential Information received otherwise than for the purposes of this Contract.
   5. The SERVICE PROVIDER may only disclose the CUSTOMER Confidential Information to the SERVICE PROVIDER Personnel and who need to know the information, and shall ensure that such SERVICE PROVIDER Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any SERVICE PROVIDER Personnel causes or contributes (or could cause or contribute) to the SERVICE PROVIDER breaching its obligations as to confidentiality under or in connection with this Contract, the SERVICE PROVIDER shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any SERVICE PROVIDER Personnel, the SERVICE PROVIDER shall provide such evidence to the CUSTOMER as the CUSTOMER may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the SERVICE PROVIDER is taking appropriate steps to comply with this Clause , including copies of any written communications to and/or from SERVICE PROVIDER Personnel and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with SERVICE PROVIDER Personnel in connection with obligations as to confidentiality.
   6. At the written request of the CUSTOMER, the SERVICE PROVIDER shall procure that those members of the SERVICE PROVIDER Personnel identified in the CUSTOMER’s notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.
   7. Nothing in this Contract shall prevent the CUSTOMER from disclosing the SERVICE PROVIDER Confidential Information:
      1. to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
      2. to any consultant, contractor or other person engaged by the CUSTOMER or any person conducting an Office of Government Commerce gateway review;
      3. for the purpose of the examination and certification of the CUSTOMER's accounts; or
      4. for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the CUSTOMER has used its resources.
   8. The CUSTOMER shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the SERVICE PROVIDER Confidential Information is disclosed pursuant to Clause is made aware of the CUSTOMER's obligations of confidentiality.
   9. Nothing in this Clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
   10. Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information, the CUSTOMER and the SERVICE PROVIDER acknowledge that any Confidential Information originating from:
       1. the CUSTOMER, its employees, servants or agents is the property of the CUSTOMER; and
       2. the SERVICE PROVIDER, its servants, agents or the SERVICE PROVIDER Personnel is the property of the SERVICE PROVIDER.
2. FREEDOM OF INFORMATION
   1. The SERVICE PROVIDER acknowledges that the CUSTOMER is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the CUSTOMER to enable the CUSTOMER to comply with its Information disclosure obligations.
   2. The SERVICE PROVIDER shall and shall procure that its Sub-Contractors shall:
      1. transfer to the CUSTOMER all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
      2. provide the CUSTOMER with a copy of all Information in its possession or power in the form that the CUSTOMER requires within five (5) Working Days (or such other period as the CUSTOMER may specify) of the CUSTOMER’s request; and
      3. provide all necessary assistance as reasonably requested by the CUSTOMER to enable the CUSTOMER to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
   3. The CUSTOMER shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
   4. In no event shall the SERVICE PROVIDER respond directly to a Request for Information unless expressly authorised to do so by the CUSTOMER.
   5. The SERVICE PROVIDER acknowledges that (notwithstanding the provisions of this Clause ) the CUSTOMER may, acting in accordance with the Department of Constitutional Affairs’ Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“the **Code**”), be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the SERVICE PROVIDER or the Ordered Software Application Solutions:
      1. in certain circumstances without consulting the SERVICE PROVIDER; or
      2. following consultation with the SERVICE PROVIDER and having taken their views into account,

provided always that where Clause applies the CUSTOMER shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the SERVICE PROVIDER advanced notice, or failing that, to draw the disclosure to the SERVICE PROVIDER’s attention after any such disclosure.

* 1. The SERVICE PROVIDER shall ensure that all Information is retained for disclosure and shall permit the CUSTOMER to inspect such records as requested from time to time.
  2. The SERVICE PROVIDER acknowledges that the Commercially Sensitive Information listed in Schedule 2-10 is of indicative value only and that the CUSTOMER may be obliged to disclose it in accordance with Clause .

1. PUBLICITY
   1. The SERVICE PROVIDER shall not:
      1. make any press announcements or publicise this Contract in any way; or
      2. use the CUSTOMER’s name or brand in any promotion or marketing or announcement of Orders,

without the CUSTOMER’s prior written consent. The SERVICE PROVIDER shall ensure the observance of the provisions of this Clause  by all SERVICE PROVIDER Personnel.

* 1. The CUSTOMER shall be entitled to publicise this Contract in accordance with any legal obligation upon the CUSTOMER, including any examination of this Contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.
  2. The SERVICE PROVIDER acknowledges to the CUSTOMER that nothing in this Contract either expressly or by implication constitutes an endorsement of any goods and/or services of the SERVICE PROVIDER (including the Ordered Software Application Solutions) and the SERVICE PROVIDER agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

1. DISPUTE RESOLUTION
   1. Subject to the provisions of Clause  and save for disputes arising:
      1. under Clause (which shall be dealt with in accordance with Clause );
      2. from benchmarking of the Ordered Software Application Solutions in accordance with paragraph 7 of Schedule 2-3 (which shall be dealt with in accordance with the provisions of paragraph 7 of Schedule 2-3); and
      3. under Schedule 2-18,

any dispute arising under, or in connection with this Contract shall be dealt with in accordance with this Clause , and neither the CUSTOMER nor the SERVICE PROVIDER shall be entitled to commence or pursue any legal proceedings under the jurisdiction of the Courts in connection with any such dispute, until the procedures set out in this Clause  have been exhausted.

* 1. Clause  shall be without prejudice to the rights of termination stated in Clause  and in addition shall not prevent the CUSTOMER or the SERVICE PROVIDER from applying for injunctive relief in the case of:
     1. breach or threatened breach of confidentiality;
     2. infringement or threatened infringement of its Intellectual Property Rights; or
     3. infringement or threatened infringement of the Intellectual Property Rights of a third party, where such infringement could expose the CUSTOMER or the SERVICE PROVIDER to liability.
  2. All disputes between the CUSTOMER and the SERVICE PROVIDER arising out of or relating to this Contract shall first be referred by [\*\*\* the CUSTOMER’s first point of contact \*\*\*] or [\*\*\* the SERVICE PROVIDER’s first point of contact \*\*\*] to the other for resolution.
  3. If any dispute cannot be resolved by the representatives nominated under Clause  within a maximum of ten (10) Working Days (or such other period as agreed by the parties) after it has been referred under Clause , that dispute shall then be referred to the [\*\*\* the CUSTOMER’s second point of contact \*\*\*] and [\*\*\* the SERVICE PROVIDER’s second point of contact \*\*\*] for resolution.
  4. If any dispute cannot be resolved by the representatives nominated under Clause  within a maximum of ten (10) Working Days (or such other period as agreed by the parties) after it has been referred under Clause , that dispute shall:
     1. first be further referred to mediation in accordance with the provisions of Schedule 2-9; and thereafter
     2. if agreed by the parties, to arbitration in accordance with the provisions of Schedule 2-9; or
     3. if arbitration is not agreed to by either party, to litigation in accordance with the provisions of Schedule 2-9.

1. INSURANCE
   1. During the Term and for a period of six (6) years following expiry or termination of this Contract, the SERVICE PROVIDER shall take out and maintain or procure the maintenance of the minimum insurances set out in Schedule 2-19.
   2. The SERVICE PROVIDER shall produce to the CUSTOMER’s [\*\*\* first point of contact \*\*\*], within five (5) Working Days of request, brokers letters for all insurance policies referred to in Clause **Error! Reference source not found.** or such other evidence as agreed between the CUSTOMER and the SERVICE PROVIDER that will confirm the extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies.
   3. The terms of any insurance or the amount of cover shall not relieve the SERVICE PROVIDER of any liabilities under this Contract. It shall be the responsibility of the SERVICE PROVIDER to ensure that the amount of insurance cover is adequate to enable it to satisfy all its potential liabilities subject to the limit of liability specified in Clause .
2. RECOVERY OF SUMS DUE
   1. The CUSTOMER shall be permitted to deduct and withhold from any sum due to the SERVICE PROVIDER under this Contract any sum of money due from the SERVICE PROVIDER under:
      1. this Contract;
      2. any other agreement between the SERVICE PROVIDER and the CUSTOMER;
      3. any other agreement between the SERVICE PROVIDER and the AUTHORITY; or
      4. any other agreement between the SERVICE PROVIDER and any other Crown Body,

provided that the terms of such other agreement provide for sums of money due from the SERVICE PROVIDER under that agreement to be recovered by way of a deduction from sums of money due to the SERVICE PROVIDER under this Contract (albeit that this Contract may not be referenced specifically under that agreement).

1. STATUTORY REQUIREMENTS
   1. The SERVICE PROVIDER shall notify the CUSTOMER of all statutory provisions and approved safety standards applicable to the Ordered Software Application Solutions and their provision and shall be responsible for obtaining all licences, consents or permits required for the performance of this Contract.
   2. The SERVICE PROVIDER shall inform the CUSTOMER if the Ordered Software Application Solutions are hazardous to health or safety and of the precautions that should be taken in respect thereto.
   3. The SERVICE PROVIDER shall, and shall ensure that its Sub-Contractors and the SERVICE PROVIDER Personnel, take all measures necessary to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Laws relating to health and safety, which may apply to those involved in the performance of this Contract.

1. STATUTORY INVALIDITY
   1. The CUSTOMER and the SERVICE PROVIDER expressly agree that should any limitation or provision contained in this Contract be held to be invalid under any particular Law, it shall to that extent be deemed to be omitted but, if either the CUSTOMER or the SERVICE PROVIDER thereby becomes liable for loss or damage which would have otherwise been excluded, such liability shall be subject to the other limitations and provisions set out herein.
2. ENVIRONMENTAL REQUIREMENTS
   1. The SERVICE PROVIDER shall comply in all material respects with all applicable environmental Laws in force from time to time in relation to the Ordered Software Application Solutions. Without prejudice to the generality of the foregoing, the SERVICE PROVIDER shall promptly provide all such information regarding the environmental impact of the Ordered Software Application Solutions as may reasonably be requested by the CUSTOMER.
   2. The SERVICE PROVIDER shall meet all reasonable requests by the CUSTOMER for information evidencing compliance with the provisions of Clause 26.1 by the SERVICE PROVIDER.
3. DISCRIMINATION AND EQUALITY
   1. The SERVICE PROVIDER shall not, and shall procure that the SERVICE PROVIDER Personnel and Sub-Contractors do not, unlawfully discriminate within the meaning and scope of the provisions of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, Employment Equality (Age) Regulations 2006 or any statutory modification or re-enactment thereof or any other Law relating to discrimination in employment.
   2. The SERVICE PROVIDER shall ,and shall procure that the SERVICE PROVIDER Personnel and its Sub-Contractors shall, operate in a manner and co-operate with the CUSTOMER so as to allow the CUSTOMER to comply with its statutory public sector equality duties which means any legislation in relation to the promotion of equality on the grounds of sex, sexual orientation, race, colour, ethnic or national origin, disability, religion or belief or age.
   3. The SERVICE PROVIDER shall, and shall procure that the SERVICE PROVIDER Personnel and its Sub-Contractors, comply with the CUSTOMER’s equality and diversity policy as may be amended from time to time, copies of which will be provided by the CUSTOMER to the SERVICE PROVIDER at the SERVICE PROVIDER’s written request.
4. TUPE (*For Contracts where TUPE is not intended to apply at commencement)*
   1. The CUSTOMER and the SERVICE PROVIDER agree that the commencement of the provision of the Ordered Software Application Solutions by the SERVICE PROVIDER under this Contract will not be a "relevant transfer" to which TUPE will apply in relation to any employees of the Customer. In the circumstances, the CUSTOMER and the SERVICE PROVIDER agree that no employees of the CUSTOMER will transfer to the SERVICE PROVIDER by virtue of the operation of TUPE or the Acquired Rights Directive.
   2. If any employee of the CUSTOMER claims or it is determined that his contract of employment has been transferred from the CUSTOMER to the SERVICE PROVIDER pursuant to TUPE or the Acquired Rights Directive then:
      1. The SERVICE PROVIDER will, within seven (7) Days of becoming aware of that fact, give notice in writing to the CUSTOMER.
      2. The CUSTOMER may offer employment to such person within twenty one (21) Days of the notification by the SERVICE PROVIDER or take such other steps as it considers appropriate to deal with the matter.
      3. If such offer is accepted (or if the situation has otherwise been resolved by the CUSTOMER), the SERVICE PROVIDER shall immediately release the person from his employment.
      4. If after the twenty one (21) Day period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, or the situation has not otherwise been resolved, the SERVICE PROVIDER may within seven (7) Days give notice to terminate the employment of such person.
      5. Subject to Clause 28.3 and subject to the SERVICE PROVIDER acting in this way or in such other way as may be agreed between the CUSTOMER and the SERVICE PROVIDER, the CUSTOMER will indemnify the SERVICE PROVIDER against all Employee Liabilities arising out of such termination.
      6. If such person is neither re‑employed by the CUSTOMER nor dismissed by the SERVICE PROVIDER within the time scales set out in this Clause 28.2 such person will be treated as having transferred to the SERVICE PROVIDER by virtue of the operation of TUPE and the SERVICE PROVIDER shall comply with such obligations as may be imposed upon it under TUPE or otherwise by Law.
   3. The indemnity in Clause 28.2.5 shall only apply where the notification referred to in Clause 28.2.1 is made by the SERVICE PROVIDER to the CUSTOMER within six (6) months of the Service Commencement Date.
5. OFFICIAL SECRETS ACTS
   1. The SERVICE PROVIDER shall take all reasonable steps to ensure that all people employed by the SERVICE PROVIDER and its Sub-Contractors in connection with this Contract are aware of the Official Secrets Acts 1911 to 1989 and where appropriate, with the provisions of the Atomic Energy Act 1946, and that these Acts apply to them during the execution of this Contract and after the expiry or termination (howsoever arising) of this Contract.
6. CORRUPT GIFTS AND PAYMENTS OF COMMISSION
   1. The SERVICE PROVIDER shall not:
      1. offer or give or agree to give any person working for, acting for or engaged by the CUSTOMER or any other Crown Body any gift or consideration of any kind as (or which could act as) an inducement or reward for any act or failure to act connected to this Contract or any other contract with any other Crown Body including its award to the SERVICE PROVIDER and any of the rights and obligations contained within it; or
      2. enter into this Contract or any other contract with the CUSTOMER, any other Crown Body or any person acting for and on behalf of the CUSTOMER or any Crown Body in connection with which commission has been paid or agreed to be paid to any person working for or engaged by the CUSTOMER or any other Crown Body by him or on his behalf, or to his knowledge, unless before (as applicable) this Contract or any other contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to (as applicable) the CUSTOMER or any other Crown Body.
   2. Any breach of Clause  by the SERVICE PROVIDER or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the SERVICE PROVIDER) or the commission of any offence by the SERVICE PROVIDER or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the SERVICE PROVIDER) under the Prevention of Corruption Acts 1889 to 1916, in relation to this Contract or any other contract with any other Crown Body shall entitle the CUSTOMER to terminate this Contract in accordance with Clause and recover from the SERVICE PROVIDER the amount of any loss resulting from such termination and/or to recover from the SERVICE PROVIDER the amount or value of any such gift, consideration or commission.
   3. Any termination under Clause shall be without prejudice to any right or remedy which has already accrued, or subsequently accrues, to the CUSTOMER.
   4. Any dispute, difference or question arising in respect of the interpretation of this Clause , the right of the CUSTOMER to terminate this Contract or the amount or value of any such gift, consideration or commission shall be decided by the CUSTOMER, whose decision shall be final and conclusive.
7. TRANSFER AND SUB-CONTRACTING
   1. This Contract is personal to the SERVICE PROVIDER. Subject to the provisions of Clause , the SERVICE PROVIDER shall not assign, novate, sub-contract or otherwise dispose of this Contract or any part thereof without the previous consent in writing of the CUSTOMER.
   2. Notwithstanding the provisions of Clause , the SERVICE PROVIDER shall be entitled to Sub-Contract its obligations hereunder to the Sub-Contractors listed in Schedule 2-8, however this shall not affect the SERVICE PROVIDER’s obligations to the CUSTOMER and any liabilities under this Contract.
   3. In selecting, appointing and managing Sub-Contractors, the SERVICE PROVIDER shall comply with the procedures specified in Schedule 2-8.
   4. In the event that the SERVICE PROVIDER, in accordance with the terms of this Contract, enters into a Sub-Contract in connection with this Contract, the SERVICE PROVIDER shall ensure that a term is included in the Sub-Contract which requires the SERVICE PROVIDER to pay all sums due thereunder to the Sub-Contractor within a specified period, not to exceed thirty (30) Days, from the date of receipt of a valid invoice as defined by the terms of the Sub-Contract.
   5. The SERVICE PROVIDER shall not enter into any Sub-Contract for the fulfilment of such responsibilities and obligations as are fulfilled by the principal Sub-Contractors listed in Schedule 2-8 by any sub-contractor not listed in Schedule 2-8 without the prior written approval of the CUSTOMER in accordance with the provisions of the Contract Change Procedure.
   6. In the event that the SERVICE PROVIDER wishes to add or remove any Sub-Contractor, the SERVICE PROVIDER shall notify the CUSTOMER’s Software Application Solutions Contract Manager in writing, which for the purposes of this notification may be via email, of such proposed additions to or removals from the list of Sub-Contractors. In the case of additions to the list of Sub-Contractors, such notification will contain confirmation that the selection and appointment of the Sub-Contractor is in accordance with the provisions of paragraph 3 of Schedule 2-8.
   7. The SERVICE PROVIDER shall not remove or change any Sub-Contractor without giving prior written notice to, and receiving the approval of, the CUSTOMER in accordance with the provisions of the Contract Change Procedure.
   8. The CUSTOMER reserves the right to veto or withdraw the approval of the use of any Sub-Contractor or partner in the provision of the Ordered Software Application Solutions. Such right shall not be exercised unreasonably, frivolously or vexatiously.
   9. In the event that the CUSTOMER exercises its right pursuant to Clause  the SERVICE PROVIDER shall use all reasonable endeavours to maintain the provision of the Ordered Software Application Solutions and the CUSTOMER and the SERVICE PROVIDER shall enter into good faith negotiations to agree the impact of the situation on the provisions of this Contract.
   10. The use of Sub-Contractors and any subsequent approval of other sub-contractors by the CUSTOMER under this Clause  shall not in any way constitute any form of recommendation by the CUSTOMER of the Sub-Contractor, whether implied or otherwise.
   11. Subject to the provisions of Clause , the CUSTOMER shall be entitled to:
       1. assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract and any associated third party licences to any other Contracting Authority; or
       2. novate this Agreement and any associated third party licences to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the CUSTOMER. If this transfer increases the burden of the SERVICE PROVIDER's obligations under this Contract the SERVICE PROVIDER shall be entitled to any additional Charges that are reasonable by way of compensation and which can be agreed through the Contract Change Procedure.
   12. Subject to the provisions of Clause , any change in the legal status of the CUSTOMER such that it ceases to be a Contracting Authority shall not affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the CUSTOMER.
   13. If this Contract is novated to a body which is not a Contracting Authority pursuant to Clause , or if a successor body which is not a Contracting Authority becomes the CUSTOMER pursuant to Clause  (in the remainder of this Clause  both such bodies are referred to as the “transferee”):
       1. the rights of termination of the CUSTOMER in Clauses 10.3.4, , , and shall be available, mutatis mutandis, to the SERVICE PROVIDER in the event of the bankruptcy, insolvency, Default or Persistent Breach of the transferee;
       2. the transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the previous consent in writing of the SERVICE PROVIDER; and
       3. the following Clauses shall be varied from the date of the novation or the date of the change of status (as appropriate) as set out below as if this Contract had been amended by the CUSTOMER and the SERVICE PROVIDER in accordance with Clause :

#### the reference in Clause to Clause shall be deleted;

#### Clauses  and shall be deleted;

#### in Clause , delete “Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information,”;

#### at the end of Clause  insert “or”. At the end of Clause , delete “; or” and replace with “,”. Delete Clause ;

#### in Clause , the first reference to “or any other Crown Body” shall be deleted and the second and reference to “any other Crown Body” shall be replaced with “the CUSTOMER”;

#### in Clause , the first reference to “, any other Crown Body”, the second reference to “or any Crown Body”, the third reference to “or any other Crown Body” and the fourth reference to “or any other Crown Body” shall be deleted;

#### in Clause , the words “any other Crown Body” shall be replaced with “the CUSTOMER”;

#### Clauses and shall be deleted; and

#### in Schedule 2-1, delete the definition of “Crown Body”.

* 1. Unless otherwise stated to the contrary, any reference to the SERVICE PROVIDER in this Contract shall include the Sub-Contractor. Notwithstanding any Sub-Contracting permitted hereunder, the SERVICE PROVIDER shall remain primarily responsible for the acts and omissions of its Sub-Contractors as though they were its own.
  2. The CUSTOMER shall not be liable for any payment whatsoever to Sub-Contractors, the burden of which shall be solely with the SERVICE PROVIDER.

1. RIGHTS OF THIRD PARTIES
   1. To the extent that this Contract is expressed to confer rights or benefits on a party who is not a party to this Contract, that party shall by virtue of the Contracts (Rights of Third Parties) Act 1999, be entitled to enforce those rights as if it was a party to this Contract. The consent of any person other than the CUSTOMER (or the SERVICE PROVIDER, as the case may be) is not required to vary or terminate this Contract or alter or extinguish any rights created under this Clause .
   2. Except as provided in Clause , a person who is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This Clause  does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.
   3. This Contract shall not create any rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise for any Sub-Contractors.
2. ACCESS TO CUSTOMER PREMISES
   1. Any CUSTOMER Premises (including temporary buildings) made available to the SERVICE PROVIDER, it Sub-Contractors and the SERVICE PROVIDER Personnel by the CUSTOMER in connection with this Contract shall be made available free of charge solely for the purpose of performing this Contract. The SERVICE PROVIDER shall have the use of the CUSTOMER Premises as licensee and shall vacate the same upon the expiry or termination (howsoever arising) of this Contract.
   2. The CUSTOMER shall be responsible for maintaining the internal and external structure of the CUSTOMER Premises and the security of the CUSTOMER Premises in accordance with its security procedures. The SERVICE PROVIDER shall comply with all reasonable security requirements of the CUSTOMER while on the CUSTOMER Premises, and shall procure that all of its Sub-Contractors and the SERVICE PROVIDER Personnel shall likewise comply with such requirements. The CUSTOMER shall provide the SERVICE PROVIDER with copies of its security procedures upon request and shall afford the SERVICE PROVIDER an opportunity to inspect its physical security arrangements.
3. SEVERABILITY
   1. Subject to the provisions of Clause , if any provision of this Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Contract had been executed with the invalid provision eliminated. In the event of a holding of invalidity, illegality or unenforceability so fundamental as to prevent the accomplishment of the purpose of this Contract, the CUSTOMER and the SERVICE PROVIDER shall immediately commence good faith negotiations to remedy such invalidity , illegality or unenforceability.
4. AUDIT
   1. Except where an audit is imposed on the CUSTOMER by a Regulatory Body, the CUSTOMER may, not more than twice in any Year, conduct an audit for the following purposes:
      1. to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Contract), and/or the costs of all suppliers (including Sub-Contractors) of the Ordered Software Application Solutions;
      2. to review the integrity, confidentiality and security of the CUSTOMER Data held or used by the SERVICE PROVIDER;
      3. to review the SERVICE PROVIDER’s compliance with the Data Protection Legislation in accordance with this Contract and any other Laws;
      4. to review any books of account kept by the SERVICE PROVIDER in connection with the provision of the Ordered Software Application Solutions;
      5. 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;
      6. to inspect the CUSTOMER’s assets, including the Intellectual Property Rights, equipment, facilities and maintenance, for the purposes of ensuring that the CUSTOMER's assets are secure and that any register of assets is up to date; and/or
      7. to ensure that the SERVICE PROVIDER is complying with the Standards and Regulations.
   2. The CUSTOMER shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the SERVICE PROVIDER or delay the provision of the Ordered Software Application Solutions.
   3. Subject to the CUSTOMER's obligations of confidentiality, the SERVICE PROVIDER shall on demand provide the CUSTOMER (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
      1. all information requested by the CUSTOMER within the permitted scope of the audit;
      2. reasonable access to any sites controlled by the SERVICE PROVIDER and to any equipment used (whether exclusively or non-exclusively) in the provision of the Ordered Software Application Solutions; and
      3. access to SERVICE PROVIDER, its Sub-Contractors and the SERVICE PROVIDER Personnel.
   4. The SERVICE PROVIDER shall implement all measurement and monitoring tools and procedures necessary to measure and report on the SERVICE PROVIDER’s performance of the Ordered Software Application Solutions against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.
   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, unless the audit identifies a Default by the SERVICE PROVIDER in which case the SERVICE PROVIDER shall reimburse the CUSTOMER for all the CUSTOMER's reasonable costs incurred in the course of the audit.
   6. If an audit identifies that:
      1. the SERVICE PROVIDER has failed to perform its obligations under this Contract in any material manner, the parties shall agree and implement a remedial plan within thirty (30) Days (or such other period as agreed by the parties). If the SERVICE PROVIDER's failure relates to a failure to provide any information to the CUSTOMER about the Charges, proposed Charges or the SERVICE PROVIDER's costs, then the remedial plan shall include a requirement for the provision of all such information;
      2. the CUSTOMER has overpaid any Charges, the SERVICE PROVIDER shall pay to the CUSTOMER the amount overpaid within twenty (20) Working Days. The CUSTOMER may deduct the relevant amount from the Charges if the SERVICE PROVIDER fails to make this payment; and
      3. the CUSTOMER has underpaid any Charges, the CUSTOMER shall pay to the SERVICE PROVIDER the amount of the under-payment less the cost of audit incurred by the CUSTOMER if this was due to a Default by the SERVICE PROVIDER in relation to invoicing within twenty (20) Working Days.
5. FORCE MAJEURE
   1. For the purposes of this Contract, the expression “**Force Majeure Event**” shall mean any cause affecting the performance by either the CUSTOMER or the SERVICE PROVIDER of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding any industrial dispute relating to the SERVICE PROVIDER, the SERVICE PROVIDER Personnel or any other failure in the SERVICE PROVIDER or the Sub-Contractor's supply chain.
   2. Subject to the remaining provisions of this Clause , either party to this Contract may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.
   3. Any act, event, omission, happening or non-happening will only be considered a Force Majeure Event if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the Affected Party, its employees, servants or agents (including where the Affected Party is the SERVICE PROVIDER, its Sub-Contractors and the SERVICE PROVIDER Personnel) or the failure of either the CUSTOMER or the SERVICE PROVIDER to perform its obligations under this Contract. The SERVICE PROVIDER cannot claim relief from a Force Majeure Event to the extent that it is required to comply with the BCDR Plan but has failed to do so.
   4. It is expressly agreed that any failure by the SERVICE PROVIDER to perform or any delay by the SERVICE PROVIDER in performing its obligations under this Contract which results from any failure or delay in the performance of its obligations by any person, firm or company with which the SERVICE PROVIDER shall have entered into any contract, supply arrangement or Sub-Contract or otherwise shall be regarded as a failure or delay due to a Force Majeure Event only in the event that such person, firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or Sub-Contract or otherwise as a result of circumstances of a Force Majeure Event.
   5. If an Affected Party becomes aware of circumstances of a Force Majeure Event which give rise to or which are likely to give rise to any such failure or delay on its part, it shall notify the other party by the most expeditious method available and shall inform the other party of the likely duration of any failure or delay caused by those circumstances. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
   6. In the event of a Force Majeure Event, the CUSTOMER and the SERVICE PROVIDER shall use all reasonable endeavours to continue to perform, or resume performance of, all of their obligations under this Contract.
   7. Provided always that (as applicable) the CUSTOMER or the SERVICE PROVIDER use reasonable endeavours pursuant to the provisions of Clause , it shall not, in any circumstances, be liable to the other for any loss of any kind whatsoever, including any damages or abatement of Charges, whether directly or indirectly caused to, or incurred by, the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to a Force Majeure Event.
   8. As soon as practicable following the Affected Party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract. Where the SERVICE PROVIDER 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.
   9. The Affected Party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
   10. Subject to paragraph 2.3 of Schedule 2-6, it is hereby expressly declared that the only events that shall afford relief from liability for failure or delay shall be events recognised as Force Majeure Events under this Clause .
6. LEGISLATIVE CHANGE
   1. The SERVICE PROVIDER shall bear the cost of ensuring that the Ordered Software Application Solutions comply with all Laws and any amendments thereto, except where any such amendment could not reasonably have been foreseen by the SERVICE PROVIDER at the Effective Date.
   2. Where such reasonably unforeseeable amendments are necessary, the CUSTOMER and the SERVICE PROVIDER shall use all reasonable endeavours to agree upon reasonable adjustments to the Charges as may be necessary to compensate the SERVICE PROVIDER for such additional costs as are both reasonably and necessarily incurred by the SERVICE PROVIDER in accommodating such amendments.
7. WAIVER AND CUMULATIVE REMEDIES
   1. The failure of the SERVICE PROVIDER or the CUSTOMER to insist upon strict performance of any provision of this Contract or to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Contract.
   2. A waiver of any default shall not constitute a waiver of any other default. Any failure to exercise or any delay in exercising a right or remedy by either party shall not constitute a waiver of that right or remedy or of any other rights or remedies.
   3. No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver communicated by notice, in accordance with the provisions of Clause .
   4. The rights and remedies provided by this Contract are cumulative and, unless a right or remedy of the CUSTOMER is expressed to be an exclusive right or remedy, the exercise of it by the CUSTOMER is without prejudice to the CUSTOMER’s other rights and remedies provided at law or in equity or otherwise under this Contract.
8. LAW AND JURISDICTION
   1. Subject to the provisions of Clause , the CUSTOMER and the SERVICE PROVIDER accept the exclusive jurisdiction of the English Courts and agree that this Contract is to be governed by and construed according to English law.
   2. This Contract shall be binding upon the CUSTOMER and its successors and assignees and the SERVICE PROVIDER and the SERVICE PROVIDER’s successors and permitted assignees.
9. ENTIRE AGREEMENT
   1. This Contract, together with the documents [\*\*\* referred to in it \*\*\*] [\*\*\* attached to it \*\*\*], constitutes the entire agreement and understanding between the CUSTOMER and the SERVICE PROVIDER relating to the subject matter hereof and supersedes, cancels and nullifies any previous agreement between the parties to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.
   2. Each of the parties acknowledge and agree that in entering into this Contract and the documents [\*\*\* referred to in it \*\*\*] [\*\*\* attached to it \*\*\*], it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract. The only remedy available to either party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Contract.
   3. Nothing in this Clause shall operate to exclude any liability for fraud.
10. FURTHER ASSURANCES
    1. At its own expense, each party shall and shall use all reasonable endeavours to procure that any necessary third party shall promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Contract.
11. RELATIONSHIP OF THE PARTIES
    1. Nothing in this Contract is intended to create a partnership, or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other party. Neither party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other party.

**43. TRANSPARENCY REQUIREMENTS**

43.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The CUSTOMER shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, the SERVICE PROVIDER hereby gives his consent for the CUSTOMER to publish the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

43.2 The CUSTOMER may consult with the SERVICE PROVIDER to inform its decision regarding any redactions but the CUSTOMER shall have the final decision in its absolute discretion.

43.3 The SERVICE PROVIDER shall assist and cooperate with the CUSTOMER to enable the CUSTOMER to publish this Contract.

|  |  |  |
| --- | --- | --- |
| For and on behalf of the CUSTOMER |  | For and on behalf of the SERVICE PROVIDER |
| Authorised signatory:  Name: |  | Authorised signatory:  Name: |
|  |  |  |
| Title: |  | Title: |
| Date: |  | Date: |

ANNEX A TO THE CONTRACT CLAUSES

ALTERNATIVE CLAUSES AND ADDITIONAL CLAUSES

1. **Introduction**
   1. This Annex A to the Contract Clauses specifies the Alternative Clauses and Additional Clauses that were requested in the Order and that shall apply to this Contract.
2. **CLAUSES SELECTED**
   1. The CUSTOMER, in the Order, requested that the following Alternative Clauses should apply:
      1. Law and Jurisdiction:
         1. English Law (default)
      2. Liquidated Damages;
      3. FOIA;
      4. Intellectual Property Rights – Alternative A;
      5. [\*\*\* Title and Risk – Alternative A or B \*\*\*];
      6. Data Handling and
   2. The CUSTOMER, in the Order, requested that the following Additional Clauses should apply:
      1. Security Measures; and
3. **IMPLEMENTATION**
   1. The appropriate changes have been made in this Contract to implement the Alternative Clauses specified in paragraph  of this Schedule and the Additional Clauses specified in paragraph  of this Schedule shall be deemed to be incorporated into this Contract.
4. **ALTERNATIVE CLAUSES**

**SCOTS LAW**

* 1. For Scots Law, make the following changes:
     1. Delete Clause  and insert:

39.1. Subject to the provisions of Clause , this Contract shall be considered as a contract made in Scotland, the CUSTOMER and the SERVICE PROVIDER accept the exclusive jurisdiction of the Scottish Courts and agree that this Contract is to be governed by and construed according to Scots Law.

**NORTHERN IRELAND LAW**

* 1. For Northern Ireland Law, make the following changes:
     1. Delete Clause  and insert:

39.1. Subject to the provisions of Clause , this Contract shall be considered as a contract made in Northern Ireland, the CUSTOMER and the SERVICE PROVIDER accept the exclusive jurisdiction of the Northern Ireland Courts and agree that this Contract is to be governed by and construed according to Northern Ireland Law.

* + 1. Term and Termination
       1. In Clause , delete “...Section 123 of the Insolvency Act 1986 (except where the claim is made under Section 123(1)(a).” and insert [\*\*\* ...Article 103 of the Insolvency (NI) Order 1989 (except where the claim is made under Section 103(1)(a). \*\*\*]
    2. Discrimination
       1. Delete Clause  and insert:

27.1. The SERVICE PROVIDER shall not unlawfully discriminate within the meaning and scope of the Race Relations Act 1976, the Race Relations (NI) Order 1997, the Disability Discrimination Act 1995, Fair Employment (NI) Acts 1976 and 1989, the Fair Employment and Treatment (Northern Ireland) Order 1998, the Sex Discrimination (NI) Orders 1976 and 1988, the Equal Pay Act (NI) 1970 or any statutory modification or re‑enactment thereof relating to discrimination in employment.

**PRIVATE AUTHORITIES**

* 1. For Contracts formed with Private Authorities make the following changes:
     1. Consequences of Termination
        1. The reference in Clause to Clause shall be deleted.
     2. Confidentiality and Official Secrets Act
        1. Clauses  and shall be deleted.
        2. In Clause , delete “Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information,”.
     3. Recovery of Sums Due
        1. At the end of Clause , insert “or”. At the end of Clause , delete “: or” and replace with “,”. Delete Clause .
     4. Corrupt Gifts and Payments of Commission
        1. In Clause , the first reference to “or any other Crown Body” shall be deleted and the second and reference to “any other Crown Body” shall be replaced with “the CUSTOMER”.
        2. In Clause , the first reference to “, any other Crown Body”, the second reference to “or any Crown Body”, the third reference to “or any other Crown Body” and the fourth reference to “or other Crown Body” shall be deleted.
        3. In Clause , the words “any other Crown Body” shall be replaced with “the CUSTOMER”.
     5. Transfer & Sub-Contracting
        1. Delete Clauses  and .
     6. Schedule 2-1 (Interpretations)
        1. Delete the definition of “Crown Body”.

**NON-CROWN**

* 1. Where the CUSTOMER is not a Crown Body, the following changes should be made if the Official Secrets Act does not apply to the CUSTOMER:
     1. Consequences of Termination
        1. The reference in Clause to Clause shall be deleted.
     2. Confidentiality and Official Secrets Act
        1. Clauses  and shall be deleted.
        2. In Clause , delete “Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information,”.
     3. Recovery of Sums Due
        1. At the end of Clause , insert “or”. At the end of Clause , delete “: or” and replace with “,”. Delete Clause .
     4. Corrupt Gifts and Payments of Commission
        1. In Clause , the first reference to “or any other Crown Body” shall be deleted and the second and reference to “any other Crown Body” shall be replaced with “the CUSTOMER”.
        2. In Clause , the first reference to “, any other Crown Body”, the second reference to “or any Crown Body”, the third reference to “or any other Crown Body” and the fourth reference to “or other Crown Body” shall be deleted.
        3. In Clause , the words “any other Crown Body” shall be replaced with “the CUSTOMER”.
     5. Transfer & Sub-Contracting
        1. Delete Clauses  and .
     6. Schedule 2-1 (Interpretations)
        1. Delete the definition of “Crown Body”.

**LIQUIDATED DAMAGES**

* 1. For Liquidated Damages, paragraphs 3 to 6 of Schedule 2-14 shall be completed in accordance with details supplied in the Order.

**FREEDOM OF INFORMATION**

* 1. Where the CUSTOMER is exempt from the provisions of FOIA only, and notifies the SERVICE PROVIDER accordingly in the Order:
     1. references to FOIA in Clauses to (inclusive) shall be deleted;
     2. the following shall be deleted from Clause : “, acting in accordance with the Department of Constitutional Affairs’ Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“the **Code**”)” and “the FOIA or”; and
     3. Clause shall be deleted and Clause shall be renumbered.
  2. Note: This should not affect the EIR.

**TUPE**

ALTERNATIVE A

* 1. For Contracts where TUPE is intended to apply at commencement, make the following changes:
     1. Delete Clause and replace with the following:

# **28. TUPE**

28.1 The CUSTOMER and the SERVICE PROVIDER agree that the commencement of the provision of the Ordered Software Application Solutions by the SERVICE PROVIDER under this Contract will be a “relevant transfer” to which TUPE and/or the Acquired Rights Directive will apply. The CUSTOMER and the SERVICE PROVIDER further agree that, as a result of the operation of TUPE, the contracts of employment between the CUSTOMER and the Transferring Customer Employees (except in relation to any contract terms relating to occupational pension schemes) will have effect from the Service Commencement Date as if originally made between the SERVICE PROVIDER and each such Transferring Customer Employee.

28.2 The CUSTOMER will perform and discharge all its obligations in respect of all the Transferring Customer Employees prior to the Service Commencement Date and any necessary apportionments in respect of any periodic payments will be made. The CUSTOMER will indemnify the SERVICE PROVIDER against all Employee Liabilities arising from the CUSTOMER’s failure to perform and discharge any such obligation.

28.3 The SERVICE PROVIDER shall perform and discharge all its obligations in respect of all the Transferring Customer Employees from and after the Service Commencement Date. The SERVICE PROVIDER shall indemnify the CUSTOMER against all Employee Liabilities arising from the SERVICE PROVIDER’s failure to perform and discharge any such obligation.

28.4 The CUSTOMER will indemnify the SERVICE PROVIDER against any Employee Liabilities in respect of the Transferring Customer Employees arising from or as a result of:

28.4.1 any act or omission by the CUSTOMER occurring before the Service Commencement Date;

28.4.2 any claim made by or in respect of any person employed or formerly employed by the CUSTOMER other than a Transferring Customer Employee for which it is alleged the SERVICE PROVIDER may be liable by virtue of this Contract and/or TUPE and/or the Acquired Rights Directive; and

28.4.3 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Customer Employee relating to any act or omission of the CUSTOMER in relation to its obligations under Regulation 13 of TUPE, except to the extent that the liability arises from the SERVICE PROVIDER’s or any Sub-Contractor’s failure to comply with Regulation 13(4) of TUPE.

28.5 If any person who is not a Transferring Customer Employee claims, or it is determined, that his contract of employment has been transferred from the CUSTOMER to the SERVICE PROVIDER pursuant to TUPE or the Acquired Rights Directive then:

28.5.1 the SERVICE PROVIDER shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the CUSTOMER; and

28.5.2 the CUSTOMER may offer employment to such person within fifteen (15) Working Days of the notification by the SERVICE PROVIDER, or take such other steps as it considers appropriate to deal with the matter.

28.6 If such offer is accepted, or if the situation has otherwise been resolved by the CUSTOMER, the SERVICE PROVIDER shall immediately release the person from his employment.

28.7 If, after the fifteen (15) Working Day period specified in Clause 28.5.2 has elapsed:

28.7.1 no such offer of employment has been made; or

28.7.2 such offer has been made but not accepted; or

28.7.3 the situation has not otherwise been resolved,

the SERVICE PROVIDER may within five (5) Working Days give notice to terminate the employment of such person.

28.8 Subject to the SERVICE PROVIDER acting in accordance with the provisions of this Clause 28, the CUSTOMER will indemnify the SERVICE PROVIDER against all Employee Liabilities arising out of termination pursuant to the provisions of Clause 28.7.

28.9 If any such person as is described in Clause 28.5 is neither re‑employed by the CUSTOMER nor dismissed by the SERVICE PROVIDER within the time scales set out in this Clause 28 such person will be treated as a Transferring Customer Employee.

28.10 The SERVICE PROVIDER shall indemnify the CUSTOMER against all Employee Liabilities arising from the SERVICE PROVIDER’s failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Transferring Customer Employee arising from or as a result of any act or omission by the SERVICE PROVIDER relating to a Transferring Customer Employee occurring before the Service Commencement Date which would give rise to a substantial change in working conditions to the material detriment of a Transferring Customer Employee and/or on or after the Service Commencement Date or any other matter, event or circumstance occurring or having its origin on or after the Service Commencement Date.

28.11 The SERVICE PROVIDER will, and will procure that any Sub-Contractor will, comply with any applicable requirement relating to pensions in respect of any Transferring Customer Employee under (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000 and (b) HM Treasury's paper entitled "Fair Deal for Staff Pensions: Procurement of Bulk Transfers and Related Issues" of June 2004 or any other replacement statement of practice, paper or other guidance.  Parts A, B, D and E of Schedule 2-18 will apply.

28.12 The CUSTOMER and the SERVICE PROVIDER agree that the Code of Practice on Workforce Matters (the “**Workforce** **Code**”) applies to the treatment of New Employees by the SERVICE PROVIDER and the SERVICE PROVIDER therefore agrees to treat New Employees in accordance with the provisions of the Workforce Code, and in particular it is agreed that:

28.12.1 the CUSTOMER and the SERVICE PROVIDER shall have regard to the Workforce Code in interpreting and applying the obligations set out in this Clause 28.12 (the “**Workforce** **Code Obligations**”);

28.12.2 subject to Clause 28.12.4, the SERVICE PROVIDER shall employ any New Employees on terms and conditions of employment which are, overall, no less favourable than those of the Fair Deal Employees who are working alongside and holding the same or a similar position to that of the New Employees;

28.12.3 the SERVICE PROVIDER shall consult with recognised trade unions and where there is no recognised trade union with any other employee representative body on the terms to be offered to the New Employees pursuant to Clause 28.12.2;

28.12.4 the SERVICE PROVIDER shall procure that the New Employees are offered either:

28.12.4.1 membership of a good quality employer pension scheme, being a contracted-out final salary based defined benefit scheme, or a defined contribution scheme under which the employer must match employee contributions up to 6%; or

28.12.4.2 a stakeholder pension scheme, under which the SERVICE PROVIDER matches employee contributions up to 6%;

28.12.5 during the Term, the SERVICE PROVIDER shall on request by the CUSTOMER provide the CUSTOMER, as soon as reasonably practicable, with accurate and complete information as is necessary for the CUSTOMER to monitor the SERVICE PROVIDER’s compliance with the Workforce Code Obligations, including information on the terms and conditions of employment of the Fair Deal Employees and of the New Employees;

28.12.6 the SERVICE PROVIDER shall support any central government-sponsored review and monitoring programme on the impact of the Workforce Code and on request by the CUSTOMER will provide the CUSTOMER with accurate and complete information as soon as reasonably practicable in order to assist the CUSTOMER in participating in or complying with any such review or monitoring programme;

28.12.7 the CUSTOMER and the SERVICE PROVIDER shall in the first instance seek to resolve by discussion between them any disputes in relation to compliance by the SERVICE PROVIDER with the Workforce Code Obligations;

28.12.8 where it appears to the CUSTOMER or the SERVICE PROVIDER that it is not possible to resolve, pursuant to Clause 28.12.7, any dispute between them in relation to compliance by the SERVICE PROVIDER with the Workforce Code Obligations, the parties shall follow the dispute resolution procedure set out in annex A to the Workforce Code; and

28.12.9 where a New Employee or any recognised trade union or staff representative (in this clause referred to as the “**complainant**”) writes to the CUSTOMER to confirm that they have been unable to resolve their complaint directly with the SERVICE PROVIDER in relation to the SERVICE PROVIDER’s compliance with the Workforce Code Obligations:

28.5.9.1 the CUSTOMER shall first write to the SERVICE PROVIDER to seek an explanation for the alleged failure by the SERVICE PROVIDER to comply with the Workforce Code Obligations. The SERVICE PROVIDER shall provide such an explanation in writing within five (5) Working Days of receipt of the request from the CUSTOMER; and

28.5.9.2 if the response provided by the SERVICE PROVIDER satisfies the CUSTOMER that the Workforce Code Obligations have been met, then the CUSTOMER will inform the complainant of this and the matter will be deemed to have been concluded;

if the CUSTOMER is not satisfied with the response provided by the SERVICE PROVIDER, it will inform the SERVICE PROVIDER and the parties shall follow the dispute resolution procedure set out in Annex a to the Workforce Code (to which any recognised union, or staff representatives, shall have access to the extent that the dispute relates specifically to the SERVICE PROVIDER’s compliance with the Workforce Code Obligations).

* 1. If this clause is chosen by the Customer, the relevant defined terms (e.g., Workforce Code Obligations, Workforce Code, Fair Deal Employee, Transferring Customer Employee and New Employee) in Schedule 2-1 need to be retained and completed where necessary.

ALTERNATIVE B

* 1. For Contracts where the CUSTOMER is replacing one service provider with another, make the following changes:
     1. Replace 28with the following:

# **28. TUPE**

28.1 The CUSTOMER and the SERVICE PROVIDER agree that the commencement of the provision of the Ordered Software Application Solutions by the SERVICE PROVIDER under this Contract will be a “relevant transfer” to which TUPE and/or the Acquired Rights Directive will apply. The CUSTOMER and the SERVICE PROVIDER further agree that, as a result of the operation of TUPE, the contracts of employment between the Outgoing Service Provider and the Transferring Outgoing Service Provider Employees (except in relation to any contract terms relating to occupational pension schemes) will have effect from the Service Commencement Date as if originally made between the SERVICE PROVIDER and each such Transferring Outgoing Service Provider Employee.

28.2 The CUSTOMER will procure (to the extent it has a contractual right to do so) that the Outgoing Service Provider will perform and discharge all its obligations in respect of all the Transferring Outgoing Service Provider Employees prior to the Service Commencement Date and any necessary apportionments in respect of any periodic payments due to them will be made. The CUSTOMER will procure (to the extent it has a contractual right to do so) that the Outgoing Service Provider will indemnify the SERVICE PROVIDER against all Employee Liabilities arising from the Outgoing Service Provider’s failure to perform and discharge any such obligation.

28.3 The SERVICE PROVIDER shall perform and discharge all its obligations in respect of all the Transferring Outgoing Service Provider Employees from and after the Service Commencement Date. The SERVICE PROVIDER shall indemnify the CUSTOMER on behalf of the Outgoing Service Provider against all Employee Liabilities arising from the SERVICE PROVIDER’s failure to perform and discharge any such obligation.

28.4 The CUSTOMER will procure (to the extent it has a contractual right to do so) that the Outgoing Service Provider will indemnify the SERVICE PROVIDER against any Employee Liabilities in respect of the Transferring Outgoing Service Provider Employees arising from or as a result of:

28.4.1 any act or omission by the Outgoing Service Provider occurring before the Service Commencement Date;

28.4.2 any claim made by or in respect of any person employed or formerly employed by the Outgoing Service Provider other than a Transferring Outgoing Service Provider Employee for which it is alleged the SERVICE PROVIDER may be liable by virtue of this Contract and/or TUPE and/or the Acquired Rights Directive; and

28.4.3 any claim made by or in respect of a Transferring Outgoing Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Outgoing Service Provider Employee relating to any act or omission of the Outgoing Service Provider in relation to its obligations under Regulation 13 of TUPE, except to the extent that the liability arises from the SERVICE PROVIDER’s or any Sub-Contractor’s failure to comply with Regulation 13(4) of TUPE.

28.5 If any person who is not a Transferring Outgoing Service Provider Employee claims, or it is determined, that his contract of employment has been transferred from the Outgoing Service Provider to the SERVICE PROVIDER pursuant to TUPE or the Acquired Rights Directive then:

28.5.1 the SERVICE PROVIDER shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the CUSTOMER (which may include notice to an Outgoing Service Provider); and

28.5.2 the Outgoing Service Provider may offer employment to such person within fifteen (15) Working Days of the notification by the SERVICE PROVIDER, or take such other steps as it considers appropriate to deal with the matter.

28.6 If such offer is accepted, or if the situation has otherwise been resolved by the Outgoing Service Provider, the SERVICE PROVIDER shall immediately release the person from his employment.

28.7 If, after the fifteen (15) Working Day period specified in Clause 28.5.2 has elapsed:

28.7.1 no such offer of employment has been made; or

28.7.2 such offer has been made but not accepted; or

28.7.3 the situation has not otherwise been resolved,

the SERVICE PROVIDER may within five (5) Working Days give notice to terminate the employment of such person.

28.8 Subject to the SERVICE PROVIDER acting in accordance with the provisions of this Clause , the CUSTOMER will procure (to the extent it has a contractual right to do so) that the Outgoing Service Provider will indemnify the SERVICE PROVIDER against all Employee Liabilities arising out of termination pursuant to the provisions of Clause 28.7.

28.9 If any such person as is described in Clause 28.5 is neither re‑employed by the Outgoing Service Provider nor dismissed by the SERVICE PROVIDER within the time scales set out in this Clause 28 such person will be treated as a Transferring Outgoing Service Provider Employee.

28.10 The SERVICE PROVIDER shall indemnify the CUSTOMER on behalf of the Outgoing Service Provider against all Employee Liabilities arising from the SERVICE PROVIDER’s failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Transferring Outgoing Service Provider Employees arising from or as a result of any act or omission by the SERVICE PROVIDER relating to a Transferring Outgoing Service Provider Employee occurring before the Service Commencement Date which would give rise to a substantial change in working conditions to the material detriment of a Transferring Outgoing Service Provider Employee and/or on or after the Service Commencement Date or any other matter, event or circumstance occurring or having its origin on or after the Service Commencement Date.

28.11 The SERVICE PROVIDER will, and will procure that any Sub-Contractor will, comply with any applicable requirement relating to pensions in respect of any Transferring Outgoing Service Provider Employee who is a Second Generation Fair Deal Employee under (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000 and (b) HM Treasury's paper entitled "Fair Deal for Staff Pensions: Procurement of Bulk Transfers and Related Issues" of June 2004 or any other replacement statement of practice, paper or other guidance.  Parts A, C, D and E of Schedule 2-18 will apply.

28.12 The CUSTOMER and the SERVICE PROVIDER agree that the Code of Practice on Workforce Matters (the “**Workforce** **Code**”) applies to the treatment of New Employees by the SERVICE PROVIDER and the SERVICE PROVIDER therefore agrees to treat New Employees in accordance with the provisions of the Workforce Code, and in particular it is agreed that:

28.12.1 the CUSTOMER and the SERVICE PROVIDER shall have regard to the Workforce Code in interpreting and applying the obligations set out in this Clause 28.12 (the “**Workforce** **Code Obligations**”);

28.12.2 subject to Clause 28.12.4, the SERVICE PROVIDER shall employ any New Employees on terms and conditions of employment which are, overall, no less favourable than those of the Fair Deal Employees who are working alongside and holding the same or a similar position to that of the New Employees;

28.12.3 the SERVICE PROVIDER shall consult with recognised trade unions and where there is no recognised trade union with any other employee representative body on the terms to be offered to the New Employees pursuant to Clause 28.12.2;

28.12.4 the SERVICE PROVIDER shall procure that the New Employees are offered either:

28.12.4.1 membership of a good quality employer pension scheme, being a contracted-out final salary based defined benefit scheme, or a defined contribution scheme under which the employer must match employee contributions up to 6%; or

28.12.4.2 a stakeholder pension scheme, under which the SERVICE PROVIDER matches employee contributions up to 6%;

28.12.5 during the Term, the SERVICE PROVIDER shall on request by the CUSTOMER provide the CUSTOMER, as soon as reasonably practicable, with accurate and complete information as is necessary for the CUSTOMER to monitor the SERVICE PROVIDER’s compliance with the Workforce Code Obligations, including information on the terms and conditions of employment of the Fair Deal Employees and of the New Employees;

28.12.6 the SERVICE PROVIDER shall support any central government-sponsored review and monitoring programme on the impact of the Workforce Code and on request by the CUSTOMER will provide the CUSTOMER with accurate and complete information as soon as reasonably practicable in order to assist the CUSTOMER in participating in or complying with any such review or monitoring programme;

28.12.7 the CUSTOMER and the SERVICE PROVIDER shall in the first instance seek to resolve by discussion between them any disputes in relation to compliance by the SERVICE PROVIDER with the Workforce Code Obligations;

28.12.8 where it appears to the CUSTOMER or the SERVICE PROVIDER that it is not possible to resolve, pursuant to Clause 28.12.7, any dispute between them in relation to compliance by the SERVICE PROVIDER with the Workforce Code Obligations, the parties shall follow the dispute resolution procedure set out in annex A to the Workforce Code; and

28.12.9 where a New Employee or any recognised trade union or staff representative (in this clause referred to as the “**complainant**”) writes to the CUSTOMER to confirm that they have been unable to resolve their complaint directly with the SERVICE PROVIDER in relation to the SERVICE PROVIDER’s compliance with the Workforce Code Obligations:

28.5.9.1 the CUSTOMER shall first write to the SERVICE PROVIDER to seek an explanation for the alleged failure by the SERVICE PROVIDER to comply with the Workforce Code Obligations. The SERVICE PROVIDER shall provide such an explanation in writing within five (5) Working Days of receipt of the request from the CUSTOMER; and

28.5.9.2 if the response provided by the SERVICE PROVIDER satisfies the CUSTOMER that the Workforce Code Obligations have been met, then the CUSTOMER will inform the complainant of this and the matter will be deemed to have been concluded;

if the CUSTOMER is not satisfied with the response provided by the SERVICE PROVIDER, it will inform the SERVICE PROVIDER and the parties shall follow the dispute resolution procedure set out in Annex a to the Workforce Code (to which any recognised union, or staff representatives, shall have access to the extent that the dispute relates specifically to the SERVICE PROVIDER’s compliance with the Workforce Code Obligations).

* 1. If this clause is chosen by the Customer, the relevant defined terms (e.g., Workforce Code Obligations, Workforce Code, Fair Deal Employee, Outgoing Service Provider, Transferring Outgoing Service Provider Employee and New Employee) in Schedule 2-1 need to be retained and completed where necessary.

**INTELLECTUAL PROPERTY RIGHTS**

ALTERNATIVE A

* 1. Where it is agreed that Contract Generated Intellectual Property Rights shall be proprietary to and owned by the SERVICE PROVIDER, delete Clause  and renumber the remaining Clauses accordingly, and delete Clause  and insert:

17.5 All Contract Generated Intellectual Property Rights shall be proprietary to and owned by the SERVICE PROVIDER. The SERVICE PROVIDER hereby grants to the CUSTOMER a royalty-free, irrevocable, non-exclusive licence to use such of the SERVICE PROVIDER’s Contract Generated Intellectual Property Rights and for such term as the CUSTOMER shall require solely for the purposes of this Contract and such other purposes as it shall reasonably require that relate to the use and provision of the Ordered Software Application Solutions, together with the ability to sub-licence the same.

ALTERNATIVE B

* 1. Where it is agreed that all Contract Generated Intellectual Property Rights, including software shall be proprietary to and owned by the CUSTOMER, delete Clause  and renumber the remaining Clauses accordingly, and delete Clause  and insert:

17.5 All Contract Generated Intellectual Property Rights shall be proprietary to and owned by the CUSTOMER and the SERVICE PROVIDER shall enter into such documentation and perform such acts as the CUSTOMER shall request to properly vest such Contract Generated Intellectual Property Rights in the CUSTOMER. Accordingly, the SERVICE PROVIDER hereby assigns (by way of present assignment of future Contract Generated Intellectual Property Rights) all such Intellectual Property Rights and shall make available to the CUSTOMER a copy of the source code of the Contract Generated Intellectual Property Rights.

Note: In the definition of SERVICE PROVIDER System, “(excluding Specially Written Software)” needs to be inserted after “Software”.

**TITLE AND RISK**

ALTERNATIVE A

* 1. For Contracts where not all Ordered Goods are being transferred to the CUSTOMER delete paragraph 3.2 of Schedule 2-13 and insert:

3.2 Title in the Ordered Goods set out in the table below provided by the SERVICE PROVIDER shall pass to the CUSTOMER on the earlier of:

(i) payment for such Ordered Goods; or

(ii) such Ordered Goods successfully passing the Acceptance Tests.

|  |
| --- |
| Ordered Goods to be transferred to the CUSTOMER |
| [\*\*\* insert Ordered Goods \*\*\*] |
| [\*\*\* insert Ordered Goods \*\*\*] |
| [\*\*\* insert Ordered Goods \*\*\*] |

ALTERNATIVE B

* 1. For Contracts where no Ordered Goods are being transferred to the CUSTOMER, paragraphs 3.2 and 3.3 of Schedule 2-13 shall be deleted and replaced with the following:

3.2 Title and risk in the Ordered Goods shall remain with the SERVICE PROVIDER throughout the Term.

**DATA HANDLING**

* 1. Where it is agreed that there is no Processing of Personnel Data or disclosure of CUSTOMER Data:
     1. delete “(including CUSTOMER Data)” from Clause 11.2;
     2. the warranty in Clause shall be deleted and the remaining Clauses renumbered accordingly;
     3. Clauses to (inclusive) shall be marked “Not Used” and Schedules 2-15 and 2-16 marked “Not Used”;
     4. delete “The SERVICE PROVIDER acknowledges that the CUSTOMER Data is the property of the CUSTOMER and the CUSTOMER hereby reserves all Intellectual Property Rights which may subsist in the CUSTOMER Data.” from Clause 17.1;
     5. delete “to review the integrity, confidentiality and security of the CUSTOMER Data held or used by the SERVICE PROVIDER;” from Clause 35.1.2 and renumber the remaining clauses accordingly;
     6. delete the following sentence from Clause : “The SERVICE PROVIDER cannot claim relief from a Force Majeure Event to the extent that it is required to comply with the BCDR Plan but has failed to do so.”;
     7. all corresponding definitions in Schedule 2-1 shall be deleted save those definitions used elsewhere in the Contract and the definition of CUSTOMER Confidential Information shall be amended by removing ““Personal Data, CUSTOMER Data”;
     8. delete paragraph 5 in Schedule 2-6; and
     9. delete paragraph 3.2.9 of Schedule 2-11 and renumber the remaining paragraphs accordingly.

**LIMITATION OF LIABILITY**

* 1. Where it is agreed that greater limits of liability are to apply to property damage, Clause shall be replaced with the following (and the existing Clause 13.4.2 shall be renumbered 13.4.3):
     1. for all direct loss of or damage by the SERVICE PROVIDER to the tangible property of the CUSTOMER shall in no event exceed [\*\*\* insert amount \*\*\*] million pounds; [***Guidance Note: The CUSTOMER should insert a suitable limit if the £5m limit in Clause is not suitable for the Contract and decide who should bear the risk of paying for any increase in the SERVICE PROVIDER’s premium and in so doing not to prejudice any SERVICE PROVIDER***];
     2. for all direct loss of or damage by the CUSTOMER to the tangible property of the SERVICE PROVIDER shall in no event exceed [\*\*\* insert amount \*\*\*]; and

1. **ADDITIONAL CLAUSES**
   1. For Contracts where the CUSTOMER requires escrow, insert the following wording as the next available Clause in the Contract:

50 [DN number given as example] Escrow

50.1 The SERVICE PROVIDER shall place the source code of [\*\*\*specify software source code and associated documentation\*\*\*] software in escrow with [\*\*\*specify escrow agent\*\*\*] within one month of acceptance by the CUSTOMER on the basis of the standard agreement or on such other terms as the CUSTOMER, the SERVICE PROVIDER and the escrow agent shall agree.

50.2 The SERVICE PROVIDER shall ensure that the software placed in escrow shall include material modifications, developments, updates, patches, enhancements or other modifications to the software from time to time.

50.3 The SERVICE PROVIDER hereby grants the CUSTOMER a perpetual, non-transferable and non-exclusive licence to use, reproduce, modify, adapt and enhance (and to authorise a third party to use, reproduce, modify, adapt and enhance) the source code and object code versions of the software placed in escrow. However, the foregoing licence shall only become effective if the CUSTOMER becomes entitled to obtain access to the source code version of that software pursuant to the escrow arrangement referred to in Clause [50.1] and the licence shall be subject to any restrictions contained therein in respect of the object code version of the software provided that such restrictions shall not detract from the rights granted under this Clause [50].

50.4 The SERVICE PROVIDER and the CUSTOMER hereby agree that both parties shall each pay their respective fees set out in any escrow agreement entered into pursuant to Clause [50].

**SECURITY MEASURES**

* 1. For Contracts where the CUSTOMER requires further security measures, insert the following wording as the next available Clause in the Contract:

51 [DN number given as example]Security Measures

* 1. In this Clause []:
     1. “secret matter” means any matter connected with or arising out of the performance of this Contract which has been, or may hereafter be, by a notice in writing given by the CUSTOMER to the SERVICE PROVIDER be designated ‘top secret’, ‘secret’, or ‘confidential’;
     2. “document” includes specifications, plans, drawings, photographs and books;
     3. references to a person employed by the SERVICE PROVIDER shall be construed as references to any person employed or engaged by the SERVICE PROVIDER to do anything in connection with this Contract, whether under a contract of service with the SERVICE PROVIDER or under any other contract or arrangement whatsoever; and
     4. “servant” where the SERVICE PROVIDER is a body corporate shall include a director of that body and any person occupying in relation to that body the position of director by whatever name called.
  2. The SERVICE PROVIDER shall not, either before or after the expiry or termination of this Contract, do or permit to be done anything which it knows or ought reasonably to know may result in information about a secret matter being:
     1. without the prior consent in writing of the CUSTOMER, disclosed to or acquired by a person who is an alien or who is a British subject by virtue only of a certificate of naturalisation in which his name was included;
     2. disclosed to or acquired by a person as respects to whom the CUSTOMER has given to the SERVICE PROVIDER a notice in writing which has not been cancelled stating that the CUSTOMER requires that secret matters shall not be disclosed to that person;
     3. without the prior consent in writing of the CUSTOMER, disclosed to or acquired by any person who is not a servant of the SERVICE PROVIDER; or
     4. disclosed to or acquired by a person who is an employee of the SERVICE PROVIDER except in a case where it is necessary for the proper performance of this Contract that such person shall have the information.
  3. Without prejudice to the provisions of Clause [], the SERVICE PROVIDER shall, both before and after the expiry or termination of this Contract, take all reasonable steps to ensure:
     1. that no such person as is mentioned in Clauses [], [] or [] hereof shall have access to any item or document under the control of the SERVICE PROVIDER containing information about a secret matter except with the prior consent in writing of the CUSTOMER;
     2. that no visitor to any premises in which there is any item to be supplied under this Contract or where Ordered Software Application Solutions are being provided shall see or discuss with the SERVICE PROVIDER or any person employed by him any secret matter unless the visitor is authorised in writing by the CUSTOMER so to do;
     3. that no photograph of any item to be supplied under this Contract or any portions of the Ordered Software Application Solutions shall be taken except insofar as may be necessary for the proper performance of this Contract or with the prior consent in writing of the CUSTOMER, and that no such photograph shall, without such consent, be published or otherwise circulated;
     4. that all information about any secret matter and every document model or other item which contains or may reveal any such information is at all times strictly safeguarded, and that, except insofar as may be necessary for the proper performance of this Contract or with the prior consent in writing of the CUSTOMER, no copies of or extracts from any such document, model or item shall be made or used and no designation of description which may reveal information about the nature or contents of any such document, model or item shall be placed thereon; and
     5. that if the CUSTOMER gives notice in writing to the SERVICE PROVIDER at any time requiring the delivery to the CUSTOMER of any such document, model or item as is mentioned in Clause [], that document, model or item (including all copies of or extracts therefrom) shall forthwith be delivered to the CUSTOMER who shall be deemed to be the owner thereof and accordingly entitled to retain the same.
  4. The decision of the CUSTOMER on the question whether the SERVICE PROVIDER has taken or is taking all reasonable steps as required by the foregoing provisions of this Clause [] shall be final and conclusive.
  5. If and when directed by the CUSTOMER, the SERVICE PROVIDER shall furnish full particulars of all people who are at any time concerned with any secret matter.
  6. If and when directed by the CUSTOMER, the SERVICE PROVIDER shall secure that any person employed by it who is specified in the direction, or is one of a class of people who may be so specified, shall sign a statement that he understands that the Official Secrets Act, 1911 to 1989 and, where applicable, the Atomic Energy Act, 1946, apply to the person signing the statement both during the carrying out and after expiry or termination of a Contract.
  7. If at any time either before or after the expiry or termination (howsoever arising) of this Contract it comes to the notice of the SERVICE PROVIDER that any person acting without lawful authority is seeking or has sought to obtain information concerning this Contract or any thing done or to be done in pursuance thereof, the matter shall be forthwith reported by the SERVICE PROVIDER to the CUSTOMER and the report shall, in each case, be accompanied by a statement of the facts, including, if possible, the name, address and occupation of that person, and the SERVICE PROVIDER shall be responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by it, that person shall forthwith report the matter to the SERVICE PROVIDER with a statement of the facts as aforesaid.
  8. The SERVICE PROVIDER shall place every person employed by it, other than a Sub-Contractor, who in its opinion has or will have such knowledge of any secret matter as to appreciate its significance, under a duty to the SERVICE PROVIDER to observe the same obligations in relation to that matter as are imposed on the SERVICE PROVIDER by Clauses [] and []. The SERVICE PROVIDER shall, if directed by the CUSTOMER, place every person who is specified in the direction or is one of a class of people so specified, under the like duty in relation to any secret matter which may be specified in the direction, and shall at all times use its best endeavours to ensure that every person upon whom obligations are imposed by virtue of this Clause [51.8] observes the said obligations. The SERVICE PROVIDER shall give such instructions and information to every such person as may be necessary for such purpose, and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to the CUSTOMER with all necessary particulars.
  9. The SERVICE PROVIDER shall, if directed by the CUSTOMER, include in the Sub-Contract in such terms as the CUSTOMER may consider appropriate for placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to those placed on the SERVICE PROVIDER by this Clause [], but with such variations (if any) as the CUSTOMER may consider necessary. Further the SERVICE PROVIDER shall:
     1. give such notices, directions, requirements and decisions to its Sub-Contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-Contracts under this Clause [51.9] into operation in such cases and to such extent as the CUSTOMER may direct;
     2. if there comes to its notice any breach by the Sub-Contractor of the obligations of secrecy and security included in their Sub-Contracts in pursuance of this Clause [], notify such breach forthwith to the CUSTOMER; and
     3. if and when so required by the CUSTOMER, exercise its power to determine the Sub-Contract under the provision in that Sub-Contract which corresponds to Clause [51.12].
  10. The SERVICE PROVIDER shall give the CUSTOMER such information and particulars as the CUSTOMER may from time to time require for the purposes of satisfying the CUSTOMER that the obligations imposed by or under the foregoing provisions of this Clause [] have been and are being observed and as to what the SERVICE PROVIDER has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof. The SERVICE PROVIDER shall secure that a representative of the CUSTOMER duly authorised in writing shall be entitled at reasonable times to enter and inspect any premises in which any thing is being done or is to be done under this Contract or in which there is or will be any item to be supplied under this Contract, and also to inspect any document or item in any such premises or which is being made or used for the purposes of this Contract. The SERVICE PROVIDER shall ensure and procure that any such representative shall be given all such information as he may require on the occasion of, or arising out of, any such inspection.
  11. Nothing in this Clause [] shall prevent any person from giving any information or doing any thing on any occasion when it is, by virtue of any enactment, the duty of that person to give that information or do that thing.
  12. If the CUSTOMER considers that any of the following events has occurred:
      1. the SERVICE PROVIDER has committed a breach of, or failed to comply with any of, the foregoing provisions of this Clause []; or
      2. the SERVICE PROVIDER has committed a breach of any obligations in relation to secrecy or security imposed upon it by any other contract with the CUSTOMER, or with any department or person acting on behalf of the Crown; or
      3. by reason of an act or omission on the part of the SERVICE PROVIDER, or of a person employed by the SERVICE PROVIDER, which does not constitute such a breach or failure as is mentioned in Clause [51.12.1], information about a secret matter has been or is likely to be acquired by a person who, in the opinion of the CUSTOMER, ought not to have such information,

and shall also decide that the interests of the State require the termination of this Contract, the CUSTOMER may by notice in writing terminate this Contract forthwith.

* 1. Notwithstanding anything to the contrary in this Contract, a decision of the CUSTOMER to terminate this Contract in accordance with the provisions of Clause [51.12] shall be final and conclusive and it shall not be necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which the CUSTOMER’s decision is based.
  2. The SERVICE PROVIDER may within five (5) Working Days of the termination of this Contract in accordance with the provisions of Clause [51.12], give the CUSTOMER notice in writing requesting the CUSTOMER to state whether the event upon which the CUSTOMER’s decision to terminate was based is an event mentioned in Clauses [51.12.1], [51.12.2] or [51.12.3] and to give particulars of that event.  The CUSTOMER shall within ten (10) Working Days of the receipt of such a request give notice in writing to the SERVICE PROVIDER containing such a statement and particulars as are required by the request.
  3. The termination of this Contract pursuant to Clause [51.12] shall be without prejudice to any rights of either party which shall have accrued before the date of such termination and:
     1. the SERVICE PROVIDER shall be entitled to be paid for any work or thing done under this Contract and accepted but not paid for by the CUSTOMER at the date of such termination either at the price which would have been payable under this Contract if this Contract had not been terminated, or at a reasonable price;
     2. the CUSTOMER may take over any work or thing done or made under this Contract (whether completed or not) and not accepted at the date of such termination which the CUSTOMER may by notice in writing to the SERVICE PROVIDER given within thirty (30) Days from the time when the provisions of this Clause [] shall have effect, elect to take over, and the SERVICE PROVIDER shall be entitled to be paid for any work or thing so taken over a price which, having regard to the stage which that work or thing has reached and its condition at the time it is taken over, is reasonable. The SERVICE PROVIDER shall in accordance with directions given by the CUSTOMER, deliver any work or thing taken over under Clause [51.15.1] and take all such other steps as may be reasonably necessary to enable the CUSTOMER to have the full benefit of any work or thing taken over under Clause [51.15.1]; and
     3. save as aforesaid, the SERVICE PROVIDER shall not be entitled to any payment from the CUSTOMER after the termination of this Contract.
  4. If, after notice of termination of this Contract pursuant to the provisions of Clause [51.12]:
     1. the CUSTOMER shall not within ten (10) Working Days of the receipt of a request from the SERVICE PROVIDER, furnish such a statement and particulars as are detailed in Clause [51.14]; or
     2. the CUSTOMER shall state in the statement and particulars detailed in Clause [51.14] that the event upon which the CUSTOMER’s decision to terminate this Contract was based is an event mentioned in Clause [51.12.3],

the respective rights and obligations of the SERVICE PROVIDER and the CUSTOMER shall be terminated in accordance with the following provisions:

* + 1. the CUSTOMER shall take over from the SERVICE PROVIDER at a fair and reasonable price all unused and undamaged materials, bought-out parts and components and articles in course of manufacture in the possession of the SERVICE PROVIDER upon the termination of this Contract under the provisions of Clause [51.12] and properly provided by or supplied to the SERVICE PROVIDER for the performance of this Contract, except such materials, bought-out parts and components and articles in course of manufacture as the SERVICE PROVIDER shall, with the concurrence of the CUSTOMER, elect to retain;
    2. the SERVICE PROVIDER shall prepare and deliver to the CUSTOMER within an agreed period or in default of agreement within such period as the CUSTOMER may specify, a list of all such unused and undamaged materials, bought-out parts and components and articles in course of manufacture liable to be taken over by or previously belonging to the CUSTOMER and shall deliver such materials and items in accordance with the directions of the CUSTOMER who shall pay to the SERVICE PROVIDER fair and reasonable handling and delivery charges incurred in complying with such directions;
    3. the CUSTOMER shall indemnify the SERVICE PROVIDER against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the SERVICE PROVIDER in connection with this Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the SERVICE PROVIDER by reason of the termination of this Contract;
    4. if hardship to the SERVICE PROVIDER should arise from the operation of this Clause [51.16] it shall be open to the SERVICE PROVIDER to refer the circumstances to the CUSTOMER who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the CUSTOMER on any matter arising out of this Clause [51.15.6] shall (notwithstanding anything to the contrary in this Contract) be final and conclusive; and
    5. subject to the operation of Clauses [51.16.3], [51.16.4],[51.16.5] and [51.16.6], termination of this Contract shall be without prejudice to any rights of either party that may have accrued before the date of such termination.

**ACCESS TO MOD SITES**

* 1. For Contracts where access to MOD sites is required, insert the following wording as the next available Clause in the Contract:

1. [DN number given as example] Access to MOD Sites
   1. In this Clause []:
      1. “Site” shall include any of Her Majesty’s Ships or Vessels and Service Stations; and
      2. “Officer in charge” shall include Officers Commanding Service Stations, Ships’ Masters or Senior Officers, and Officers superintending Government Establishments.
   2. The CUSTOMER shall issue passes for those representatives of the SERVICE PROVIDER who are approved for admission to the Site and a representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the CUSTOMER and shall be surrendered on demand or on completion of the Ordered Software Application Solutions.
   3. The SERVICE PROVIDER’s representatives when employed within the boundaries of a Site, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of personnel at that Site. When on board ship, compliance shall be with the Ship’s Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements shall be provided, on request, by the Officer in charge.
   4. The SERVICE PROVIDER shall be responsible for the living accommodation and maintenance of its representatives while they are employed at a Site. Sleeping accommodation and messing facilities, if required, may be provided by the CUSTOMER wherever possible, at the discretion of the Officer in charge, at a cost fixed in accordance with current Ministry of Defence regulations. At Sites overseas, accommodation and messing facilities, if required, shall be provided wherever possible. The status to be accorded to the SERVICE PROVIDER’s personnel for messing purposes shall be at the discretion of the Officer in charge who shall, wherever possible give his decision before the commencement of this Contract where so asked by the SERVICE PROVIDER. When sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the CUSTOMER and shall be obtained by the SERVICE PROVIDER from the Officer in charge. Such certificate shall be presented to the CUSTOMER with other evidence relating to the costs of this Contract.
   5. Where the SERVICE PROVIDER’s representatives are required by this Contract to join or visit a Site overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided for them free of charge by the Ministry of Defence whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The SERVICE PROVIDER shall make such arrangements through the Technical Branch named for this purpose in this Contract. When such transport is not available within a reasonable time, or in circumstances where the SERVICE PROVIDER wishes its representatives to accompany material for installation which it is to arrange to be delivered, the SERVICE PROVIDER shall make its own transport arrangements. The CUSTOMER shall reimburse the SERVICE PROVIDER’s reasonable costs for such transport of its representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the SERVICE PROVIDER’s representatives locally overseas which is necessary for the purpose of this Contract shall be provided wherever possible by the Ministry of Defence, or by the Officer in charge and, where so provided, shall be free of charge.
   6. Out-patient medical treatment given to the SERVICE PROVIDER’s representatives by a Service Medical Officer or other Government Medical Officer at a Site overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the SERVICE PROVIDER’s representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the SERVICE PROVIDER at rates fixed in accordance with current Ministry of Defence regulations.
   7. Accidents to the SERVICE PROVIDER’s representatives which ordinarily require to be reported in accordance with Health and Safety at Work etc Act 1974, shall be reported to the Officer in charge so that the Inspector of Factories may be informed.
   8. No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the SERVICE PROVIDER’s representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.
   9. The SERVICE PROVIDER shall, wherever possible, arrange for funds to be provided to its representatives overseas through normal banking channels (e.g. by travellers’ cheques). If banking or other suitable facilities are not available, the CUSTOMER shall, upon request by the SERVICE PROVIDER and subject to any limitation required by the SERVICE PROVIDER, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the SERVICE PROVIDER’s representatives are attached. All such advances made by the CUSTOMER shall be recovered from the SERVICE PROVIDER.

[***Guidance Note: If Clause  is used ensure that the term Technical Branch used in Clause  is defined in Schedule 2-1***]

schedule 2-1

INTERPRETATIONS

|  |  |
| --- | --- |
| **Acceptance Procedures** | means the procedure of that name as specified in Schedule 2-5. |
| **Acceptance Test** | means a test to be conducted in accordance of the provisions of Schedule 2-5 and “**Acceptance Tests**” shall be construed accordingly. |
| **Acceptance Test Criteria** | means the test criteria specified in Schedule 2-5. |
| **Acceptance Test Period** | means the period during which the Acceptance Procedures shall be performed, pursuant to the provisions of Schedule 2-5. |
| **Acquired Rights Directive** | means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended. |
| **Additional Clauses** | means the additional Clauses specified in paragraph 2.1 of Annex A to this Contract that were requested in the Order by the CUSTOMER and that shall apply to this Contract. |
| **Affected Party** | means the party seeking to claim relief in respect of a Force Majeure Event. |
| **Affiliate** | means any person, partnership, joint venture, corporation or other form of enterprise, domestic or foreign, including subsidiaries that directly or indirectly are controlled by, or are under common control with the SERVICE PROVIDER or its Parent Company. |
| **Alternative Clauses** | means the alternative Clauses specified in paragraph 2.2 of Annex A to this Contract that were requested in the Order by the CUSTOMER and that shall apply to this Contract. |
| **AUTHORITY** | has the meaning ascribed to it in Recital of this Contract. |
| **[\*\*\* Average Price** | means in relation to the Comparable Services provided by the Comparison Group, the mean average of prices for those Comparable Services as adjusted to produce Equivalent Services Data over the previous twelve (12) month period, or other period as agreed between the CUSTOMER and the SERVICE PROVIDER. (The "mean average price" shall be calculated by aggregating the prices derived from Equivalent Services Data for each of the services and dividing the same by the number instances of Comparable Services). \*\*\*] (*Required if Customer requires benchmarking*) |
| **BACS** | means the Banks Automated Clearing System. |
| **BCDR Plan** | means the plan consisting of general business continuity and disaster recovery principles, the Business Continuity Plan and Disaster Recovery Plan as further described in paragraph 1.2 of Schedule 2-15. |
| **[\*\*\* Benchmark Report** | means the report produced by the Benchmarker following the Benchmark Review as further described in paragraph 7.18 of Schedule 2-3. \*\*\*] (*Required if Customer requires benchmarking*) |
| **[\*\*\* Benchmark Review** | means a review of the Ordered Software Application Solutions carried out in accordance with paragraphs 7.8 to 7.17 (inclusive) of Schedule 2-3 to determine whether those Ordered Software Application Solutions represent Good Value. \*\*\*] (*Required if Customer requires benchmarking*) |
| **[\*\*\* Benchmarked Services** | means the Ordered Software Application Solutions that the CUSTOMER elects to include in a Benchmark Review under paragraph 7.4 of Schedule 2-3. \*\*\*] (*Required if Customer requires benchmarking*) |
| **[\*\*\* Benchmarker** | means the independent third party appointed under paragraph 7.5 of Schedule 2-3. \*\*\*] (*Required if Customer requires benchmarking*) |
| **Breach of Security** | means in accordance with the security requirements in Schedule [\*\*\* insert schedule \*\*\*] and the Security Policy, the occurrence of:   1. any unauthorised access to or use of the Ordered Software Application Solutions, the CUSTOMER Premises, the Sites, the SERVICE PROVIDER System and/or any ICT, information or data (including the Confidential Information and the CUSTOMER Data) used by the CUSTOMER and/or the SERVICE PROVIDER in connection with this Contract; and/or 2. the loss 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 SERVICE PROVIDER in connection with this Contract. |
| **Business Continuity Plan** | has the meaning set out in paragraph of Schedule 2-15. |
| **Catalogue** | means the catalogue of Software Application Solutions available for Order under the provisions of the Framework Agreement. |
| **Catalogue Entry** | means a Software Application Solution that has been approved by the AUTHORITY in accordance with the procedures set out in the Framework Agreement and listed in the Catalogue. |
| **CCN Effective Date** | has the meaning ascribed to it in paragraph 3.3.1 of Schedule 2-7. |
| **CEDR** | means the Centre for Effective Dispute Resolution. |
| **Charges** | means the rates and charges set out in Schedule 2-3. |
| **Charges Variation Procedure** | means the procedure for varying the Charges specified in Schedule 2-3. |
| **Code** | has the meaning ascribed to it in Clause of this Contract. |
| **Commercially Sensitive Information** | means the information listed in Schedule 2-10 comprising the information of a commercially sensitive nature relating to the SERVICE PROVIDER, its Intellectual Property Rights or its business or which the SERVICE PROVIDER has indicated to the CUSTOMER that, if disclosed by the CUSTOMER, would cause the SERVICE PROVIDER significant commercial disadvantage or material financial loss. |
| **[\*\*\* Comparable Services** | means services that are identical or materially similar to the Benchmarked Services (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar services exist in the market, the Benchmarker shall propose an approach for developing a comparable service benchmark. \*\*\*] (*Required if Customer requires benchmarking*) |
| **[\*\*\* Comparison Group** | means a sample group of organisations providing Comparable Services identified by the Benchmarker under paragraph 7.8.7 of Schedule 2-3 which consists of organisations which are either of similar size to the SERVICE PROVIDER or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker's professional opinion) fair comparators with the SERVICE PROVIDER or which, in the professional opinion of the Benchmarker, are best practice organisations. \*\*\*] (*Required if Customer requires benchmarking*) |
| **[\*\*\* complainant** | has the meaning ascribed to it in Clause 28.12.9. \*\*\*] (*TUPE Alternative Clause Alternative A and B*). |
| **Confidential Information** | means the CUSTOMER Confidential Information and/or the SERVICE PROVIDER Confidential Information. |
| **Contract** | means the clauses of this contract together with the Schedules and annexes to it [\*\*\* and any documents [\*\*\* referred to in it or \*\*\*] attached to it \*\*\*]. |
| **Contract Change Note (CCN)** | means the contract change note specified in Annex A of Schedule 2-7. |
| **Contract Change Procedure** | means the contract change procedure specified in Schedule 2-7 for making changes to this Contract. |
| **Contract Generated Intellectual Property Rights** | means any Intellectual Property Rights created by the SERVICE PROVIDER as a result of the performance by the SERVICE PROVIDER of its obligations under this Contract including the Specially Written Software. |
| **Contracting Authority** | means a contracting authority as listed in the OJEU Notice or Regulation 3 of the Public Contracts Regulations 2006. |
| **Crown Body** | means any department, office or agency of the Crown and “**Crown Bodies**” shall be construed accordingly. |
| **CUSTOMER Confidential Information** | means all Personal Data, CUSTOMER Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the CUSTOMER, including all Intellectual Property Rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential. |
| **CUSTOMER Data** | means (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the SERVICE PROVIDER by or on behalf of the CUSTOMER; or (ii) which the SERVICE PROVIDER 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 Furnished Items** | means any items issued or otherwise furnished in connection with this Contract by or on behalf of the CUSTOMER. |
| **CUSTOMER Premises** | means premises owned, controlled or occupied by the CUSTOMER or any Crown Body which are made available for use by the SERVICE PROVIDER or its Sub-Contractors for provision of Ordered Software Application Solutions (or any of them) on the terms set out in this Contract or any separate agreement or licence. |
| **CUSTOMER System** | means the CUSTOMER's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the CUSTOMER or the SERVICE PROVIDER in connection with this Contract which is owned by or licensed to the CUSTOMER by a third party and which interfaces with the SERVICE PROVIDER System or which is necessary for the CUSTOMER to receive the Ordered Software Application Solutions. |
| **Data Controller** | has the same meaning as set out in the Data Protection Act 1998. |
| **Data Processor** | has the same meaning as set out in the Data Protection Act 1998. |
| **Data Protection Legislation** | means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner. |
| **Data Subject** | has the same meaning as set out in the Data Protection Act 1998. |
| **Days** | means calendar days. |
| **Default** | means any breach of the obligations of any party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of any party, it’s employees, agents or Sub-Contractors in connection with or in relation to the subject matter of this Contract and in respect of which such party is liable to the other. |
| **Disaster** | means the occurrence of one or more events which, either separately or cumulatively, mean that the Ordered Software Application Solutions, or a material part of it will be unavailable for period of [\*\*\* insert period \*\*\*] or which is reasonably anticipated will mean that the Ordered Software Application Solutions or a material part will be unavailable for that period. |
| **Disaster Recovery** | means the process of restoration of the Ordered Software Application Solutions by the provision of the Disaster Recovery Services. |
| **Disaster Recovery Plan** | has the meaning set out in paragraph of Schedule 2-15. |
| **Disaster Recovery Services** | means the disaster recovery and/or business continuity services (as the context may require) to be provided by the SERVICE PROVIDER pursuant to Schedule 2-15. |
| **Disaster Recovery Systems** | means the system identified by the SERVICE PROVIDER in the SERVICE PROVIDER Solution which shall be used for the purpose of delivering the Disaster Recovery Service. |
| **Effective Date** | means the date on which this Contract is signed by both parties. |
| **Employee Liabilities** | means all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination or discrimination on the grounds of religion, belief or sexual orientation or claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims whether in tort, contract or statute or otherwise, demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equal Opportunities Commission, the Disability Rights Commission, or the Commission for Racial Equality or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation), and any expenses and legal costs on an indemnity basis. |
| **Environmental Information Regulations** | 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. |
| **[\*\*\* Equivalent Services Data** | means data derived from an analysis of the Comparable Services provided by the Comparison Group as adjusted in accordance with paragraph 7.16(i) of Schedule 2-3. \*\*\*] (*Required if Customer requires benchmarking*) |
| **Exit and Service Transfer Arrangements** | means the arrangements set out in Schedule 2-11 which shall apply in the event of the expiry or termination (howsoever arising) of this Contract. |
| **Expert** | means the person appointed by the parties in accordance with paragraph 7.27 of Schedule 2-3. |
| **[\*\*\* Fair Deal Employee** | means (1) the Transferring Customer Employees and (2) those Transferring Outgoing Service Provider Employees whose period of continuous employment commenced with and who originally transferred from employment with central or local government or a public sector employer pursuant to a relevant transfer under TUPE (or the predecessor legislation to TUPE), and who remain in employment relating to the provision of services to which that relevant transfer applied. \*\*\* ] (*TUPE Alternative Clause Alternative A and B*) |
| **FOIA** | means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation. |
| **Force Majeure Event** | has the meaning ascribed to it in Clause of this Contract. |
| **Framework Agreement** | means the meaning ascribed to it in Recital of this Contract. |
| **Further Competition Procedure** | means the further competition procedure specified in paragraph 2.2 of schedule 5 of the Framework Agreement as may be updated from time to time by the AUTHORITY). |
| **General Principles** | has the meaning ascribed to it in paragraph of Schedule 2-15. |
| **Good Industry Practice** | means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector. |
| **[\*\*\* Good Value** | means that:  (i) the Charges attributable to a Benchmarked Service are, having taken into account the Service Levels, [\*\*\* less than or equal to the Average Price \*\*\*] [\*\*\* are within the Upper Quartile \*\*\*];  and  (ii) any Service Levels attributable to Benchmarked Services are, having taken into account the Charges, equal to or greater than the [\*\*\* median \*\*\*] [\*\*\* mean average \*\*\*] service levels for Comparable Services as adjusted using Equivalent Services Data. \*\*\*] (*Required if Customer requires benchmarking*) |
| **Goods** | means any goods used in the provision of the Software Application Solutions including hardware and software. Such goods may have been provided by the SERVICE PROVIDER, the CUSTOMER, a lessor or another third party. When a specific item of goods is the subject of an Order by a Customer, it will be referred to in the ensuing Contract as Ordered Goods. |
| **ICT Environment** | means the CUSTOMER System and the SERVICE PROVIDER System. |
| **Implementation Plan** | means the plan specified in the CUSTOMER’s Order, and incorporated with Schedule 2-2, necessary to implement provision of the Ordered Software Application Solutions within their organisation. |
| **Indexing** | has the meaning ascribed to it in Schedule 2-3. |
| **Information** | has the meaning given under section 84 of the Freedom of Information Act 2000. |
| **Intellectual Property Rights** | means patents, patent applications, trade marks, service marks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, trade or business names and other similar rights or obligations whether registrable or not in any country (including the United Kingdom). |
| **Invoicing Procedure** | means the procedure by which the SERVICE PROVIDER invoices the CUSTOMER, as set out in Schedule 2-4. |
| **ISMS** | means the Information Security Management System as defined by ISO/IEC 27001. The scope of the ISMS will be as agreed by the parties and will directly reflect the scope of the Ordered Software Application Solutions. |
| **Law** | means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of Court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body including the Security Policy Framework, the Code and the Workforce Code. |
| **[\*\*\* Liquidated Damages** | means the liquidated damages specified in Schedule 2-14. \*\*\*] |
| **[\*\*\* Liquidated Damages Period** | means the period specified in paragraph 4 of Schedule 2-14 for each instance where Liquidated Damages apply. \*\*\*] |
| **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. |
| **Materials** | has the meaning ascribed to it in Clause of this Contract. |
| **Mediator** | has the meaning ascribed to it in Schedule 2-9. |
| **Model Contract** | means the model contract for software application solutions (version 8.0) published by the AUTHORITY on its website. |
| **[\*\*\* New Employees** | means those new employees recruited by the SERVICE PROVIDER after the commencement of the Ordered Software Application Solutions by the SERVICE PROVIDER with the intention for those employees to work wholly or mainly on the provision of the Ordered Software Application Solutions and “**New Employee**” means any one of them. \*\*\*] (*TUPE Alternative Clause Alternative A and B*) |
| **Notice of Arbitration** | means the formal notice from the SERVICE PROVIDER or the CUSTOMER to the other party referring a dispute to arbitration in accordance with the provisions of Schedule 2-9. |
| **OJEU Notice** | means the contract notice issued by the AUTHORITY in respect of the Framework Agreement. |
| **Open Source Ordered Software** | means the open software source listed in Schedule 2-17. |
| **Order** | means an order for Software Application Solutions served by the CUSTOMER on the SERVICE PROVIDER. |
| **Ordered Goods** | means a Catalogue Entry for Goods selected by the CUSTOMER and included in Schedule 2-2 of this Contract pursuant to an Order. |
| **Ordered Software Application Solutions** | means a Catalogue Entry for Software Application Solutions selected by the Customer and included in Schedule 2-2 of this Contract pursuant to an Order. |
| **[\*\*\* Outgoing Service Provider** | means the party providing services to the CUSTOMER similar or the same as the Ordered Software Application Solutions and which is being replaced by the SERVICE PROVIDER. **\*\*\***] (*TUPE Alternative Clause Alternative B*) |
| **Parent Company** | means any company which is the ultimate Holding Company of the SERVICE PROVIDER or any other company of which the ultimate Holding Company of the SERVICE PROVIDER is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the SERVICE PROVIDER or which is engaged in the same or similar business to the SERVICE PROVIDER. The term “**Holding Company”** shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto. |
| **Payment Profile** | means the profile of payments to be made by the CUSTOMER to the SERVICE PROVIDER under the terms of this Contract as set out in Schedule 2-4. |
| **Persistent Breach** | means the SERVICE PROVIDER is in any breach of this Contract or any part thereof continuously for twenty (20) Working Days or more. |
| **Personal Data** | has the same meaning as set out in the Data Protection Act 1998. |
| **Pre-Existing Intellectual Property Rights** | means any Intellectual Property Rights vested in or licensed to:  a) the SERVICE PROVIDER prior to or independently of the performance by the SERVICE PROVIDER of its obligations under this Contract; and  b) the CUSTOMER prior to or independently of the performance by the CUSTOMER of its obligations under this Contract. |
| **Private Authority** | means a commercial organisation to whom service provision has been outsourced by a Contracting Authority, which assumes the role and responsibilities of the CUSTOMER under a Contract. |
| **Processing** | has the same meaning as set out in the Data Protection Act 1998. |
| **Protectively Marked** | has the meaning as set out in the Security Policy Framework. |
| **Quarter** | means a three (3) month period beginning on 1st January, 1st April, 1st July or 1st October. The term “**Quarterly**” shall be similarly construed. |
| **Regulatory Bodies** | means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the CUSTOMER and “**Regulatory Body**” shall be construed accordingly. |
| **Related Service Provider** | means any person who provides services to the CUSTOMER in relation to the CUSTOMER’s project from time to time which persons include without limit as at the Effective Date [\*\*\* insert details \*\*\*]. |
| **Relevant Transfer** | means a transfer of employment to which TUPE applies or is treated as applying. |
| **Reports** | means reports submitted by the SERVICE PROVIDER to the CUSTOMER as specified in Schedule 2-6. |
| **Requests for Information** | means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations. |
| **Review Report** | has the meaning ascribed to it in paragraph 6.2 of Schedule 2-15. |
| **[\*\*\* Second Generation Fair Deal Employee** | means any employee whose employment transfers under a Relevant Transfer from the Outgoing Service Provider to the SERVICE PROVIDER on the Service Commencement Date and who (i) in relation to previous employment with the CUSTOMER, had been accruing pension rights as an active member of [\*\*\*insert name of public sector pension scheme\*\*\*] immediately before a Relevant Transfer of his employment from the CUSTOMER to the Outgoing Service Provider, or a series of Relevant Transfers starting with employment with the CUSTOMER and finishing with employment with the Outgoing Service Provider, and (ii) had elected to transfer such pension rights from [\*\*\*insert name of public sector pension scheme*\*\*\**] to the Outgoing Service Provider's Scheme. \*\*\*] (*TUPE Alternative Clause Alternative A and B*) |
| **Security Management Plan** | means the SERVICE PROVIDER's security plan prepared pursuant to paragraph 3 of Schedule 2-16, an outline of which is set out in Annex of Schedule 2-16. |
| **Security Policy** | means the CUSTOMER's security policy annexed to Schedule 2-16, as updated from time to time. |
| **Security Policy Framework** | means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division). |
| **Security Tests** | has the meaning ascribed to it in paragraph of Schedule 2-16. |
| **Service Commencement Date** | means the date of commencement of the provision of the Ordered Software Application Solutions by the SERVICE PROVIDER in accordance with the Order. |
| **Service Credits** | means the service credits specified in Schedule 2-2 which shall be payable to the CUSTOMER by the SERVICE PROVIDER in the event that the Service Levels are not met in respect of Ordered Software Application Solutions. |
| **Service Levels** | means the levels of service defined in Schedule 2-2. |
| **SERVICE PROVIDER Confidential Information** | means any information, which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the SERVICE PROVIDER, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential. |
| **SERVICE PROVIDER Equipment** | means the hardware, computer and telecoms devices and equipment supplied by the SERVICE PROVIDER or its Sub-Contractors (but not hired, leased or loaned from the CUSTOMER) for the provision of the Ordered Software Application Solutions. |
| **SERVICE PROVIDER Personnel** | means all employees, agents, consultants and contractors of the SERVICE PROVIDER and/or of any Sub-Contractor. |
| **SERVICE PROVIDER Proposals** | has the meaning ascribed to it in paragraph 6.2.3 if Schedule 2-15. |
| **SERVICE PROVIDER Software** | means the proprietary software of the SERVICE PROVIDER as set out in an Order and incorporated within Schedule 2-2. |
| **SERVICE PROVIDER Solution** | means the SERVICE PROVIDER’s solution to the CUSTOMER’s requirements as set out in Schedule 2-2. |
| **SERVICE PROVIDER System** | means the information and communications technology system used by the SERVICE PROVIDER in providing the Ordered Software Application Solutions including the Software, the SERVICE PROVIDER Equipment and related cabling (but excluding the CUSTOMER System). |
| **Service Transfer** | means any transfer of the Ordered Software Application Solutions (or any part of the Ordered Software Application Solutions), for whatever reason, from the SERVICE PROVIDER or any Sub-Contractor to the CUSTOMER or to a replacement service provider. |
| **Service Transfer Date** | means the date of a Service Transfer. |
| **Service Transfer Plan (STP)** | means the plan produced in accordance with paragraph 3 of Schedule 2-11 by the SERVICE PROVIDER to be agreed by the CUSTOMER to facilitate any transfer of the Ordered Software Application Solutions (or any part of the Ordered Software Application Solutions), for whatever reason, from the SERVICE PROVIDER or any Sub-Contractor to the CUSTOMER or to a replacement service provider. |
| **Sites** | means any premises from which Ordered Software Application Solutions are provided or from which the SERVICE PROVIDER manages, organises or otherwise directs the provision or the use of Ordered Software Application Solutions or where any part of the SERVICE PROVIDER System is situated or where any physical interface with the CUSTOMER System takes place. |
| **Software** | means any Specially Written Software, SERVICE PROVIDER Software and Third Party Software. |
| **Software Application Solutions** | means the software application solutions specified in the Catalogue that the SERVICE PROVIDER shall make available to Customers. Such software application solutions may also include the provision of Goods. When a specific software application solution (and any Goods) is the subject of an Order by a Customer, it will be referred to in the ensuing Contract as Ordered Software Application Solution. |
| **Software Application Solutions Contract Manager** | means [ \*\*\* insert name \*\*\*] of the CUSTOMER and [ \*\*\* insert name \*\*\*] of the SERVICE PROVIDER. |
| **Special Terms** | means additional Customer specific terms, to which the SERVICE PROVIDER’s agreement is sought by a Customer under the Further Competition Procedure. |
| **Specially Written Software** | means any software created by the SERVICE PROVIDER (or by a third party on behalf of the SERVICE PROVIDER, including by any Sub-Contractor) specifically for the purposes of this Contract. |
| **Staff Vetting Procedures** | means the CUSTOMER's procedures and departmental policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989. |
| **Staffing Information** | means written information about each of the SERVICE PROVIDER’s or its subcontractor’s staff as referred to in paragraph 6.1.1 of Schedule 2-11 including in particular: the percentage of working time spent by each of them in the provision of the services; job title, remuneration (meaning salary and benefits and any enhanced redundancy terms), age, length of service, notice period, particulars of employment in accordance with section 1 of the Employment Rights Act 1996, the applicability of any collective agreement to such staff, any disciplinary action taken against any of them in the preceding two (2) years, details of any grievances raised by any of them in the preceding two (2) years, any Court or employment tribunal proceedings brought by any of them in the preceding two (2) years, any potential proceedings which the SERVICE PROVIDER’s or its subcontractor reasonably considers may be raised by any of them, and information about any of them who have been absent from work for one (1) month or more regardless of the reason at the time the staffing information is requested. |
| **Standards and Regulations** | means the standards and regulations as set out in Schedule 2-12 with which the SERVICE PROVIDER shall comply in the provision of the Ordered Software Application Solutions and its responsibilities and obligations hereunder. |
| **Sub-Contractor** | means any supplier selected, appointed and managed by the SERVICE PROVIDER in accordance with the provisions of Schedule 2-8, including the Sub-Contractors specified in Schedule 2-8. The terms “**Sub-Contract**” and “**Sub-Contracting**” shall be similarly construed. |
| **[\*\*\* Technical Branch** | means [\*\*\* where the Order specifies the use of Access to MoD Sites Additional Clause, the Order should also specify the definition of Technical Branch \*\*\*].] |
| **Term** | means the term of this Contract as set out in Clause  of this Contract, subject to early termination (howsoever arising) pursuant to Clause . |
| **Termination Events** | means each of the events specified in Clause  of this Contract. |
| **Third Party Software** | means software which is proprietary to any third party [\*\*\* other than an Affiliate of the SERVICE PROVIDER \*\*\*] which is or will be used by the SERVICE PROVIDER for the purposes of providing the Ordered Software Application Solutions, including the software specified as such in Schedule 2-2. |
| **Transferee Employer** | means any employer of Transferring Service Provider Employees immediately after a transfer which is a Relevant Transfer of any Service. |
| **[\*\*\* Transferring Customer Employees** | means those employees of the CUSTOMER to which TUPE will apply on the Service Commencement Date, and in respect of whom written notification has been given by the CUSTOMER to the SERVICE PROVIDER before the Service Commencement Date. \*\*\*] (*TUPE Alternative Clause Alternative A*) |
| **[\*\*\* Transferring Outgoing Service Provider Employees** | means those employees of the Outgoing Service Provider to which TUPE will apply on the Service Commencement Date, and in respect of whom written notification has been given by the CUSTOMER to the SERVICE PROVIDER before the Service Commencement Date. **\*\*\***] (*TUPE Alternative Clause Alternative B*) |
| **Transferring Service Provider Employees** | has the meaning ascribed to it in Schedule 2-11 (Exit and Service Transfer Arrangements). |
| **TUPE** | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive. |
| **[\*\*\* Upper Quartile** | that based on an analysis of Equivalent Services Data, the Charges for the Benchmarked Services, as compared to the range of prices for Comparable Services, are within the top 25% in terms of best value for money or the recipients of Comparable Services. \*\*\*] (*Required if Customer requires benchmarking*) |
| **Value Added Tax** | means value added tax as provided for in the Value Added Tax Act 1994 and any other applicable sales tax. |
| **[\*\*\* Workforce Code** | has the meaning ascribed to it in Clause 28.11 of this Contract (  *TUPE Alternative Clause Alternative A and B*). **\*\*\*]** |
| **[\*\*\* Workforce** **Code Obligations** | has the meaning ascribed to it in Clause 28.12.1 of this Contract. (  *TUPE Alternative Clause Alternative A and B*). **\*\*\*]** |
| **Working Days** | means Monday to Friday inclusive, excluding English public and bank holidays. |
| **Year** | means a period of twelve (12) months. |

schedule 2-2

THE ORDERED SOFTWARE APPLICATION SOLUTIONS, SERVICE LEVELS, SERVICE CREDITS AND IMPLEMENTATION PLAN

1. **INTRODUCTION**
   1. This Schedule specifies:
      1. the Ordered Software Application Solutions;
      2. the Service Levels applicable to each of the Ordered Software Application Solutions;
      3. the Service Credits applicable where Service Levels are not met; and
      4. the Implementation Plan
2. **THE ORDERED SOFTWARE APPLICATION SOLUTIONS**
   1. [\*\*\* as specified in the Catalogue and/or CUSTOMER Order \*\*\*]
3. **SERVICE LEVELS**
   1. [\*\*\* as specified in the Catalogue and/or CUSTOMER Order \*\*\*]
4. **SERVICE CREDITS**
   1. [\*\*\* as specified in the Catalogue and/or CUSTOMER Order \*\*\*]
5. **IMPLEMENTATION PLAN**
   1. [\*\*\* as specified in the CUSTOMER Order \*\*\*]

schedule 2-3

THE CHARGES, CHARGES VARIATION PROCEDURE

1. **introduction**
   1. This Schedule details:
      1. the Charges for the Ordered Software Application Solutions; [\*\*\* and \*\*\*]
      2. the Charges Variation Procedure applicable to this Contract; [\*\*\* and \*\*\*]
      3. [\*\*\* the benchmarking procedures. \*\*\*]
2. **THE CHARGES**
   1. [\*\*\* to be inserted relative to the Ordered Software Application Solutions \*\*\*]
3. **CHARGES VARIATION PROCEDURE**
   1. [\*\*\*Subject to paragraph 3.2 of this Schedule, \*\*\*][\*\*\*tT \*\*\*]he Charges, shall only be varied due to:
      1. Indexing in accordance with the provisions of paragraph  of this Schedule;
      2. agreement between the parties at any time to decrease any of the Charges; [\*\*\* and \*\*\*]
      3. reduction in the Charges in accordance with Clause 5.1.8 of this Contract; [\*\*\* and \*\*\*]
      4. [\*\*\* a Benchmarking Review. \*\*\*]
   2. [\*\*\* The following Charges shall not be subject to the Charges Variation Procedure: [\*\*\* insert details \*\*\*] \*\*\*]
4. **INDEXING**
   1. In accordance with the provisions of the Framework Agreement, on the first Day following each anniversary of the commencement of the Framework Agreement, the Charges shall be varied by the application of the following formula:

NC = EC \* Z

where:

NC = New Charge

EC = Existing Charge, and

Z = 1 + (% change in RPIX Index)

100

1. **INDEX**
   1. RPIX Index - The “Retail Prices Index excluding mortgage interest rates (RPIX)” as published by the Office of National Statistics (http://www.statistics.gov.uk/instantfigures.asp). The measurement to be used in the variation calculation of the variable ‘Z’ in paragraph  of this Schedule shall be the percentage “Annual change” in the RPIX Index in respect of the most recent twelve (12) months for which published data is available.
   2. Where the published figure specified in paragraph  of this Schedule is stated to be a provisional figure or is subsequently amended, that figure shall apply as ultimately confirmed or amended.
   3. In the event that any changes occur to the basis of the RPIX Index, or it is no longer published, the adjusted index or, if appropriate, the revised formula shall be that agreed by the AUTHORITY and the SERVICE PROVIDER under the Framework Agreement.
2. **IMPLEMENTATION OF ADJUSTED CHARGES**
   1. Charges varied in accordance with the provisions of this Schedule shall be amended by the SERVICE PROVIDER to take effect on the relevant date.
   2. Notwithstanding paragraph 6.1 of this Schedule, no amendment to the Charges pursuant to the provisions of paragraph 4.1 of this Schedule, shall be made during the first three (3) months after the Effective Date.
3. **[BENCHMARKING**

**Frequency of Benchmark Review**

* 1. The CUSTOMER may, by written notice to the SERVICE PROVIDER, require a Benchmark Review of any or all of the Ordered Software Application Solutions.
  2. The CUSTOMER shall not be entitled to carry out a Benchmark Review during the first twelve (12) months after the Effective Date nor at intervals of less than six (6) months after any previous Benchmark Review.

**Purpose and scope of Benchmark Review**

* 1. The purpose of a Benchmark Review will be to establish whether a Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.
  2. The Ordered Software Application Solutions that are to be the Benchmarked Services will be identified by the CUSTOMER in the written request given under paragraph of this Schedule.

**Appointment of Benchmarker**

* 1. The CUSTOMER shall appoint the Benchmarker to carry out the Benchmark Review.
  2. The CUSTOMER will, at the written request of the SERVICE PROVIDER, require the Benchmarker to enter into an appropriate confidentiality undertaking with the SERVICE PROVIDER.
  3. The costs and expenses of the Benchmarker and the Benchmark Review shall be shared equally between both parties provided that each party shall bear its own internal costs of the Benchmark Review.

**Benchmarking Process**

* 1. The CUSTOMER shall require the Benchmarker to produce, and to send to each party for approval, a draft plan for the Benchmark Review within ten (10) Days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances. The plan must include:
     1. a proposed timetable for the Benchmark Review;
     2. a description of the information that the Benchmarker requires each party to provide;
     3. a description of the benchmarking methodology to be used;
     4. a description that demonstrates objectively and transparently that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives;
     5. an estimate of the resources required from each party to underpin the delivery of the plan;
     6. a description of how the Benchmarker will scope and identify the Comparison Group; and
     7. details of any entities which the Benchmarker proposes to include within the Comparison Group.
  2. Each party must give notice in writing to the Benchmarker and to the other party within ten (10) Days after receiving the draft plan, advising whether it approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan. Neither party may unreasonably withhold or delay its approval of the draft plan, and any suggested amendments must be reasonable.
  3. Where a party suggests amendments to the draft plan under paragraph of this Schedule, the Benchmarker must, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph of this Schedule shall apply to any amended draft plan.
  4. Failure by a party to give notice under paragraph of this Schedule will be treated as approval of the draft plan by that party.
  5. Once the plan is approved by both parties, the Benchmarker will carry out the Benchmark Review in accordance with the plan. Each party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the SERVICE PROVIDER shall fail to provide any information requested from it by the Benchmarker and described in the plan such failure shall constitute a material Default for the purposes of Clause of this Contract.
  6. Each party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Ordered Software Application Solutions.
  7. Either party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
  8. Once it has received the information it requires, the Benchmarker shall finalise a sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The selection of the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarker's professional judgment using:
     1. information from other service providers to the CUSTOMER;
     2. survey information;
     3. market intelligence;
     4. the Benchmarker's own data and experience;
     5. relevant published information;
     6. information from consultancies and/or other vendors or purchasers of Comparable Services; and
     7. information from 'in-house' providers to the CUSTOMER to the extent that Benchmarker considers that they are valid comparators.
  9. The Benchmarker shall then by (i) applying the adjustment factors listed in paragraph of this Schedule and from an analysis of the Comparable Services derive the Equivalent Services Data and (ii) using the Equivalent Services Data calculate the [\*\*\* Average Price \*\*\*] [\*\*\* Upper Quartile \*\*\*] and/or median Service Levels:
     1. compare the Charges attributable to the Benchmarked Services (having regard in particular to the Service Levels and Service Credits regime) with the [\*\*\* Average Price \*\*\*] [\*\*\* Upper Quartile \*\*\*] using the Equivalent Services Data;
     2. compare the Service Levels attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with the [\*\*\* median \*\*\*] [\*\*\* mean average \*\*\*] service levels using the Equivalent Services Data; and
     3. determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.
  10. In carrying out the benchmarking analysis the Benchmarker shall have regard to the following matters when performing a comparative assessment of the Benchmarked Services and the Comparable Services in order to derive Equivalent Services Data:
      1. the contractual and business environment under which the Ordered Software Application Solutions are being provided (including the scope, scale, complexity and geographical spread of the Ordered Software Application Solutions);
      2. any front-end investment and development costs of the SERVICE PROVIDER;
      3. the SERVICE PROVIDER's risk profile including the financial, performance or liability risks associated with the provision of the Ordered Software Application Solutions as a whole;
      4. the extent of the SERVICE PROVIDER's management and contract governance responsibilities; and
      5. any other factors reasonably identified by the SERVICE PROVIDER, which, if not taken into consideration, could unfairly cause the SERVICE PROVIDER's pricing to appear non-competitive (such as erroneous costing or over-aggressive pricing).

**Benchmarker's Report**

* 1. The Benchmarker shall be required to prepare a Benchmarking Report and deliver it simultaneously to both parties, at the time specified in the plan approved under paragraph of this Schedule, setting out its findings. The Benchmarking Report shall:
     1. include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;
     2. include other findings (if any) regarding the quality and competitiveness or otherwise of those Ordered Software Application Solutions; and
     3. if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Charges or Service Levels, that would the required to make that Benchmarked Service or those Benchmarked Service as a whole Good Value.
  2. The Benchmarker shall act as an expert and not as an arbitrator.
  3. Benchmark Reviews shall not result in any increase to the Charges or any decrease in the performance of any Ordered Software Application Solutions or Service Levels.
  4. If the Benchmarking Report states that any Benchmarked Service is not Good Value, or that the Benchmarked Services as a whole are not Good Value then the SERVICE PROVIDER shall (subject to paragraphs and of this Schedule) implement the changes set out in the Benchmarking Report as soon as reasonably practicable within a timescale agreed with the CUSTOMER but in any event within no more than one (1) month.
  5. Subject to the SERVICE PROVIDER's right to dispute or reject the Benchmarking Report under paragraph or of this Schedule, if the Benchmarking Report determines that any or all of the Benchmarked Services are not Good Value, any failure by the SERVICE PROVIDER to reduce the Charges in accordance with such timescales agreed between the parties under paragraph of this Schedule shall, without prejudice to any other rights or remedies of the CUSTOMER, constitute a material Default for the purposes of Clause of this Contract.
  6. The SERVICE PROVIDER shall be entitled to reject the a Benchmarking Report if the SERVICE PROVIDER reasonably considers that the Benchmarker has not followed the procedure for the related Benchmark Review as set out in this Schedule in any material respect.
  7. The SERVICE PROVIDER shall not be obliged to implement any Benchmarking Report to the extent this would cause the SERVICE PROVIDER to provide the Ordered Software Application Solutions at a loss (as determined, by reference to the financial model), or to the extent the SERVICE PROVIDER cannot technically implement the recommended changes.
  8. In the event of a dispute relating to the Benchmarking Report or any rejection of the Benchmarking Report under paragraph or of this Schedule the matter shall be referred to an Expert for determination in accordance with the procedure detailed in paragraphs and of this Schedule. In such event, the CUSTOMER shall continue to pay the Charges to the SERVICE PROVIDER in accordance with the terms of this Contract pending the conclusion of the Expert determination process.
  9. On conclusion of the Expert determination process, if the Expert determines that all or any part of the Benchmarking Report recommendations regarding any reduction in the Charges shall be implemented by the SERVICE PROVIDER, the SERVICE PROVIDER shall immediately repay to the CUSTOMER the difference between the Charges paid by the CUSTOMER up to and including the date of the Expert's determination and the date upon which the recommended reduction in Charges should have originally taken effect.

**Expert Determination**

* 1. 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 Law Society.
  2. The Expert shall act on the following basis:
     1. he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
     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;
     3. the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his appointment or as soon as reasonably practicable thereafter and the parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
     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. the process shall be conducted in private and shall be confidential; and
     6. the Expert shall determine how and by whom the costs of the determination, including his/her fess and expenses, are to be paid.]

SCHEDULE 2-4

INVOICING PROCEDURE

1. **Introduction**
   1. This Schedule sets out the Invoicing Procedure that shall apply to this Contract.
2. **Invoicing Procedure**
   1. The SERVICE PROVIDER shall, in accordance with the Payment Profile, submit invoices directly to:

[\*\*\* insert the billing point \*\*\*]

* 1. Invoices shall specify:
     1. the unique Order reference [\*\*\* insert ref. \*\*\*];
     2. the delivery milestone (if any) within this Contract to which the invoice relates and a summary of the corresponding Ordered Software Application Solutions;
     3. any Service Credits due;
     4. the line value;
     5. total value excluding Value Added Tax;
     6. the Value Added Tax percentage
     7. the total value including Value Added Tax;
     8. the tax point date relating to the rate of Value Added Tax shown; and
     9. the SERVICE PROVIDER’s SAP number (if applicable).

1. **INVOICE PAYMENT**
   1. The CUSTOMER shall pay all valid invoices submitted by the SERVICE PROVIDER in accordance with the provisions of this Schedule in accordance with the provisions of Clause 5 of this Contract.
   2. In the event of a disputed invoice, the CUSTOMER shall make payment in respect of any undisputed amount in accordance with the provisions of Clause 5 of this Contract and return the invoice to the SERVICE PROVIDER within ten (10) Working Days of receipt with a covering statement proposing amendments to the invoice and/or the reason for any non-payment. The SERVICE PROVIDER shall respond within ten (10) Working Days of receipt of the returned invoice stating whether or not the SERVICE PROVIDER accepts the CUSTOMER’s proposed amendments. If it does then the SERVICE PROVIDER shall supply with the response a replacement valid invoice. If it does not then the matter shall be dealt with in accordance with the provisions of Clause  of this Contract.
2. **Payment Profile**
   1. The Payment Profile in respect of the Ordered Software Application Solutions provided under this Contract is as follows:

(delete options which are inappropriate)

* + 1. [\*\*\* insert Payment Profile relevant to each Ordered Software Application Solution, as specified in the Order \*\*\*]; or
    2. [\*\*\* monthly in arrears \*\*\*].
    3. [\*\*\* Quarterly in arrears \*\*\*]

**SCHEDULE 2-5**

**ACCEPTANCE PROCEDURES**

# **INTRODUCTION**

* 1. This Schedule specifies the Acceptance Procedures and the Acceptance Test Criteria to be used in the acceptance of the Ordered Software Application Solutions.

1. ACCEPTANCE PROCEDURES – BASIC PARAMETERS
   1. The SERVICE PROVIDER shall, during the Acceptance Test Period, make available the Ordered Software Application Solutions to the CUSTOMER (including any products supplied by the SERVICE PROVIDER necessary to enable the provision of those Ordered Software Application Solutions) for the Acceptance Procedures to be performed.
   2. The CUSTOMER will conduct Acceptance Tests on the Ordered Software Application Solutions to test whether they meet the requirement specified in the Order and meet the appropriate Service Levels.
   3. The CUSTOMER will perform the Acceptance Procedures in respect of each Ordered Software Application Solution (including any applicable delivery milestones stated within the Implementation Plan of this Contract).
   4. The Acceptance Procedures shall be recorded as successful and the SERVICE PROVIDER notified accordingly where all the Acceptance Test Criteria are met.
   5. The Acceptance Procedures shall be recorded as unsuccessful and the SERVICE PROVIDER notified accordingly where any of the Acceptance Test Criteria are not met.
   6. In the event that the Acceptance Procedures in respect of each Ordered Software Application Solution or any part thereof, have not been recorded as successful pursuant to paragraph  of this Schedule by the end of the relevant Acceptance Test Period, the CUSTOMER will extend the Acceptance Test Period by a period of ten (10) Working Days (or such other period as the parties may agree) during which the SERVICE PROVIDER shall correct the faults which caused the Acceptance Procedures to be recorded as unsuccessful and the Acceptance Procedures shall be re-performed.
   7. In the event that after the CUSTOMER has extended the Acceptance Test Period pursuant to paragraph  of this Schedule the relevant Acceptance Procedures have not been recorded as successful by the end of that period, the CUSTOMER shall, without prejudice to its other rights and remedies, be entitled to:
      1. extend the Acceptance Test Period for a further period (or periods) specified by the CUSTOMER during which the SERVICE PROVIDER shall correct the faults which caused the Acceptance Procedures to be recorded as unsuccessful and the Acceptance Procedures shall be re-performed; or
      2. reject the Ordered Software Application Solution (or any part thereof), terminate this Contract and receive a full refund of all sums paid under this Contract in respect of Ordered Software Application Solutions so rejected.
   8. If the CUSTOMER fails to carry out the relevant Acceptance Tests within the Acceptance Test Period and such failure is wholly and solely due to the actions or inactivity of the CUSTOMER, the Acceptance Tests shall be deemed to have been completed successfully.
   9. The right to reject and terminate in paragraph 2.7.2 of this Schedule shall apply to each Ordered Software Application Solution so that the CUSTOMER can reject and terminate parts of the Ordered Software Application Solution rather than the entire Ordered Software Application Solutions if it so wishes.
   10. The SERVICE PROVIDER shall provide such assistance as the CUSTOMER requires in relation to the conducting of the Acceptance Tests.
2. ACCEPTANCE PROCEDURES & ACCEPTANCETEST CRITERIA
   1. [The Acceptance Procedures pertaining to the Ordered Software Application Solution, as specified and agreed in the Order should be inserted here \*\*\*]
   2. [\*\*\* The Acceptance Test Criteria pertaining to each Acceptance Procedure to be applied to the Ordered Software Application Solution, as specified and agreed in the Order, should be inserted here. \*\*\*]

schedule 2-6

CONTRACT AND SERVICE MANAGEMENT

1. **Introduction**
   1. This Schedule specifies the requirements in respect of Contract and service management issues.
2. **implementation** 
   1. If required by the CUSTOMER’s Order, both parties shall perform all their obligations under this Contract in accordance with the Implementation Plan.
   2. In the event that the SERVICE PROVIDER fails, due to its Default, to fulfil an obligation by the date specified in the Implementation Plan for such fulfilment, the SERVICE PROVIDER shall notify the CUSTOMER of such failure and, at the request of the CUSTOMER and without prejudice to the Customer’s other rights and remedies, arrange all such additional resources as are necessary to fulfil the said obligation as early as practicable thereafter at no additional charge to the CUSTOMER.
   3. In the event that any obligation of the SERVICE PROVIDER specified in the Implementation Plan is delayed as a result of a Default by the CUSTOMER then:
      1. the date associated with the relevant obligation(s) as specified in the Implementation Plan (and the dates similarly associated with any subsequent obligation(s) specified in the Implementation Plan) shall be amended by a period of time equal to the period of such CUSTOMER Default (or other such period as the parties agree);
      2. both parties shall use all reasonable endeavours to mitigate the impact of such delay and to recover any resultant delay to the performance of the Ordered Software Application Solutions; and
      3. the CUSTOMER shall reimburse those reasonable costs of the SERVICE PROVIDER which are both reasonably and necessarily incurred by the SERVICE PROVIDER as a direct result of such delay.
3. **REPORTS**
   1. When requested by the CUSTOMER, the SERVICE PROVIDER shall provide Reports electronically to the CUSTOMER at [\*\*\* insert address \*\*\*].
   2. Such Reports, in respect of each [\*\*\* month/Quarter \*\*\*], shall be submitted [\*\*\* monthly/Quarter \*\*\*] by the [\*\*\* insert date \*\*\*] Day of the following [\*\*\* month/Quarter \*\*\*].
   3. Reports shall include:
      1. a record of the Ordered Software Application Solutions provided to the CUSTOMER;
      2. a record of the invoices raised by the SERVICE PROVIDER;
      3. a record of any failures to provide Ordered Software Application Solutions in accordance with this Contract;
      4. details of the number and nature of any complaints from the CUSTOMER; and
      5. details of any Sub-Contractors used; and
      6. a forecast of the Charges payable by the CUSTOMER for each of the following three (3) months.
4. **REVIEW MEETINGS**
   1. When requested by the CUSTOMER, the [\*\*\* insert CUSTOMER’s first point of contact \*\*\*] and [\*\*\* insert SERVICE PROVIDER’s first point of contact \*\*\*] and/or nominated representatives shall attend review meetings at a location and frequency to be agreed between the [\*\*\* insert CUSTOMER’s first point of contact \*\*\*] and [\*\*\* insert SERVICE PROVIDER’s first point of contact \*\*\*].
5. **CUSTOMER DATA**
   1. Format: [\*\*\* state format of back-ups of CUSTOMER Data \*\*\*].
   2. In accordance with Clause of this Contract, the SERVICE PROVIDER shall ensure that back-ups of CUSTOMER Data are available to the CUSTOMER at all times upon request and are delivered to the CUSTOMER at no less than [\*\*\* insert period \*\*\*] monthly intervals.
   3. In accordance with Clause of this Contract, the SERVICE PROVIDER shall restore or procure the restoration of CUSTOMER Data later than [\*\*\* insert period \*\*\*].

schedule 2-7

CONTRACT CHANGE PROCEDURE

1. **INTRODUCTION**
   1. This Schedule sets out the Contract Change Procedure to be used by the CUSTOMER and the SERVICE PROVIDER to effect changes to this Contract.
2. **PRINCIPLES**
   1. The CUSTOMER and the SERVICE PROVIDER shall conduct discussions relating to proposed changes to this Contract in good faith. Neither party shall unreasonably withhold or delay consent to the other party’s proposed changes to this Contract.
   2. Until such time as a Contract Change Note (CCN) has been signed by both parties, the SERVICE PROVIDER shall continue to provide and make available to the CUSTOMER the Ordered Software Application Solutions in accordance with this Contract.
   3. Any work undertaken in connection with any changes to this Contract by the SERVICE PROVIDER, its Sub-Contractors or agents (other than that which has previously been agreed in accordance with the provisions of paragraph 2.2 of this Schedule) shall be undertaken entirely at the expense and liability of the SERVICE PROVIDER unless otherwise agreed between the CUSTOMER and the SERVICE PROVIDER in advance.
   4. Any discussions, negotiations or other communications which may take place between the parties in connection with any proposed changes to this Contract, including the submission of any written communications, prior to the signing by both parties of the relevant CCN, shall be without prejudice to the rights of either party.
3. **PROCEDURE**
   1. Should either party wish to propose a change to this Contract, that party shall submit a draft CCN detailing the proposed change to the other party using the proforma at Annex A to this Schedule in accordance with Clause of this Contract.
   2. Within ten (10) Working Days of the submission of a draft CCN (or such other period as may be agreed between the parties) the receiving party shall respond to the draft CCN in accordance with Clause of this Contract. If appropriate, the parties shall enter into discussions to discuss the draft CCN.
   3. Discussion between the parties following the submission of a draft CCN shall take place within five (5) Working Days (or such other period as agreed by the parties) and result in either:
      1. agreement between the parties on the changes to this Contract to be made (including agreement on the date upon which the changes to this Contract are to take effect (the “**CCN Effective Date**”)) within five (5) Working Days (or such other period as agreed by the parties), such agreement to be expressed in the form of proposed revisions to the text of the relevant parts of this Contract; or
      2. no further action being taken on that draft CCN.
   4. Where agreement is reached in accordance with paragraph 3.3.1 of this Schedule, the party submitting the draft CCN shall prepare a final CCN for execution by both parties within five (5) Working Days (or such other period as agreed by the parties). The final CCN, the content of which has been agreed between the parties in accordance with paragraph  of this Schedule, shall be uniquely identified by a sequential number allocated by the CUSTOMER.
   5. The SERVICE PROVIDER sign two (2) copies of each CCN and submit these to the CUSTOMER not less than ten (10) Working Days prior to the CCN Effective Date.
   6. Subject to the agreement reached in accordance with paragraph  of this Schedule remaining valid, the CUSTOMER shall sign both copies of the approved CCN within five (5) Working Days of receipt by the CUSTOMER. Following signature by the CUSTOMER, one (1) copy of the signed CCN shall be returned to the SERVICE PROVIDER by the CUSTOMER.
   7. A CCN signed by both parties shall constitute an amendment to this Contract pursuant to Clause  of this Contract.

Annex A

Contract Change Note for the Contract Change Procedure

Sequential Number: [to be allocated by the CUSTOMER]

Title: ...........................................................

Originator: ......................... for the [CUSTOMER/SERVICE PROVIDER]

Date change first proposed: ...........................................................

Number of pages attached: ................……………………………

WHEREAS the SERVICE PROVIDER and the CUSTOMER entered into a Contract for the provision of Software Application Solutions dated [date] and now wish to amend that Contract as follows:

**Reason for proposed change**

[Party proposing change to complete]

**Full details of proposed change**

[Party proposing change to complete]

**Details of likely impact, if any, of proposed change on other aspects of the Contract**

[Party proposing change to complete]

**IT IS AGREED** as follows:

1. With effect from [date] the Contract shall be amended as set out below:

[Details of the amendments to the Contract to be inserted here – to include the explicit changes required to the text in order to effect the change, i.e. Clause/Schedule/paragraph number, required deletions and insertions etc]

2. Save as herein amended, all other terms and conditions of the Contract inclusive of any previous CCNs shall remain in full force and effect.

**Signed for and on behalf of the SERVICE PROVIDER**

**By ....................................................................................................**

**Name ..............................................................................................**

**Title .................................................................................................**

**Date ................................................................................................**

**Signed for and on behalf of the CUSTOMER**

**By ..............................................................................................**

**Name ..............................................................................................**

**Title ……………………………………………………………..**

**Date ...............................................................................................**

schedule 2-8

SUB-CONTRACTORS

1. **INTRODUCTION**
   1. This Schedule contains:
      1. details of the Sub-Contractors to be engaged or employed by the SERVICE PROVIDER in the provision of Ordered Software Application Solutions; and
      2. the procedure to select, appoint and manage Sub-Contractors.
   2. Clause of this Contract sets out the conditions and restrictions placed on amending or changing Sub-Contractors.
2. **SUB-CONTRACTORS**
   1. Table of Sub-Contractors:

|  |  |
| --- | --- |
| Name and full contact details | Obligation |
| [\*\*\* insert name and address \*\*\*] | [\*\*\* insert Sub-Contractor obligation(s) \*\*\*] |
|  |
|  |
|  |
|  |
| [\*\*\* insert name and address \*\*\*] | [\*\*\* insert Sub-Contractor obligation(s) \*\*\*] |
|  |
|  |
|  |
|  |
| [\*\*\* insert name and address \*\*\*] | [\*\*\* insert Sub-Contractor obligation(s) \*\*\*] |
|  |
|  |
|  |
|  |

1. **PROCEDURE TO SELECT, APPOINT AND MANAGE SUB-CONTRACTORS**
   1. The following procedure shall be followed by the SERVICE PROVIDER when selecting, appointing and managing Sub-Contractors under this Contract: [\*\*\* SERVICE PROVIDER’s procedure as specified in the Framework Agreement should be inserted here \*\*\*]

schedule 2-9

DISPUTE RESOLUTION PROCEDURE

1. **INTRODUCTION**
   1. This Schedule sets out the mediation and arbitration dispute resolution procedure governing disputes under this Contract.
   2. In the event that a dispute cannot be resolved by the CUSTOMER and SERVICE PROVIDER representatives nominated under Clause  of this Contract within a maximum of ten (10) Working Days (or such other period as agreed by the parties) after referral, the dispute shall be further referred to mediation in accordance with the provisions of Clause  of this Contract.
   3. Subject always to the provisions of Clause  of this Contract, nothing in this dispute resolution procedure shall prevent the CUSTOMER or the SERVICE PROVIDER from seeking from any Court of the competent jurisdiction an interim order restraining the other party from doing any act or compelling the other to do any act.
2. **MEDIATION**
   1. The procedure for mediation pursuant to Clause  of this Contract and consequential provisions relating to mediation shall be as follows:
      1. a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the CUSTOMER and the SERVICE PROVIDER or, if they are unable to agree upon the identity of the Mediator within ten (10) Working Days after a request by one party to the other, or if the Mediator agreed upon is unable or unwilling to act, either party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“**CEDR**”) to appoint a Mediator; and
      2. the CUSTOMER and the SERVICE PROVIDER shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. The parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure.
   2. Unless otherwise agreed by the CUSTOMER and the SERVICE PROVIDER, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.
   3. In the event that the CUSTOMER and the SERVICE PROVIDER reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on both parties once it is signed by the [\*\*\* insert CUSTOMER’s second point of contact \*\*\*] and [\*\*\* insert SERVICE PROVIDER’s second point of contact \*\*\*].
   4. Failing agreement, either the CUSTOMER or SERVICE PROVIDER may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Contract or otherwise without the prior written consent of both parties.
   5. The CUSTOMER and the SERVICE PROVIDER shall each bear their own costs in relation to any reference made to the Mediator and the fees and all other costs of the Mediator shall be borne jointly in equal proportions by both parties unless otherwise directed by the Mediator.
   6. Work and activity to be carried out under this Contract shall not cease or be delayed during the mediation process.
   7. In the event that the CUSTOMER and the SERVICE PROVIDER fail to reach agreement in the structured negotiations within forty (40) Working Days of the Mediator being appointed, or such longer period as may be agreed, then any dispute or difference between them may, subject to the agreement of both parties, be referred to arbitration in accordance with the provisions of Clause  of this Contract.
3. **ARBITRATION**
   1. In the event that a dispute between the CUSTOMER and the SERVICE PROVIDER, or a claim by one against the other, pursuant to the terms of this Contract is not resolved pursuant to paragraph  of this Schedule, the parties may, in accordance with the provisions of Clause  of this Contract and subject to paragraph 2.7 of this Schedule, refer the matter to arbitration in accordance with this Schedule.
   2. The party seeking to initiate the arbitration shall give a written Notice of Arbitration to the other party. The Notice of Arbitration shall specifically state:
      1. that the dispute is referred to arbitration;
      2. the particulars of this Contract; and
      3. a brief summary of the subject of the dispute.
   3. Unless otherwise agreed in writing by the CUSTOMER and the SERVICE PROVIDER, the provisions of the Arbitration Act 1996 shall govern the arbitration commenced pursuant to this Schedule.
   4. Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, if referred to arbitration in accordance with this Schedule shall be resolved by arbitration under the procedural rules of the London Court of International Arbitration (which are deemed to be incorporated into this Contract save that in the event of any conflict between those rules and this Contract, this Contract shall prevail).
   5. It is agreed between the CUSTOMER and the SERVICE PROVIDER that for the purposes of the arbitration, the decision of the arbitrator shall be binding on the parties (in the absence of any material failure by the arbitrator to comply with the London Court of International Arbitration procedural rules).
   6. The arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made to any body other than the tribunal, the CUSTOMER and the SERVICE PROVIDER, their legal representatives and any person necessary to the conduct of the proceedings, without the agreement of all parties to the arbitration.
   7. The arbitration proceedings shall take place in London and in the English language and the arbitration proceedings shall be governed by, and interpretations made in accordance with, the laws of England. The arbitration tribunal shall consist of a sole arbitrator to be agreed by the parties and in the event that the parties fail to agree the appointment of the arbitrator within ten (10) Working Days or, if the person appointed is unable or unwilling to act, as appointed by the London Court of International Arbitration.
   8. The CUSTOMER and the SERVICE PROVIDER shall each bear their own costs in relation to any reference made to the arbitrator and the fees and all other costs of the arbitrator shall be borne jointly in equal proportions by both parties unless otherwise directed by the arbitrator.
   9. In the event that the CUSTOMER and the SERVICE PROVIDER do not agree to refer the matter to arbitration, then any dispute or difference between them may be referred to the Courts in accordance with the provisions of Clause  of this Contract.

**SCHEDULE 2-10**

COMMERCIALLY SENSITIVE INFORMATION

1. **INTRODUCTION**
   1. Without prejudice to the CUSTOMER’s general obligation of confidentiality, the parties acknowledge that the CUSTOMER may have to disclose Information in or relating to this Contract following a Request for Information pursuant to Clause of this Contract.
   2. In this Schedule the parties have sought to identify the SERVICE PROVIDER’s Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.
   3. Where possible, the parties have sought to identify where any relevant Information will cease to fall into the category of Information to which this Schedule applies.
   4. Without prejudice to the CUSTOMER’s obligation to disclose Information in accordance with FOIA, the CUSTOMER will, acting reasonably but in its sole discretion, seek to apply the commercial interests exemption set out in s.43 of the FOIA to the following Information:

|  |  |  |
| --- | --- | --- |
| **Date** | **Item(s)** | **Duration of Confidentiality** |
| [\*\*\* insert date \*\*\*] | [\*\*\* insert details \*\*\*] | [\*\*\* insert duration \*\*\*] |
|  |  |  |

**SCHEDULE 2-11**

**EXIT AND SERVICE TRANSFER ARRANGEMENTS**

1. **INTRODUCTION**
   1. This Schedule describes the duties and responsibilities of the SERVICE PROVIDER to the CUSTOMER leading up to and covering the expiry or termination (howsoever arising) (including partial termination) of this Contract and the transfer of service provision to a replacement service provider.
   2. The objectives of the Exit and Service Transfer Arrangements are to ensure a smooth transition of the availability of the Ordered Software Application Solutions from the SERVICE PROVIDER to a replacement service provider at the termination (howsoever arising) (including partial termination) or expiry of this Contract.
2. **EXIT AND SERVICE TRANSFER ARRANGEMENTS**
   1. The SERVICE PROVIDER agrees to indemnify and keep the CUSTOMER fully indemnified for itself and on behalf of any replacement service provider in respect of any claims, costs (including reasonable legal costs), demands, and liabilities arising from the provision of incorrect information provided to the CUSTOMER by the SERVICE PROVIDER, to the extent that any such claim, cost, demand or liability directly and unavoidably arises from the use of the incorrect information in a manner that can reasonably be assumed to be proper in bidding for or providing services similar to the Ordered Software Application Solutions.
3. **SERVICE TRANSFER PLAN**
   1. Where required by the CUSTOMER, no later than three (3) months after the Effective Date, and thereafter as specified in paragraph  of this Schedule, the SERVICE PROVIDER shall prepare a Service Transfer Plan (STP) for review by the CUSTOMER. The CUSTOMER shall review the STP within twenty (20) Working Days of receipt from the SERVICE PROVIDER and shall notify the SERVICE PROVIDER of any suggested revisions to the STP. In this respect, the CUSTOMER will act neither unreasonably, capriciously nor vexatiously. Such suggested revisions shall be discussed and resolved within ten (10) Working Days. The agreed STP shall be signed as approved by each party.
   2. The STP shall provide comprehensive proposals for the activities and the associated liaison and assistance that will be required for the successful transfer of the Ordered Software Application Solutions, including the following details:
      1. proposals for the identification and transfer of documentation providing details of the Ordered Software Application Solutions;
      2. proposals for the identification of all Ordered Goods;
      3. proposals for the identification of all leases, maintenance agreements and support agreements utilised by the SERVICE PROVIDER in connection with the provision of the Ordered Software Application Solutions, together with details of the relevant lessors and contractors, the payment terms, expiry dates and any relevant novation and/or early termination provisions;
      4. proposals for the identification and return of all CUSTOMER Furnished Items in the possession of the SERVICE PROVIDER;
      5. a detailed summary identifying the owners of title and risk in all the Ordered Goods and CUSTOMER Furnished Items following transfer of the Ordered Software Application Solutions;
      6. proposals to enable the CUSTOMER or the replacement service provider to recruit suitably skilled personnel;
      7. proposals for the training of key members of the replacement service provider’s personnel in connection with the continuation of the provision of the Ordered Software Application Solutions following the expiry or termination (howsoever arising) of this Contract charged at rates agreed between the parties at that time;
      8. proposals for the granting of licences to use all software (including the Software) necessary for the CUSTOMER’s receipt of the Ordered Software Application Solutions and the provision of copies of all related documentation;
      9. proposals for the transfer of all CUSTOMER Data then in the SERVICE PROVIDER’s possession to either the CUSTOMER or a replacement service provider, including:
         1. an inventory of all CUSTOMER Data;
         2. details of the data structures in which the CUSTOMER Data is stored, in the form of an agreed data model together with information on other data structures in which the CUSTOMER Data could be stored;
         3. proposed transfer methods, both physical and electronic; and
         4. proposed methods for ensuring the integrity of the CUSTOMER Data on transfer,
      10. proposals for providing the CUSTOMER or a replacement service provider copies of all documentation:
          1. used in the provision of the Ordered Software Application Solutions and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the SERVICE PROVIDER; and
          2. relating to the use and operation of the Ordered Goods;
      11. proposals for the methods of transfer of the Ordered Goods to the CUSTOMER or a replacement service provider;
      12. proposals for the assignment or novation of all Ordered Goods, leases, maintenance agreements and support agreements utilised by the SERVICE PROVIDER in connection with the performance of the Ordered Software Application Solutions;
      13. proposals for the disposal of any redundant Ordered Goods and materials; and
      14. proposals for the supply of any other information or assistance reasonably required by the CUSTOMER or a replacement service provider in order to effect an orderly hand over of the provision of the Ordered Software Application Solutions.
   3. The STP shall be reviewed and updated by the SERVICE PROVIDER. In this regard, the SERVICE PROVIDER shall provide a revised version of the STP to the CUSTOMER on or before 31 July and 31st January each year (or more frequently as may be agreed between the parties). The revised STP shall be reviewed and agreed in accordance with the provisions of paragraph  of this Schedule.
4. **ASSISTANCE ON EXPIRY OR TERMINATION**
   1. In the event that this Contract expires or is terminated the SERVICE PROVIDER shall, where so requested by the CUSTOMER, provide assistance to the CUSTOMER to migrate the provision of the Ordered Software Application Solutions to a replacement service provider including as set out in the Service Transfer Plan.
5. **PRE- SERVICE TRANSFER OBLIGATIONS**
   1. The SERVICE PROVIDER agrees that, subject to compliance with the Data Protection Legislation:
      1. within twenty (20) Working Days of the earliest of:
         1. receipt of a notification from the CUSTOMER of a Service Transfer or intended Service Transfer; or
         2. receipt of the giving of notice of early termination of this Contract or any part thereof; or
         3. the date which is six (6) months before the due expiry date of this Contract,

it shall provide a list of those of its, or its Sub-Contractors', employees who are wholly or mainly assigned to the provision of the Ordered Software Application Solutions which the SERVICE PROVIDER believes will transfer to the CUSTOMER or the replacement service provider (as the case may be), together with Staffing Information in relation to such employees;

* + 1. at least ten (10) Working Days prior to the Service Transfer Date, the SERVICE PROVIDER shall provide to the CUSTOMER for itself or on behalf of any replacement service provider (as the case may be) a final list of employees which shall transfer under TUPE (the “**Transferring Service Provider Employees**”); and
    2. the CUSTOMER shall be permitted to use and disclose information provided by the SERVICE PROVIDER under paragraph 5 of this Schedule for informing any tenderer or other prospective replacement service provider.
  1. The SERVICE PROVIDER warrants that the information provided under paragraph  of this Schedule shall be true and accurate.
  2. From the date of the earliest event referred to in paragraphs  to of this Schedule, the SERVICE PROVIDER agrees that it shall not, and agrees to procure that its Sub-Contractors shall not, other than in the ordinary course of business, in respect of those employees engaged in the provision of the Ordered Software Application Solutions:
     1. increase or reduce the total number of employees so engaged, or give notice to terminate the employment of any such employees; or
     2. replace or re-deploy any such employee other than where any replacement is of equivalent grade, skills, experience and expertise; or
     3. make, promise, propose or permit any changes to their terms and conditions of employment (including any payments connected with the termination of employment).

1. **APPLICATION OF TUPE ON A SERVICE TRANSFER**
   1. The CUSTOMER shall determine whether or not based upon a reasonable assessment of the facts a Service Transfer is a situation to which TUPE and/or the Acquired Rights Directive may apply. In circumstances where it is so reasonably determined, it is agreed the CUSTOMER or a replacement service provider would inherit liabilities in respect of employees of the SERVICE PROVIDER or any Sub-Contractor engaged in the provision of the Ordered Software Application Solutions and, accordingly, the provisions in paragraphs 7 to of this Schedule shall apply.
2. **TUPE INDEMNITIES**
   1. The SERVICE PROVIDER shall, and shall procure that any Sub-Contractor shall, perform and discharge all its obligations in respect of all the Transferring Service Provider Employees up to and including the Service Transfer Date. The SERVICE PROVIDER shall indemnify the CUSTOMER for itself and on behalf of any replacement service provider against all Employee Liabilities arising from the SERVICE PROVIDER's, or any Sub-Contractor's, failure to perform and discharge any such obligation.
   2. The SERVICE PROVIDER shall indemnify the CUSTOMER for itself and on behalf of any replacement service provider against any Employee Liabilities in respect of the Transferring Service Provider Employees arising from or as a result of:
      1. any act or omission by the SERVICE PROVIDER or any Sub-Contractor occurring on or before the Service Transfer Date;
      2. any claim made by or in respect of any person employed or formerly employed by the SERVICE PROVIDER or any Sub-Contractor other than a Transferring Service Provider Employee for which it is alleged that the CUSTOMER or any replacement service provider may be liable by virtue of this Contract and/or TUPE and/or the Acquired Rights Directive; and
      3. any claim made by or in respect of a Transferring Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Service Provider Employee relating to any act or omission of the SERVICE PROVIDER or any Sub-Contractor in relation to its or their obligations under Regulation 13 of TUPE except to the extent that the liability arises from the CUSTOMER's or any replacement service provider's failure to comply with Regulation 13(4) of TUPE.
   3. If any person who is not a Transferring Service Provider Employee claims, or it is determined, that his contract of employment has been transferred from the SERVICE PROVIDER or any Sub-Contractor to the CUSTOMER or any replacement service provider pursuant to TUPE or the Acquired Rights Directive, then:
      1. the CUSTOMER will and shall use its reasonable endeavours to procure that the replacement service provider will, within five (5) Working Days of becoming aware of that fact, give notice in writing to the SERVICE PROVIDER; and
      2. the SERVICE PROVIDER 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 CUSTOMER or the replacement service provider or take such other steps as it considers appropriate to deal with the matter.
   4. If such offer is accepted, or if the situation has otherwise been resolved by the SERVICE PROVIDER, the CUSTOMER shall and shall use its reasonable endeavours to procure that the replacement service provider shall immediately release the person from his employment.
   5. If, after the fifteen (15) Working Day period specified in paragraph  of this Schedule has elapsed:
      1. no such offer of employment has been made; or
      2. such offer has been made but not accepted; or
      3. the situation has not otherwise been resolved,

the CUSTOMER may and shall advise the replacement service provider that it may within five (5) Working Days give notice to terminate the employment of such person.

* 1. Subject to the CUSTOMER or the replacement service provider acting in accordance with the provisions of paragraph 7 of this Schedule, the SERVICE PROVIDER shall indemnify the CUSTOMER for itself and on behalf of the replacement service provider against all Employee Liabilities arising out of termination pursuant to the provisions of paragraph  of this Schedule.
  2. If any such person as is described in paragraph 7.3 of this Schedule is neither re-employed by the SERVICE PROVIDER or any Sub-Contractor nor dismissed by the CUSTOMER or replacement service provider within the time scales set out in this paragraph 7 of this Schedule, such person will be treated as a Transferring Service Provider Employee.
  3. The CUSTOMER shall, and shall use its reasonable endeavours to procure that the replacement service provider shall indemnify the SERVICE PROVIDER against all Employee Liabilities arising from the CUSTOMER's or a replacement service provider's failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Transferring Service Provider Employee arising from or as a result of any act or omission by the CUSTOMER or a replacement service provider relating to a Transferring Service Provider Employee occurring before the Service Transfer Date which would give rise to a substantial change in working conditions to the material detriment of a Transferring Service Provider Employee or on or after the Service Transfer Date or any other matter, event or circumstance occurring or having its origin after the Service Transfer Date.

1. **THIRD PARTY RIGHTS**

The parties agree that the Contracts (Rights of Third Parties) Act 1999 (**CRiTPA**) shall apply to paragraph 7 of this Schedule to the extent necessary that any replacement service provider shall have the right to enforce the obligations owed to, and indemnities given to, the replacement service provider by the SERVICE PROVIDER under that paragraph 7 in its own right pursuant to clause 1(1) of CRiTPA.

1. **PROVISIONS WHERE TUPE DOES NOT APPLY**

If, in the event of a Service Transfer to which TUPE or the Acquired Rights Directive do not apply the following provisions shall apply:

* 1. the CUSTOMER can and shall advise the replacement service provider that it can, in its discretion, make to any of the employees identified on the list provided by the SERVICE PROVIDER under paragraph of this Schedule, an offer, in writing, to employ that employee under a new contract of employment to take effect on the Day after the termination referred to in paragraph of this Schedule.
  2. When the offer has been made by the CUSTOMER or replacement service provider and accepted by any employee or worker, the SERVICE PROVIDER shall and shall procure that any Sub-Contractor shall permit the employee or worker to leave its employment, as soon as practicable depending on the business needs of the SERVICE PROVIDER, which could be without the employee or worker having worked his full notice period, if the employee so requests.
  3. If the employee does not accept an offer of employment made by the CUSTOMER or replacement service provider, or no such offer is made, the employee shall remain employed by the SERVICE PROVIDER (or the relevant Sub-Contractor, as the case may be) and all Employee Liabilities in relation to the employee shall remain with the SERVICE PROVIDER or the relevant Sub-Contractor and the SERVICE PROVIDER shall indemnify the CUSTOMER for itself and on behalf of any replacement service provider against any Employment Liabilities that either of them may incur in respect of any such employees of the SERVICE PROVIDER or the relevant Sub-Contractor.

schedule 2-12

STANDARDS AND REGULATIONS

1. **Introduction**
   1. This Schedule sets out the Standards and Regulations with which the SERVICE PROVIDER shall comply in its provision of the Ordered Software Application Solutions.
   2. **[\*\*\*** Insert applicable Standards and Regulations from the Catalogue and/or Order - the below are examples \*\*\*]
2. **[Technical**

## ***[***[***www.cabinetoffice.gov.uk/e-government***](http://www.cabinetoffice.gov.uk/e-government) ***]***

* 1. [e-Government Interoperability Framework]
  2. [Technical Standards Catalogue]
  3. [e-Government Metadata Standard (e-GMS)]
  4. [ITIL Guidelines
     1. The SERVICE PROVIDER shall follow the guidelines contained in the Office of Government Commerce’s IT Infrastructure Library ("**ITIL guidelines**") for delivering the Ordered Software Application Solutions [or may propose alternatives that are broadly functionally consistent with the ITIL guidelines.]
     2. The SERVICE PROVIDER shall ensure that its service support processes include:
        1. Configuration Management;
        2. Service Desk/Help Desk;
        3. Incident Management;
        4. Problem Management;
        5. Change Management; and
        6. Release Management,
     3. The SERVICE PROVIDER shall ensure that its service delivery processes include:
        1. Service Level Management;
        2. ICT Financial Management;
        3. Capacity Management;
        4. Availability Management;
        5. ICT Service Continuity Management; and
        6. Security Management.
     4. Within three (3) months after the Effective Date, the SERVICE PROVIDER will prepare and deliver to the CUSTOMER for approval full documentation of the processes listed at paragraphs and of this Schedule and to a standard sufficient to achieve ISO 20000 certification. If the documentation is not approved by the CUSTOMER, the SERVICE PROVIDER shall amend it within fifteen (15) Working Days of a notice of non-approval and re-submit to the CUSTOMER for approval. No approval to be given by the CUSTOMER pursuant to this paragraph may be unreasonably withheld or delayed.
     5. The SERVICE PROVIDER shall initiate a project within three (3) months of the Effective Date with the aim of achieving ISO 20000 (IT Service Management) certification within eighteen (18) months of the Effective Date. This certification is to apply to the Ordered Software Application Solutions and not to the SERVICE PROVIDER’s organisation as a whole.
     6. The SERVICE PROVIDER shall on reasonable request allow the CUSTOMER to engage the services of a Registered Certification Body (RCB) to audit their compliance with the ISO 20000 standard, provided that such audit shall be on reasonable notice to the SERVICE PROVIDER, shall not take place more frequently than once in any twelve (12) month period and the cost of such audit is borne by the CUSTOMER.
     7. The SERVICE PROVIDER’s ICT service management functions shall interface with the CUSTOMER in accordance with the CUSTOMER’s ICT service management framework.
     8. [The SERVICE PROVIDER shall on reasonable request provide the CUSTOMER with documents showing how ITIL guidelines have been followed in the provision of the Ordered Software Application Solutions.]
     9. The SERVICE PROVIDER shall on request allow the CUSTOMER or its representatives to audit any or all of its ICT service management functions [to ensure that ITIL guidelines are being followed in the delivery of the Services.]]
  5. [\*\*\* insert any further applicable Standards and Regulations \*\*\*]

1. **[Business**
   1. [\*\*\* insert any applicable Standards and Regulations \*\*\*]]
2. **Security**
   1. The SERVICE PROVIDER shall ensure that security is maintained to the level required by Schedule 2-16, and subject to the relevant audit rights at Clause of this Contract.
   2. [\*\*\* insert any further applicable Standards and Regulations e.g., HMG IA standards 1 to 7 and CESG IA \*\*\*]
3. **[Environment**
   1. [The SERVICE PROVIDER undertakes to follow a sound environmental management policy so that its activities comply with all applicable environmental legislation and regulations and that its products or services are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of, in ways that are appropriate from an environmental protection perspective.]
   2. [The SERVICE PROVIDER warrants that it has obtained ISO 14000/14001 certification for its environmental management and shall comply with and maintain such certification requirements.]
   3. [The SERVICE PROVIDER shall comply with relevant obligations under the Waste Electrical and Electronic Equipment Regulations 2002/96/EC.]]
   4. [\*\*\* insert any further applicable Standards and Regulations \*\*\*]
4. **[project management**
   1. The SERVICE PROVIDER shall generally make use of PRINCE2 methodology or similar, supplemented where appropriate by the tools and methods of the SERVICE PROVIDER's own project management methodologies.]
   2. [\*\*\* insert any further applicable Standards and Regulations \*\*\*]
5. **[Systems Development Environment**
   1. Any requirements analysis or requirements capture shall be based on Structured System Analysis and Design Methodology, (SSADM) or [Dynamic Systems Development Methodology (DSDM)] or equivalents (tailored where appropriate and necessary) as agreed with the CUSTOMER.]
   2. [\*\*\* insert any further applicable Standards and Regulations \*\*\*]
6. **[Data Standards**
   1. The SERVICE PROVIDER shall develop, document, operate and maintain standards and procedures for ensuring the quality and integrity of all key data. These standards and procedures must be agreed with the CUSTOMER.
   2. Key data shall include: [\*\*\* insert list of data \*\*\*]
   3. [\*\*\* insert any further applicable Standards and Regulations \*\*\*]]
7. **[INFORMATION STANDARDS**
   1. The SERVICE PROVIDER will have in place systems and procedures which will be subject to external audit for the following areas of control over: [\*\*\* insert details of the deliverables, services or systems - i.e., access via passwords, controls over leavers and joiners, user access rights etc. \*\*\*]
   2. [\*\*\* insert any further applicable Standards and Regulations \*\*\*]]
8. **[VERSION control**
   1. The SERVICE PROVIDER shall develop procedures which ensure that only the correct release or version of a Deliverable can be delivered to the CUSTOMER. The SERVICE PROVIDER shall provide a copy of the draft procedures to the CUSTOMER for its approval. On receipt of such approval, the SERVICE PROVIDER shall then operate those procedures.]

**SCHEDULE 2-13**

**TITLE AND RISK**

# **INTRODUCTION**

* 1. This Schedule specifies the ownership and passing of title and risk from one party to another under certain circumstances during and following the Term of this Contract.

1. CONTRACT COMMENCEMENT
   1. Ordered Goods and CUSTOMER Furnished Items to be used in the provision of the Ordered Software Application Solutions may (as applicable) be provided by the SERVICE PROVIDER, the CUSTOMER, a lessor or a previous service provider of the CUSTOMER. Subject always to the provisions of paragraph  of this Schedule, title and risk in those Ordered Goods and CUSTOMER Furnished Items shall be as specified in this paragraph  of this Schedule.
   2. Where any Ordered Goods are provided by the SERVICE PROVIDER (other than Ordered Goods which are leased, loaned or hired by a third party in accordance with paragraph 2.4 of this Schedule):

### they shall remain the property of the SERVICE PROVIDER and such Ordered Goods (if required) shall be licensed to the CUSTOMER or its authorised agents;

### if the Ordered Goods are licensed in accordance with paragraph 2.2.1 of this Schedule, the CUSTOMER undertakes the safe custody, and the due return, of those Ordered Goods; and further

### the CUSTOMER shall be responsible for any deterioration in those Ordered Goods, fair wear and tear excepted.

* 1. Where any CUSTOMER Furnished Items are provided by the CUSTOMER (other than CUSTOMER Furnished Items which are provided by a previous service provider in accordance with paragraph 2.5 of this Schedule):

### title remains with the CUSTOMER and such CUSTOMER Furnished Items (if required) shall be licensed to the SERVICE PROVIDER or its Sub-Contractors for use only for the purposes of this Contract;

### the SERVICE PROVIDER undertakes the safe custody, and the due return, of all such Ordered Goods;

### the SERVICE PROVIDER shall be responsible for any deterioration in such CUSTOMER Furnished Items, fair wear and tear excepted; and

### neither the SERVICE PROVIDER, nor any Sub-Contractor, nor any other person shall have a lien on such CUSTOMER Furnished Items for any sum due to the SERVICE PROVIDER, any Sub-Contractor or any other person and the SERVICE PROVIDER shall take all reasonable steps to ensure that the title of the CUSTOMER and the exclusion of any such lien are brought to the notice of all Sub-Contractors and other people dealing with such CUSTOMER Furnished Items.

* 1. Where any Ordered Goods are provided by a lessor, title to those Ordered Goods shall remain with the lessor and risk shall be determined in accordance with the relevant lease.
  2. Where any CUSTOMER Furnished Items are provided by a previous service provider, it shall remain the property of the previous service provider and shall be licensed to the CUSTOMER, its authorised agents, or the SERVICE PROVIDER, as agreed between the parties concerned.

1. DURING THE TERM
   1. Where ownership of any Ordered Goods and/or CUSTOMER Furnished Items to be used in the provision of the Ordered Software Application Solutions changes during the Term, the passing of title and risk in those Ordered Goods and CUSTOMER Furnished Items shall be as specified in this paragraph  of this Schedule.
   2. Title in all Ordered Goods provided by the SERVICE PROVIDER shall pass to the CUSTOMER on the earlier of:

### payment for such Ordered Goods; or

### such Ordered Goods successfully passing the Acceptance Tests.

* 1. Notwithstanding paragraph 3.2.1 of this Schedule, risk in Ordered Goods provided by the SERVICE PROVIDER shall pass to the CUSTOMER when such Ordered Goods successfully pass the Acceptance Tests. If the CUSTOMER has paid for the Ordered Goods prior to conclusion of the Acceptance Tests, the SERVICE PROVIDER shall promptly repay the amounts paid by the CUSTOMER if the Ordered Goods (or any part thereof) do not successfully pass the Acceptance Tests.
  2. Where, at the CUSTOMER’s request, any Ordered Goods provided by the SERVICE PROVIDER are to be transferred to a lessor, it shall remain the property of the SERVICE PROVIDER until such time as the relevant lease specifies the passage of title in such Ordered Goods. At such time, the risk in such Ordered Goods shall be determined in accordance with the relevant lease.
  3. Where title and risk in any CUSTOMER Furnished Items is to transfer to the SERVICE PROVIDER, the CUSTOMER and the SERVICE PROVIDER shall agree the terms of such transfer in accordance with the Contract Change Procedures.

1. SERVICE TRANSFER
   1. Title and risk in the Ordered Goods after the Term shall be determined as specified in the Service Transfer Plan.

SCHEDULE 2-14

[LIQUIDATED DAMAGES]

– *Optional – to be used where the Customer requires liquidated damages provisions in respect of delivery of the Ordered Software Application Solution*

1. **INTRODUCTION**
   1. This Schedule sets out the circumstances under this Contract where the Customer has a right to claim Liquidated Damages rather than the other rights and remedies express in the Contract. The Schedule sets out the period of such Liquidated Damages and their amounts.
2. LIQUIDATED DAMAGES
   1. Without prejudice to any other remedies available to the CUSTOMER:
      1. if the Acceptance Procedures have not been recorded as successful in accordance with paragraph 2.4 of Schedule 2-5 by the end of the Acceptance Test Period, the SERVICE PROVIDER shall pay to the CUSTOMER as Liquidated Damages for each Day of delay the relevant sum specified in paragraph  of this Schedule up to the end of the relevant Liquidated Damages Period. Such payment shall be in full and final settlement of the SERVICE PROVIDER’s financial liability for any loss or damage incurred by the CUSTOMER during the Liquidated Damages Period; and
      2. if the Acceptance Procedures have not been recorded as successful by the end of the Liquidated Damages Period, the CUSTOMER shall be entitled to claim any remedy available to it for loss or damage incurred by it thereafter.
   2. No payment or concession to the SERVICE PROVIDER by the CUSTOMER or other act or omission of the CUSTOMER shall in any way affect the rights of the CUSTOMER to recover the Liquidated Damages pursuant to the provisions of paragraph  of this Schedule or be deemed to be a waiver of the right of the CUSTOMER to recover any such damages unless such waiver has been signed by the CUSTOMER, expressly made in writing by the CUSTOMER and refers specifically to a waiver of the CUSTOMER’s rights to claim Liquidated Damages.
   3. At the Effective Date, the SERVICE PROVIDER and the CUSTOMER agree that the daily Liquidated Damages sum specified in paragraph  of this Schedule represents a genuine pre-estimate of the CUSTOMER’s loss, calculated in accordance with paragraph  of this Schedule.
3. **CIRCUMSTANCES WHERE LIQUIDATED DAMAGES APPLY**
   1. Liquidated Damages apply in the circumstance that the SERVICE PROVIDER does not meet the implementation timescale of the Core system being implemented, tested and Live by the 20th December 2013.
4. **PERIOD OF LIQUIDATED DAMAGES**
   1. The charge is implemented once the date of the current contract expires and we are required to extend the current contract until the new system is live.
5. **AMOUNT OF LIQUIDATED DAMAGES**
   1. Minimum of £43k pr extension year with the current provider. This may increase if a short extension term is required as they previously would not supply an extension period of shorter than three (3) years.
6. **CALCULATION OF GENUINE PRE-ESTIMATE OF LOSS**
   1. This has been calculated on the cost of having to extend the current contract with the current provider in order to continue having a payroll system whilst the new system is being installed. The current provider previously would not extend the Contract for anything shorter than a three (3) year extension period at an approx cost of £43k per year. If they allow a shorter extension period this charge may be increased.

SCHEDULE 2-15

BCDR PLAN

# **PURPOSE OF THIS SCHEDULE**

## This Schedule sets out the CUSTOMER's requirements for ensuring continuity of the business processes and operations supported by the Ordered Software Application Solutions in circumstances of service disruption or failure and for restoring the Ordered Software Application Solutions through business continuity and as necessary disaster recovery procedures. It also includes the requirement on the SERVICE PROVIDER to develop, review, test, change, and maintain a BCDR Plan in respect of the Ordered Software Application Solutions.

## The BCDR Plan shall be divided into three parts:

### Part A which shall set out general principles applicable to the BCDR Plan (**"General Principles"**);

### Part B which shall relate to business continuity (**"Business Continuity Plan"**); and

### Part C which shall relate to disaster recovery (**"Disaster Recovery Plan"**).

## The BCDR Plan shall detail the processes and arrangements which the SERVICE PROVIDER shall follow to ensure continuity of the business processes and operations supported by the Ordered Software Application Solutions following any failure or disruption of any element of the Ordered Software Application Solutions and the recovery of the Ordered Software Application Solutions in the event of a Disaster.

# **DEVELOPMENT OF BCDR PLAN**

## The BCDR Plan shall unless otherwise required by the CUSTOMER in writing, be based upon and be consistent with the provisions of paragraphs , 4 and of this Schedule.

## The SERVICE PROVIDER shall ensure that its Sub-Contractors' disaster recovery and business continuity plans are integrated with the BCDR Plan.

# **PART A - GENERAL PRINCIPLES AND REQUIREMENTS**

## The BCDR Plan shall:

### set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;

### provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the Ordered Software Application Solutions and any services provided to the CUSTOMER by a Related Service Provider;

### contain an obligation upon the SERVICE PROVIDER to liaise with the CUSTOMER and (at the CUSTOMER's request) any Related Service Provider with respect to issues concerning business continuity and disaster recovery where applicable;

### detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the CUSTOMER and any of its other Related Service Providers as notified to the SERVICE PROVIDER by the CUSTOMER from time to time;

### contain a communication strategy including details of an incident and problem management service [\*\*\* and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the CUSTOMER \*\*\*];

### contain a risk analysis, including:

#### failure or disruption scenarios and assessments and estimates of frequency of occurrence;

#### identification of any single points of failure within the Ordered Software Application Solutions and processes for managing the risks arising therefrom;

#### identification of risks arising from the interaction of the Ordered Software Application Solutions with the services provided by a Related Service Provider; and

#### a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;

### provide for documentation of processes, including business processes, and procedures;

### set out key contact details (including roles and responsibilities) for the SERVICE PROVIDER (and any Sub-Contractors) and for the CUSTOMER;

### identify the procedures for reverting to "normal service";

### set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than [\*\*\* insert % \*\*\*] of data loss and to preserve data integrity;

### identify the responsibilities (if any) that the CUSTOMER has agreed it will assume in the event of the invocation of the BCDR Plan; and

### [\*\*\* provide for the provision of technical advice and assistance to key contacts at the CUSTOMER as notified by the CUSTOMER from time to time to inform decisions in support of the CUSTOMER’s business continuity plans. \*\*\*]

## The BCDR Plan shall be designed so as to ensure that:

### the Ordered Software Application Solutions are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;

### the adverse impact of any Disaster, service failure, or disruption on the operations of the CUSTOMER is minimal as far as reasonably possible;

### it complies with the relevant provisions of ISO 27002:2005, ISO 20000 (as amended) and all other industry standards from time to time in force; and

### there is a process for the management of disaster recovery testing detailed in the BCDR Plan.

## The BCDR Plan must be upgradeable and sufficiently flexible to support any changes to the Ordered Software Application Solutions or to the business processes facilitated by and the business operations supported by the Ordered Software Application Solutions.

## The SERVICE PROVIDER shall not be entitled to any relief from its obligations under the Service Levels or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the SERVICE PROVIDER of this Contract.

# **PART B - BUSINESS CONTINUITY ELEMENT - PRINCIPLES AND CONTENTS**

## 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 Ordered Software Application Solutions remain supported and to ensure continuity of the business operations supported by the Ordered Software Application Solutions including and unless the CUSTOMER expressly states otherwise in writing:

### the alternative processes, (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Ordered Software Application Solutions; and

### the steps to be taken by the SERVICE PROVIDER upon resumption of the Ordered Software Application Solutions in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

## The Business Continuity Plan shall address the various possible levels of failures of or disruptions to the Ordered Software Application Solutions and the services to be provided and the steps to be taken to remedy to the different levels of failure and disruption. The Business Continuity Plan shall also clearly set out the conditions and/or circumstances under which the Disaster Recovery Plan is invoked.

# **PART C - DISASTER RECOVERY ELEMENT - PRINCIPLES AND CONTENTS**

## The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the SERVICE PROVIDER ensures continuity of the business operations of the CUSTOMER supported by the Ordered Software Application Solutions following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

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

## The Disaster Recovery Plan shall include the following:

### the technical design and build specification of the Disaster Recovery System;

### details of the procedures and processes to be put in place by the SERVICE PROVIDER and any Sub-Contractor in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:

#### data centre and disaster recovery site audits;

#### backup methodology and details of the SERVICE PROVIDER's approach to data back-up and data verification;

#### identification of all potential disaster scenarios;

#### risk analysis;

#### documentation of processes and procedures;

#### hardware configuration details;

#### network planning including details of all relevant data networks and communication links;

#### invocation rules;

#### service recovery procedures; and

#### steps to be taken upon Service resumption to address any prevailing effect of the Service failure or disruption;

### any applicable service levels with respect to the provision of Disaster Recovery Services and details of any agreed relaxation upon the Service Levels during any period of invocation of the Disaster Recovery Plan;

### details of how the SERVICE PROVIDER shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;

### access controls to any disaster recovery sites used by the SERVICE PROVIDER or any Sub-Contractor in relation to its obligations pursuant to this Schedule; and

### testing and management arrangements.

# **REVIEW AND AMENDMENT OF THE BCDR PLAN**

## The SERVICE PROVIDER shall review part or all of the BCDR Plan and the risk analysis on which it is based:

### on a regular basis and as a minimum once every six (6) calendar months;

### within three (3) months of the BCDR Plan (or any part) having been invoked pursuant to paragraph of this Schedule; and

### where the CUSTOMER requests any additional reviews (over and above those provided for in paragraphs and of this Schedule) by notifying the SERVICE PROVIDER to such effect in writing, whereupon the SERVICE PROVIDER shall conduct such reviews in accordance with the CUSTOMER's written requirements. The costs of both parties for any such additional reviews will be met by the CUSTOMER.

## Each review of the BCDR Plan pursuant to paragraph 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 Ordered Software Application Solutions or any underlying business processes and operations facilitated by or supported by the Ordered Software Application Solutions 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 SERVICE PROVIDER 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 SERVICE PROVIDER shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the CUSTOMER a report (**"Review Report"**) setting out:

### the findings of the review;

### any changes in the risk profile associated with the Ordered Software Application Solutions; and

### the SERVICE PROVIDER's proposals ("**SERVICE PROVIDER 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 SERVICE PROVIDER can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

## The SERVICE PROVIDER shall as soon as is reasonably practicable after receiving the CUSTOMER's approval of the SERVICE PROVIDER 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 SERVICE PROVIDER Proposals. Any such change shall be at the SERVICE PROVIDER's expense unless it can be reasonably shown that the changes are required because of a material change to the Project’s risk profile.

# **TESTING OF THE BCDR PLAN**

## The SERVICE PROVIDER shall test the BCDR Plan on a regular basis (and in any event not less than [\*\*\* once \*\*\*] in every [\*\*\* Year \*\*\*]). Subject to paragraph , the CUSTOMER may require the SERVICE PROVIDER 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 Ordered Software Application Solutions 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.

## If the CUSTOMER requires an additional test of the BCDR Plan it shall give the SERVICE PROVIDER written notice and the SERVICE PROVIDER shall conduct the test in accordance with the CUSTOMER's requirements and the relevant provisions of the BCDR Plan. The SERVICE PROVIDER's costs of the additional test shall be borne by the CUSTOMER unless the BCDR Plan fails the additional test in which case the SERVICE PROVIDER's costs of that failed test shall be borne by the SERVICE PROVIDER.

## Following each test, the SERVICE PROVIDER shall send to the CUSTOMER a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the CUSTOMER considers to be necessary as a result of those tests.

## The SERVICE PROVIDER 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.

## The SERVICE PROVIDER 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.

## The SERVICE PROVIDER shall, within twenty (20) Working Days of the conclusion of each test, provide to the CUSTOMER a report setting out:

### the outcome of the test;

### any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and

### the SERVICE PROVIDER's proposals for remedying any such failures.

## Following each test, the SERVICE PROVIDER 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 SERVICE PROVIDER, at no additional cost to the CUSTOMER, by the date reasonably required by the CUSTOMER and set out in such notice.

## 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 SERVICE PROVIDER of any of its obligations under this Schedule or otherwise.

## The SERVICE PROVIDER shall also perform a test of the BCDR Plan as part of the commissioning of any new project.

# **INVOCATION OF THE BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN**

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

**SCHEDULE 2-16**

**SECURITY MANAGEMENT PLAN**

# **INTRODUCTION**

## This Schedule covers:

### principles of protective security to be applied in delivering the Ordered Software Application Solutions;

### [\*\*\* wider aspects of security relating to the Ordered Software Application Solutions \*\*\*];

### the development, implementation, operation, maintenance and continual improvement of an ISMS;

### the creation and maintenance of the Security Management Plan;

### audit and testing of ISMS compliance with the security requirements (as set out in Schedule [\*\*\* insert schedule \*\*\*]).

### conformance to ISO/IEC 27001 (Information Security Requirements Specification) and ISO/IEC27002 (Information Security Code of Practice) and;

### obligations in the event of actual, potential or attempted breaches of security.

# **PRINCIPLES OF SECURITY**

## The SERVICE PROVIDER acknowledges that the CUSTOMER places great emphasis on the confidentiality, integrity and availability of information and consequently on the security provided by the ISMS.

## The SERVICE PROVIDER shall be responsible for the effective performance of the ISMS and shall at all times provide a level of security which:

### is in accordance with Good Industry Practice, Law and this Contract;

### complies with the Security Policy;

### [\*\*\* complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) available from the Cabinet Office Security Policy Division (COSPD)\*\*\*];

### meets any specific security threats to the ISMS;

### complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph  of this Schedule;

### complies with the security requirements as set out in Schedule [\*\*\* insert schedule \*\*\*]; and

### complies with the CUSTOMER’s ICT standards.

## Subject to Clause of this Contract, the references to standards, guidance and policies set out in paragraph 2.2 of this Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.

## In the event of any inconsistency in the provisions of the above standards, guidance and policies, the SERVICE PROVIDER should notify the CUSTOMER's Software Application Solutions Contract Manager of such inconsistency immediately upon becoming aware of the same, and the CUSTOMER's Software Application Solutions Contract Manager shall, as soon as practicable, advise the SERVICE PROVIDER which provision the SERVICE PROVIDER shall be required to comply with.

# **ISMS AND SECURITY MANAGEMENT PLAN**

## **Introduction**

### The SERVICE PROVIDER shall develop, implement, operate, maintain and continuously improve and maintain an ISMS which will, without prejudice to paragraph 2.2 of this Schedule, be approved, by the CUSTOMER, tested in accordance with this Schedule, periodically updated and audited in accordance with ISO/IEC 27001.

### The SERVICE PROVIDER shall develop and maintain a Security Management Plan in accordance with this Schedule to apply during the Term.

### The SERVICE PROVIDER shall comply with its obligations set out in the Security Management Plan.

### Both the ISMS and the Security Management Plan shall, unless otherwise specified by the CUSTOMER, aim to protect all aspects of the Ordered Software Application Solutions and all processes associated with the delivery of the Ordered Software Application Solutions, including the CUSTOMER Premises, the Sites, the SERVICE PROVIDER System and any ICT, information and data (including the CUSTOMER Confidential Information and the CUSTOMER Data) to the extent used by the CUSTOMER or the SERVICE PROVIDER in connection with this Contract.

## **Development of the Security Management Plan**

### Within twenty (20) Working Days after signature of this Contract and in accordance with paragraph  of this Schedule, the SERVICE PROVIDER will prepare and deliver to the CUSTOMER for approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan set out in Annex B of this Schedule.

### If the Security Management Plan, or any subsequent revision to it in accordance with paragraph 3.4 of this Schedule, is approved by the CUSTOMER it will be adopted immediately and will replace the previous version of the Security Management Plan at Annex B. If the Security Management Plan is not approved by the CUSTOMER the SERVICE PROVIDER shall amend it within ten (10) Working Days of a notice of non-approval from the CUSTOMER and re-submit to the CUSTOMER for approval. The parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the CUSTOMER. If the CUSTOMER does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with Schedule 2-9. No approval to be given by the CUSTOMER pursuant to this paragraph of this Schedule may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 3.3.4 of this Schedule shall be deemed to be reasonable.

## **Content of the Security Management Plan**

### The Security Management Plan will set out the security measures to be implemented and maintained by the SERVICE PROVIDER in relation to all aspects of the Ordered Software Application Solutions and all processes associated with the delivery of the Ordered Software Application Solutions and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Ordered Software Application Solutions comply with the provisions of this Schedule (including the principles set out in paragraph 2.2 of this Schedule).

### The Security Management Plan (including the draft version) should also set out the plans for transiting all security arrangements and responsibilities from those in place at the date of signature of this Contract to those incorporated in the SERVICE PROVIDER’s ISMS at the date set out in the Implementation Plan for the SERVICE PROVIDER to meet the full obligations of the security requirements at Schedule [\*\*\* insert schedule \*\*\*].

### The Security Management Plan will be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules of this Contract which cover specific areas included within that standard.

### The Security Management Plan shall be written in plain English in language which is readily comprehensible to the staff of the SERVICE PROVIDER and the CUSTOMER engaged in the Ordered Software Application Solutions and shall only reference documents which are in the possession of the CUSTOMER or whose location is otherwise specified in this Schedule.

## **Amendment and Revision of the ISMS and Security Management Plan**

### The ISMS and Security Management Plan will be fully reviewed and updated by the SERVICE PROVIDER annually, or from time to time to reflect:

#### emerging changes in Good Industry Practice;

#### any change or proposed change to the SERVICE PROVIDER System, the Ordered Software Application Solutions and/or associated processes;

#### any new perceived or changed security threats; and/or

#### any reasonable request by the CUSTOMER.

### The SERVICE PROVIDER will provide the CUSTOMER with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the CUSTOMER. The results of the review should include:

#### suggested improvements to the effectiveness of the ISMS;

#### updates to the risk assessments;

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

#### suggested improvements in measuring the effectiveness of controls.

### On receipt of the results of such reviews, the CUSTOMER will approve any amendments or revisions to the ISMS or Security Management Plan in accordance with the process set out at paragraph 3.2.2 of this Schedule.

### Any change or amendment which the SERVICE PROVIDER proposes to make to the ISMS or Security Management Plan (as a result of a CUSTOMER request or change to the Schedule [\*\*\* insert schedule \*\*\*] or otherwise) shall be subject to the Contract Change Procedure and shall not be implemented until approved in writing by the CUSTOMER.

# **TESTING**

## The SERVICE PROVIDER shall conduct tests of the ISMS (**"Security Tests"**) on an [\*\*\* annual \*\*\*] basis or as otherwise agreed by the parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the CUSTOMER.

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

## Without prejudice to any other right of audit or access granted to the CUSTOMER pursuant to this Contract, the CUSTOMER and/or its authorised representatives shall be entitled, at any time and without giving notice to the SERVICE PROVIDER, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the SERVICE PROVIDER's compliance with the ISMS and the Security Management Plan. The CUSTOMER may notify the SERVICE PROVIDER of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Ordered Software Application Solutions. If such tests adversely affect the SERVICE PROVIDER’s ability to deliver the Ordered Software Application Solutions to the agreed Service Levels, the SERVICE PROVIDER shall be granted relief against any resultant under-performance for the period of the tests.

## Where any Security Test carried out pursuant to paragraphs or of this Schedule reveals any actual or potential Breach of Security, the SERVICE PROVIDER shall promptly notify the CUSTOMER of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the SERVICE PROVIDER proposes to make in order to correct such failure or weakness. Subject to the CUSTOMER's approval in accordance with paragraph of this Schedule, the SERVICE PROVIDER shall implement such changes to the ISMS and the Security Management Plan in accordance with the timetable agreed with the CUSTOMER or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or security requirements (as set out in Schedule [\*\*\* insert schedule \*\*\*]), the change to the ISMS or Security Management Plan shall be at no cost to the CUSTOMER.

# **COMPLIANCE WITH ISO/IEC 27001**

## [\*\*\* The SERVICE PROVIDER shall obtain independent certification of the ISMS to ISO/IEC 27001 within [twelve (12)] months of signature of this Contract and shall maintain such certification for the Term. \*\*\*]

## [\*\*\* If certain parts of the ISMS do not conform to Good Industry Practice, or controls as described in ISO/IEC 27002 are not consistent with the Security Policy, and, as a result, the SERVICE PROVIDER reasonably believes that it is not compliant with ISO/IEC 27001, the SERVICE PROVIDER shall promptly notify the CUSTOMER of this and the CUSTOMER in its absolute discretion may waive the requirement for certification in respect of the relevant parts. \*\*\*\*]

## The CUSTOMER shall be entitled to carry out such regular security audits as may be required, and in accordance with Good Industry Practice, in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001.

## If, on the basis of evidence provided by such audits, it is the CUSTOMER's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the SERVICE PROVIDER, then the CUSTOMER shall notify the SERVICE PROVIDER of the same and give the SERVICE PROVIDER a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001. If the SERVICE PROVIDER does not become compliant within the required time then the CUSTOMER has the right to obtain an independent audit against these standards in whole or in part.

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

# **BREACH OF SECURITY**

## Either party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.

## Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph of this Schedule, the SERVICE PROVIDER shall:

### immediately take all reasonable steps necessary to:

#### remedy such breach or protect the integrity of the ISMS against any such potential or attempted breach or threat; and

#### prevent an equivalent breach in the future.

Such steps shall include any action or changes reasonably required by the CUSTOMER. In the event that such action is taken in response to a breach that is determined by the CUSTOMER acting reasonably not to be covered by the obligations of the SERVICE PROVIDER under this Contract, then the SERVICE PROVIDER shall be entitled to refer the matter to the Contract Change Procedure; and

### as soon as reasonably practicable provide to the CUSTOMER full details (using such reporting mechanism as defined by the ISMS) of the Breach of Security or the potential or attempted Breach of Security.

Annex A

Security Policy

Annex B

Security Management Plan

SCHEDULE 2-17

SOFTWARE AND SOFTWARE LICENCE TERMS

1. **INTRODUCTION**
   1. This Schedule details the various elements of the Software and categorises them into Specially Written Software, SERVICE PROVIDER Software and Third Party Software.
   2. Annexes A and B of this Schedule sets out the licence terms for the SERVICE PROVIDER Software and Third Party Software (including Open Source Ordered Software), respectively.
   3. The SERVICE PROVIDER shall update this Schedule periodically to record any software subsequently acquired from third parties or developed for the delivery of the Ordered Software Application Solutions.
2. **SPECIALLY WRITTEN SOFTWARE**
   1. The Specially Written Software shall consist of any programs, codes and software written by or on behalf of the SERVICE PROVIDER for use by the SERVICE PROVIDER specifically in the provision of the Ordered Software Application Solutions (including any modifications or enhancements made to such software during the Term) and including the following items: [\*\*\* insert all details in this table \*\*\*]

| **Software** | **Supplier (if Affiliate of the SERVICE PROVIDER)** | **Purpose** | **To be deposited in Escrow?** |
| --- | --- | --- | --- |
|  |  |  | [\*\*\* Yes / No \*\*\*] |
|  |  |  | [\*\*\* Yes / No \*\*\*] |
|  |  |  | [\*\*\* Yes / No \*\*\*] |
|  |  |  | [\*\*\* Yes / No \*\*\*] |

* 1. The SERVICE PROVIDER will develop Software to meet the SERVICE PROVIDER’s requirements. The following components will be modified to create the Specially Written Software: [\*\*\* insert all details \*\*\*]

1. **SERVICE PROVIDER SOFTWARE**
   1. The SERVICE PROVIDER Software comprises the following items: [\*\*\* insert all details in this table \*\*\*]

| **Software** | **Supplier (if Affiliate of the SERVICE PROVIDER)** | **Purpose** | **[Number of Licences]** | **[Restrictions]** | **[Number of Copies]** | **[Other]** | **To be deposited in Escrow?** |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  | [\*\*\* Yes / No \*\*\*] |
|  |  |  |  |  |  |  | [\*\*\* Yes / No \*\*\*] |
|  |  |  |  |  |  |  | [\*\*\* Yes / No \*\*\*] |
|  |  |  |  |  |  |  | [\*\*\* Yes / No \*\*\*] |
|  |  |  |  |  |  |  | [\*\*\* Yes / No \*\*\*] |
|  |  |  |  |  |  |  | [\*\*\* Yes / No \*\*\*] |

1. **THIRD PARTY SOFTWARE**
   1. The Third Party Software shall [\*\*\* include \*\*\*] [\*\*\* consist of \*\*\*] the following items, including any Open Source Ordered Software: [\*\*\* insert all details in this table \*\*\*]

| **Third Party Software** | **Supplier** | **Purpose** | **[Number of Licences]** | **[Restrictions]** | **Number of Copies]** | **[Other]** | **To be deposited in Escrow?** |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  | [\*\*\* Yes / No \*\*\*] |
|  |  |  |  |  |  |  | [\*\*\* Yes / No \*\*\*] |
|  |  |  |  |  |  |  | [\*\*\* Yes / No \*\*\*] |
|  |  |  |  |  |  |  | [\*\*\* Yes / No \*\*\*] |

**Annex A**

**SERVICE PROVIDER Software**

**[**\*\*\* insert licence terms \*\*\***]Annex B**

**Third Party Software**

[\*\*\* insert licence terms \*\*\*]SCHEDULE 2-18

PENSIONS

- *optional – to be used where a TUPE staff transfer is envisaged as a consequence of the Customer and the Service provider entering into the Contract (including its termination/expiry).*

**PURPOSE AND STRUCTURE OF THIS SCHEDULE**

This Schedule sets out the pension arrangements for employees whose employment is compulsorily transferred to the SERVICE PROVIDER whether from the CUSTOMER or an Outgoing Service Provider or with effect on and from the Service Commencement Date.

This Schedule comprises five parts:

Part A contains definitions which apply for the purposes of this Schedule only;

Part B contains provisions governing the pensions aspects of any compulsory transfer of any Transferring Pensionable Customer Employee;

Part C contains provisions governing the pensions aspects of any compulsory transfer of any Second Generation Fair Deal Employee to the SERVICE PROVIDER from any Outgoing Service Provider;

Part D contains provisions governing the resolution of any dispute relating to actuarial calculations required under this Schedule; and

Part E contains provisions governing the pensions aspects of the termination of the Ordered Software Application Solutions or any part of them.

PART A – DEFINITIONS FOR PENSIONS MATTERS

For the purposes of this Schedule, the following terms have the following meanings:

|  |  |
| --- | --- |
| **Actuary** | **means a Fellow of either the Institute of Actuaries or Faculty of Actuaries.** |
| **Broadly Comparable** | **means, in respect of a pension scheme, a status demonstrated by the issue by the Government Actuary’s Department of a broad comparability certificate relating to the [\*\*\* insert name of relevant public sector pension scheme \*\*\*].** |
| **CUSTOMER’s Actuary** | **means an Actuary employed by [\*\*\* insert name of firm \*\*\*] who is advising the CUSTOMER in relation to the pensions aspects of the Contract / the Government Actuary’s Department.** |
| **Employee** | **means, together, any Transferring Pensionable Customer Employee and Second Generation Fair Deal Employee.** |
| **Outgoing Service Provider’s Actuary**  **Outgoing Service Provider’s Actuary’s Letter** | **means an Actuary employed by [\*\*\* insert name of firm \*\*\*] who is advising the Outgoing Service Provider in relation to pension aspects of the Contract or its contract with the CUSTOMER, as appropriate. [use of this term subject to project-specific review]**  **means the letter in the agreed form signed by the Outgoing Service Provider’s Actuary and the CUSTOMER’s Actuary, a copy of which is attached to this Schedule and identified as Outgoing Service Provider’s Actuary’s Letter. [use of this term subject to project-specific review]** |
| **Outgoing Service Provider’s Scheme** | **means a pension scheme established or nominated by the Outgoing Service Provider which was Broadly Comparable at the effective date of a Relevant Transfer of any Second Generation Fair Deal Employee from the CUSTOMER to the Outgoing Service Provider. [use of this term subject to project-specific review]** |
| **Payment Date** | **means, as appropriate, the first Working Day more than twenty eight (28) Days after the date when the last of the Paragraph 5 Provisos and/or the Paragraph Provisos has been satisfied.** |
| **[\*\*\* PCSPS** | **means the Principal Civil Service Pension Scheme as laid before Parliament on 19 November 1974 under section 2(11) of the Superannuation Act 1972 and subsequently amended. \*\*\*]*[Guidance Note: Where the applicable public sector scheme is not the PCSPS, this definition and all reference to PCSPS throughout this Schedule should be amended as appropriate; where more than one public sector scheme is involved this Schedule will apply separately to each scheme and each bulk transfer of pension rights ]*** |
| **[\*\*\* PCSPS Actuary** | **means an Actuary employed by [Hewitt] or such other firm engaged from time to time to advise on PCSPS. \*\*\*]** |
| **[\*\*\* PCSPS Actuary’s Letter** | **means the letter in the agreed form signed by the PCSPS Actuary and the CUSTOMER’s Actuary, a copy of which is attached to this Schedule and identified as PCSPS Actuary’s Letter. \*\*\*]** |
| **Pension Service Credit** | **means a period of pensionable service under the SERVICE PROVIDER’s Scheme credited to any Employee in respect of the rights accrued by the Employee under, as appropriate, [\*\*\* PCSPS \*\*\*] or the Outgoing Service Provider’s Scheme (including, for the avoidance of doubt and in respect of any Second Generation Fair Deal Employee, rights transferred into the Outgoing Service Provider’s Scheme from [\*\*\* PCSPS \*\*\*]) calculated on a day for day, year for year basis (or such other appropriate basis as determined by the [\*\*\* PCSPS Actuary \*\*\*] if, in his reasonable opinion, the actuarial differences between the SERVICE PROVIDER’s Scheme and [\*\*\* PCSPS \*\*\*] or the Outgoing Service Provider’s Scheme, as appropriate, so require).** |
| **Required Transfer Amount One** | **means the amount calculated in accordance with the assumptions, principles and adjustments (but excluding any timing adjustment in respect of the period after the Service Commencement Date) contained in the SERVICE PROVIDER’s Actuary’s Letter One as representing the amount required to fund the Pension Service Credit for each Transferring Pensionable Customer Employee who takes up Transfer Option One. [use of this term subject to project-specific review]** |
| **Required Transfer Amount Two** | **means the amount calculated in accordance with the assumptions, principles and adjustments (but excluding any timing adjustment in respect of the period after the Service Commencement Date) contained in the SERVICE PROVIDER’s Actuary’s Letter Two as representing the amount required to fund the Pension Service Credit for each Second Generation Fair Deal Employee who takes up Transfer Option Two. [use of this term subject to project-specific review]** |
| **SERVICE PROVIDER’s Actuary** | **means an Actuary employed by [\*\*\* insert name of firm \*\*\*] who is advising the SERVICE PROVIDER in relation to the pensions aspects of the Contract.** |
| **SERVICE PROVIDER’s Actuary’s Letter One** | **means the letter in the agreed form signed by the SERVICE PROVIDER’s Actuary and the CUSTOMER’s Actuary, a copy of which is attached to this Schedule and identified as SERVICE PROVIDER’s Actuary’s Letter One. [use of this term subject to project-specific review]** |
| **SERVICE PROVIDER’s Actuary’s Letter Two** | **means the letter in the agreed form signed by the SERVICE PROVIDER’s Actuary and the Outgoing Service Provider’s Actuary, a copy of which is attached to this Schedule and identified as SERVICE PROVIDER’s Actuary’s Letter Two. [use of this term subject to project-specific review]** |
| ***[Guidance Note: If the Ordered Software Application Solutions will commence on a series of future dates which are unknown at the date of the Contract (or just one future date), definitions of the SERVICE PROVIDER’s Actuary’s Letter One and SERVICE PROVIDER’s Actuary’s Letter Two may require revision:***  ***“a letter based on the draft letter from the [specify] Actuary to the [specify]’s Actuary, agreed at or prior to the date of the Contract between the [insert party] and the [insert party] and dated [insert date]. A copy of such draft letter is attached to this Schedule. The letter shall, as far as reasonably possible, be based on such draft letter. Actuarial bases used by the [specify]’s Actuary to calculate the underlying transfer value at any Service Commencement Date shall be either (a) those set out in the appendices to the draft letter or (b) those which the [specify]’s Actuary considers appropriate at the time of finalising the draft letter; any variation in the letter as compared with the draft letter shall be confined to legitimate changes to actuarial practice since date of the Contract as described at limb (b) of this definition.”]*** | |
| **SERVICE PROVIDER’s Scheme** | **means a pension scheme established or nominated by the Service Provider which is Broadly Comparable at the effective date of the compulsory transfer of employment of any Transferring Pensionable Customer Employee from the CUSTOMER to the SERVICE PROVIDER.]** |
| **Transfer Amount One** | **means the amount calculated in accordance with the assumptions, principles and adjustments contained in the [\*\*\* PCSPS Actuary’s Letter \*\*\*] as representing, for each Transferring Pensionable Customer Employee who takes up Transfer Option One, the value of his accrued rights under [\*\*\* PCSPS \*\*\*] on a past service reserve basis as at the Service Commencement Date, adjusted to the Payment Date in accordance with the timing adjustment in the [\*\*\* PCSPS Actuary’s Letter \*\*\*]. [use of this term subject to project-specific review]** |
| **Transfer Amount Two** | **means the amount calculated in accordance with the assumptions, principles and adjustments contained in the Outgoing Service Provider’s Actuary’s Letter as representing, for each Second Generation Fair Deal Employee who takes up Transfer Option Two, the value of his accrued rights under the Outgoing Contractor’s Scheme and the value of rights he had accrued under [\*\*\* PCSPS \*\*\*] and transferred into the Outgoing Contractor’s Scheme, on a past service reserve basis as at the Service Commencement Date, adjusted to the Payment Date in accordance with the timing adjustment in the Outgoing Service Provider’s Actuary’s Letter. [use of this term subject to project-specific review]** |
| **Transfer Option One** | **means an option given to each Transferring Pensionable Customer Employee to transfer rights, accrued under [\*\*\* PCSPS \*\*\*]before the Service Commencement Date, from [\*\*\* PCSPS \*\*\*]to the SERVICE PROVIDER’s Scheme. [use of this term subject to project-specific review]** |
| **Transfer Option Two** | **means an option given to each Second Generation Fair Deal Employee to transfer rights accrued under [\*\*\* PCSPS \*\*\*] and transferred into the Outgoing Service Provider’s Scheme and accrued under the Outgoing Service Provider’s Scheme, from the Outgoing Service Provider’s Scheme to the SERVICE PROVIDER’s Scheme. [use of this term subject to project-specific review]** |
| **Transfer Option Deadline** | **means the first Working Day to fall at least three (3) months after Transfer Option One or Transfer Option Two has been sent to each Employee, as applicable.** |
| **Transferring Pensionable Customer Employee** | **means each Transferring Customer Employee whose employment is compulsorily transferred to the SERVICE PROVIDER and who, immediately before such compulsory transfer, was in, as applicable:**  **reckonable service under [[\*\*\* PCSPS \*\*\*] for the purposes of rule 1.5 of the 1972 Section of Arrangement of the Rules of [\*\*\* PCSPS \*\*\*]].**  **active membership of [[\*\*\* PCSPS \*\*\*] for the purposes of rule A.7 of the 2002 Section of Arrangement of the Rules of [\*\*\* PCSPS \*\*\*]]; or**  **active membership of [[\*\*\* PCSPS \*\*\*] for the purposes of A.12 of the 2007 Section of Arrangement of the Rules of [\*\*\* PCSPS \*\*\*]]. [use of this term subject to project-specific review]** |
| **[\*\*\* Top Up One** | **means the amount calculated in accordance with paragraph .7 of this Schedule. [use of this term subject to project-specific review]** |
| **Top Up Two** | **means the amount calculated in accordance with paragraph .7 of this Schedule. \*\*\*] [use of this term subject to project-specific review]** |
| ***[Guidance Note: The CUSTOMER will notify the SERVICE PROVIDER in writing during the early negotiation phase of the procurement process and, in any event, at least ten (10) Working Days before the deadline for ITT, whether or not it will pay any shortfall between Transfer Amount One/Transfer Amount Two and the amount required by the trustees of the SERVICE PROVIDERs Scheme to fund the Pension Service Credit in the SERVICE PROVIDER’s Scheme in respect of each Transferring Pensionable Customer Employee/Second Generation Fair Deal Employee who takes up Transfer Option One/ Transfer Option Two]*** | |

# **PART B – PENSIONS ON A TRANSFER OF ANY TRANSFERRING PENSIONABLE CUSTOMER EMPLOYEE**

1. **ESTABLISHMENT OF THE SERVICE PROVIDER’S SCHEME**
   1. The SERVICE PROVIDER undertakes to establish or nominate the SERVICE PROVIDER’s Scheme on or before the Service Commencement Date. **[use of this paragraph subject to project-specific review – in particular LGPS Admitted Body Status may be available and appropriate.]**
   2. The SERVICE PROVIDER undertakes to supply full details of the SERVICE PROVIDER’s Scheme to the CUSTOMER at least twenty one (21) Working Days before the Service Commencement Date. This must include a valid certificate from the Government Actuary’s Department certifying that the SERVICE PROVIDER’s Scheme is Broadly Comparable as at the Service Commencement Date.
2. **JOINING THE SERVICE PROVIDER’S SCHEME**
   1. Subject to paragraph 1 of this Schedule, the SERVICE PROVIDER shall procure that each Transferring Pensionable Customer Employee is automatically admitted to the SERVICE PROVIDER’s Scheme as an active member with effect on and from the Service Commencement Date.
   2. The CUSTOMER shall procure that each Transferring Pensionable Customer Employee is informed of such automatic admission at least five (5) Working Days before the Service Commencement Date.
   3. Each Transferring Pensionable Customer Employee has the right to opt out of automatic admission to the SERVICE PROVIDER’s Scheme. The CUSTOMER shall procure that each Transferring Pensionable Customer Employee is informed of this right and of the manner of exercise of this right (by way of written notice to the SERVICE PROVIDER on or before the Service Commencement Date) at least five (5) Working Days before the Service Commencement Date.
3. **TRANSFER OPTION ONE AND PENSION SERVICE CREDIT**
   1. The CUSTOMER shall use all reasonable endeavours to procure that Transfer Option One is sent to each Transferring Pensionable Customer Employee no later than ten (10) Working Days following the receipt by the SERVICE PROVIDER or the SERVICE PROVIDER’s Actuary, as appropriate, of all such information and documentation as is relevant in relation to the description of Transfer Option One.
   2. This paragraph 3.2 is subject always to prior receipt of Transfer Amount One [\*\*\* and, if relevant, Top Up One, if any, \*\*\*] by the trustees of the SERVICE PROVIDER’s Scheme in accordance with paragraph[s] 5 [\*\*\* and respectively \*\*\*] of this Schedule. The SERVICE PROVIDER shall procure that each Transferring Pensionable Customer Employee who takes up Transfer Option One is granted his Pension Service Credit as soon as reasonably practicable following receipt of Transfer Amount One [\*\*\* and, where relevant, Top Up One, if any, \*\*\*] in accordance with paragraph[s] 5 [\*\*\* and respectively \*\*\*] of this Schedule.
4. **CALCULATION AND VERIFICATION OF TRANSFER AMOUNT ONE**
   1. The CUSTOMER shall use all reasonable endeavours to procure that the [\*\*\* PCSPS Actuary \*\*\*] calculates Transfer Amount One within three (3) months of the Transfer Option Deadline.
   2. The CUSTOMER shall use all reasonable endeavours to procure that the SERVICE PROVIDER’s Actuary is notified of Transfer Amount One, and any appropriate underlying methodology, within three (3) months of the Transfer Option Deadline.
   3. The SERVICE PROVIDER shall procure that, within four (4) weeks of having been notified of Transfer Amount One, the SERVICE PROVIDER’s Actuary verifies such calculation or sets out in writing to the [\*\*\* PCSPS Actuary \*\*\*] his reasons for not verifying such calculation.
   4. This paragraph 4.4 applies where the SERVICE PROVIDER’s Actuary sets out in writing his reasons for not verifying the calculation of Transfer Amount One in accordance with paragraph 4.3 above. Where this paragraph 4.4 applies, the CUSTOMER and the SERVICE PROVIDER shall, as appropriate, use all reasonable endeavours to procure that the SERVICE PROVIDER’s Actuary and the [\*\*\* PCSPS Actuary \*\*\*] work together to agree Transfer Amount One within a period agreed to be reasonable by the SERVICE PROVIDER’s Actuary and the [\*\*\* PCSPS Actuary \*\*\*].
   5. The CUSTOMER and the SERVICE PROVIDER shall, as appropriate, use all reasonable endeavours to procure that the [\*\*\* PCSPS Actuary \*\*\*] and the SERVICE PROVIDER’s Actuary shall act reasonably and shall cooperate with each other for the purposes of this paragraph 4.
   6. If the SERVICE PROVIDER’s Actuary and the [\*\*\* PCSPS Actuary \*\*\*] fail to agree Transfer Amount One in accordance with paragraph 4.4 above, paragraph 15 of this Schedule shall apply.
5. **PAYMENT OF TRANSFER AMOUNT ONE**
   1. This paragraph 5 is subject always to the Paragraph 5 Provisos.
   2. The CUSTOMER will use all reasonable endeavours to procure that Transfer Amount One is transferred in cash to the trustees of the SERVICE PROVIDER’s Scheme on the Payment Date.
   3. The SERVICE PROVIDER agrees, following resolution of all material queries in a time period agreed to be reasonable by both the SERVICE PROVIDER and the CUSTOMER, to fully accept the outcome of the exercise of Transfer Option One. The SERVICE PROVIDER agrees to use all reasonable endeavours to procure that the trustees of the SERVICE PROVIDER’s Scheme shall accept Transfer Amount One [\*\*\* and, where relevant, Top Up One, if any \*\*\*].
   4. The Paragraph 5 Provisos are:
      1. the Transfer Option Deadline has passed;
      2. the CUSTOMER has provided to the trustees of the SERVICE PROVIDER’s Scheme completed and signed forms of consent in respect of the transfer of accrued rights under [\*\*\* PCSPS \*\*\*] from each Transferring Pensionable Customer Employee who takes up Transfer Option One;
      3. a contracting-out certificate in respect of the SERVICE PROVIDER’s Scheme has been issued which covers the employment of the Transferring Pensionable Customer Employees;
      4. Transfer Amount One has been agreed under paragraph 4 above; and
      5. the trustees of the SERVICE PROVIDER’s Scheme have confirmed in writing (and have not revoked that confirmation) to the administrators of [\*\*\* PCSPS \*\*\*] that they are ready, willing and able to receive Transfer Amount One [\*\*\* and, where relevant, Top Up One, if any \*\*\*].
6. **SERVICE PROVIDER’S FURTHER OBLIGATIONS**
   1. The SERVICE PROVIDER covenants with the CUSTOMER that the SERVICE PROVIDER shall:
      1. use all reasonable endeavours to secure the status of the SERVICE PROVIDER’s Scheme as a registered pension scheme under the Finance Act 2004 or any statutory modification or re-enactment of that Act;
      2. procure that the SERVICE PROVIDER’s Scheme is contracted-out on a salary-related basis using the reference scheme test;
      3. procure that the SERVICE PROVIDER’s Scheme is able to and shall accept a bulk past service transfer;
      4. procure that no amendments are made to the provisions of the SERVICE PROVIDER’s Scheme which would cause it be cease to be certified by the Government Actuary’s Department as Broadly Comparable, and in respect of such certification, a certificate was supplied in accordance with paragraph 1.2 of this Schedule, prior to the date on which payment of Transfer Amount One [\*\*\* and, where relevant, Top Up One, if any, are \*\*\*] is made to the SERVICE PROVIDER’s Scheme under paragraph[s] [\*\*\* and respectively \*\*\*] of this Schedule; and
      5. procure that the benefits offered under the SERVICE PROVIDER’s Scheme for each Transferring Pensionable Customer Employee in respect of employment after the Service Commencement Date are Broadly Comparable.
   2. The SERVICE PROVIDER agrees to indemnify the CUSTOMER and the Crown against all liabilities, damages, losses, costs and expenses arising out of any claim by any Employee that the provision of (or failure to provide) early, normal, late or ill-health retirement, death or life assurance benefits for the period of employment after the Service Commencement Date, or the level of such benefit provided, constitutes a breach of his employment rights.
   3. The SERVICE PROVIDER will comply with any applicable obligations under section 258 of the Pensions Act 2004.
7. **[REQUIRED TRANSFER AMOUNT ONE AND TOP UP ONE**
   1. This paragraph 7 applies where the CUSTOMER has notified the SERVICE PROVIDER that it will pay any shortfall between the Transfer Amount and the amount required by the trustees of the SERVICE PROVIDER’s Scheme to fund the Pension Service Credit in the SERVICE PROVIDER’s Scheme in respect of each Transferring Pensionable Customer Employee who takes up Transfer Option One.
   2. The SERVICE PROVIDER shall procure that the SERVICE PROVIDER’s Actuary calculates Required Transfer Amount One within three (3) months of the Transfer Option Deadline.
   3. The SERVICE PROVIDER shall procure that the [\*\*\* PCSPS Actuary \*\*\*] is notified of Required Transfer Amount One, and any appropriate underlying methodology, within three (3) months of the Transfer Option Deadline.
   4. The CUSTOMER shall procure that, within four (4) weeks of having been notified of Required Transfer Amount One, the [\*\*\* PCSPS Actuary \*\*\*] verifies such calculation or sets out in writing to the SERVICE PROVIDER’s Actuary his reasons for not verifying such calculation.
   5. This paragraph 7.5 applies where the [\*\*\* PCSPS Actuary \*\*\*] sets out in writing his reasons for not verifying the calculation of Required Transfer Amount One in accordance with paragraph 7.4 above. Where this paragraph 7.5 applies, the CUSTOMER and the SERVICE PROVIDER, as appropriate, shall use all reasonable endeavours to procure that the [\*\*\* PCSPS Actuary \*\*\*] and the SERVICE PROVIDER’s Actuary work together to agree Required Transfer Amount One within a period agreed to be reasonable by the [\*\*\* PCSPS Actuary \*\*\*] and the SERVICE PROVIDER’s Actuary.
   6. The CUSTOMER and the SERVICE PROVIDER, as appropriate, shall use all reasonable endeavours to procure that the [\*\*\* PCSPS Actuary \*\*\*] and the SERVICE PROVIDER’s Actuary act reasonably and cooperate with each other for the purposes of this paragraph 7.
   7. If the [\*\*\* PCSPS Actuary \*\*\*] and the SERVICE PROVIDER’s Actuary fail to agree Required Transfer Amount One in accordance with paragraph 7.5 above, paragraph 15 of this Schedule shall apply.
   8. Where relevant, as soon as reasonably possible after the calculation and verification or determination of Required Transfer Amount One, as appropriate, Top Up One shall be calculated (ignoring, for the purposes of this calculation, any timing adjustment relating to the period after the Payment Date) by the SERVICE PROVIDER’s Actuary and verified by the [\*\*\* PCSPS Actuary \*\*\*], in accordance with the following formula:

B minus Aas varied in accordance with C but subject to D, where:

A means Transfer Amount One;

B means Required Transfer Amount One (ignoring, for the purposes of this calculation, any timing adjustment relating to the period after the Service Commencement Date);

C means the timing adjustment contained in the SERVICE PROVIDER’s Actuary’s Letter for the period on and from the Service Commencement Date up to and including the Payment Date; and

D means that Top Up One shall be deemed to be zero where such calculation produces a negative result.

* 1. Where relevant, the CUSTOMER shall pay Top Up One (as adjusted by the timing adjustment set out in the SERVICE PROVIDER’s Actuary’s Letter for the period from the Payment Date through to the date on which payment is made), if any, to the SERVICE PROVIDER no later than five (5) Working Days from the date of the calculation and verification or, as appropriate, determination of Top Up One.
  2. Where relevant, the SERVICE PROVIDER shall, immediately on receipt of Top Up One, pay Top Up One to the trustees of the SERVICE PROVIDER’s Scheme.]

PART C – PENSIONS ON TRANSFER OF ANY SECOND GENERATION FAIR DEAL EMPLOYEE

1. ESTABLISHMENT OF THE SERVICE PROVIDER’S SCHEME
   1. The SERVICE PROVIDER undertakes to establish or nominate the SERVICE PROVIDER’s Scheme on or before the Service Commencement Date.
   2. The SERVICE PROVIDER undertakes to supply full details of the SERVICE PROVIDER’s Scheme to the CUSTOMER at least twenty one (21) Working Days before the Service Commencement Date. This must include a valid certificate from the Government Actuary’s Department certifying that the SERVICE PROVIDER’s Scheme is Broadly Comparable as at the Service Commencement Date.
2. JOINING THE SERVICE PROVIDER’S SCHEME
   1. Subject to paragraph 9.2 of this Schedule, the SERVICE PROVIDER shall procure that each Second Generation Fair Deal Employee is automatically admitted to the SERVICE PROVIDER’s Scheme as an active member with effect on and from the Service Commencement Date.
   2. The CUSTOMER shall procure that each Second Generation Fair Deal Employee is informed of such automatic admission at least five (5) Working Days before the Service Commencement Date.
   3. Each Second Generation Fair Deal Employee has the right to opt out of automatic admission to the SERVICE PROVIDER’s Scheme. The CUSTOMER shall procure that each Second Generation Fair Deal Employee is informed of this right and of the manner of exercise of this right (by way of written notice to the SERVICE PROVIDER on or before the Service Commencement Date) at least five (5) Working Days before the Service Commencement Date.
3. TRANSFER OPTION TWO AND PENSION SERVICE CREDIT
   1. The SERVICE PROVIDER shall use all reasonable endeavours to procure that Transfer Option Two is sent to each Second Generation Fair Deal Employee no later than ten (10) Working Days following the receipt by the SERVICE PROVIDER or the SERVICE PROVIDER’s Actuary, as appropriate, of all such information and documentation as is relevant in relation to the description of the Transfer Option Two.
   2. This paragraph 10.2 is subject always to prior receipt of Transfer Amount Two [\*\*\* and, where relevant, Top Up Two, if any, \*\*\*] by the trustees of the SERVICE PROVIDER’s Scheme in accordance with paragraph[s] [\*\*\* and respectively \*\*\*] of this Schedule. The SERVICE PROVIDER shall procure that each Second Generation Fair Deal Employee who takes up Transfer Option Two is granted his Pension Service Credit as soon as reasonably practicable following receipt of the Transfer Amount Two [\*\*\* and, where relevant, Top Up Two, if any, \*\*\*] in accordance with paragraph[s] [\*\*\* and respectively \*\*\*] of this Schedule.
4. CALCULATION AND VERIFICATION OF TRANSFER AMOUNT TWO
   1. The CUSTOMER shall use all reasonable endeavours to procure that the Outgoing Service Provider’s Actuary (or for the purposes of this paragraph, the CUSTOMER Actuary where the CUSTOMER determines at its sole discretion, this is not practical or possible) calculates Transfer Amount Two within three (3) months of the Transfer Option Deadline.
   2. The CUSTOMER shall use all reasonable endeavours to procure that the SERVICE PROVIDER’s Actuary is notified of Transfer Amount Two, and any appropriate underlying methodology, within three (3) months of the Transfer Option Deadline.
   3. The SERVICE PROVIDER shall procure that, within four (4) weeks of having been notified of Transfer Amount Two, the SERVICE PROVIDER’s Actuary verifies such calculation or sets out in writing to the Outgoing Service Provider’s Actuary his reasons for not verifying such calculation.
   4. This paragraph 11.4 applies where the SERVICE PROVIDER’s Actuary sets out in writing his reasons for not verifying the calculation of Transfer Amount Two in accordance with paragraph 11.3 above. Where this paragraph 11.4 applies, the SERVICE PROVIDER shall use all reasonable endeavours to procure that SERVICE PROVIDER’s Actuary works with the Outgoing Service Provider’s Actuary, the CUSTOMER having used all reasonable endeavours to procure that the Outgoing Service Provider’s Actuary works with the SERVICE PROVIDER’s Actuary for the purposes of this paragraph , to agree Transfer Amount Two within a period agreed to be reasonable by the SERVICE PROVIDER’s Actuary and the Outgoing Service Provider’s Actuary.
   5. The CUSTOMER and the SERVICE PROVIDER, as appropriate, shall use all reasonable endeavours to procure that the Outgoing Service Provider’s Actuary and the SERVICE PROVIDER’s Actuary act reasonably and cooperate with each other for the purposes of this paragraph 11.
   6. If the SERVICE PROVIDER’s Actuary and the Outgoing Service Provider’s Actuary fail to agree Transfer Amount Two in accordance with paragraph 11.4 above, paragraph 15 of this Schedule shall apply.
5. PAYMENT OF TRANSFER AMOUNT TWO
   1. This paragraph 12 is subject always to the Paragraph 12 Provisos.
   2. The CUSTOMER will use all reasonable endeavours to procure that Transfer Amount Two is transferred in cash to the trustees of the SERVICE PROVIDER’s Scheme on the Payment Date.
   3. The SERVICE PROVIDER agrees, following resolution of all material queries in a time period agreed to be reasonable by both the SERVICE PROVIDER and the CUSTOMER, to fully accept the outcome of the exercise of Transfer Option Two. The SERVICE PROVIDER agrees to use all reasonable endeavours to procure that the trustees of the SERVICE PROVIDER’s Scheme shall accept Transfer Amount Two [\*\*\* and, where relevant, Top Up Two, if any \*\*\*].
   4. The Paragraph 12 Provisos are:
      1. the Transfer Option Deadline has passed;
      2. the CUSTOMER has provided to the trustees of the SERVICE PROVIDER’s Scheme completed and signed forms of consent in respect of the transfer of rights under Outgoing Service Provider’s Scheme (including, for the avoidance of doubt rights accrued under [\*\*\* PCSPS \*\*\*] in respect of employment with the CUSTOMER prior to transfer to the Outgoing Service Provider and transferred into the Outgoing Service Provider’s Scheme) from each Second Generation Fair Deal Employee who takes up Transfer Option Two;
      3. a contracting-out certificate in respect of the SERVICE PROVIDER’s Scheme has been issued which covers the employment of the Second Generation Fair Deal Employees;
      4. Transfer Amount Two has been agreed under paragraph above; and
      5. the trustees of the SERVICE PROVIDER’s Scheme have confirmed in writing (and have not revoked that confirmation) to the trustees of the Outgoing Service Provider’s Scheme that they are ready, willing and able to receive Transfer Amount Two [\*\*\* and, where relevant, Top Up Two, if any \*\*\*].
6. SERVICE PROVIDER’S FURTHER OBLIGATIONS
   1. The SERVICE PROVIDER covenants with the CUSTOMER that the SERVICE PROVIDER shall:
      1. use all reasonable endeavours to secure the status of the SERVICE PROVIDER’s Scheme as a registered pension scheme under the Finance Act 2004 or any statutory modification or re-enactment of that Act;
      2. procure that the SERVICE PROVIDER’s Scheme is contracted-out on a salary-related basis using the reference scheme test;
      3. procure that the SERVICE PROVIDER’s Scheme is able to and shall accept a bulk past service transfer;
      4. procure that no amendments are made to the provisions of the SERVICE PROVIDER’s Scheme as certified by the Government Actuary’s Department, and in respect of such certification, a certificate was supplied in accordance with paragraph of this Schedule, prior to the date on which payment of Transfer Amount Two [\*\*\* and, where relevant, Top Up Two, if any, are \*\*\*] is made to the SERVICE PROVIDER’s Scheme under paragraph[s] [\*\*\* and respectively \*\*\*] of this Schedule; and
      5. procure that the benefits offered under the SERVICE PROVIDER’s Scheme for each Second Generation Fair Deal Employee in respect of service after the Service Commencement Date are Broadly Comparable.
   2. The SERVICE PROVIDER agrees to indemnify the CUSTOMER and the Crown against all liabilities, damages, losses, costs and expenses arising out of any claim by any Employee that the provision of (or failure to provide) early, normal, late or ill-health retirement, death or life assurance benefits for the period of employment after the Service Commencement Date, or the level of such benefit provided, constitutes a breach of his employment rights.
   3. The SERVICE PROVIDER will comply with any applicable obligations under section 258 of the Pensions Act 2004.
7. [REQUIRED TRANSFER AMOUNT TWO AND TOP UP TWO
   1. This paragraph 14 applies where the CUSTOMER has notified the SERVICE PROVIDER that it will pay any shortfall between Transfer Amount Two and the amount required by the trustees of the SERVICE PROVIDER’s Scheme to fund the Pension Service Credit in the SERVICE PROVIDER’s Scheme in respect of each Second Generation Fair Deal Employee who takes up Transfer Option Two.
   2. The SERVICE PROVIDER shall use all reasonable endeavours to procure that the SERVICE PROVIDER’s Actuary calculates Required Transfer Amount Two within three (3) months of the Transfer Option Deadline.
   3. The SERVICE PROVIDER shall use all reasonable endeavours to procure that the CUSTOMER’s Actuary is notified of Required Transfer Amount Two, and any appropriate underlying methodology, within three (3) months of the Transfer Option Deadline.
   4. The CUSTOMER shall procure that, within four (4) weeks of having been notified of Required Transfer Amount Two, the CUSTOMER’s Actuary verifies such calculation or sets out in writing to the SERVICE PROVIDER’s Actuary his reasons for not verifying such calculation.
   5. This paragraph 14.5 applies where the CUSTOMER’s Actuary sets out in writing his reasons for not verifying the calculation of Required Transfer Amount Two in accordance with paragraph 14.4 above. Where this paragraph 14.5 applies, the CUSTOMER and the SERVICE PROVIDER shall, as appropriate, procure that the CUSTOMER’s Actuary and the SERVICE PROVIDER’s Actuary work together to agree Required Transfer Amount Two within a period agreed to be reasonable by the CUSTOMER’s Actuary and the SERVICE PROVIDER’s Actuary.
   6. The CUSTOMER and the SERVICE PROVIDER, as appropriate, shall use all reasonable endeavours to procure that the CUSTOMER’s Actuary and the SERVICE PROVIDER’s Actuary act reasonably and cooperate with each other for the purposes of this paragraph 14.
   7. If the CUSTOMER’s Actuary and the SERVICE PROVIDER’s Actuary fail to agree Required Transfer Amount Two in accordance with paragraph 14.5 above, paragraph of this Schedule shall apply.
   8. Where relevant, as soon as reasonably possible after the calculation and verification or determination of Required Transfer Amount Two, as appropriate, Top Up Two (ignoring, for the purposes of this calculation, any timing adjustment relating to the period after the Payment Date) shall be calculated by the SERVICE PROVIDER’s Actuary and verified by the CUSTOMER’s Actuary, in accordance with the following formula:

A minus B as varied in accordance with C but subject to D, where:

A means Transfer Amount Two;

B means Required Transfer Amount Two (ignoring, for the purposes of this calculation, any timing adjustment relating to the period after the Service Commencement Date);

C means the timing adjustment contained in the SERVICE PROVIDER’s Actuary’s Letter for the period on and from the Service Commencement Date up to and including the Payment Date; and

D means that Top Up Two shall be deemed to be zero where such calculation produces a negative result.

* 1. Where relevant, the CUSTOMER shall pay Top Up Two (as adjusted by the timing adjustment set out in the SERVICE PROVIDER’s Actuary’s Letter for the period from the Payment Date through to the date on which payment is made), if any, to the SERVICE PROVIDER no later than five (5) Working Days from the date of the calculation and verification or, as appropriate, determination of Top Up Two.
  2. Where relevant, the SERVICE PROVIDER shall, immediately on receipt of Top Up Two, pay Top Up Two to the trustees of the SERVICE PROVIDER’s Scheme.]

PART D – DISPUTE RESOLUTION OF PENSIONS MATTERS

1. DISPUTE RESOLUTION
   1. In the event of dispute between, as appropriate, the [\*\*\* PCSPS Actuary \*\*\*], the CUSTOMER’s Actuary and/or the SERVICE PROVIDER’s Actuary which cannot be resolved within fourteen (14) Days of such dispute arising, either the CUSTOMER or the SERVICE PROVIDER may request that the matter is referred to an independent Actuary.
   2. If the parties fail to agree on the identity of the independent Actuary within a reasonable period of time, he shall be appointed by the President for the time being of the Institute of Actuaries, or such equivalent officer of any successor organisation, for definitive determination of the disputed matter.
   3. The independent Actuary shall determine the dispute by acting as an expert and not an arbitrator and his decision and directions shall be binding upon the CUSTOMER and the SERVICE PROVIDER.
   4. The charges and expenses incurred pursuant to this provision shall be paid one-half by the CUSTOMER and one-half by the SERVICE PROVIDER unless the independent Actuary determines otherwise.

PART E – PENSIONS ON TERMINATION OF THE CONTRACT

1. THE SERVICE PROVIDER’S OBLIGATIONS ON ANY FUTURE TRANSFER
   1. The SERVICE PROVIDER shall, and shall use all reasonable efforts to procure that the trustees of the SERVICE PROVIDER’s Scheme, do and/or provide all such acts and things as may, in the reasonable opinion of the CUSTOMER, be necessary or desirable to enable the CUSTOMER, and/or a Transferee Employer, to achieve the following objectives:
      1. to maintain ongoing pension accrual for any Employee whose employment is compulsorily transferred at the termination of the Ordered Software Application Solutions or any part of them in a pension arrangement where the benefits are Broadly Comparable (for the avoidance of doubt, in respect of a Transferring Pensionable Customer Employee, the measure is against the benefits that he was accruing in [\*\*\* PCSPS \*\*\*] immediately before the Service Commencement Date and, in respect of a Second Generation Fair Deal Employee, the measure is against the benefits that he was accruing in [\*\*\* PCSPS \*\*\*] immediately before the transfer of his employment to the Outgoing Service Provider);
      2. not to adversely affect pension rights accrued by any such Employee in the period ending on the date of the relevant future transfer;
      3. to comply with all applicable legislation, binding codes of practice and non-binding codes of practice issued by any statutory CUSTOMER which may be admissible as evidence of legislative compliance; and
      4. to ensure that each Employee whose employment is so compulsorily transferred is given the option to transfer fully funded rights from the SERVICE PROVIDER’s Scheme in respect of his pensionable service under the SERVICE PROVIDER’s Scheme (including, for the avoidance of doubt and where applicable, any rights transferred to the SERVICE PROVIDER’s Scheme from [\*\*\* PCSPS \*\*\*] and the Outgoing Service Provider’s Scheme under the provisions of this Schedule) to an occupational pension scheme sponsored by the Transferee Employer.

“Fully funded” means, as at the time of the future compulsory transfer of employment, an actuarial basis which is no less favourable than that applied in the calculation of, as appropriate, Transfer Amount One or, if greater, Required Transfer Amount One or Transfer Amount Two or, if greater, Required Transfer Amount Two as at the Service Commencement Date, according to, and calculated using the method and assumptions set out in, the [\*\*\* PCSPS Actuary’s Letter \*\*\*] or the SERVICE PROVIDER’s Actuary’s Letter, as appropriate.

* 1. Where any Employee’s employment is compulsorily terminated by the SERVICE PROVIDER for reasons of redundancy (whether compulsory or voluntary) the SERVICE PROVIDER shall at its own expense:
     1. procure that the trustees of the SERVICE PROVIDER’s Scheme pay out from the SERVICE PROVIDER’s Scheme an amount equivalent to any additional pension benefits (both in value and manner of payment) which would have been paid to the Employee from [\*\*\* PCSPS \*\*\*] had the Employee remained in service with the CUSTOMER and remained a member of [\*\*\* PCSPS \*\*\*], had [\*\*\* PCSPS \*\*\*] not changed and had the Employee been made redundant by the CUSTOMER at the date on which the SERVICE PROVIDER compulsorily terminates his employment;
     2. provide compensation to the Employee which is equivalent in terms of value and manner of payment to that payable under paragraph of this Schedule where the SERVICE PROVIDER is unable to procure the additional pension benefits from the SERVICE PROVIDER’s Scheme in accordance with paragraph of this Schedule; and
     3. procure the payment of any other benefit other than those referred to at paragraphs and that are not old age, invalidity or survivors’ benefits either through the SERVICE PROVIDER’s Scheme or, if that is not possible, by providing compensation, where the obligation to do so has transferred to the SERVICE PROVIDER under the Acquired Rights Directive and/or the Employment Regulations and/or in accordance with applicable statements of practice and/or guidance of the Government Actuary’s Department.
  2. This paragraph 16 shall only apply to the extent that the relevant benefit will not be provided under [\*\*\* PCSPS \*\*\*].

SCHEDULE 2-19

INSURANCES

1. **INTRODUCTION**
   1. This Schedule contains the list of insurances to be maintained by the SERVICE PROVIDER.
   2. The SERVICE PROVIDER shall:
      1. maintain these insurances with a reputable insurance company on terms that are as favourable to those generally available to a prudent service provider in respect of risks insured in the international insurance market; and
      2. not cancel these insurances or make any material change to them without the express written consent of the CUSTOMER.
   3. The SERVICE PROVIDER shall procure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as avoided in whole or part. The SERVICE PROVIDER shall use reasonable endeavours to notify the CUSTOMER (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any insurance, or any cover or claim under any insurance in whole or in part.
2. **LIST OF INSURANCE PROVISIONS**

| **Class** | **Minimum Sum Insured** |
| --- | --- |
| Public Liability | Five million pounds (£5,000,000) |
| Employers Liability | Five million pounds (£5,000,000) |
| Professional Indemnity | Five million pounds (£5,000,000) |
| Property Damage Insurance | Five million pounds (£5,000,000) |
| Product Liability | Sufficient to cover all potential liabilities in respect of Product Liability |
| Business Continuity | Sufficient to cover all potential liabilities in respect of Business Continuity |