THIS MODEL CONTRACT IS NOT SUITABLE FOR PROCURING OR REPLACING A MANAGED SERVICE. TUPE ON COMMENCEMENT AND EXPIRY/TERMINATION IS NOT COVERED IN THIS MODEL CONTRACT

SCHEDULE 2

MODEL CONTRACT

[INSERT NAME OF CUSTOMER]

- and -

[INSERT NAME OF CONTRACTOR]

CONTRACT
relating to

the provision of Commoditised IT Hardware and Software
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ANNEX A TO THE CONTRACT CLAUSES
CONTRACT SCHEDULES

2-1. Interpretations
2-2. The Ordered IT Products, Service Levels, Service Credits and Implementation Plan
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2-13. [*** Liquidated Damages ***]
2-14. BCDR Plan
2-15. Security Management Plan
2-16. Software and Software Licence Terms
2-17. Insurances
THIS CONTRACT is made on the [    ] day of [    ] 20[  ]

BETWEEN

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

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

WHEREAS

a) 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 CONTRACTOR, to provide IT products.

b) The CONTRACTOR undertook to provide the same on the terms set out in a framework agreement number [insert number – Tenderer must complete as per Annex 3 of the ITT] dated [insert date – Tenderer must complete as per Annex 3 of the ITT] (the “Framework Agreement”).

c) 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.

d) The AUTHORITY and the CONTRACTOR agree that public sector bodies within the UK may enter into contracts under the Framework Agreement.

e) 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 CONTRACTOR.

f) The CUSTOMER served an Order for the IT products on [*** insert date ***].

g) The CONTRACTOR confirmed its agreement to the terms of the Order and its acceptance of the Order and hereby duly executes this Contract.

h) 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

1.1 As used in this Contract:

1.1.1 the terms and expressions set out in Schedule 2-1 shall have the meanings ascribed therein;

1.1.2 the masculine includes the feminine and the neuter;
1.1.3 the singular includes the plural and vice versa;
1.1.4 the Recitals shall form part of and be incorporated into this Contract; and
1.1.5 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”.

1.2 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.

1.3 A reference to any document other than as specified in Clause 1.2 shall be construed as a reference to the document as at the Effective Date.

1.4 Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.

1.5 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.

1.6 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.

1.7 Without prejudice to Clause 3.2, 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:

1.7.1 the Clauses, including Annex A thereto;
1.7.2 Schedule 2-1;
1.7.3 the remaining Schedules excluding Schedule 2-16; and
1.7.4 Schedule 2-16.

2. IT PRODUCTS

2.1 This Contract governs the overall relationship of the CONTRACTOR and the CUSTOMER with respect to the provision of the Ordered IT Products. The CUSTOMER has ordered the Ordered IT Products specified in Schedule 2-2 and the CONTRACTOR shall provide those Ordered IT Products:

2.1.1 in accordance with the provisions of this Contract if those Ordered IT Products are to be sold by the CONTRACTOR and purchased by the CUSTOMER; and
2.1.2 in accordance with the provisions of this Contract and any other terms and conditions as are agreed between the CUSTOMER and the CONTRACTOR and any third party (if any) if the Ordered Goods are to be leased, loaned or hired to the CUSTOMER. Where the CUSTOMER is entering into any other terms and conditions with any such third party, the CUSTOMER shall inform the CONTRACTOR of the terms and conditions of any such third party leasing, loan or hire purchase contract that it shall be expected to comply with and the CONTRACTOR shall ensure that no act or omission by itself, any CONTRACTOR Personnel or its Sub-Contractors in anyway invalidates or affects (including causing or likely to cause the CUSTOMER to breach) such terms and conditions.

2.2 Nothing in this Contract shall create an exclusive relationship between the CONTRACTOR and the CUSTOMER for the provision of any or all IT Products.

2.3 The CONTRACTOR shall provide the Ordered IT Products in accordance with:

2.3.1 any agreed timetable and Implementation Plan; and

2.3.2 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 2-13. ***] Any failure to meet any Service Levels shall entitle the CUSTOMER to Service Credits calculated in accordance with the provisions of Schedule 2-2.

2.4 In the provision of the Ordered IT Products, should the CONTRACTOR become aware of any breach in its provision or performance of the Ordered IT Products, the CONTRACTOR 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.

Ordered Goods

2.5 The CONTRACTOR shall not replace any parts or components of the Ordered Goods used for the provision of the Ordered IT Products 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.

2.6 Where there is fault in any Ordered Goods which cannot be repaired, the CONTRACTOR shall ensure and procure that any data (including CUSTOMER Data) residing in any Ordered Goods is removed prior to such Ordered Goods being returned to any manufacturer or other third party for disposal.

2.7 The CONTRACTOR hereby grants the CUSTOMER, its agents and employees an irrevocable licence at any time (but where practicable on reasonable notice and in normal working hours) to enter any CONTRACTOR premises where any Ordered Goods owned by the CUSTOMER are kept to inspect or remove them. The CONTRACTOR shall store such Ordered Goods separately from all other goods of
the CONTRACTOR or any third party and in such a way that they remain readily identifiable as the CUSTOMER’s property. The CONTRACTOR shall ensure and procure that it obtains equivalent rights of inspection and removal where any Ordered Goods owned by the CUSTOMER are kept at third party (including any Sub-Contractor) premises and that such Ordered Goods are kept separately from all other goods of that third party (including any Sub-Contractor) and in such a way that they remain readily identifiable as the CUSTOMER’s property.

2.8 If the CUSTOMER determines in its sole discretion that any of the termination events specified in Clause 10 (including the Termination Events) have occurred or are likely to occur, the CUSTOMER may, either itself or via its agent, enter any premises of the CONTRACTOR or any third party (including any Sub-Contractor) where Ordered Goods owned by the CUSTOMER are kept to remove such Ordered Goods.

Due Diligence

2.9 The CONTRACTOR acknowledges that it has:

2.9.1 made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the CUSTOMER;

2.9.2 raised all relevant due diligence questions with the CUSTOMER before the Effective Date; and

2.9.3 entered into this Contract in reliance on its own due diligence alone.

2.10 The CONTRACTOR acknowledges that it has inspected the Operating Environment and has advised the CUSTOMER of any aspect of the Operating Environment that is not suitable for the provision of the Ordered IT Products and that the specified actions to remedy the unsuitable aspects of the Operating Environment, together with a timetable for and the costs of those actions, have been specified in the relevant parts of this Contract.

2.11 If the CONTRACTOR has either failed to inspect the Operating Environment or failed to notify the CUSTOMER of any required remedial actions in accordance with Clause 2.10 then the CONTRACTOR shall not be entitled to recover any additional costs or charges from the CUSTOMER relating to any unsuitable aspects of the Operating Environment except in respect of any latent structural defect in the CUSTOMER Premises. The onus shall be on the CONTRACTOR to prove to the CUSTOMER that any work to the CUSTOMER Premises is required in respect of a latent structural defect and that the additional costs or charges are reasonable and necessary. The CONTRACTOR shall not incur such additional costs or charges without obtaining the CUSTOMER’s prior written consent.

2.12 Any disputes relating to due diligence shall be resolved in accordance with Clause 21.

3. STANDARDS AND REGULATIONS

3.1 The CONTRACTOR shall provide the Ordered IT Products and meet its responsibilities and obligations hereunder in accordance with the Standards and
3.2 The CONTRACTOR shall discuss with the CUSTOMER any conflict that the CONTRACTOR 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.

4. DELIVERY, ACCEPTANCE AND TITLE AND RISK

4.1 Delivery of Ordered Goods

4.1.1 The CONTRACTOR shall deliver the Ordered Goods and provide the Ordered Goods at the location(s) at the time(s) and date(s) and to the CUSTOMER’s delivery requirements as specified in the Order.

4.1.2 The point of delivery of the Ordered Goods shall be when an authorised agent of the CUSTOMER gives written acknowledgement that the Ordered Goods have been removed from the transporting vehicle and deposited at the CUSTOMER’s delivery address as specified in the Order. Except where otherwise specified in the Order, delivery shall include the unloading, stacking and/or installation of the Ordered Goods by the CONTRACTOR Personnel, Sub-Contractors, suppliers or carriers at such place as the CUSTOMER or duly authorised person shall reasonably direct, and they shall at all times comply with the reasonable requirements of the CUSTOMER’s security procedures.

4.1.3 Access to the CUSTOMER Premises and any labour and equipment that may be provided by the CUSTOMER in connection with delivery of the Ordered Goods shall be provided without acceptance by the CUSTOMER of any liability whatsoever and the CONTRACTOR shall indemnify the CUSTOMER against each and every action, proceeding, liability, cost, claim loss expense (including reasonable legal fees and disbursements on a solicitor and client basis) and demands which the CUSTOMER may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the CONTRACTOR Personnel, Sub-Contractors, suppliers or carriers.

4.1.4 The CUSTOMER shall be under no obligation to accept or pay for any Ordered Goods delivered until the date of delivery specified in the Order.

4.2 Acceptance

4.2.1 The Acceptance Procedures for the Ordered IT Products are set out in Schedule 2-5.

4.3 Title and Risk

4.3.1 The ownership and passing of title and risk from one party to another is specified in Schedule 2-12.
5. CHARGES

5.1 Charges

5.1.1 The Charges for the Ordered IT Products (including any delivery charges) are set out in Schedule 2-3. The CUSTOMER shall not be liable to pay to the CONTRACTOR any monies towards the management charge which is payable by the CONTRACTOR to the AUTHORITY under the Framework Agreement.

5.1.2 In consideration of the CONTRACTOR’s provision of the Ordered IT Products 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 CONTRACTOR. To the extent that any Ordered IT Product under this Contract are interdependent on any other Ordered IT Product(s), then (unless agreed otherwise in the Payment Profile) no payment shall be due in respect of any such Ordered IT Product until they are all agreed to be ready for service following passing of the applicable Acceptance Procedures.

5.1.3 The CONTRACTOR 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.

5.1.4 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.

5.1.5 The CONTRACTOR 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 CONTRACTOR’s failure to account for or to pay any Value Added Tax relating to payments made to the CONTRACTOR under this Contract. Any amounts due under this Clause 5.1.5 shall be paid in cleared funds by the CONTRACTOR 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.

5.1.6 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.

5.1.7 The CONTRACTOR shall accept payment electronically via BACS.

5.1.8 The CONTRACTOR shall accept the Government Procurement Card as a means of payment for the Ordered IT Products where such card is agreed with the CUSTOMER to be a suitable means of payment. The CONTRACTOR shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the CUSTOMER.

5.1.9 If at any time during the Term the CONTRACTOR reduces its charges for
any IT Products offered in a catalogue (including the Catalogue) which is provided under the Framework Agreement in accordance with the terms of the Framework Agreement, the CONTRACTOR shall immediately reduce the Charges for such IT Products (where such IT Products form part of the Ordered IT Products) under this Contract by the same amount.

5.2 Euro

5.2.1 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 CONTRACTOR, be entitled to require the CONTRACTOR at no additional charge to convert the Charges from Sterling into Euros (in accordance with EC Regulation number 1103/97). The CONTRACTOR shall thereafter submit valid invoices denominated in Euros.

5.3 Charges Variation

5.3.1 The Charges may only be varied in accordance with the provisions of the Charges Variation Procedure.

6. CONTRACT MANAGEMENT AND COOPERATION

6.1 The CONTRACTOR and the CUSTOMER shall comply with their respective contract management obligations set out in Schedule 2-6.

6.2 The CONTRACTOR shall ensure that release of any new Software, new releases to the Software and upgrades to Software:

6.2.1 comply with the interface requirements in this Contract;

6.2.2 are notified to the CUSTOMER [*** three (3) ***] months before the release of any new Software or upgrade to Software; and

6.2.3 are co-ordinated with the CUSTOMER to ensure it minimises any disruption to the Ordered IT Products, the ICT Environment or the CUSTOMER's operations.

7. ALTERNATIVE CLAUSES AND ADDITIONAL CLAUSES

7.1 The Alternative Clauses and/or Additional Clauses specified in Annex A to the Clauses shall apply.

8. AMENDMENTS TO THIS CONTRACT

8.1 No amendment to the provisions of this Contract, other than a variation of the Charges in accordance with the Charges Variation Procedure or a variation of any Sub-Contractors in accordance with Clause 30.5, shall be effective unless made in accordance with the Contract Change Procedure specified in Schedule 2-7.

9. COMMUNICATIONS
9.1 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.

9.2 Except as otherwise expressly provided, any notice or other communication whatsoever which either the CUSTOMER or the CONTRACTOR 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 9.3. 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.

9.3 For the purposes of Clause 9.2 the address of each party shall be:

For the CUSTOMER:

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

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

For the CONTRACTOR:

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

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

10. TERM AND TERMINATION

10.1 This Contract shall take effect on the Effective Date and shall expire on:

10.1.1 the date specified in the Order; or

10.1.2 five (5) years after the Effective Date,

whichever is the earlier, unless terminated earlier pursuant to this Clause 10.

10.2 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.

10.3 Termination Events

10.3.1 A change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the CONTRACTOR or its Parent Company where the proposed new owner has:

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

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

10.3.1.3 failed to comply with any obligations relating to the payment of any taxes or social security contributions; or
10.3.1.4 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

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

10.3.2 A change of control, as defined in Clause 10.3.1 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 IT Products by the new owner.

10.3.3 Any of the events listed in Clauses 10.3.1.1 to 10.3.1.5 (inclusive) occur in relation to or in respect of the CONTRACTOR itself, or if the CUSTOMER has reasonable grounds to object to the CONTRACTOR arising from security concerns in respect of the CONTRACTOR.

10.3.4 The CONTRACTOR:

10.3.4.1 being an individual, or where the CONTRACTOR 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

10.3.4.2 being a company, passes a resolution, or the Court makes an order that the CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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
CONTRACTOR 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.

10.3.5 Where the circumstances detailed in Clause 17.19.1, Clause 29.2 or paragraph 2.7.2 of Schedule 2-5 arise.

10.3.6 Failure to remedy a breach of warranties in accordance with the provisions of Clause 12.2.

10.4 For the purposes of Clause 10.3.1, the following shall be disregarded:

10.4.1 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

10.4.2 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.

10.5 Without prejudice to the provisions of Clause 10.2 or 10.6, the CUSTOMER may at any time by notice in writing terminate this Contract or any part of the Ordered IT Products forthwith if the CONTRACTOR is in material Default of any obligation under this Contract and:

10.5.1 the material Default is capable of remedy and the CONTRACTOR shall have failed to remedy the material Default within thirty (30) Days of written notice to the CONTRACTOR specifying the material Default and requiring its remedy; or

10.5.2 the material Default is not capable of remedy.

10.6 Without prejudice to the provisions of Clause 10.2 or 10.5, where the CUSTOMER considers that the CONTRACTOR has committed a Persistent Breach in relation to this Contract or any part thereof (including any part of the Ordered IT Products), the CUSTOMER shall be entitled to serve a notice on the CONTRACTOR:

10.6.1 specifying that it is a formal warning notice;

10.6.2 giving reasonable details of the breach; and

10.6.3 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 IT Products affected by such breach.

10.7 If, thirty (30) Days after service of a formal warning notice as described in Clause 10.6, the CONTRACTOR has failed to demonstrate to the satisfaction of the CUSTOMER that the breach specified has not continued or recurred and that the CONTRACTOR 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 10.5.2.

10.8 The CONTRACTOR shall promptly notify the CUSTOMER in writing on each occasion of the occurrence of any of the events specified in Clause 10.3.1.

10.9 The CUSTOMER shall only be permitted to exercise its rights pursuant to Clause 10.3.1 for six (6) months after service of a notice by the CONTRACTOR pursuant to Clause 10.8 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.

10.10 The termination (howsoever arising) or expiry of this Contract pursuant to this Clause 10 shall be without prejudice to any rights of either the CUSTOMER or the CONTRACTOR that shall have accrued before the date of such termination or expiry.

10.11 Save as aforesaid, the CONTRACTOR shall not be entitled to any payment from the CUSTOMER after the termination (howsoever arising) or expiry of this Contract.

10.12 The CONTRACTOR shall not be entitled to suspend the supply of the Ordered IT Products where it is in dispute with the CUSTOMER and shall instead follow the procedure set out in Clause 21.

11. CONSEQUENCES OF TERMINATION AND EXPIRY

11.1 Notwithstanding the service of a notice to terminate this Contract or any part thereof, the CONTRACTOR shall continue to provide the Ordered IT Products 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 11.

11.2 Within ten (10) Working Days of the earlier of the date of expiry or termination (howsoever arising) of this Contract, the CONTRACTOR shall return to the CUSTOMER:

11.2.1 any data (including CUSTOMER Data) and CUSTOMER Confidential Information in the CONTRACTOR’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 CONTRACTOR’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 11.3, or such period as is necessary for such compliance;

11.2.2 all Ordered Goods owned by the CUSTOMER in the CONTRACTOR’s or any third party’s (including Sub-Contractors) possession and/or or control; and

11.2.3 any sums prepaid in respect of Ordered IT Products not provided by the date of expiry or termination (howsoever arising).
11.3 The CUSTOMER shall for a period of twelve (12) months following expiry or termination (howsoever arising) of this Contract be entitled to require access to data or information arising from the Ordered IT Products from the CONTRACTOR.

11.4 The provisions of:

11.4.1 Clauses 1, 11 to 21 (inclusive), 23, 25, 28, 29, 31, 33, 34, 36 to 39 (inclusive);

11.4.2 Schedules 2-1 and 2-9; and

11.4.3 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.

12. WARRANTIES AND REPRESENTATIONS

12.1 The CONTRACTOR warrants and represents that:

12.1.1 it has full capacity and authority and all necessary consents, licences and permissions (statutory, regulatory, contractual or otherwise) (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 CONTRACTOR;

12.1.2 this Contract shall be performed in compliance with all Laws (as amended from time to time) and all applicable standards (including ISO and BS standards (or equivalent));

12.1.3 it shall perform its obligations hereunder (including the provision of the Ordered IT Products) by using appropriately experienced, qualified and trained CONTRACTOR Personnel and Sub-Contractors;

12.1.4 in performing its obligations under this Contract, all Software used by or on behalf of the CONTRACTOR will be currently supported versions of that Software and perform in all material respects in accordance with its specification;

12.1.5 it shall discharge its obligations hereunder (including the provision of the Ordered IT Products) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures;

12.1.6 for the duration of the Term, all CONTRACTOR Personnel used to provide the Ordered IT Products will be vetted in accordance with Good Industry Practice, the Security Policy and the Standards and Regulations;

12.1.7 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 IT Products by the CUSTOMER;
12.1.8 it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the:

12.1.8.1 introduction, creation or propagation of any disruptive element (including any Malicious Software); and

12.1.8.2 unauthorised use of and modification or access to (or into),

the Ordered IT Products, systems, data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the CUSTOMER;

12.1.9 it shall take all measures to avoid any and all data loss and data corruption during the provision of the Ordered IT Products in accordance with Good Industry Practice;

12.1.10 it shall take all measures to avoid the failure or reduced performance (in whole or in part) of the Ordered IT Products;

12.1.11 the Ordered IT Products are and will continue to be during the Term:

12.1.11.1 of satisfactory quality;

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

12.1.11.3 free from material programming errors and material defects in design, manufacture or materials throughout the applicable warranty period;

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

12.1.11.5 consistent with any requirements set out or referred to in this Contract relating to quality and security and the CONTRACTOR shall ensure that all aspects of the Ordered IT Products are the subject of quality management systems and risk mitigation measures.

12.1.12 the Ordered IT Products shall not cause any disruption to the public switched telecommunications network to the extent that the Ordered IT Products are delivered thereto or any components thereof are interconnected thereto; and

12.1.13 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:

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

12.2 The CONTRACTOR acknowledges that any breach of the warranties in Clause 12.1 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 12.1 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 10.3.6.

12.3 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.

12.4 The CUSTOMER and the CONTRACTOR 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.

12.5 The fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the CUSTOMER may have in respect of breach of that provision by the CONTRACTOR.

13. LIMITATION OF LIABILITY

13.1 Neither the CUSTOMER nor the CONTRACTOR excludes or limits liability to the other for:

13.1.1 death or personal injury caused as a result of its negligence;


13.1.3 fraud or fraudulent misrepresentation; or

13.1.4 any other liability which cannot be excluded or limited by Law.

13.2 Nothing in this Clause 13 shall be taken as limiting the liability of the CONTRACTOR in respect of Clauses 5.1.5 and 15 to 18 (inclusive).

13.3 In respect of any claims of liability arising out of the wilful default (including wilful Default) of the CONTRACTOR, its Sub-Contractors or the CONTRACTOR Personnel, the CONTRACTOR 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.

13.4 Subject always to the provisions of Clauses 13.1, 13.2 and 13.3, the aggregate liability of either the CUSTOMER or the CONTRACTOR to the other for each year of this Contract under or in relation to this Contract:

13.4.1 for all direct loss of or damage to the tangible property of the other shall in no Event exceed five (5) million pounds; and

13.4.2 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 CONTRACTOR 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).

13.5 Subject always to the provisions of Clauses 13.1, 13.2 and 13.3, in no event shall either the CUSTOMER or the CONTRACTOR be liable to the other for:

13.5.1 indirect, incidental, punitive or consequential loss or damage; and/or
13.5.2 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.

13.6 Subject always to the provisions of Clauses 13.1, 13.2 13.3 and 13.4, the provisions of Clause 13.5 shall not be taken as limiting the right of either the CUSTOMER or the CONTRACTOR to claim from the other for:

13.6.1 additional operational and administrative costs and expenses;
13.6.2 any costs or expenses rendered nugatory; and/or
13.6.3 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.

13.7 For the purposes of this Clause 13, “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.

13.8 The CUSTOMER and the CONTRACTOR expressly agree that should any limitation or provision contained in this Clause 13 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.

14. CUSTOMER DATA

14.1 The CONTRACTOR shall not delete or remove any proprietary notices contained within or relating to the CUSTOMER Data.

14.2 The CONTRACTOR shall not store, copy, disclose, or use the CUSTOMER Data except as necessary for the performance by the CONTRACTOR of its obligations under this Contract or as otherwise expressly authorised in writing by the CUSTOMER.

14.3 To the extent that CUSTOMER Data is held and/or processed by the
CONTRACTOR, the CONTRACTOR shall supply that CUSTOMER Data to the CUSTOMER as requested by the CUSTOMER in the format specified in Schedule 2-6.

14.4 The CONTRACTOR shall take responsibility for preserving the integrity of CUSTOMER Data and preventing the corruption or loss of CUSTOMER Data.

14.5 The CONTRACTOR 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 CONTRACTOR 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.

14.6 The CONTRACTOR shall ensure that any system on which the CONTRACTOR holds any CUSTOMER Data, including back-up data, is a secure system that complies with the Security Policy.

14.7 If the CUSTOMER Data is corrupted, lost or sufficiently degraded as a result of the CONTRACTOR's Default so as to be unusable, the CUSTOMER may:

14.7.1 require the CONTRACTOR (at the CONTRACTOR'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 CONTRACTOR shall do so as soon as practicable but not later than the period specified in Schedule 2-6; and/or

14.7.2 itself restore or procure the restoration of CUSTOMER Data, and shall be repaid by the CONTRACTOR any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the BCDR Plan.

14.8 If at any time the CONTRACTOR 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 CONTRACTOR shall notify the CUSTOMER immediately and inform the CUSTOMER of the remedial action the CONTRACTOR proposes to take.

15. PROTECTION OF PERSONAL DATA

15.1 With respect to the parties' rights and obligations under this Contract, the parties agree that the CUSTOMER is the Data Controller and that the CONTRACTOR is the Data Processor.

15.2 The CONTRACTOR shall:

15.2.1 Process the Personal Data only in accordance with instructions from the CUSTOMER (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the CUSTOMER to the CONTRACTOR during the Term);

15.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Ordered IT Products or as is required by Law or any Regulatory Body;
15.2.3 implement appropriate technical and organisational measures to protect the
Personal Data against unauthorised or unlawful processing and against
accidental loss, destruction, damage, alteration or disclosure. These
measures shall be appropriate to the harm 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;

15.2.4 take reasonable steps to ensure the reliability of any CONTRACTOR
Personnel who have access to the Personal Data;

15.2.5 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 IT Products;

15.2.6 ensure that all CONTRACTOR 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 15;

15.2.7 ensure that none of the CONTRACTOR Personnel publish, disclose or
divulge any of the Personal Data to any third party unless directed in
writing to do so by the CUSTOMER;

15.2.8 notify the CUSTOMER (within five (5) Working Days) if it receives:

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

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

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

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

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

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

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

15.2.10 permit the CUSTOMER or the [*** insert representative ***] (subject to
reasonable and appropriate confidentiality undertakings), to inspect and
audit the CONTRACTOR'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 CONTRACTOR is in full compliance with its obligations under this Contract;

15.2.11 provide a written description of the technical and organisational methods employed by the CONTRACTOR for processing Personal Data (within the timescales required by the CUSTOMER); and

15.2.12 not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Effective Date, the CONTRACTOR (or any Sub-Contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area, the following provisions shall apply:

15.2.12.1 the CONTRACTOR shall submit an Contract Change Note to the CUSTOMER which shall be dealt with in accordance with the Contract Change Procedure and Clauses 15.2.12.2 to 15.2.12.4 below;

15.2.12.2 the CONTRACTOR 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 CONTRACTOR 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;

15.2.12.3 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

15.2.12.4 the CONTRACTOR 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 CONTRACTOR 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).

15.3 The CONTRACTOR 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.

16. SECURITY REQUIREMENTS AND STAFF VETTING

16.1 The CONTRACTOR shall comply, and shall procure the compliance of the CONTRACTOR Personnel, with the Security Policy and the Security Management Plan and the CONTRACTOR shall ensure that the Security Management Plan produced by the CONTRACTOR fully complies with the Security Policy.

16.2 The CUSTOMER shall notify the CONTRACTOR of any changes or proposed changes to the Security Policy.

16.3 If the CONTRACTOR believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Ordered IT Products it may submit a Contract Change Note. In doing so, the CONTRACTOR 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.

16.4 Until and/or unless a change to the Charges is agreed by the CUSTOMER pursuant to Clause 16.3 the CONTRACTOR shall continue to provide the Ordered IT Products in accordance with its existing obligations.

16.5 The CONTRACTOR 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).

16.6 Notwithstanding Clause 16.5, if Malicious Software is found, the parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of CUSTOMER Data, assist each other to mitigate any losses and to restore the Ordered IT Products to their desired operating efficiency.
16.7 Any cost arising out of the actions of the parties taken in compliance with the provisions of Clause 16.6 shall be borne by the parties as follows:

16.7.1 by the CONTRACTOR where the Malicious Software originates from the CONTRACTOR Software, the Third Party Software supplied by the CONTRACTOR (except where the CUSTOMER has waived the obligation set out in Clause 16.5) or the CUSTOMER Data (whilst the CUSTOMER Data was under the control of the CONTRACTOR) unless the CONTRACTOR can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the CUSTOMER when provided to the CONTRACTOR; and

16.7.2 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 16.5) or the CUSTOMER Data (whilst the CUSTOMER Data was under the control of the CUSTOMER).

16.8 The CONTRACTOR shall comply with the Staff Vetting Procedures in respect of all CONTRACTOR Personnel employed or engaged in the provision of the Ordered IT Products. The CONTRACTOR confirms that all CONTRACTOR Personnel employed or engaged by the CONTRACTOR at the Effective Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

16.9 The CONTRACTOR shall provide training on a continuing basis for all CONTRACTOR Personnel employed or engaged in the provision of the Ordered IT Products in compliance with the Security Policy and Security Management Plan.

17. INTELLECTUAL PROPERTY RIGHTS AND INDEMNITY

17.1 Save as granted under this Contract, neither the CUSTOMER nor the CONTRACTOR shall acquire any right, title or interest in the other’s Pre-Existing Intellectual Property Rights. The CONTRACTOR 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.

17.2 The CONTRACTOR 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 CONTRACTOR under this Contract.

17.3 The CUSTOMER acknowledges that the Open Source Ordered Software is subject to the open source licensing terms set out in Schedule 2-16 and that the Intellectual Property Rights in the Open Source Ordered Software are owned by a variety of third parties. The CONTRACTOR shall not do or allow to be done any act or omission which would cause the licence terms relating to the Open Source Ordered Software to be breached.

17.4 The CONTRACTOR 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
17.5 The CONTRACTOR:

17.5.1 hereby grants to the CUSTOMER a licence to use the CONTRACTOR Software on its standard licence terms (set out in Annex A to Schedule 2-16);

17.5.2 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 2-16); and

17.5.3 hereby grants to the CUSTOMER a non-exclusive licence to copy the descriptions of the Ordered IT Products, 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 17.5.

17.6 Where any Third Party Software is being licensed to the CUSTOMER:

17.6.1 the CONTRACTOR shall use its reasonable endeavours to ensure that such Third Party Software is sub-licensed to the CUSTOMER by the CONTRACTOR rather than being licensed to the CUSTOMER directly by the Third Party Software owner; and

17.6.2 the CUSTOMER shall not, by virtue of the Third Party Software owner’s standard licence terms (or otherwise) be required to pay charges directly to the Third Party Software owner or any other third party. Where Third Party Software licence terms require payment by the CUSTOMER to the Third Party Software owner or any other third party, the CONTRACTOR shall indemnify (and keep indemnified) the CUSTOMER for all such charges and any associated taxes payable.

17.7 Where the CONTRACTOR grants or procures a licence to use Intellectual Property Rights under or in accordance with this Contract, the CONTRACTOR shall:

17.7.1 ensure that such licence is (a) assignable to all permitted assignees under this Contract; (b) sub- licensable to all users envisaged by this Contract (including replacement contractors on the expiry or termination (howsoever arising) of this Contract); (c) fully transferable (as between CUSTOMER equipment and CUSTOMER users, as the case may be); and (d) subject to Clause 17.7.2, without additional charge to the CUSTOMER;

17.7.2 where charges are payable (“Additional Charges”) for assignment, sublicensing or transfer of such licence, only be permitted to pass on the Additional Charges to the CUSTOMER where the CONTRACTOR has provided written notification of such Additional Charges to the CUSTOMER prior to such licence being entered into and the CUSTOMER has consented in writing to pay such Additional Charges;

17.7.3 where the CUSTOMER is obliged to pay the Additional Charges and the CUSTOMER did not provide its consent to them in accordance with Clause
17.7.2, indemnify (and keep indemnified) the CUSTOMER for all such charges and associated taxes payable.

17.8 If the CONTRACTOR cannot obtain for the CUSTOMER the rights set out in Clause 17.7.1, the CONTRACTOR shall, prior to such licence being entered into, consult with the CUSTOMER on whether the rights that can be obtained are nevertheless acceptable to the CUSTOMER or whether the CONTRACTOR should seek to use an alternative provider.

17.9 To the extent that the CONTRACTOR 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 IT Products (“Materials”) it shall provide copies of all Materials to the CUSTOMER promptly and the CONTRACTOR 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.

17.10 The CONTRACTOR shall ensure and procure that the availability, provision and use of the Catalogue and Ordered IT Products and the performance of the CONTRACTOR’s responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.

17.11 The CONTRACTOR 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:

17.11.1 availability, provision or use of the Catalogue and/or Ordered IT Products (or any parts thereof); and

17.11.2 performance of the CONTRACTOR’s responsibilities and obligations hereunder.

17.12 The CONTRACTOR shall promptly notify the CUSTOMER if any claim or demand is made or action brought against the CONTRACTOR for infringement or alleged infringement of any Intellectual Property Right that may affect the availability, provision or use of the Catalogue and/or Ordered IT Products (or any parts thereof) and/or the performance of the CONTRACTOR’s responsibilities and obligations hereunder.

17.13 The CUSTOMER shall promptly notify the CONTRACTOR if any claim or demand is made or action brought against the CUSTOMER to which Clause 17.11 may apply. The CONTRACTOR 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 CONTRACTOR exclusive control of any such litigation and such negotiations.

17.14 The CUSTOMER shall at the request of the CONTRACTOR afford to the CONTRACTOR all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the CUSTOMER to which Clause 17.11
may apply or any claim or demand made or action brought against the CONTRACTOR to which Clause 17.12 may apply. The CONTRACTOR shall reimburse the CUSTOMER for all costs and expenses (including legal costs and disbursements on a solicitor and client basis) incurred in so doing.

17.15 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 17.11 may apply or any claim or demand made or action brought against the CONTRACTOR to which Clause 17.12 may apply.

17.16 If a claim or demand is made or action brought to which Clause 17.11, 17.12 and/or 17.13 may apply, or in the reasonable opinion of the CONTRACTOR is likely to be made or brought, the CONTRACTOR may at its own expense and within a reasonable time either:

17.16.1 modify any or all of the affected Catalogue and/or Ordered IT Products without reducing the performance and functionality of the same, or substitute alternative goods or goods and services of equivalent performance and functionality for any or all of the affected Catalogue and/or Ordered IT Products, so as to avoid the infringement or the alleged infringement, provided that:

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

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

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

17.16.2 procure a licence to use the Catalogue and/or Ordered IT Products on terms that are reasonably acceptable to the CUSTOMER; and

17.16.3 in relation to the performance of the CONTRACTOR’s responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations.

17.17 The provisions of Clauses 17.11 and 17.16 shall not apply insofar as any such claim or demand or action is in respect of any:

17.17.1 use by the CUSTOMER of the Catalogue and/or Ordered IT Products in combination with any item, good or service not supplied or approved by the CONTRACTOR (or its Sub-Contractors) where such use of the Ordered IT Products directly gives rise to the claim, demand or action; or

17.17.2 modification carried out by or on behalf of the CUSTOMER to the Catalogue and/or any Ordered IT Products provided under this Contract if such modification is not authorised by the CONTRACTOR (or its Sub-Contractors) in writing; or
17.17.3 use by the CUSTOMER of the Catalogue and/or Ordered IT Products in a manner not reasonably to be inferred from the specification or requirements of the CUSTOMER.

17.18 In the event that the CONTRACTOR has availed itself of its rights to modify the Catalogue and/or Ordered IT Products or to supply substitute goods or goods and services pursuant to Clause 17.16.1 or to procure a licence under Clause 17.16.2 and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, then the CONTRACTOR shall have no further liability in respect of the said claim, demand or action.

17.19 In the event that a modification or substitution in accordance with Clause 17.16.1 above is not possible so as to avoid the infringement, or the CONTRACTOR has been unable to procure a licence in accordance with Clause 17.16.2:

17.19.1 the CUSTOMER shall be entitled to terminate this Contract pursuant to Clause 10.3.5; and

17.19.2 the CONTRACTOR shall be liable for the value of the additional costs incurred in implementing and maintaining replacement goods or goods and services.

17.20 Clauses 17.11 and 17.16 set out the entire financial liability of the CONTRACTOR with regard to the infringement of any Intellectual Property Right by the availability, provision or use of the Catalogue and/or Ordered IT Products (or any parts thereof) and/or the performance of the CONTRACTOR’s responsibilities and obligations hereunder. This shall not affect the CONTRACTOR’s financial liability for other Defaults or causes of action that may arise hereunder.

17.21 The CUSTOMER warrants that the CONTRACTOR’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 CONTRACTOR to infringe any third party’s Intellectual Property Rights in such item.

18. CONFIDENTIALITY

18.1 Except to the extent set out in this Clause 18 or where disclosure is expressly permitted elsewhere in this Contract, each party shall:

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

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

18.2 Clause 18.1 shall not apply to the extent that:

18.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 19;

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

18.2.3 such information was obtained from a third party without obligation of confidentiality;

18.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

18.2.5 it is independently developed without access to the other party's Confidential Information.

18.3 The CONTRACTOR may only disclose the CUSTOMER Confidential Information to the CONTRACTOR Personnel who are directly involved in the provision of the Ordered IT Products and who need to know the information, and shall ensure that such CONTRACTOR Personnel are aware of and shall comply with these obligations as to confidentiality.

18.4 The CONTRACTOR shall not, and shall procure that the CONTRACTOR Personnel do not, use any of the CUSTOMER Confidential Information otherwise than for the purposes of this Contract.

18.5 The CONTRACTOR may only disclose the CUSTOMER Confidential Information to the CONTRACTOR Personnel and who need to know the information, and shall ensure that such CONTRACTOR 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 CONTRACTOR Personnel causes or contributes (or could cause or contribute) to the CONTRACTOR breaching its obligations as to confidentiality under or in connection with this Contract, the CONTRACTOR 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 CONTRACTOR Personnel, the CONTRACTOR 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 CONTRACTOR is taking appropriate steps to comply with this Clause 18, including copies of any written communications to and/or from CONTRACTOR Personnel and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with CONTRACTOR Personnel in connection with obligations as to confidentiality.

18.6 At the written request of the CUSTOMER, the CONTRACTOR shall procure that those members of the CONTRACTOR Personnel identified in the CUSTOMER’s notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.

18.7 Nothing in this Contract shall prevent the CUSTOMER from disclosing the CONTRACTOR Confidential Information:

18.7.1 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;

18.7.2 to any consultant, contractor or other person engaged by the CUSTOMER or any person conducting an Office of Government Commerce gateway review;

18.7.3 for the purpose of the examination and certification of the CUSTOMER's accounts; or

18.7.4 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.

18.8 The CUSTOMER shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the CONTRACTOR Confidential Information is disclosed pursuant to Clause 18.7 is made aware of the CUSTOMER's obligations of confidentiality.

18.9 Nothing in this Clause 18 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.

18.10 Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information, the CUSTOMER and the CONTRACTOR acknowledge that any Confidential Information originating from:

18.10.1 the CUSTOMER, its employees, servants or agents is the property of the CUSTOMER; and

18.10.2 the CONTRACTOR, its servants, agents or the CONTRACTOR Personnel is the property of the CONTRACTOR.

19. FREEDOM OF INFORMATION

19.1 The CONTRACTOR 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.

19.2 The CONTRACTOR shall and shall procure that its Sub-Contractors shall:

19.2.1 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;

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

19.2.3 provide all necessary assistance as reasonably requested by the CUSTOMER to enable the CUSTOMER to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

19.3 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.

19.4 In no event shall the CONTRACTOR respond directly to a Request for Information unless expressly authorised to do so by the CUSTOMER.

19.5 The CONTRACTOR acknowledges that (notwithstanding the provisions of this Clause 19) 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 CONTRACTOR or the Ordered IT Products:

19.5.1 in certain circumstances without consulting the CONTRACTOR; or

19.5.2 following consultation with the CONTRACTOR and having taken their views into account,

provided always that where Clause 19.5.1 applies the CUSTOMER shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the CONTRACTOR advanced notice, or failing that, to draw the disclosure to the CONTRACTOR’s attention after any such disclosure.

19.6 The CONTRACTOR shall ensure that all Information is retained for disclosure and shall permit the CUSTOMER to inspect such records as requested from time to time.

19.7 The CONTRACTOR 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 19.5.

20. PUBLICITY

20.1 The CONTRACTOR shall not:

20.1.1 make any press announcements or publicise this Contract in any way; or

20.1.2 use the CUSTOMER’s name or brand in any promotion or marketing or announcement of Orders,

without the CUSTOMER’s prior written consent. The CONTRACTOR shall ensure the observance of the provisions of this Clause 20 by all CONTRACTOR Personnel.
20.2 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.

20.3 The CONTRACTOR acknowledges to the CUSTOMER that nothing in this Contract either expressly or by implication constitutes an endorsement of any goods or goods and services of the CONTRACTOR (including the Ordered IT Products) and the CONTRACTOR agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

21. DISPUTE RESOLUTION

21.1 Subject to the provisions of Clause 21.2 and save for disputes arising under:

21.1.1 Clause 29 (which shall be dealt with in accordance with Clause 29.4); and

21.1.2 Clause 32.4 (which shall be dealt with in accordance with Clause 32.4),

any dispute arising under, or in connection with this Contract shall be dealt with in accordance with this Clause 21, and neither the CUSTOMER nor the CONTRACTOR 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 21 have been exhausted.

21.2 Clause 21.1 shall be without prejudice to the rights of termination stated in Clause 10 and in addition shall not prevent the CUSTOMER or the CONTRACTOR from applying for injunctive relief in the case of:

21.2.1 breach or threatened breach of confidentiality;

21.2.2 infringement or threatened infringement of its Intellectual Property Rights; or

21.2.3 infringement or threatened infringement of the Intellectual Property Rights of a third party, where such infringement could expose the CUSTOMER or the CONTRACTOR to liability.

21.3 All disputes between the CUSTOMER and the CONTRACTOR arising out of or relating to this Contract shall first be referred by [*** the CUSTOMER’s first point of contact ***] or [*** the CONTRACTOR’s first point of contact ***] to the other for resolution.

21.4 If any dispute cannot be resolved by the representatives nominated under Clause 21.3 within a maximum of ten (10) Working Days (or such other period as agreed by the parties) after it has been referred under Clause 21.3, that dispute shall then be referred to the [*** the CUSTOMER’s second point of contact ***] and [*** the CONTRACTOR’s second point of contact ***] for resolution.

21.5 If any dispute cannot be resolved by the representatives nominated under Clause 21.4 within a maximum of ten (10) Working Days (or such other period as agreed by the parties) after it has been referred under Clause 21.4, that dispute shall:
21.5.1 first be further referred to mediation in accordance with the provisions of Schedule 2-9; and thereafter

21.5.2 if agreed by the parties, to arbitration in accordance with the provisions of Schedule 2-9; or

21.5.3 if arbitration is not agreed to by either party, to litigation in accordance with the provisions of Schedule 2-9.

22. INSURANCE

22.1 During the Term and for a period of six (6) years following expiry or termination (howsoever arising) of this Contract, the CONTRACTOR shall take out and maintain or procure the maintenance of the minimum insurances set out in Schedule 2-17.

22.2 The CONTRACTOR 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 22.1 or such other evidence as agreed between the CUSTOMER and the CONTRACTOR 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.

22.3 The terms of any insurance or the amount of cover shall not relieve the CONTRACTOR of any liabilities under this Contract. It shall be the responsibility of the CONTRACTOR 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 13.

23. RECOVERY OF SUMS DUE

23.1 The CUSTOMER shall be permitted to deduct and withhold from any sum due to the CONTRACTOR under this Contract any sum of money due from the CONTRACTOR under:

23.1.1 this Contract;

23.1.2 any other agreement between the CONTRACTOR and the CUSTOMER;

23.1.3 any other agreement between the CONTRACTOR and the AUTHORITY; or

23.1.4 any other agreement between the CONTRACTOR and any other Crown Body,

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

24. STATUTORY REQUIREMENTS

24.1 The CONTRACTOR shall notify the CUSTOMER of all statutory provisions and
approved safety standards applicable to the Ordered IT Products and their provision and shall be responsible for obtaining all licences, consents or permits required for the performance of this Contract.

24.2 The CONTRACTOR shall inform the CUSTOMER if the Ordered IT Products are hazardous to health or safety and of the precautions that should be taken in respect thereto.

24.3 The CONTRACTOR shall, and shall ensure that its Sub-Contractors and the CONTRACTOR 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.

25. STATUTORY INVALIDITY

25.1 The CUSTOMER and the CONTRACTOR 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 CONTRACTOR 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.

26. ENVIRONMENTAL REQUIREMENTS

26.1 The CONTRACTOR shall comply in all material respects with all applicable environmental Laws in force from time to time in relation to the Ordered IT Products. Without prejudice to the generality of the foregoing, the CONTRACTOR shall promptly provide all such information regarding the environmental impact of the Ordered IT Products as may reasonably be requested by the CUSTOMER.

26.2 The CONTRACTOR shall meet all reasonable requests by the CUSTOMER for information evidencing compliance with the provisions of Clause 26.1 by the CONTRACTOR.

27. DISCRIMINATION AND EQUALITY

27.1 The CONTRACTOR shall not, and shall procure that the CONTRACTOR 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.

27.2 The CONTRACTOR shall, and shall procure that the CONTRACTOR 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.

27.3 The CONTRACTOR shall, and shall procure that the CONTRACTOR 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 CONTRACTOR at the CONTRACTOR’s written request.

28. OFFICIAL SECRETS ACTS

28.1 The CONTRACTOR shall take all reasonable steps to ensure that all people employed by the CONTRACTOR 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.

29. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

29.1 The CONTRACTOR shall not:

29.1.1 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 CONTRACTOR and any of the rights and obligations contained within it; or

29.1.2 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.

29.2 Any breach of Clause 29.1 by the CONTRACTOR or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the CONTRACTOR) or the commission of any offence by the CONTRACTOR or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the CONTRACTOR) 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 10.3.5 and recover from the CONTRACTOR the amount of any loss resulting from such termination and/or to recover from the CONTRACTOR the amount or value of any such gift, consideration or commission.

29.3 Any termination under Clause 29.2 shall be without prejudice to any right or remedy which has already accrued, or subsequently accrues, to the CUSTOMER.

29.4 Any dispute, difference or question arising in respect of the interpretation of this
Clause 29, 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.

30. TRANSFER AND SUB-CONTRACTING

30.1 This Contract is personal to the CONTRACTOR. Subject to the provisions of Clause 30.2, the CONTRACTOR 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.

30.2 Notwithstanding the provisions of Clause 30.1, the CONTRACTOR shall be entitled to Sub-Contract its obligations hereunder to the Sub-Contractors listed in Schedule 2-8, however this shall not affect the CONTRACTOR’s obligations to the CUSTOMER and any liabilities under this Contract.

30.3 In selecting, appointing and managing Sub-Contractors, the CONTRACTOR shall comply with the procedures specified in Schedule 2-8.

30.4 In the event that the CONTRACTOR, in accordance with the terms of this Contract, enters into a Sub-Contract in connection with this Contract, the CONTRACTOR shall ensure that a term is included in the Sub-Contract which requires the CONTRACTOR 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.

30.5 In the event that the CONTRACTOR wishes to add any new sub-contractor or remove any Sub-Contractor, the CONTRACTOR shall notify the CUSTOMER’s CITHS Contract Manager in writing, which for the purposes of this notification may be via email, of such proposed additions to or removals. 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. In the case of removals to the list of Sub-contractors, such notification will contain information on how the CONTRACTOR proposes to ensure continuity in the provision of the Ordered IT Products. The CONTRACTOR may not use any new sub-contractor or remove any Sub-Contractor until the CUSTOMER has confirmed in writing its agreement to such addition or removal. The Contract Change Procedure shall not apply to the addition of any new sub-contractors or removal of any Sub-Contractors unless stated otherwise by the CUSTOMER.

30.6 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 IT Products. Such right shall not be exercised unreasonably, frivolously or vexatiously.

30.7 In the event that the CUSTOMER exercises its right pursuant to Clause 30.6 the CONTRACTOR shall use all reasonable endeavours to maintain the provision of the Ordered IT Products and the CUSTOMER and the CONTRACTOR shall enter into good faith negotiations to agree the impact of the situation on the provisions of this Contract.

30.8 The use of Sub-Contractors and any subsequent approval of other sub-contractors
by the CUSTOMER under this Clause 30 shall not in any way constitute any form of recommendation by the CUSTOMER of the Sub-Contractor, whether implied or otherwise.

30.9 Subject to the provisions of Clause 30.11, the CUSTOMER shall be entitled to:

30.9.1 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

30.9.2 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 CONTRACTOR's obligations under this Contract the CONTRACTOR shall be entitled to any additional Charges that are reasonable by way of compensation and which can be agreed through the Contract Change Procedure.

30.10 Subject to the provisions of Clause 30.11, 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.

30.11 If this Contract is novated to a body which is not a Contracting Authority pursuant to Clause 30.9.2, or if a successor body which is not a Contracting Authority becomes the CUSTOMER pursuant to Clause 30.10 (in the remainder of this Clause 30 both such bodies are referred to as the “transferee”):

30.11.1 the rights of termination of the CUSTOMER in Clauses 10.3.4, 10.3.5, 10.3.6, 10.5 and 10.6 shall be available, mutatis mutandis, to the CONTRACTOR in the event of the bankruptcy, insolvency, Default or Persistent Breach of the transferee;

30.11.2 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 CONTRACTOR; and

30.11.3 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 CONTRACTOR in accordance with Clause 8:

30.11.3.1 the reference in Clause 11.4 to Clause 28 shall be deleted;

30.11.3.2 Clauses 18.7.1 and 28 shall be deleted;

30.11.3.3 in Clause 18.10, delete “Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information,”;

30.11.3.4 at the end of Clause 23.1.2 insert “or”. At the end of Clause 23.1.3, delete “; or” and replace with “,”. Delete Clause 23.1.4;
30.11.3.5 in Clause 29.1.1, 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”;

30.11.3.6 in Clause 29.1.2, 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;

30.11.3.7 in Clause 29.2, the words “any other Crown Body” shall be replaced with “the CUSTOMER”;

30.11.3.8 Clauses 30.9 and 30.11 shall be deleted; and

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

30.12 Unless otherwise stated to the contrary, any reference to the CONTRACTOR in this Contract shall include the Sub-Contractor. Notwithstanding any Sub-Contracting permitted hereunder, the CONTRACTOR shall remain primarily responsible for the acts and omissions of its Sub-Contractors as though they were its own.

30.13 The CUSTOMER shall not be liable for any payment whatsoever to Sub-Contractors, the burden of which shall be solely with the CONTRACTOR.

31. RIGHTS OF THIRD PARTIES

31.1 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 CONTRACTOR, as the case may be) is not required to vary or terminate this Contract or alter or extinguish any rights created under this Clause 31.1.

31.2 Except as provided in Clause 31.1, 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 31.2 does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.

31.3 This Contract shall not create any rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise for any Sub-Contractors.

32. ACCESS TO CUSTOMER PREMISES

32.1 Any CUSTOMER Premises (including temporary buildings) made available to the CONTRACTOR, it Sub-Contractors and the CONTRACTOR 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 CONTRACTOR 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.

32.2 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 CONTRACTOR shall comply with all health and safety and reasonable security requirements of the CUSTOMER while on the CUSTOMER Premises and shall procure that all of its Sub-Contractors and the CONTRACTOR Personnel shall likewise comply with such requirements. The CUSTOMER shall provide the CONTRACTOR with copies of its security procedures upon request and shall afford the CONTRACTOR an opportunity to inspect its physical security arrangements.

32.3 The CONTRACTOR shall notify the CUSTOMER as soon as practicable of any health and safety hazards at the CUSTOMER Premises of which it becomes aware. The CONTRACTOR will draw these hazards to the attention of the CONTRACTOR Personnel and will instruct those persons in connection with any necessary associated safety measures.

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

33. SEVERABILITY

33.1 Subject to the provisions of Clause 25, 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 CONTRACTOR shall immediately commence good faith negotiations to remedy such invalidity, illegality or unenforceability.

34. FORCE MAJEURE

34.1 For the purposes of this Contract, the expression “Force Majeure Event” shall mean any cause affecting the performance by either the CUSTOMER or the CONTRACTOR 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 CONTRACTOR, the CONTRACTOR Personnel or any other failure in the CONTRACTOR or the Sub-Contractor's supply chain.

34.2 Subject to the remaining provisions of this Clause 34, 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.

34.3 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 CONTRACTOR, its Sub-Contractors and the CONTRACTOR Personnel) or the failure of either the CUSTOMER or the CONTRACTOR to perform its obligations under this Contract. The CONTRACTOR 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.

34.4 It is expressly agreed that any failure by the CONTRACTOR to perform or any delay by the CONTRACTOR 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 CONTRACTOR 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.

34.5 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.

34.6 In the event of a Force Majeure Event, the CUSTOMER and the CONTRACTOR shall use all reasonable endeavours to continue to perform, or resume performance of, all of their obligations under this Contract.

34.7 Provided always that (as applicable) the CUSTOMER or the CONTRACTOR use reasonable endeavours pursuant to the provisions of Clause 34.6, 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.

34.8 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 CONTRACTOR 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.

34.9 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.

34.10 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 34.
35. LEGISLATIVE CHANGE

35.1 The CONTRACTOR shall bear the cost of ensuring that the Ordered IT Products comply with all Laws and any amendments thereto, except where any such amendment could not reasonably have been foreseen by the CONTRACTOR at the Effective Date.

35.2 Where such reasonably unforeseeable amendments are necessary, the CUSTOMER and the CONTRACTOR shall use all reasonable endeavours to agree upon reasonable adjustments to the Charges as may be necessary to compensate the CONTRACTOR for such additional costs as are both reasonably and necessarily incurred by the CONTRACTOR in accommodating such amendments.

36. WAIVER AND CUMULATIVE REMEDIES

36.1 The failure of the CONTRACTOR 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.

36.2 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.

36.3 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 9.

36.4 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.

37. LAW AND JURISDICTION

37.1 Subject to the provisions of Clause 21, the CUSTOMER and the CONTRACTOR accept the exclusive jurisdiction of the English Courts and agree that this Contract is to be governed by and construed according to English law.

37.2 This Contract shall be binding upon the CUSTOMER and its successors and assignees and the CONTRACTOR and the CONTRACTOR’s successors and permitted assignees.

38. ENTIRE AGREEMENT

38.1 This Contract, together with the documents [*** referred to in it ***] [*** attached to it ***], constitutes the entire agreement and understanding between the CUSTOMER and the CONTRACTOR 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.
38.2 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.

38.3 Nothing in this Clause 38 shall operate to exclude any liability for fraud.

### 39. FURTHER ASSURANCES

39.1 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.

### 40. RELATIONSHIP OF THE PARTIES

40.1 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.

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<th>For and on behalf of the CUSTOMER</th>
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ANNEX A TO THE CONTRACT CLAUSES

ALTERNATIVE CLAUSES AND ADDITIONAL CLAUSES

1. INTRODUCTION

1.1. 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

2.1. The CUSTOMER, in the Order, requested that the following Alternative Clauses should apply:

2.1.1. Law and Jurisdiction:

2.1.1.1. [*** [English Law (default)] [Scots Law] [Northern Ireland Law] ***]

2.1.2. [*** Private Authorities ***];

2.1.3. [*** Non-Crown ***];

2.1.4. [*** Liquidated Damages ***];

2.1.5. [*** FOIA ***];

2.1.6. [*** Data Handling ***];

2.1.7. [*** Limitation of Liability ***]; and

2.1.8. [*** MOD – BACS ***].

2.2. The CUSTOMER, in the Order, requested that the following Additional Clauses should apply:

2.2.1. [*** Third Party Co-operation ***];

2.2.2. [*** Security Measures ***];

2.2.3. [*** Access to MOD Sites ***];

2.2.4. [*** MOD – Unique Identifiers ***]

2.2.5. [*** MOD – Use of Electronic Business Delivery Form ***]

2.2.6. [*** MOD – Payment under P2P ***]

2.2.7. [*** MOD – Payment under P2P – Matching the Invoice and Order (Two way match) ***];

2.2.8. [*** MOD – GPC ***]; and
3. IMPLEMENTATION

3.1. The appropriate changes have been made in this Contract to implement the Alternative Clauses specified in paragraph 2.1 of this Annex A and the Additional Clauses specified in paragraph 2.2 of this Annex A shall be deemed to be incorporated into this Contract.

4. ALTERNATIVE CLAUSES

SCOTS LAW

4.1. For Scots Law, make the following changes:

4.1.1. Delete Clause 37.1 and insert:

37.1. Subject to the provisions of Clause 21, this Contract shall be considered as a contract made in Scotland, the CUSTOMER and the CONTRACTOR 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

4.2. For Northern Ireland Law, make the following changes:

4.2.1. Delete Clause 37.1 and insert:

37.1. Subject to the provisions of Clause 21, this Contract shall be considered as a contract made in Northern Ireland, the CUSTOMER and the CONTRACTOR 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.

4.2.2. Term and Termination

4.2.2.1. In Clause 10.3.4.2, 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). ***]
PRIVATE AUTHORITIES

4.3. For Contracts formed with Private Authorities make the following changes:

4.3.1. Consequences of Termination

4.3.1.1. The reference in Clause 11.4 to Clause 28 shall be deleted.

4.3.2. Confidentiality and Official Secrets Act

4.3.2.1. Clauses 18.7.1 and 28 shall be deleted.

4.3.2.2. In Clause 18.10, delete “Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information,“.

4.3.3. Recovery of Sums Due

4.3.3.1. At the end of Clause 23.1.2, insert “or”. At the end of Clause 23.1.3, delete “: or” and replace with “,“.

4.3.4. Corrupt Gifts and Payments of Commission

4.3.4.1. In Clause 29.1.1, 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”.

4.3.4.2. In Clause 29.1.2, 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.

4.3.4.3. In Clause 29.2, the words “any other Crown Body” shall be replaced with “the CUSTOMER”.

4.3.5. Transfer & Sub-Contracting

4.3.5.1. Delete Clauses 30.9 and 30.11.

4.3.6. Schedule 2-1 (Interpretations)

4.3.6.1. Delete the definition of “Crown Body”.

NON-CROWN

4.4. 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:

4.4.1. Consequences of Termination

4.4.1.1. The reference in Clause 11.4 to Clause 28 shall be deleted.
4.4.2. Confidentiality and Official Secrets Act

4.4.2.1. Clauses 18.7.1 and 28 shall be deleted.
4.4.2.2. In Clause 18.10, delete “Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.”.

4.4.3. Recovery of Sums Due

4.4.3.1. At the end of Clause 23.1.2, insert “or”. At the end of Clause 23.1.3, delete “; or” and replace with “,”. Delete Clause 23.1.4.

4.4.4. Corrupt Gifts and Payments of Commission

4.4.4.1. In Clause 29.1.1, 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”.
4.4.4.2. In Clause 29.1.2, 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.
4.4.4.3. In Clause 29.2, the words “any other Crown Body” shall be replaced with “the CUSTOMER”.

4.4.5. Transfer & Sub-Contracting

4.4.5.1. Delete Clauses 30.9 and 30.11.

4.4.6. Schedule 2-1 (Interpretations)

4.4.6.1. Delete the definition of “Crown Body”.

LIQUIDATED DAMAGES

4.5. For Liquidated Damages, paragraphs 3 to 6 of Schedule 2-13 shall be completed in accordance with details supplied in the Order.

FREEDOM OF INFORMATION

4.6. Where the CUSTOMER is exempt from the provisions of FOIA only, and notifies the CONTRACTOR accordingly in the Order:

4.6.1. references to FOIA in Clauses 19.1 to 19.3 (inclusive) shall be deleted;
4.6.2. the following shall be deleted from Clause 19.5: “, 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
4.6.3. Clause 19.6 shall be deleted and Clause 19.7 shall be renumbered.

4.7. Note: This should not affect the EIR.

DATA HANDLING

4.8. Where it is agreed that there is no Processing of Personnel Data or disclosure of CUSTOMER Data:

4.8.1. delete “(including CUSTOMER Data)” from Clause 11.2;

4.8.2. the warranty in Clause 12.1.6 shall be deleted and the remaining Clauses renumbered accordingly;

4.8.3. Clauses 14 to 16 (inclusive) shall be marked “Not Used” and Schedules 2-14 and 2-15 marked “Not Used”;

4.8.4. delete “The CONTRACTOR 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;

4.8.5. delete the following sentence from Clause 34.3: “The CONTRACTOR 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.”;

4.8.6. 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”; and

4.8.7. delete paragraph 5 in Schedule 2-6.

LIMITATION OF LIABILITY

4.9. Where it is agreed that greater limits of liability are to apply to property damage, Clause 13.4.1 shall be replaced with the following (and the existing Clause 13.4.2 shall be renumbered 13.4.3):

13.4.1 for all direct loss of or damage by the CONTRACTOR to the tangible property of the CUSTOMER shall in no event exceed [*** insert amount ***] million pounds;

13.4.2 for all direct loss of or damage by the CUSTOMER to the tangible property of the CONTRACTOR shall in no event exceed [*** insert amount ***]; and

MOD – BACS

4.10. Where the CUSTOMER is the MOD, Clause 5.1.7 shall be replaced with the following:

5.1.7 The CUSTOMER shall make payment to the CONTRACTOR of all valid
invoices submitted for payment in accordance with this Contract by means of the BACS directly into the CONTRACTOR's nominated bank account. To facilitate payment by means of BACS, the CONTRACTOR shall provide the CUSTOMER in advance of the submission of valid invoices, if it has not already done so, details of the name and address of its bank, the sort code and account number.

5. ADDITIONAL CLAUSES

CO-OPERATION WITH THIRD PARTIES

5.1. For Contracts where the CUSTOMER requires co-operation between third parties, insert the following wording as the next available Clause in the Contract:

52 [DN number given as example] Third Party Co-operation

52.1 The CONTRACTOR shall provide to the CUSTOMER's other suppliers as are periodically notified to the CONTRACTOR such reasonable co-operation, information (including any documentation), advice and assistance in connection with the Ordered IT Products [*** so as to enable any such person to create and maintain technical or organisational interfaces with the Ordered IT Products, where applicable, ***] and on the termination (howsoever arising) or expiry of this Contract, to enable the timely transition of the Ordered IT Products (or any of them) to any replacement service provider and generally provide the CUSTOMER with such assistance as the CUSTOMER may reasonably require in respect of the supply of the Ordered IT Products.

SECURITY MEASURES

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

53 [DN number given as example] Security Measures

53.1 In this Clause [53]:

53.1.1 “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 CONTRACTOR be designated ‘top secret’, ‘secret’, or ‘confidential’;

53.1.2 “document” includes specifications, plans, drawings, photographs and books;

53.1.3 references to a person employed by the CONTRACTOR shall be construed as references to any person employed or engaged by the CONTRACTOR to do anything in connection with this Contract, whether under a contract of service with the CONTRACTOR or under any other contract or arrangement whatsoever; and

53.1.4 “servant” where the CONTRACTOR 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.

53.2 The CONTRACTOR 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:

53.2.1 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;

53.2.2 disclosed to or acquired by a person as respects to whom the CUSTOMER has given to the CONTRACTOR a notice in writing which has not been cancelled stating that the CUSTOMER requires that secret matters shall not be disclosed to that person;

53.2.3 without the prior consent in writing of the CUSTOMER, disclosed to or acquired by any person who is not a servant of the CONTRACTOR; or

53.2.4 disclosed to or acquired by a person who is an employee of the CONTRACTOR except in a case where it is necessary for the proper performance of this Contract that such person shall have the information.

53.3 Without prejudice to the provisions of Clause [53.2], the CONTRACTOR shall, both before and after the expiry or termination of this Contract, take all reasonable steps to ensure:

53.3.1 that no such person as is mentioned in Clauses [53.2.1], [53.2.2] or [53.2.3] hereof shall have access to any item or document under the control of the CONTRACTOR containing information about a secret matter except with the prior consent in writing of the CUSTOMER;

53.3.2 that no visitor to any premises in which there is any item to be supplied under this Contract or where Ordered IT Products are being provided shall see or discuss with the CONTRACTOR or any person employed by him any secret matter unless the visitor is authorised in writing by the CUSTOMER so to do;

53.3.3 that no photograph of any item to be supplied under this Contract or any portions of the Ordered IT Products 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;

53.3.4 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

53.3.5 that if the CUSTOMER gives notice in writing to the CONTRACTOR at any time requiring the delivery to the CUSTOMER of any such document, model or item as is mentioned in Clause [53.3.4], 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.

53.4 The decision of the CUSTOMER on the question whether the CONTRACTOR has taken or is taking all reasonable steps as required by the foregoing provisions of this Clause [53] shall be final and conclusive.

53.5 If and when directed by the CUSTOMER, the CONTRACTOR shall furnish full particulars of all people who are at any time concerned with any secret matter.

53.6 If and when directed by the CUSTOMER, the CONTRACTOR 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.

53.7 If at any time either before or after the expiry or termination (howsoever arising) of this Contract it comes to the notice of the CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR with a statement of the facts as aforesaid.

53.8 The CONTRACTOR 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 CONTRACTOR to observe the same obligations in relation to that matter as are imposed on the CONTRACTOR by Clauses [53.2] and [53.3]. The CONTRACTOR 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
[53.8] observes the said obligations. The CONTRACTOR 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.

53.9 The CONTRACTOR 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 CONTRACTOR by this
Clause [53], but with such variations (if any) as the CUSTOMER may
consider necessary. Further the CONTRACTOR shall:

53.9.1 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 [53.9] into operation in such cases and to such extent as the
CUSTOMER may direct;

53.9.2 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 [53], notify such breach forthwith to the
CUSTOMER; and

53.9.3 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 [53.12].

53.10 The CONTRACTOR 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 [53] have been and are being
observed and as to what the CONTRACTOR has done or is doing or
proposes to do to secure the observance of those obligations and to prevent
any breach thereof. The CONTRACTOR 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 CONTRACTOR 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.

53.11 Nothing in this Clause [53] 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.
53.12 If the CUSTOMER considers that any of the following events has occurred:

53.12.1 the CONTRACTOR has committed a breach of, or failed to comply with any of, the foregoing provisions of this Clause [53]; or

53.12.2 the CONTRACTOR 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

53.12.3 by reason of an act or omission on the part of the CONTRACTOR, or of a person employed by the CONTRACTOR, which does not constitute such a breach or failure as is mentioned in Clause [53.12.1], 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.

53.13 Notwithstanding anything to the contrary in this Contract, a decision of the CUSTOMER to terminate this Contract in accordance with the provisions of Clause [53.12] 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.

53.14 The CONTRACTOR may within five (5) Working Days of the termination of this Contract in accordance with the provisions of Clause [53.12], 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 Clause [53.12.1], [53.12.2] or [53.12.3] 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 CONTRACTOR containing such a statement and particulars as are required by the request.

53.15 The termination of this Contract pursuant to Clause [53.12] shall be without prejudice to any rights of either party which shall have accrued before the date of such termination and:

53.15.1 the CONTRACTOR 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;

53.15.2 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 CONTRACTOR given within thirty (30) Days
from the time when the provisions of this Clause [53] shall have effect, elect to take over, and the CONTRACTOR 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 CONTRACTOR shall in accordance with directions given by the CUSTOMER, deliver any work or thing taken over under Clause [53.15.1] 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 [53.15.1]; and

53.15.3 save as aforesaid, the CONTRACTOR shall not be entitled to any payment from the CUSTOMER after the termination of this Contract.

53.16 If, after notice of termination of this Contract pursuant to the provisions of Clause [53.12]:

53.16.1 the CUSTOMER shall not within ten (10) Working Days of the receipt of a request from the CONTRACTOR, furnish such a statement and particulars as are detailed in Clause [53.14]; or

53.16.2 the CUSTOMER shall state in the statement and particulars detailed in Clause [53.14] that the event upon which the CUSTOMER’s decision to terminate this Contract was based is an event mentioned in Clause [53.12.3],

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

53.16.3 the CUSTOMER shall take over from the CONTRACTOR 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 CONTRACTOR upon the termination of this Contract under the provisions of Clause [53.12] and properly provided by or supplied to the CONTRACTOR for the performance of this Contract, except such materials, bought-out parts and components and articles in course of manufacture as the CONTRACTOR shall, with the concurrence of the CUSTOMER, elect to retain;

53.16.4 the CONTRACTOR 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 CONTRACTOR fair and reasonable handling and delivery charges incurred in complying
with such directions;

53.16.5 the CUSTOMER shall indemnify the CONTRACTOR against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the CONTRACTOR in connection with this Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the CONTRACTOR by reason of the termination of this Contract;

53.16.6 if hardship to the CONTRACTOR should arise from the operation of this Clause [53.16] it shall be open to the CONTRACTOR 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 [53.16.6] shall (notwithstanding anything to the contrary in this Contract) be final and conclusive; and

53.16.7 subject to the operation of Clauses [53.16.3], [53.16.4], [53.16.5] and [53.16.6], 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

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

54. [DN number given as example] Access to MOD Sites

54.1 References in this Clause [54] to:

54.1.1 “CONTRACTOR's Representative(s)” shall be deemed to include the CONTRACTOR's employees, agents and Sub-Contractors;

54.1.2 “Government Establishment” or “site” shall be deemed to include any of Her Majesty’s Ships or Vessels and Service Stations; and

54.1.3 “Officer in Charge” shall be deemed to include Officers Commanding Service Stations, Ships’ Masters or Senior Officers, and Heads of Government Establishments.

General

54.2 The following general provisions apply:

54.2.1 The Officer in Charge shall provide such available administrative and technical facilities for the CONTRACTOR's Representatives employed at Government Establishments for the purpose of this Contract as may be necessary for the effective and economical discharge of work under this Contract. These facilities will be provided free of charge unless otherwise stated in this Contract. The
status to be accorded to the CONTRACTOR’s Representatives for messing purposes will be at the discretion of the Officer in Charge.

54.2.2 Any land or premises (including temporary buildings) made available to the CONTRACTOR by the CUSTOMER in connection with this Contract shall be made available to the CONTRACTOR free of charge, unless otherwise stated in this Contract, and shall be used by the CONTRACTOR solely for the purposes of performing this Contract. The CONTRACTOR shall have the use of such land or premises as licensee and shall vacate the same upon completion of this Contract. Any utilities required by the CONTRACTOR shall be subject to the charges set out in this Contract.

54.2.3 The CONTRACTOR shall have no claim against the CUSTOMER for any additional cost or delay occasioned by the closure for holidays of Government Establishments, where this is made known to him prior to entering into the Contract.

Liability In Respect Of Damage To Government Property

54.3 Without prejudice to the provisions of DEFCON 611 (Issued Property) and of DEFCON 612 (Loss of or Damage to the Ordered IT Products), where those conditions form part of this Contract, the CONTRACTOR shall, except as otherwise provided for in this Contract, make good or, at the option of the CUSTOMER, pay compensation for all damage occurring to any Government property, which includes land or buildings, occasioned by the CONTRACTOR, or by any of its Representatives, arising from its or their presence on a Government Establishment in connection with this Contract, provided that this Clause shall not apply to the extent that the CONTRACTOR is able to show that any such damage was not caused or contributed to by any circumstances within its or their reasonable control.

54.4 The total liability of the CONTRACTOR under Clause [54.3] herein shall be subject to any limitation specified in this Contract.

CONTRACTOR’s Property

54.5 All property of the CONTRACTOR and its Representatives shall be at the risk of the CONTRACTOR whilst it is on any Government Establishment, and the CUSTOMER shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows:

54.5.1 where any such loss or damage was caused or contributed to by any act, neglect or default of any Government servant, agent or contractor then the CUSTOMER shall accept liability therefor to the extent to which such loss or damage is so caused or contributed to as aforesaid; and

54.5.2 where any property of the CONTRACTOR has been taken on charge by the Officer in Charge, and a proper receipt has been given therefor, then the CUSTOMER shall be liable for any loss or
CONTRACTOR's Representatives

54.6 The CONTRACTOR shall submit in writing to the CUSTOMER for approval, initially and as necessary from time to time, a list of those of its Representatives who may need to enter a Government Establishment for the purpose of, or in connection with, work under this Contract, giving such particulars as the CUSTOMER may require, including full details of birthplace and parentage of any such Representative who:

54.6.1 was not born in the United Kingdom; or

54.6.2 if he was born in the United Kingdom, was born of parents either or both of whom were not born in the United Kingdom.

54.7 The CUSTOMER shall issue passes for those Representatives who are approved by it in accordance with Clause [54.6] herein for admission to a Government Establishment 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 IT Products.

54.8 Notwithstanding the provisions of Clauses [54.6] and [54.7] hereof if, in the opinion of the CUSTOMER, any Representative of the CONTRACTOR shall misconduct himself, or it shall not be in the public interest for any person to be employed or engaged by the CONTRACTOR, the CONTRACTOR shall remove such person without delay on being required to do so and shall cause the work to be performed by such other person as may be necessary.

54.9 The decision of the CUSTOMER upon any matter arising under Clauses [54.6] to [54.8] inclusive shall be final and conclusive.

Observance Of Regulations

54.10 The following provisions apply:

54.10.1 The CONTRACTOR shall ensure that its Representatives have the necessary probity (by undertaking the Government’s Baseline Personnel Security Standard) and, where applicable, are cleared to the appropriate level of security when employed within the boundaries of a Government Establishment.

54.10.2 Where the CONTRACTOR requires information on the Government’s Baseline Personnel Security Standard (the Standard) or security clearance for its Representatives or is not in possession of the relevant rules, regulations or requires guidance on them, he shall apply in the first instance to the CITHS Contract Manager.

54.10.3 On request, the CONTRACTOR shall be able to demonstrate to the
CUSTOMER that the CONTRACTOR’s processes to assure compliance with the standard have been carried out satisfactorily. Where that assurance is not already in place, the CONTRACTOR shall permit the CUSTOMER to inspect the processes being applied by the CONTRACTOR to comply with the standard.

54.10.4 The CONTRACTOR shall comply and shall ensure that its Representatives comply with the rules, regulations and requirements that are in force whilst at that Government Establishment which shall be provided by the CUSTOMER on request.

54.10.5 When on board ship, compliance with the rules, regulations, and requirements shall be in accordance 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.

Transport Overseas

54.11 Where the CONTRACTOR’s Representatives are required by this Contract to join or visit a Government Establishment 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 CUSTOMER whenever possible, normally by Royal Air Force or by CUSTOMER chartered aircraft. The CONTRACTOR shall make such arrangements through the CITHS Contract Manager for this purpose in this Contract. When such transport is not available within a reasonable time, or in circumstances where the CONTRACTOR wishes its Representatives to accompany material for installation which it is to arrange to be delivered, the CONTRACTOR shall make its own transport arrangements. The CUSTOMER shall reimburse the CONTRACTOR’s 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 CONTRACTOR’s Representatives locally overseas which is necessary for the purpose of this Contract shall be provided wherever possible by the CUSTOMER and, where so provided, will be free of charge.

Medical Treatment Overseas

54.12 Out-patient medical treatment given to the CONTRACTOR’s Representatives by a Service Medical Officer or other Government Medical Officer at a Government Establishment 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 Government Establishment and transportation of the CONTRACTOR’s Representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the CONTRACTOR at the appropriate local rate.

Injuries, Disease And Dangerous Occurrences
54.13 The CONTRACTOR shall report any injury, disease or dangerous occurrence at any Government Establishment arising out of the performance of this Contract, which is required to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) to the Officer in Charge of the relevant Government Establishment. This would be in addition to any report, which the CONTRACTOR may be required to submit under RIDDOR to the relevant enforcing authority (e.g. Health and Safety Executive or Local Authority).

**Dependants Of CONTRACTOR's Representatives**

54.14 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 CONTRACTOR’s Representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current CUSTOMER rates.

**Provision Of Funds Overseas**

54.15 The CONTRACTOR 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 CONTRACTOR and subject to any reasonable limitation required by the CONTRACTOR, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Government Establishment to which the CONTRACTOR’s Representatives are attached. All such advances made by the CUSTOMER shall be recovered from the CONTRACTOR.

**Health And Safety Hazard Control**

54.16 Where the CONTRACTOR enters a Government Establishment for the purpose of performing work under this Contract:

54.16.1 The CONTRACTOR shall notify the Officer in Charge or the site project liaison officer or overseeing officer nominated in this Contract of:

54.16.1.1 any health and safety hazards associated with the work to be performed by it or any of its Representatives;

54.16.1.2 any foreseeable risks to the health and safety of all persons associated with such hazards; and

54.16.1.3 any precautions to be taken by it as well as any precautions which, in its opinion, ought to be taken by the CUSTOMER, in order to control such risks.

54.16.2 The CUSTOMER shall notify the CONTRACTOR of:
54.16.2.1 any health and safety hazards which may be encountered by the CONTRACTOR or any of its Representatives on the Government Establishment;

54.16.2.2 any foreseeable risks to the health and safety of the CONTRACTOR or any of its Representatives, associated with such hazards; and

54.16.2.3 any precautions to be taken by the CUSTOMER as well as any precautions which, in its opinion, ought to be taken by the CONTRACTOR, in order to control such risks.

54.16.3 The CONTRACTOR shall notify its Representatives of and, where appropriate, provide adequate instruction in relation to:

54.16.3.1 the hazards, risks and precautions notified by it to the CUSTOMER under Clause [54.16.1];

54.16.3.2 the hazards, risks and precautions notified by the CUSTOMER to the CONTRACTOR under Clause [54.16.2]; and

54.16.3.3 the precautions which, in its opinion, ought to be taken by its Representatives in order to control those risks.

54.16.4 The CONTRACTOR shall provide the Officer in Charge or the site project liaison officer or overseeing officer nominated in this Contract with:

54.16.4.1 copies of those sections of its own and, where appropriate, its Representatives’ safety policies which are relevant to the risks notified under Clause [54.16.1];

54.16.4.2 copies of any related risk assessments;

54.16.4.3 copies of any notifications and instructions issued by it to its Representatives under Clause [54.16.3].

54.16.5 The CUSTOMER shall provide the CONTRACTOR with:

54.16.5.1 copies of those sections of its own safety policies which are relevant to the risks notified under Clause [54.16.2];

54.16.5.2 copies of any related risk assessments; and

54.16.5.3 copies of any notifications and instructions issued by it to its employees similar to those called for from the CONTRACTOR under Clause [54.16.3].

5.4. If Clause 54 is used ensure that it is carved out of Clause 21.1 but adding “Clauses [54.6] to [54.8] (which shall be dealt with in accordance with Clause [54.9])”. 

Annex A to the Contract Clauses (Alternative Clauses and Additional Clauses) v 1.00
Page 17 of 27
5.5. For Contracts where trading electronically with the MOD is required, insert the following wording as a new Clause 2.13 in the Contract:

2.13 **Unique Identifiers**

2.13.1 For the purposes of this Clause [2.13], Unique Identifiers comprise:

2.13.1.1 Unique Order Identifier (UOI) generated by P2P for non-inventory purchase orders; or

2.13.1.2 Unique Receipt Reference Identifier (URRI), generated by P2P for inventory purchase orders.

2.13.2 For P2P purchase orders, this Contract will reference UOIs or URRIs, or both. The application of UOIs and URRIs is at the line item level. The CONTRACTOR must quote the applicable Unique Identifier in any communication concerning a line item.

2.13.3 Confirmation of receipt of deliveries by Unique Identifiers shall not be construed as an acceptance of the Ordered IT Products for the purposes of Schedule 2-5 or any other term of this Contract relating to acceptance by the CUSTOMER.

## MOD – USE OF

**ELECTRONIC BUSINESS DELIVERY FORM**

5.6. For Contracts where trading electronically with the MOD is required, insert the following wording as new Clauses 4.1.5 to 4.1.8 in the Contract:

**Electronic Business Delivery Form**

4.1.5 **Form of Usage**

4.1.5.1 The CONTRACTOR must use the electronic business delivery form for all Ordered IT Products where the CUSTOMER includes with the Order, DEFFORM 30. Failure to provide this form will lead to greater resource effort, more input errors and delays in payment processes.

4.1.5.2 The electronic business delivery form, DEFFORM 129J, must accompany the package or consignment to which it applies. The CONTRACTOR must either:

4.1.5.2.1 attach the form as a label, directly to the package surface; or

4.1.5.2.2 forward the form in a document envelope,

as provided in Clauses [4.1.6.1] and [4.1.6.2] of this Contract.
4.1.6 **Form Structure**

For the provision of Ordered Goods

4.1.6.1 Where delivery is for Ordered Goods, the following criteria apply:

4.1.6.1.1 The nominal label size is A6 (102 mm x 152 mm) but A5 (148 mm x 210 mm) is acceptable. If required by package size, the CONTRACTOR may use other label sizes, but only if no degradation to the text, bar code legibility and quality occurs as set out in Clause [4.1.7.2].

4.1.6.1.2 The CONTRACTOR must use the bar coded Unique Identifier as defined in Clause [2.13.1], unless specified otherwise in this Contract.

4.1.6.1.3 The CONTRACTOR must attach two (2) labels to each package or consignment delivered. One label must be detachable for use in processing the information through the appropriate CUSTOMER receipting system.

For the provision of Ordered Services

4.1.6.2 Where the Ordered IT Products include Services (“Ordered Services”), the following criteria apply:

4.1.6.2.1 Standard size is A4 (210 mm x 297 mm).

4.1.6.2.2 The CONTRACTOR must use the bar coded Unique Identifier as defined in Clause [2.13.1] unless specified otherwise in this Contract.

4.1.6.2.3 The CONTRACTOR must provide one form either on completion of the Ordered Services or on completion of each agreed stage of the Ordered Services.

4.1.7 **Bar Code Symbology and Print Quality**

4.1.7.1 The bar code symbology used shall meet the requirements of STANAG 4329, "NATO Standard Bar Code Symbologies", specifically Code 39 (ISO/IEC 16388), unless otherwise specified.

4.1.7.2 The barcode print quality shall be as defined in ISO/IEC 16388 (Information technology – Automatic identification and data capture techniques – Code 39 bar code symbology specification). The overall grade shall be at least grade B at point of printing and not less than grade C at final point of receipt.

4.1.8 **Methods of Printing**

4.1.8.1 For method of printing the DEFFORM 129J, electronic business
delivery form, see DefStan 81-41 (Part 6). Laser printing is preferred.

5.7. Where this Additional Clause is required, any referenced DEFFORMS must be included in the Order.

MOD – PAYMENT UNDER P2P

5.8. For Contracts where trading electronically with the MOD is required, insert the following wording either in place of paragraphs 2 and 3 of Schedule 2-4 or as a new paragraph 5 of Schedule 2-4:

[5] Payment Under P2P

[5].1 In order to obtain payment the CONTRACTOR shall, upon completion or performance of this Contract (or of any part of this Contract for which the CONTRACTOR is entitled to payment) submit a delivery label. The CONTRACTOR shall complete and dispatch the delivery label in accordance with DEFFORM 129J.

[5].2 Upon receipt of the delivery label, the CUSTOMER shall without delay either:

[5].2.1 enter the relevant details into the CUSTOMER’s ordering receipting and payment system (DECS P2P), indicating receipt or performance of the applicable Ordered IT Products (“receipting”); or

[5].2.2 notify the CONTRACTOR in writing, giving reasons why it considers receipting of the applicable Ordered IT Products may be withheld.

[5].3 The CONTRACTOR shall submit all claims for payment to the CUSTOMER in accordance with the Payment Profile and using a properly prepared message structure and format for an invoice in accordance with the arrangements set out or referenced in DEFFORM 30.

[5].4 All valid, properly prepared invoices submitted to the CUSTOMER in accordance with this paragraph [5] shall be paid by the CONTRACTOR on or before the Relevant Day (as defined in paragraph [5.9] of this Schedule 2-4).

[5].5 Receipting by the CUSTOMER shall not be construed as acceptance by the CUSTOMER of the performance of the CONTRACTOR’s obligations nor as a waiver of its rights and remedies either under this Contract or otherwise.

[5].6 Where the CUSTOMER is responsible for arranging all or any part of the transportation of Ordered IT Products to be supplied under this Contract the CUSTOMER shall be deemed not to have received the delivery label for the purposes of paragraphs [5.2] and [5.9.3] until either:

[5].6.1 the consignee has physically received the Ordered IT Products; or
[5].6.2 five (5) Days after the Ordered IT Products are ready for collection as notified to the CUSTOMER’s Transport Office, whichever occurs first. Wherever possible, the CONTRACTOR shall inform the CUSTOMER’s Transport Office at least two (2) Days in advance of the date upon which the Ordered IT Products shall be ready for collection.

[5].7 Where and to the extent that the debt would otherwise be a “qualifying debt” under the Late Payment of Commercial Debts (Interest) Act 1998 (the “Act”):

[5].7.1 the interest provided for by this paragraph [5] is a contractual remedy and is not statutory interest. Therefore, to the extent permissible by law, the provisions of the Act relating to statutory interest shall not apply to this Contract;

[5].7.2 from the Day after the Relevant Day and thereafter until payment is made, simple interest at a rate calculated in accordance with paragraph [5.7.3], may be claimed by the CONTRACTOR on the value of all valid claims for payment (or unpaid parts thereof);

[5].7.3 without prejudice to paragraph [5.7.1], the rate of interest referred to in paragraph [5.7.2] shall be the prevailing rate of statutory interest (as defined in the Act) on the Relevant Day;

[5].7.4 no interest shall be payable for any period of delay attributable to the conduct of the CONTRACTOR;

[5].7.5 all claims for interest made pursuant to this paragraph [5] shall be notified in writing to the CUSTOMER’s commercial officer shown at box 1 of the Appendix (as defined in paragraph [5.9.1]); and

[5].7.6 any interest pursuant to this paragraph [5] shall not form a part of the Charges and, as a remedy for late payment, shall not be subject to VAT.

[5].8 If and to the extent that any term of this paragraph [5] shall be held to be, or to cause the paragraph or this Contract to be, void, invalid, unlawful or unenforceable, such term shall, to that extent, be omitted from this paragraph [5] and the rest of paragraph [5] shall stand.

[5].9 In this paragraph [5]:

[5].9.1 “the Appendix” means DEFFORM 111 appended to this Contract;

[5].9.2 “the consignee” and “the CUSTOMER's Transport Officer” shall be determined by reference, respectively, to boxes 9 and 10 of the Appendix;

[5].9.3 “the Relevant Day” means the Day which is thirty (30) Days after the later of:
[5.9.3.1] the Day upon which a valid delivery label in accordance with paragraph [5.1] is received by the CUSTOMER; and

[5.9.3.2] the date of completion or performance of the part of this Contract to which the delivery label relates.

5.9. Where the foregoing represents how all payments due under the Contract will be made Clause 5.1.6 shall be marked “Not Used” and the following wording in Clause 5.1.3 shall be deleted “All such invoices shall be payable by the CUSTOMER within twenty eight (28) Days of the date of issue of the invoice”. The Payment Profile in paragraph 4 of Schedule 2-4 shall be completed so that it is consistent with the payment terms set out in this Additional Clause.

5.10. Where this Additional Clause is required, any referenced DEFFORMS must be included in the Order.

MOD – PAYMENT UNDER P2P – MATCHING THE INVOICE AND ORDER (TWO-WAY MATCH)

5.11. For Contracts where trading electronically with the MOD is required, insert the following wording either in place of paragraphs 2 and 3 of Schedule 2-4 or as a new paragraph 5 of Schedule 2-4:


[5.1] In order to obtain payment the CONTRACTOR shall submit all claims for payment to the CUSTOMER in accordance with the Payment Profile and using a properly prepared message structure and format for an invoice in accordance with the arrangements set out or referenced in DEFFORM 30.

[5.2] All valid, properly prepared invoices submitted to the CUSTOMER in accordance with this paragraph [5] shall be paid by the CUSTOMER on or before the Relevant Day (as defined in paragraph [5.6] of this Schedule 2-4).

[5.3] Payment by the CUSTOMER under this paragraph [5] shall not be construed as an acceptance of the Ordered IT Products for the purpose of Schedule 2-5 or any other term of this Contract relating to acceptance by the CUSTOMER.

[5.4] Where and to the extent that the debt would otherwise be a "qualifying debt" under the Late Payment of Commercial Debts (Interest) Act 1998 (the “Act”):

[5.4.1] the interest provided for by this paragraph [5] is a contractual remedy and is not statutory interest. Therefore, to the extent permissible by law, the provisions of the Act relating to statutory interest shall not apply to this Contract;

[5.4.2] from the Day after the Relevant Day and thereafter until payment is
made, simple interest at a rate calculated in accordance with paragraphs [5.4.3], may be claimed by the CONTRACTOR on the value of all valid claims for payment (or unpaid parts thereof);

[5].4.3 without prejudice to paragraph [5.4.1], the rate of interest referred to in paragraph [5.4.2] shall be the prevailing rate of statutory interest (as defined in the Act) on the Relevant Day;

[5].4.4 no interest shall be payable for any period of delay attributable to the conduct of the CONTRACTOR;

[5].4.5 all claims for interest made pursuant to this paragraph [5] shall be notified in writing to the CUSTOMER’s commercial officer shown at box 1 of the Appendix (as defined in paragraph [5.6]; and

[5].4.6 any interest pursuant to this paragraph [5] shall not form a part of the Charges and, as a remedy for late payment, shall not be subject to VAT.

[5].5 If and to the extent that any term of this paragraph [5] shall be held to be, or to cause paragraph [5] or this Contract to be, void, invalid, unlawful or unenforceable, such term shall, to that extent, be omitted from this paragraph [5] and the rest of this paragraph [5] shall stand.

[5].6 In this paragraph [5]:

[5].6.1 “the Appendix” means DEFFORM 111 appended to this Contract;

[5].6.2 “the Relevant Day” means the Day which is thirty (30) Days after the later of:

[5].6.2.1 the Day upon which a valid invoice in accordance with paragraph [5.1] is received by the CUSTOMER and

[5].6.2.2 the date of completion or performance of the part of this Contract to which the invoice relates.

5.12. Where the foregoing represents how all payments due under the Contract will be made Clause 5.1.6 shall be marked “Not Used” and the following wording in Clause 5.1.3 shall be deleted “All such invoices shall be payable by the CUSTOMER within twenty eight (28) Days of the date of issue of the invoice”. The Payment Profile in paragraph 4 of Schedule 2-4 shall be completed so that it is consistent with the payment terms set out in this Additional Clause.

5.13. Where this Additional Clause is required, any referenced DEFFORMS must be included in the Order.

MOD – GPC

5.14. For Contracts where use of the GPC is required by the MOD, insert the following wording in Schedule 2-4:
The following definitions shall be inserted into or replace existing terms defined in Schedule 2-1:

“Government Procurement Card” or “GPC” means a VISA badged procurement card that is supplied to the CUSTOMER by Barclaycard Business. This may either be a GPC held by the Authorised Demander, or a GPC which has been lodged with the CONTRACTOR.

“VISA Merchant Acquiring Bank or “VMAB” means the CONTRACTOR’s bank that is responsible for making payment to the CONTRACTOR.

“Authorised Demander” means any one of the persons authorised by the CUSTOMER to place Orders, being the persons listed in the Order.

“Delivery Point” means the location(s) (including the full postal address) specified in the Order for the delivery of the Ordered IT Products, as required under Clause 4.1.1 of this Contract.

“Location Point” means the location(s) (including the full postal address) specified in the Order Form where the performance of the Services which are part of the Ordered IT Products will commence and/or be completed.

“Product Code Number” means a reference number allocated by the CONTRACTOR to identify a line item.

Order Procedures

[6].2 Without prejudice to the Ordering Procedures, if a GPC is to be lodged with the CONTRACTOR, the Authorised Demander’s GPC card number, card expiry date and, if previously agreed with the CONTRACTOR, the card security number, must be provided in the Order.

[6].3 Each Order is to be issued by an Authorised Demander. In addition to the information set out in the Ordering Procedures, the Order must also contain the following information:

[6].3.1 the Location Point(s) for the commencement and satisfactory completion of the Services which are part of the Ordered IT Products Ordered; and

[6].3.2 if different from the Delivery Point, the final destination of the Ordered IT Products;

[6].4 The CONTRACTOR shall check the availability of the Ordered IT Products and acknowledge receipt of the Order in accordance with the Ordering Procedures and the Framework Agreement.

[6].5 If the CONTRACTOR is unable to fulfil an Order in accordance with the terms of the Order, the CONTRACTOR shall notify the Authorised Demander accordingly in accordance with the Ordering Procedures and the
Framework Agreement and, upon instruction from the Authorised Demander, either:

[6].5.1 cancel that part of the Order that cannot be fulfilled in the required (as applicable) delivery or performance timescales; or

[6].5.2 agree a revised delivery and/or performance timescale and proceed to process the Order in accordance with the Ordering Procedures and paragraph [6.6].

[6.6] If the CONTRACTOR is able to fulfil an Order in accordance with the terms of the Order, the CONTRACTOR shall process the transaction in accordance with the Payment Profile and record the following details, as Card Holder Not Present (CNP), on the Electronic Point of Sale (EPOS) equipment which shall have either VISA Global Invoice Specification (VGIS) capability, or, as a minimum requirement, VISA Level 3 Line Item Detail (LID) capability:

[6].6.1 in respect of each Ordered IT Product:

[6].6.1.1 the full invoice data at LID level including (in respect of Ordered Goods) the Product Code Number;

[6].6.1.2 a short description of the Ordered IT Products in accordance with the Order;

[6].6.1.3 the quantity of Ordered Goods being dispatched;

[6].6.1.4 the denomination of the quantity of Ordered Goods;

[6].6.1.5 the price for (as applicable) the quantity of Ordered Goods being dispatched or the completed Services (ex VAT);

[6].6.1.6 the VAT payable; and

[6].6.1.7 the gross price payable;

[6].6.2 the CONTRACTOR’s name;

[6].6.3 the transaction process date;

[6].6.4 the Order number (as set out in the Order) against which the Ordered IT Products are being ordered; and

[6].6.5 the Authorised Demander’s GPC details as specified in the Order.

[6].7 If the EPOS returns an authorisation acceptance code, the CONTRACTOR shall dispatch the Ordered IT Products in accordance with this Contract. Payment to the CONTRACTOR will be made in accordance with paragraph [6.10]. If the EPOS rejects the Authorised Demander’s GPC details, the CONTRACTOR shall notify the Authorised Demander immediately and take no further action in response to the Order, until a resolution to the
payment failure has been agreed.

[6].8 The CONTRACTOR shall provide the Authorised Demander with (in the case of Ordered Goods) a dispatch note with each delivery and (in the case of Services) a statement of completion of the Services with each Service. The dispatch note and statement of completion shall include:

[6].8.1 the Order number (as set out in the Order);

[6].8.2 the date of the Order;

[6].8.3 the Delivery Point (in the case of Ordered Goods) and the Location Point (in the case of Services);

[6].8.4 if different from the Delivery Point or Location Point, the final destination of (as applicable) the Ordered Goods or the location where the Services were completed; and

[6].8.5 in respect of each Ordered IT Product in the Order:

[6].8.5.1 the Product Code Number;

[6].8.5.2 the short description of the Ordered Goods and a clear and concise description of the Services;

[6].8.5.3 the quantity of the Ordered Goods delivered;

[6].8.5.4 the denomination of quantity of the Ordered Goods;

[6].8.5.5 the price for the completed Services and the quantity of the Ordered Goods delivered (ex VAT);

[6].8.5.6 VAT;

[6].8.5.7 the gross price payable; and

[6].8.5.8 the date of dispatch of the Ordered Goods and the date on which the Services were completed.

NOTE: As applicable, the dispatch note or the statement of completion may be a copy of the invoice clearly marked “Paid by VISA” and invalidated as a tax document with the legend “This is not a VAT invoice”, or (as applicable) a delivery note or statement of statement that includes pricing details described at paragraph [6.8.5.5] to [6.8.5.8].

[6].9 If the CONTRACTOR obtains confirmation of receipt, e.g. by signature, from the Authorised Demander or his representative for the Ordered IT Products, that confirmation shall not be treated as acceptance. Acceptance of the Ordered IT Products shall be in accordance with Schedule 2-5.

Payment to the CONTRACTOR

[6].10 Where the transaction arrangements described in paragraph [6.6] have been
followed and the EPOS returns an authorisation acceptance code in accordance with paragraph [6.7], the CONTRACTOR’s VMAB will make payment in accordance with the Payment Profile.

[6].11 The CONTRACTOR shall not, in any circumstances whatsoever, submit to the CUSTOMER an invoice for payment or MOD Form 640 when an Order has been issued with an Authorised Demander’s GPC details as a method of payment for the Order under this Contract unless by agreement where the EPOS system rejects a valid transaction.

Refunds

[6].12 If a payment has been made by the CONTRACTOR’s VMAB as a result of a transaction that used an Authorised Demander’s GPC details, any refund due in respect of that transaction shall be made by a direct credit on that Authorised Demander’s GPC.

5.15. Where this Additional Clause is required, any referenced MOD forms must be included in the Order.

MOD – OVERSEAS SUPPLY

5.16. For Contracts where the MOD requires delivery overseas, insert the following wording as a new Clause 4.1.9:

4.1.9 The CONTRACTOR must be able to deliver to whole of the United Kingdom and overseas sites including Germany, Cyprus, Gibraltar, the Falkland Islands and HM ships. The CONTRACTOR shall accept responsibility for the supply and delivery of all Ordered Goods worldwide. This will normally entail delivery to a UK base such as DSDA Bicester or RAF Brize Norton for onward transmission through usual CUSTOMER freight channels.
# SCHEDULE 2-1
## INTERPRETATIONS

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acceptance Procedures</td>
<td>means the procedure of that name as specified in Schedule 2-5.</td>
</tr>
<tr>
<td>Acceptance Test</td>
<td>means a test to be conducted in accordance of the provisions of Schedule 2-5 and &quot;Acceptance Tests&quot; shall be construed accordingly.</td>
</tr>
<tr>
<td>Acceptance Test Criteria</td>
<td>means the test criteria specified in Schedule 2-5.</td>
</tr>
<tr>
<td>Acceptance Test Period</td>
<td>means the period during which the Acceptance Procedures shall be performed, pursuant to the provisions of Schedule 2-5.</td>
</tr>
<tr>
<td>Additional Charges</td>
<td>has the meaning ascribed to it in Clause 17.7.2 of this Contract.</td>
</tr>
<tr>
<td>Additional Clauses</td>
<td>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.</td>
</tr>
<tr>
<td>Affected Party</td>
<td>means the party seeking to claim relief in respect of a Force Majeure Event.</td>
</tr>
<tr>
<td>Affiliate</td>
<td>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 CONTRACTOR or its Parent Company.</td>
</tr>
<tr>
<td>Alternative Clauses</td>
<td>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.</td>
</tr>
<tr>
<td>AUTHORITY</td>
<td>has the meaning ascribed to it in Recital a) of this Contract.</td>
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<tr>
<td>BACS</td>
<td>means the Banks Automated Clearing System.</td>
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<tr>
<td>BCDR Plan</td>
<td>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 2-14.</td>
</tr>
<tr>
<td>Breach of Security</td>
<td>means in accordance with the security requirements in Schedule 2-2 and the Security Policy, the occurrence of (a) any unauthorised access to or use of the Ordered IT Products, the CUSTOMER Premises, the Sites, the CONTRACTOR System and/or any ICT, information or data (including the Confidential Information and the CUSTOMER Data) used by the CUSTOMER and/or the CONTRACTOR in connection with this Contract; and/or (b) the loss and/or unauthorised disclosure of any information or data (including</td>
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<tr>
<td><strong>Business Continuity Plan</strong></td>
<td>has the meaning set out in paragraph 1.2.2 of Schedule 2-14.</td>
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<tr>
<td>----------------------------</td>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Catalogue</strong></td>
<td>means the catalogue of IT Products available for Order under the provisions of the Framework Agreement.</td>
</tr>
<tr>
<td><strong>Catalogue Entry</strong></td>
<td>means an IT Product that has been approved by the AUTHORITY in accordance with the procedures set out in the Framework Agreement and listed in the Catalogue.</td>
</tr>
<tr>
<td><strong>Catalogue Ordering Procedure</strong></td>
<td>means the ordering procedure of that name, as set out in the Ordering Procedures (and as may be updated from time to time by the AUTHORITY).</td>
</tr>
<tr>
<td><strong>CCN Effective Date</strong></td>
<td>has the meaning ascribed to it in paragraph 3.3.1 of Schedule 2-7.</td>
</tr>
<tr>
<td><strong>CEDR</strong></td>
<td>means the Centre for Effective Dispute Resolution.</td>
</tr>
<tr>
<td><strong>Charges</strong></td>
<td>means the rates and charges set out in Schedule 2-3.</td>
</tr>
<tr>
<td><strong>Charges Variation Procedure</strong></td>
<td>means the procedure for varying the Charges specified in Schedule 2-3.</td>
</tr>
<tr>
<td><strong>CITHS Contract Manager</strong></td>
<td>means [*** insert name <em><strong>] of the CUSTOMER and [</strong></em> insert name ***] of the CONTRACTOR.</td>
</tr>
<tr>
<td><strong>Code</strong></td>
<td>has the meaning ascribed to it in Clause 19.5 of this Contract.</td>
</tr>
<tr>
<td><strong>Commerially Sensitive Information</strong></td>
<td>means the information listed in Schedule 2-10 comprising the information of a commercially sensitive nature relating to the CONTRACTOR, its Intellectual Property Rights or its business or which the CONTRACTOR has indicated to the CUSTOMER that, if disclosed by the CUSTOMER, would cause the CONTRACTOR significant commercial disadvantage or material financial loss.</td>
</tr>
<tr>
<td><strong>Confidential Information</strong></td>
<td>means the CUSTOMER Confidential Information and/or the CONTRACTOR Confidential Information.</td>
</tr>
<tr>
<td><strong>Contract</strong></td>
<td>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 ***].</td>
</tr>
<tr>
<td><strong>Contract Change Note (CCN)</strong></td>
<td>means the contract change note specified in Annex A to Schedule 2-7.</td>
</tr>
<tr>
<td><strong>Contract Change Procedure</strong></td>
<td>means the contract change procedure specified in Schedule 2-7 for making changes to this Contract.</td>
</tr>
<tr>
<td><strong>Contracting</strong></td>
<td>means a contracting authority as listed in the OJEU Notice or Schedule 2-1 (Interpretations) v 1.00</td>
</tr>
<tr>
<td>Authority</td>
<td>Regulation 3 of the Public Contracts Regulations 2006.</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>------------------------------------------------------</td>
</tr>
<tr>
<td><strong>CONTRACTOR Confidential Information</strong></td>
<td>means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the CONTRACTOR, 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 &quot;confidential&quot;) or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information.</td>
</tr>
<tr>
<td><strong>CONTRACTOR Equipment</strong></td>
<td>means the hardware, computer and telecoms devices and equipment supplied by the CONTRACTOR or its Sub-Contractors (but not hired, leased or loaned from the CUSTOMER) for the provision of the Ordered IT Products.</td>
</tr>
<tr>
<td><strong>CONTRACTOR Personnel</strong></td>
<td>means all employees, agents, consultants and contractors of the CONTRACTOR and/or of any Sub-Contractor.</td>
</tr>
<tr>
<td><strong>CONTRACTOR Proposals</strong></td>
<td>has the meaning ascribed to it in paragraph 6.2.3 of Schedule 2-14.</td>
</tr>
<tr>
<td><strong>CONTRACTOR Software</strong></td>
<td>means the proprietary off-the-shelf software of the CONTRACTOR as set out in an Order and incorporated within Schedule 2-2.</td>
</tr>
<tr>
<td><strong>CONTRACTOR System</strong></td>
<td>means the information and communications technology system used by the CONTRACTOR in providing the Ordered IT Products including the Software, the CONTRACTOR Equipment and related cabling (but excluding the CUSTOMER System).</td>
</tr>
<tr>
<td><strong>Crown Body</strong></td>
<td>means any department, office or agency of the Crown and “Crown Bodies” shall be construed accordingly.</td>
</tr>
<tr>
<td><strong>CUSTOMER Confidential Information</strong></td>
<td>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 &quot;confidential&quot;) or which ought reasonably be considered to be confidential.</td>
</tr>
<tr>
<td><strong>CUSTOMER Data</strong></td>
<td>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 CONTRACTOR by or on behalf of the CUSTOMER; or (ii) which the CONTRACTOR 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.</td>
</tr>
<tr>
<td><strong>CUSTOMER Premises</strong></td>
<td>means premises owned, controlled or occupied by the CUSTOMER or any Crown Body which are made available for use by the</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>CONTRACTOR or its Sub-Contractors for provision of Ordered IT Products (or any of them) on the terms set out in this Contract or any separate agreement or licence.</td>
<td></td>
</tr>
<tr>
<td>CUSTOMER System</td>
<td>means the CUSTOMER's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the CUSTOMER or the CONTRACTOR in connection with this Contract which is owned by or licensed to the CUSTOMER by a third party and which interfaces with the CONTRACTOR System or which is necessary for the CUSTOMER to receive the Ordered IT Products.</td>
</tr>
<tr>
<td>Data Controller</td>
<td>has the same meaning as set out in the Data Protection Act 1998.</td>
</tr>
<tr>
<td>Data Processor</td>
<td>has the same meaning as set out in the Data Protection Act 1998.</td>
</tr>
<tr>
<td>Data Subject</td>
<td>has the same meaning as set out in the Data Protection Act 1998.</td>
</tr>
<tr>
<td>Days</td>
<td>means calendar days.</td>
</tr>
<tr>
<td>Default</td>
<td>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, its 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.</td>
</tr>
<tr>
<td>Disaster</td>
<td>means the occurrence of one or more events which, either separately or cumulatively, mean that the Ordered IT Products, or a material part of it will be unavailable for period of [*** insert period ***] or which is reasonably anticipated will mean that the Ordered IT Products or a material part will be unavailable for that period.</td>
</tr>
<tr>
<td>Disaster Recovery</td>
<td>means the process of restoration of the Ordered IT Products by the provision of the Disaster Recovery Services.</td>
</tr>
<tr>
<td>Disaster Plan Recovery Services</td>
<td>has the meaning set out in paragraph 1.2.3 of Schedule 2-14.</td>
</tr>
<tr>
<td>Disaster Services Recovery</td>
<td>means the disaster recovery and/or business continuity services (as the context may require) to be provided by the CONTRACTOR</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Disaster Recovery Systems</td>
<td>means the system identified by the CONTRACTOR which shall be used for the purpose of delivering the Disaster Recovery Service.</td>
</tr>
<tr>
<td>Effective Date</td>
<td>means the date on which this Contract is signed by both parties.</td>
</tr>
<tr>
<td>Environmental Information Regulations</td>
<td>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.</td>
</tr>
<tr>
<td>FOIA</td>
<td>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.</td>
</tr>
<tr>
<td>Force Majeure Event</td>
<td>has the meaning ascribed to it in Clause 34.1 of this Contract.</td>
</tr>
<tr>
<td>Framework Agreement</td>
<td>means the meaning ascribed to it in Recital b) of this Contract.</td>
</tr>
<tr>
<td>Further Competition Procedure</td>
<td>means the ordering procedure of that name, as set out in the Ordering Procedures (and as may be updated from time to time by the AUTHORITY).</td>
</tr>
<tr>
<td>General Principles</td>
<td>has the meaning ascribed to it in paragraph 1.2.1 of Schedule 2-14.</td>
</tr>
<tr>
<td>Good Industry Practice</td>
<td>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.</td>
</tr>
<tr>
<td>Goods</td>
<td>means any goods used in the provision of the IT Products including hardware and software. 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.</td>
</tr>
<tr>
<td>Government Procurement Card</td>
<td>means the UK Government’s VISA purchasing card.</td>
</tr>
<tr>
<td>ICT Environment</td>
<td>means the CUSTOMER System and the CONTRACTOR System.</td>
</tr>
<tr>
<td>IT Products</td>
<td>means the Goods specified in the Catalogue that the CONTRACTOR shall make available to Customers including the Services. When a specific Good or Good and Service is the subject of an Order by a Customer, it will be referred to in the ensuing Contract as an Ordered IT Product.</td>
</tr>
<tr>
<td>Implementation Plan</td>
<td>means the plan (if any) specified in the CUSTOMER’s Order, and incorporated with Schedule 2-2, necessary to implement provision of</td>
</tr>
<tr>
<td><strong>Information</strong></td>
<td>has the meaning given under section 84 of the Freedom of Information Act 2000.</td>
</tr>
<tr>
<td>-----------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Intellectual Property Rights</strong></td>
<td>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).</td>
</tr>
<tr>
<td><strong>Invoicing Procedure</strong></td>
<td>means the procedure by which the CONTRACTOR invoices the CUSTOMER, as set out in Schedule 2-4.</td>
</tr>
<tr>
<td><strong>ISMS</strong></td>
<td>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 IT Products.</td>
</tr>
<tr>
<td><strong>Law</strong></td>
<td>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 and the Code.</td>
</tr>
<tr>
<td><strong>Malicious Software</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Materials</strong></td>
<td>has the meaning ascribed to it in Clause 17.6 of this Contract.</td>
</tr>
<tr>
<td><strong>Mediator</strong></td>
<td>has the meaning ascribed to it in Schedule 2-9.</td>
</tr>
<tr>
<td><strong>Model Contract</strong></td>
<td>means the model contract set out in Schedule 2 of the Framework Agreement.</td>
</tr>
<tr>
<td><strong>Notice of Arbitration</strong></td>
<td>means the formal notice from the CONTRACTOR or the CUSTOMER to the other party referring a dispute to arbitration in accordance with the provisions of Schedule 2-9.</td>
</tr>
<tr>
<td><strong>OJEU Notice</strong></td>
<td>means the contract notice issued by the AUTHORITY in respect of the Framework Agreement.</td>
</tr>
<tr>
<td><strong>Open Source</strong></td>
<td>means the open software source listed in Schedule 2-16.</td>
</tr>
<tr>
<td>Ordered Software</td>
<td>means the CUSTOMER System and the Sites.</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>-----------------------------------------</td>
</tr>
<tr>
<td>Operating Environment</td>
<td>means an order for IT Products served by the CUSTOMER on the CONTRACTOR in accordance with the Ordering Procedures.</td>
</tr>
<tr>
<td>Order</td>
<td>means a Catalogue Entry for Goods selected by the CUSTOMER and included in Schedule 2-2 of this Contract pursuant to an Order.</td>
</tr>
<tr>
<td>Ordered Goods</td>
<td>means a Catalogue Entry for IT Products selected by the CUSTOMER and included in Schedule 2-2 of this Contract pursuant to an Order.</td>
</tr>
<tr>
<td>Ordered IT Products</td>
<td>means the ordering procedures specified by the AUTHORITY from time to time and available from the AUTHORITY’s website which the CONTRACTOR and CUSTOMER must comply with when placing an Order.</td>
</tr>
<tr>
<td>Parent Company</td>
<td>means any company which is the ultimate Holding Company of the CONTRACTOR or any other company of which the ultimate Holding Company of the CONTRACTOR is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the CONTRACTOR or which is engaged in the same or similar business to the CONTRACTOR. The term “Holding Company” shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto.</td>
</tr>
<tr>
<td>Payment Profile</td>
<td>means the profile of payments to be made by the CUSTOMER to the CONTRACTOR under the terms of this Contract as set out in Schedule 2-4.</td>
</tr>
<tr>
<td>Persistent Breach</td>
<td>means the CONTRACTOR is in any breach of this Contract or any part thereof continuously for twenty (20) Working Days or more.</td>
</tr>
<tr>
<td>Personal Data</td>
<td>has the same meaning as set out in the Data Protection Act 1998.</td>
</tr>
<tr>
<td>Pre-Existing Intellectual Property Rights</td>
<td>means any Intellectual Property Rights vested in or licensed to (a) the CONTRACTOR prior to or independently of the performance by the CONTRACTOR 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.</td>
</tr>
<tr>
<td>Private Authority</td>
<td>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.</td>
</tr>
<tr>
<td>Processing</td>
<td>has the same meaning as set out in the Data Protection Act 1998.</td>
</tr>
<tr>
<td>Protectively Marked</td>
<td>has the meaning as set out in the Security Policy Framework.</td>
</tr>
<tr>
<td><strong>Quarter</strong></td>
<td>means a three (3) month period beginning on 1st January, 1st April, 1st July or 1st October. The term “Quarterly” shall be similarly construed.</td>
</tr>
<tr>
<td><strong>Regulatory Bodies</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Related Service Provider</strong></td>
<td>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 ***].</td>
</tr>
<tr>
<td><strong>Reports</strong></td>
<td>means reports submitted by the CONTRACTOR to the CUSTOMER as specified in Schedule 2-6.</td>
</tr>
<tr>
<td><strong>Requests for Information</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Review Report</strong></td>
<td>has the meaning ascribed to it in paragraph 6.2 of Schedule 2-14.</td>
</tr>
<tr>
<td><strong>Security Management Plan</strong></td>
<td>means the CONTRACTOR’s security plan prepared pursuant to paragraph 3 of Schedule 2-15, an outline of which is set out in Annex of Schedule 2-15.</td>
</tr>
<tr>
<td><strong>Security Policy</strong></td>
<td>means the CUSTOMER’s security policy annexed to Schedule 2-15, as updated from time to time.</td>
</tr>
<tr>
<td><strong>Security Tests</strong></td>
<td>has the meaning ascribed to it in paragraph 4.1 of Schedule 2-15.</td>
</tr>
<tr>
<td><strong>Service Commencement Date</strong></td>
<td>means the date of commencement of the provision of the Ordered IT Products by the CONTRACTOR in accordance with the Order.</td>
</tr>
<tr>
<td><strong>Service Credits</strong></td>
<td>means the service credits specified in Schedule 2-2 which shall be payable to the CUSTOMER by the CONTRACTOR in the event that the Service Levels are not met in respect of Ordered IT Products.</td>
</tr>
<tr>
<td><strong>Service Levels</strong></td>
<td>means the levels of service defined in Schedule 2-2.</td>
</tr>
<tr>
<td><strong>Services</strong></td>
<td>means the services that are directly associated with the supply of the Goods and is limited to those services specified in the Catalogue.</td>
</tr>
<tr>
<td><strong>Sites</strong></td>
<td>means any premises from which Ordered IT Products are provided or from which the CONTRACTOR manages, organises or otherwise</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>--------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Software</td>
<td>means any CONTRACTOR Software and Third Party Software.</td>
</tr>
<tr>
<td>Special Terms</td>
<td>means additional Customer specific terms, to which the CONTRACTOR’s agreement is sought by a Customer under the Further Competition Procedure.</td>
</tr>
<tr>
<td>Staff Vetting Procedures</td>
<td>means the CUSTOMER's procedures and departmental policies for the vetting of personnel whose role will involve 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.</td>
</tr>
<tr>
<td>Standards and Regulations</td>
<td>means the standards and regulations as set out in Schedule 2-11 with which the CONTRACTOR shall comply in the provision of the Ordered IT Products and its responsibilities and obligations hereunder.</td>
</tr>
<tr>
<td>Sub-Contractor</td>
<td>means any supplier selected, appointed and managed by the CONTRACTOR 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.</td>
</tr>
<tr>
<td>Term</td>
<td>means the term of this Contract as set out in Clause 10.1 of this Contract, subject to early termination (howsoever arising) pursuant to Clause 10.</td>
</tr>
<tr>
<td>Termination Events</td>
<td>means each of the events specified in Clause 10.3 of this Contract.</td>
</tr>
<tr>
<td>Third Party Software</td>
<td>means off-the-shelf software which is proprietary to any third party [*** other than an Affiliate of the CONTRACTOR ***] which is or will be used by the CONTRACTOR for the purposes of providing the Ordered IT Products, including the software specified as such in Schedule 2-16.</td>
</tr>
<tr>
<td>Value Added Tax</td>
<td>means value added tax as provided for in the Value Added Tax Act 1994 and any other applicable sales tax.</td>
</tr>
<tr>
<td>Working Days</td>
<td>means Monday to Friday inclusive, excluding English public and bank holidays.</td>
</tr>
<tr>
<td>Year</td>
<td>means a period of twelve (12) months.</td>
</tr>
</tbody>
</table>
SCHEDULE 2-2

THE ORDERED IT PRODUCTS, SERVICE LEVELS, SERVICE CREDITS AND IMPLEMENTATION PLAN

1. INTRODUCTION

1.1. This Schedule specifies:

1.1.1. the Ordered IT Products;
1.1.2. the Service Levels applicable to each of the Ordered IT Products;
1.1.3. the Service Credits applicable where Service Levels are not met; and
1.1.4. the Implementation Plan.

1.2. [Tenderers must insert their response to A10 of the ITT here]

2. THE ORDERED IT PRODUCTS

2.1. [*** as specified in the Catalogue and/or CUSTOMER Order ***]

3. SERVICE LEVELS

3.1. [*** as specified in the Catalogue and/or CUSTOMER Order ***]

4. SERVICE CREDITS

4.1. [*** as specified in the Catalogue and/or CUSTOMER Order ***]

5. IMPLEMENTATION PLAN

5.1. [*** as specified in the CUSTOMER Order ***]
1. INTRODUCTION

1.1. This Schedule details:

1.1.1. the Charges for the Ordered IT Products; and

1.1.2. the Charges Variation Procedure applicable to this Contract.

1.2. In accordance with the Framework Agreement, the CONTRACTOR cannot increase its maximum mark-up (as set out in the Framework Agreement) which it applies to the Goods. Nothing in this Contract shall prevent or restrict the CONTRACTOR from reducing the maximum mark-up and the CONTRACTOR shall ensure that any reduction is immediately passed on to the CUSTOMER.

1.3. In accordance with the Framework Agreement, the CONTRACTOR will not impose any minimum order quantities or values on Customers.

1.4. In accordance with the Framework Agreement, the CONTRACTOR will ensure that all delivery charges are clearly visible and identifiable to the CUSTOMER at the point of Order.

2. THE CHARGES

2.1. [*** to be inserted relative to the Ordered IT Products including any delivery charges ***]

3. CHARGES VARIATION PROCEDURE

3.1. [***Subject to paragraph 3.2 of this Schedule, ***][***t OR T ***]he Charges, shall only be varied due to:

3.1.1. agreement between the parties at any time to decrease any of the Charges; and

3.1.2. reduction in the charges in accordance with Clause 5.1.9 of this Contract.

3.2. [*** The following Charges shall not be subject to the Charges Variation Procedure: [*** insert details ***] ***]
SCHEDULE 2-4

INVOICING PROCEDURE

1. INTRODUCTION

1.1. This Schedule sets out the Invoicing Procedure that shall apply to this Contract.

2. INVOICING PROCEDURE

2.1. The CONTRACTOR shall, in accordance with the Payment Profile, submit invoices directly to:

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

2.2. Invoices shall specify:

2.2.1. the unique Order reference [*** insert ref. ***];

2.2.2. the delivery milestone (if any) within this Contract to which the invoice relates and a summary of the corresponding Ordered IT Products;

2.2.3. any applicable delivery charges;

2.2.4. any Service Credits due;

2.2.5. the line value;

2.2.6. total value excluding Value Added Tax;

2.2.7. the Value Added Tax percentage;

2.2.8. the total value including Value Added Tax;

2.2.9. the tax point date relating to the rate of Value Added Tax shown; and

2.2.10. the CONTRACTOR’s SAP number (if applicable).

3. INVOICE PAYMENT

3.1. The CUSTOMER shall pay all valid invoices submitted by the CONTRACTOR in accordance with the provisions of this Schedule in accordance with the provisions of Clause 5 of this Contract.

3.2. 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 CONTRACTOR 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 CONTRACTOR shall respond within ten (10) Working Days of receipt of the returned invoice stating whether or not the CONTRACTOR accepts the CUSTOMER’s proposed amendments. If it does then the CONTRACTOR 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 21 of this Contract.

4. PAYMENT PROFILE

4.1. The Payment Profile in respect of the Ordered IT Products provided under this Contract is as follows:

[*** insert Payment Profile relevant to each Ordered IT Product, as specified in the Order ***]
SCHEDULE 2-5

ACCEPTANCE PROCEDURES

1. INTRODUCTION

1.1 This Schedule specifies the Acceptance Procedures and the Acceptance Test Criteria to be used in the acceptance of the Ordered IT Products.

2. ACCEPTANCE PROCEDURES

2.1 The CONTRACTOR shall, during the Acceptance Test Period, make available the Ordered IT Products to the CUSTOMER (including any products supplied by the CONTRACTOR necessary to enable the provision of those Ordered IT Products) for the Acceptance Procedures to be performed.

2.2 The CUSTOMER will conduct Acceptance Tests on the Ordered IT Products to test whether they meet the requirement specified in the Order and meet the appropriate Service Levels.

2.3 The CUSTOMER will perform the Acceptance Procedures in respect of each Ordered IT Product (including any applicable delivery milestones stated within the Implementation Plan of this Contract).

2.4 The Acceptance Procedures shall be recorded as successful and the CONTRACTOR notified accordingly where all the Acceptance Test Criteria are met.

2.5 The Acceptance Procedures shall be recorded as unsuccessful and the CONTRACTOR notified accordingly where any of the Acceptance Test Criteria are not met.

2.6 In the event that the Acceptance Procedures in respect of each Ordered IT Product or any part thereof, have not been recorded as successful pursuant to paragraph 2.4 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 CONTRACTOR shall correct the faults which caused the Acceptance Procedures to be recorded as unsuccessful and the Acceptance Procedures shall be re-performed.

2.7 In the event that after the CUSTOMER has extended the Acceptance Test Period pursuant to paragraph 2.6 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:

2.7.1 extend the Acceptance Test Period for a further period (or periods) specified by the CUSTOMER during which the CONTRACTOR shall correct the faults which caused the Acceptance Procedures to be recorded as unsuccessful and the Acceptance Procedures shall be re-performed; or

2.7.2 reject the Ordered IT Product, terminate this Contract and receive a full
refund of all sums paid under this Contract.

2.8 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.

2.9 The Acceptance Procedures set out in paragraph 2 of this Schedule shall apply to each of the phases of testing set out in paragraph 3 of this Schedule (unless stated otherwise in paragraph 3).

2.10 The right to reject and terminate in paragraph 2.7.2 of this Schedule shall apply to each Ordered IT Product so that the CUSTOMER can reject and terminate parts of the Ordered IT Product rather than the entire Ordered IT Products if it so wishes. If the CUSTOMER only terminates the rejected part of the Ordered IT Product the refund referred to in paragraph 2.7.2 of this Schedule shall be in respect of Ordered IT Products so rejected.

2.11 The CONTRACTOR shall provide such assistance as the CUSTOMER requires in relation to the conducting of the Acceptance Tests.

2.12 During the implementation/rollout phase (as further described in paragraph 3 of this Schedule), the CUSTOMER reserves the right to re-test any service element which failed the Acceptance Tests conducted in the previous testing phase (as further described in paragraph 3 of this Schedule) even if such service element subsequently passed the Acceptance Test and was signed off by the CUSTOMER. In the event of such re-test, the CUSTOMER shall have all rights and remedies set out in the Contract.

3. ACCEPTANCE TEST CRITERIA

3.1 *** The Acceptance Test Criteria pertaining to each Ordered IT Product, as specified and agreed in the Order, should be inserted here. ***
1. INTRODUCTION

1.1. This Schedule specifies the requirements in respect of Contract and service management issues.

2. IMPLEMENTATION

2.1. If required by the CUSTOMER’s Order, both parties shall perform all their obligations under this Contract in accordance with the Implementation Plan.

2.2. In the event that the CONTRACTOR fails (or is likely to fail), due to its Default, to fulfil an obligation by the date specified in the Implementation Plan for such fulfilment, the CONTRACTOR shall notify the CUSTOMER in writing of such failure (including full details of the reasons for and consequences of the delay) and, at the request of the CUSTOMER and without prejudice to the CUSTOMER’s other rights and remedies:

2.2.1. 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; and

2.2.2. take all reasonable steps necessary to eliminate or mitigate the consequences of the delay, including issuing a correction plan (covering those aspects for which the CONTRACTOR is responsible) for approval not later than ten (10) Working Days after the initial notification under paragraph 2.2 of this Schedule, which once approval has been secured from the CUSTOMER, shall be followed by the CONTRACTOR.

2.3. In the event that any obligation of the CONTRACTOR specified in the Implementation Plan is (or is likely to become) delayed as a result of a Default by the CUSTOMER then:

2.3.1. the CONTRACTOR shall immediately notify the CUSTOMER of the fact of the delay (including full details of the consequences of the delay);

2.3.2. 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’s Default (or other such period as the parties agree);

2.3.3. 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 IT Products; and

2.3.4. the CUSTOMER shall reimburse those reasonable costs of the CONTRACTOR which are both reasonably and necessarily incurred by the CONTRACTOR as a direct result of such delay.
2.4. Where a delay is attributable in part to the CONTRACTOR’s Default and in part to a CUSTOMER Default, the parties shall negotiate in good faith with a view to agreeing a fair and reasonable apportionment of responsibility for the delay. If necessary, the parties may escalate the matter in accordance with Clause 21.

3. REPORTS

3.1. When requested by the CUSTOMER, the CONTRACTOR shall provide Reports electronically to the CUSTOMER at [*** insert address ***].

3.2. Such Reports, in respect of each [*** month/Quarter ***], shall be submitted [*** monthly/Quarter ***] by the [*** insert date ***] Day of the following [*** month/Quarter ***].

3.3. Reports shall include:
   3.3.1. a record of the Ordered IT Products provided to the CUSTOMER;
   3.3.2. a record of the invoices raised by the CONTRACTOR;
   3.3.3. a record of any failures to provide Ordered IT Products in accordance with this Contract;
   3.3.4. details of the number and nature of any complaints from the CUSTOMER;
   3.3.5. details of any Sub-Contractors used; and
   3.3.6. a forecast of the Charges payable by the CUSTOMER for each of the following three (3) months.

4. REVIEW MEETINGS

4.1. When requested by the CUSTOMER, the [*** insert CUSTOMER’s first point of contact ***] and [*** insert CONTRACTOR’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 CONTRACTOR’s first point of contact ***].

5. CUSTOMER DATA

5.1. Format: [*** complete as required by Clause 14.3 of the Contract ***].

5.2. In accordance with Clause 14.5 of this Contract, the CONTRACTOR 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.

5.3. In accordance with Clause 14.7.1 of this Contract, the CONTRACTOR shall restore or procure the restoration of CUSTOMER Data later than [*** insert period ***].
SCHEDULE 2-7

CONTRACT CHANGE PROCEDURE

1. INTRODUCTION

1.1. This Schedule sets out the Contract Change Procedure to be used by the CUSTOMER and the CONTRACTOR to effect changes to this Contract.

1.2. In accordance with Clause 8.1 of the Contract, the following shall not be subject to the Agreement Change Procedure:

1.2.1. a variation of the Charges (which shall be subject to the Charges Variation Procedure); and

1.2.2. changes to the Sub-Contractors listed in Schedule 9 (which shall be subject to Clause 30.5 of the Contract).

2. PRINCIPLES

2.1. The CUSTOMER and the CONTRACTOR 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.

2.2. Until such time as a Contract Change Note (CCN) has been signed by both parties, the CONTRACTOR shall continue to provide and make available to the CUSTOMER the Ordered IT Products in accordance with this Contract.

2.3. Any work undertaken in connection with any changes to this Contract by the CONTRACTOR, 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 CONTRACTOR unless otherwise agreed between the CUSTOMER and the CONTRACTOR in advance.

2.4. 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

3.1. 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 9 of this Contract.

3.2. 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 9 of this Contract. If appropriate, the parties shall enter into discussions to discuss the draft CCN.
3.3. 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:

3.3.1. 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

3.3.2. no further action being taken on that draft CCN.

3.4. 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 3.3.1 of this Schedule, shall be uniquely identified by a sequential number allocated by the CUSTOMER.

3.5. The CONTRACTOR 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.

3.6. Subject to the agreement reached in accordance with paragraph 3.3.1 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 CONTRACTOR by the CUSTOMER.

3.7. A CCN signed by both parties shall constitute an amendment to this Contract pursuant to Clause 8 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/CONTRACTOR]
Date change first proposed: ...........................................................
Number of pages attached: ...........................................................

WHEREAS the CONTRACTOR and the CUSTOMER entered into a Contract for the provision of IT Products 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]

Target date for implementing 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 CONTRACTOR

By ...................................................................................................
COMMODITISED IT HARDWARE AND SOFTWARE FRAMEWORK AGREEMENT

Name ...........................................................................................................
Title ...........................................................................................................
Date ...........................................................................................................

Signed for and on behalf of the CUSTOMER

By ...........................................................................................................
Name ...........................................................................................................
Title ...........................................................................................................
Date ...........................................................................................................
SCHEDULE 2-8

SUB-CONTRACTORS

1. INTRODUCTION

1.1. This Schedule contains:

1.1.1. details of the Sub-Contractors to be engaged or employed by the CONTRACTOR in the provision of Ordered IT Products; and

1.1.2. the procedure to select, appoint and manage Sub-Contractors.

1.2. Clause 30 of this Contract sets out the conditions and restrictions placed on amending or changing Sub-Contractors.

2. SUB-CONTRACTORS

2.1. Table of Sub-Contractors:

<table>
<thead>
<tr>
<th>Name and full contact details</th>
<th>Obligation</th>
</tr>
</thead>
<tbody>
<tr>
<td>*** insert name and address ***</td>
<td>*** insert Sub-Contractor obligation(s) ***</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>*** insert name and address ***</th>
<th>*** insert Sub-Contractor obligation(s) ***</th>
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<th>*** insert name and address ***</th>
<th>*** insert Sub-Contractor obligation(s) ***</th>
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<th>*** insert name and address ***</th>
<th>*** insert Sub-Contractor obligation(s) ***</th>
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<table>
<thead>
<tr>
<th>*** insert name and address ***</th>
<th>*** insert Sub-Contractor obligation(s) ***</th>
</tr>
</thead>
</table>
3. PROCEDURE TO SELECT, APPOINT AND MANAGE SUB-CONTRACTORS

3.1. The following procedure shall be followed by the CONTRACTOR when selecting, appointing and managing Sub-Contractors under this Contract:

[Tenderers must insert their response to A11 of the ITT here]
SCHEDULE 2-9

DISPUTE RESOLUTION PROCEDURE

1. INTRODUCTION

1.1. This Schedule sets out the mediation and arbitration dispute resolution procedure governing disputes under this Contract.

1.2. In the event that a dispute cannot be resolved by the CUSTOMER and CONTRACTOR representatives nominated under Clause 21.3 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 21.4 of this Contract.

1.3. Subject always to the provisions of Clause 21 of this Contract, nothing in this dispute resolution procedure shall prevent the CUSTOMER or the CONTRACTOR 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

2.1. The procedure for mediation pursuant to Clause 21.5 of this Contract and consequential provisions relating to mediation shall be as follows:

2.1.1. a neutral adviser or mediator (the “Mediator”) shall be chosen by agreement between the CUSTOMER and the CONTRACTOR 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

2.1.2. the CUSTOMER and the CONTRACTOR 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.

2.2. Unless otherwise agreed by the CUSTOMER and the CONTRACTOR, 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.

2.3. In the event that the CUSTOMER and the CONTRACTOR 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 CONTRACTOR’s second point of contact ***].
2.4. Failing agreement, either the CUSTOMER or CONTRACTOR 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.

2.5. The CUSTOMER and the CONTRACTOR 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.

2.6. Work and activity to be carried out under this Contract shall not cease or be delayed during the mediation process.

2.7. In the event that the CUSTOMER and the CONTRACTOR 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 21.5 of this Contract.

3. ARBITRATION

3.1. In the event that a dispute between the CUSTOMER and the CONTRACTOR, or a claim by one against the other, pursuant to the terms of this Contract is not resolved pursuant to paragraph 2 of this Schedule, the parties may, in accordance with the provisions of Clause 21.5 of this Contract and subject to paragraph 2.7 of this Schedule, refer the matter to arbitration in accordance with this Schedule.

3.2. 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:

3.2.1. that the dispute is referred to arbitration;

3.2.2. the particulars of this Contract; and

3.2.3. a brief summary of the subject of the dispute.

3.3. Unless otherwise agreed in writing by the CUSTOMER and the CONTRACTOR, the provisions of the Arbitration Act 1996 shall govern the arbitration commenced pursuant to this Schedule.

3.4. 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).

3.5. It is agreed between the CUSTOMER and the CONTRACTOR 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).

3.6. 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 CONTRACTOR, their legal representatives and any person necessary to the conduct of the proceedings, without the agreement of all parties to the arbitration.

3.7. 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.

3.8. The CUSTOMER and the CONTRACTOR 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.

3.9. In the event that the CUSTOMER and the CONTRACTOR 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 37 of this Contract.
1. INTRODUCTION

1.1. Without prejudice to the CUSTOMER’s general obligation of confidentiality, the parties acknowledge that the CUSTOMER may have to disclose Information in or relating to this Contract following a Request for Information pursuant to Clause 19 of this Contract.

1.2. In this Schedule the parties have sought to identify the CONTRACTOR’s Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.

1.3. Where possible, the parties have sought to identify where any relevant Information will cease to fall into the category of Information to which this Schedule applies.

1.4. Without prejudice to the CUSTOMER’s obligation to disclose Information in accordance with 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:

<table>
<thead>
<tr>
<th>Date</th>
<th>Item(s)</th>
<th>Duration of Confidentiality</th>
</tr>
</thead>
<tbody>
<tr>
<td>*** insert date ***</td>
<td>*** insert details ***</td>
<td>*** insert duration ***</td>
</tr>
</tbody>
</table>
1. INTRODUCTION

1.1. This Schedule sets out the Standards and Regulations with which the CONTRACTOR shall comply in its provision of the Ordered IT Products.

1.2. [*** Insert applicable Standards and Regulations from the Catalogue and/or Order - Standards and Regulations set out below in paragraphs 2, 3, 4, 5.1 and 5.2 reflect the minimum standards and regulations which the CONTRACTOR has agreed to comply with under the Framework Agreement and will therefore apply to each Contract. If the CUSTOMER has additional Standards and Regulations which it requires the SERVICE PROVIDER to comply with, the CUSTOMER should include these in the Order/Contract. Further examples are highlighted in paragraphs 5.3, 6 to 12 (inclusive) to aid the parties ***]

2. GENERAL STANDARDS

2.1. [*** Quality Management System

2.1.1. The CONTRACTOR shall undertake its obligations arising hereunder and in all Contracts in accordance with the BS EN ISO 9001 Quality Management System standard.

2.1.2. The CONTRACTOR shall ensure that its Sub-Contractors undertake their obligations arising under Contracts in accordance with the BS EN ISO 9001 Quality Management System standard. ***]

3. SUSTAINABILITY

3.1. The CONTRACTOR 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 (including the Ordered IT Products) are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of, in ways that are appropriate from an environmental protection perspective.

3.2. The CONTRACTOR warrants that it has obtained ISO 14000/14001 certification for its environmental management and shall comply with and maintain such certification requirements.

3.3. The CONTRACTOR shall comply with relevant obligations under the Waste Electrical and Electronic Equipment Regulations 2002/96/EC.

3.4. In its supply of the IT Products, the CONTRACTOR shall (at its own cost) comply with DEFRA’s “Buy Sustainable – Quick Wins” mandatory minimum specifications to the extent applicable (including in relation to Category 3 goods (Office Machinery)), as updated from time to time. This document can currently be found at
3.5. [Tenderers must insert their response to A14 of the ITT here]

4. CUSTOMER SERVICE

4.1. [Tenderers must insert their response to A6 of the ITT here]

4.2. [Tenderers must insert their response to A7 of the ITT here]

5. SECURITY

5.1. The CONTRACTOR shall ensure that security is maintained to the level required by Schedule 2-15, and subject to the relevant audit rights therein.

5.2. [Tenderers must insert their response to A8 of the ITT here]

5.3. [*** insert any further applicable Standards and Regulations e.g., HMG IA standards 1 to 7, CESG IA and BS 15000/2000 or ISO 1779927001/27002 (as referred to in Schedule 2-17) ***]

6. *** INFORMATION SECURITY AND INFORMATION STANDARDS

6.1. The CONTRACTOR 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. ***]

6.2. The CONTRACTOR shall undertake its obligations arising hereunder and in all Contracts in accordance with the ISO 27001 Information Security Management standard.

6.3. The CONTRACTOR shall ensure that all Ordered IT Products intended for the transmission of protectively marked material or for the protection of systems accredited to store or process protectively marked material shall be protected and delivered to the standards set out in the Security Policy Framework.

6.4. All other Ordered IT Products shall comply with the Information Age Government Security Framework.

6.5. The CONTRACTOR shall prepare an Accreditation Document Set (ADS) (as defined in HMG Infosec Standard 2) covering the scope of the Ordered IT Products and shall maintain said ADS throughout the Term. The ADS shall be subject to the approval of the Pan-Government Accredor.

6.6. [*** insert any further applicable Standards and Regulations ***] ***

7. *** TECHNICAL

7.1. [e-Government Interoperability Framework]

7.2. [Technical Standards Catalogue]
7.3. [e-Government Metadata Standard (e-GMS)]

7.4. [ITIL Guidelines]

7.4.1. The CONTRACTOR shall follow the guidelines contained in the Office of Government Commerce’s IT Infrastructure Library ("ITIL guidelines") for delivering the Ordered IT Products [or may propose alternatives that are broadly functionally consistent with the ITIL guidelines.]

7.4.2. The CONTRACTOR shall ensure that its service support processes include:

- 7.4.2.1. Configuration Management;
- 7.4.2.2. Service Desk/Help Desk;
- 7.4.2.3. Incident Management;
- 7.4.2.4. Problem Management;
- 7.4.2.5. Change Management; and
- 7.4.2.6. Release Management.

7.4.3. The CONTRACTOR shall ensure that its service delivery processes include:

- 7.4.3.1. Service Level Management;
- 7.4.3.2. ICT Financial Management;
- 7.4.3.3. Capacity Management;
- 7.4.3.4. Availability Management;
- 7.4.3.5. ICT Service Continuity Management; and
- 7.4.3.6. Security Management.

7.4.4. Within three (3) months after the Effective Date, the CONTRACTOR will prepare and deliver to the CUSTOMER for approval full documentation of the processes listed at paragraphs 8.4.2 and 8.4.3 of this Schedule and to a standard sufficient to achieve ISO 20000 certification. If the documentation is not approved by the CUSTOMER, the CONTRACTOR 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 8.4.4 may be unreasonably withheld or delayed.

7.4.5. The CONTRACTOR 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 IT Products and not to
the CONTRACTOR’s organisation as a whole.

7.4.6. The CONTRACTOR 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 CONTRACTOR, 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.

7.4.7. The CONTRACTOR’s ICT service management functions shall interface with the CUSTOMER in accordance with the CUSTOMER’s ICT service management framework.

7.4.8. [The CONTRACTOR shall on reasonable request provide the CUSTOMER with documents showing how ITIL guidelines have been followed in the provision of the Ordered IT Products.]

7.4.9. The CONTRACTOR 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 Ordered IT Products.]

7.5. [*** insert any further applicable Standards and Regulations ***] ***

8. [*** BUSINESS]

8.1. [*** insert any applicable Standards and Regulations ***] ***

9. [*** PROJECT MANAGEMENT]

9.1. The CONTRACTOR shall generally make use of PRINCE2 methodology or similar, supplemented where appropriate by the tools and methods of the CONTRACTOR's own project management methodologies. ***]

10. [*** SYSTEMS DEVELOPMENT ENVIRONMENT]

10.1. 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.

10.2. [*** insert any further applicable Standards and Regulations ***] ***

11. [*** DATA STANDARDS]

11.1. The CONTRACTOR 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.

11.2. Key data shall include: [*** insert list of data ***]

11.3. [*** insert any further applicable Standards and Regulations ***] ***
12. [*** VERSION CONTROL

12.1. The CONTRACTOR shall develop procedures which ensure that only the correct release or version of a Deliverable can be delivered to the CUSTOMER. The CONTRACTOR shall provide a copy of the draft procedures to the CUSTOMER for its approval. On receipt of such approval, the CONTRACTOR shall then operate those procedures. ***]
1. INTRODUCTION

1.1 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.

2. CONTRACT COMMENCEMENT

2.1 Ordered Goods to be used in the provision of the Ordered IT Products may (as applicable) be provided by the CONTRACTOR or a third party (e.g., lessor). Subject always to the provisions of paragraph 3 of this Schedule, title and risk in those Ordered Goods shall be as specified in this paragraph 2 of this Schedule.

2.2 Where any Ordered Goods are provided by the CONTRACTOR (other than Ordered Goods which are leased, loaned or hired by a third party in accordance with paragraph 2.3 of this Schedule):

2.2.1 title and risk remains with the CONTRACTOR and such Ordered Goods (if required) shall be licensed to the CUSTOMER or its authorised agents; and

2.2.2 if the Ordered Goods are licensed in accordance with paragraph 2.2.1 of this Schedule and are in the CUSTOMER’s sole possession and control, the CUSTOMER:

2.2.2.1 undertakes the safe custody and the due return of those Ordered Goods; and

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

2.3 Where any Ordered Goods are leased, loaned or hired from a third party either directly to the CUSTOMER or via the CONTRACTOR (in which case the identity of the third party shall be disclosed to the CUSTOMER), title to those Ordered Goods shall remain with the lessor and risk shall be determined in accordance with the relevant third party terms and conditions.

3. DURING THE TERM

3.1 Where ownership of any Ordered Goods to be used in the provision of the Ordered IT Products changes during the Term, the passing of title and risk in those Ordered Goods shall be as specified in this paragraph 3 of this Schedule.

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

3.2.1 payment for such Ordered Goods; or

3.2.2 such Ordered Goods successfully passing the Acceptance Tests.
Ordered Goods to be transferred to the CUSTOMER

[*** All Ordered Goods will transfer OR insert which Ordered Goods will transfer ***]
SCHEDULE 2-13

LIQUIDATED DAMAGES

1. INTRODUCTION

1.1. 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

2.1. Without prejudice to any other remedies available to the CUSTOMER:

2.1.1. if:

2.1.1.1. any milestone or deliverable has not been met by the date set out in the Implementation Plan; and/or

2.1.1.2. 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 CONTRACTOR shall pay to the CUSTOMER as Liquidated Damages for each Day of delay the relevant sum specified in paragraph 5 of this Schedule up to the end of the relevant Liquidated Damages Period. Such payment shall be in full and final settlement of the CONTRACTOR’s financial liability for any loss or damage incurred by the CUSTOMER during the Liquidated Damages Period; and

2.1.2. if:

2.1.2.1. any milestone or deliverable has not been met; and/or

2.1.2.2. 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.

2.2. No payment or concession to the CONTRACTOR 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 2.1 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.

2.3. At the Effective Date, the CONTRACTOR and the CUSTOMER agree that the daily Liquidated Damages sum specified in paragraph 5 of this Schedule represents a genuine pre-estimate of the CUSTOMER’s loss, calculated in accordance with paragraph 6 of this Schedule.
3. CIRCUMSTANCES WHERE LIQUIDATED DAMAGES APPLY

3.1. [***full details of circumstances where Liquidated Damages would apply should be inserted here ***]

4. PERIOD OF LIQUIDATED DAMAGES

4.1. [*** full details of the period of Liquidated Damages should be inserted here ***]

5. AMOUNT OF LIQUIDATED DAMAGES

5.1. [*** full details of value of Liquidated Damages should be inserted here ***]

6. CALCULATION OF GENUINE PRE-ESTIMATE OF LOSS

6.1. [*** full details of the calculation of the estimate should be inserted here ***]
1. PURPOSE OF THIS SCHEDULE

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

1.2 The BCDR Plan shall be divided into three parts:

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

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

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

1.3 The BCDR Plan shall detail the processes and arrangements which the CONTRACTOR shall follow to ensure continuity of the business processes and operations supported by the Ordered IT Products following any failure or disruption of any element of the Ordered IT Products and the recovery of the Ordered IT Products in the event of a Disaster.

2. DEVELOPMENT OF BCDR PLAN

2.1 The BCDR Plan shall unless otherwise required by the CUSTOMER in writing, be based upon and be consistent with the provisions of paragraphs 3, 4 and 5 of this Schedule.

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

3. PART A - GENERAL PRINCIPLES AND REQUIREMENTS

3.1 The BCDR Plan shall:

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

3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the Ordered IT Products and any services provided to the CUSTOMER by a Related Service Provider;

3.1.3 contain an obligation upon the CONTRACTOR 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;
recovery where applicable;

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

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

3.1.6 contain a risk analysis, including:

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

3.1.6.2 identification of any single points of failure within the Ordered IT Products and processes for managing the risks arising therefrom;

3.1.6.3 identification of risks arising from the interaction of the Ordered IT Products with the services provided by a Related Service Provider; and

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

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

3.1.8 set out key contact details (including roles and responsibilities) for the CONTRACTOR (and any Sub-Contractors) and for the CUSTOMER;

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

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

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

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

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

3.2.1 the Ordered IT Products are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
3.2.2 the adverse impact of any Disaster, service failure, or disruption on the operations of the CUSTOMER is minimal as far as reasonably possible;

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

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

3.3 The BCDR Plan must be upgradeable and sufficiently flexible to support any changes to the Ordered IT Products or to the business processes facilitated by and the business operations supported by the Ordered IT Products.

3.4 The CONTRACTOR 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 CONTRACTOR of this Contract.

4. PART B - BUSINESS CONTINUITY ELEMENT - PRINCIPLES AND CONTENTS

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

4.1.1 the alternative processes, (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Ordered IT Products; and

4.1.2 the steps to be taken by the CONTRACTOR upon resumption of the Ordered IT Products in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

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

5. PART C - DISASTER RECOVERY ELEMENT - PRINCIPLES AND CONTENTS

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

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

5.3 The Disaster Recovery Plan shall include the following:
5.3.1 the technical design and build specification of the Disaster Recovery System;

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

5.3.2.1 data centre and disaster recovery site audits;

5.3.2.2 backup methodology and details of the CONTRACTOR's approach to data back-up and data verification;

5.3.2.3 identification of all potential disaster scenarios;

5.3.2.4 risk analysis;

5.3.2.5 documentation of processes and procedures;

5.3.2.6 hardware configuration details;

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

5.3.2.8 invocation rules;

5.3.2.9 service recovery procedures; and

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

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

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

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

5.3.6 testing and management arrangements.

6. REVIEW AND AMENDMENT OF THE BCDR PLAN

6.1 The CONTRACTOR shall review part or all of the BCDR Plan and the risk analysis on which it is based:

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

6.1.2 within three (3) months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 8 of this Schedule; and
6.1.3 where the CUSTOMER requests any additional reviews (over and above those provided for in paragraphs 6.1.1 and 6.1.2 of this Schedule) by notifying the CONTRACTOR to such effect in writing, whereupon the CONTRACTOR shall conduct such reviews in accordance with the CUSTOMER's written requirements. The costs of both parties for any such additional reviews will be met by the CUSTOMER.

6.2 Each review of the BCDR Plan pursuant to paragraph 6.1 of this Schedule shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Ordered IT Products or any underlying business processes and operations facilitated by or supported by the Ordered IT Products 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 CONTRACTOR 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 CONTRACTOR shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the CUSTOMER a report ("Review Report") setting out:

6.2.1 the findings of the review;
6.2.2 any changes in the risk profile associated with the Ordered IT Products; and
6.2.3 the CONTRACTOR's proposals ("CONTRACTOR 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 CONTRACTOR can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

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

7. TESTING OF THE BCDR PLAN

7.1 The CONTRACTOR shall test the BCDR Plan on a regular basis (and in any event not less than *** once *** in every *** Year ***)). Subject to paragraph 7.2 of this Schedule, the CUSTOMER may require the CONTRACTOR 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 IT Products or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
7.2 If the CUSTOMER requires an additional test of the BCDR Plan it shall give the CONTRACTOR written notice and the CONTRACTOR shall conduct the test in accordance with the CUSTOMER's requirements and the relevant provisions of the BCDR Plan. The CONTRACTOR's costs of the additional test shall be borne by the CUSTOMER unless the BCDR Plan fails the additional test in which case the CONTRACTOR's costs of that failed test shall be borne by the CONTRACTOR.

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

7.4 The CONTRACTOR shall undertake and manage testing of the BCDR Plan in full consultation with the CUSTOMER and shall liaise with the CUSTOMER in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the CUSTOMER in this regard. Each test shall be carried out under the supervision of the CUSTOMER or its nominee.

7.5 The CONTRACTOR shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the CUSTOMER. Copies of live test data used in any such testing shall be (if so required by the CUSTOMER) destroyed or returned to the CUSTOMER on completion of the test.

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

7.6.1 the outcome of the test;
7.6.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
7.6.3 the CONTRACTOR's proposals for remedying any such failures.

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

7.8 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan’s procedures) shall not relieve the CONTRACTOR of any of its obligations under this Schedule or otherwise.

7.9 The CONTRACTOR shall also perform a test of the BCDR Plan as part of the commissioning of any new project.

8. INVOCATION OF THE BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN

8.1 In the event of a complete loss of service or in the event of a Disaster, the CONTRACTOR shall immediately invoke the BCDR Plan (and shall inform the CUSTOMER promptly of such invocation). In all other instances the
CONTRACTOR shall only invoke or test the BCDR Plan with the prior consent of the CUSTOMER.
SCHEDULE 2-15

SECURITY MANAGEMENT PLAN

1. INTRODUCTION

1.1 This Schedule covers:

1.1.1 principles of protective security to be applied in delivering the Ordered IT Products;

1.1.2 [*** wider aspects of security relating to the Ordered IT Products ***];

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

1.1.4 the creation and maintenance of the Security Management Plan;

1.1.5 audit and testing of ISMS compliance with the security requirements (as set out in Schedule 2-2);

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

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

2. PRINCIPLES OF SECURITY

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

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

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

2.2.2 complies with the Security Policy;

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

2.2.4 meets any specific security threats to the ISMS;

2.2.5 complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph 5 of this Schedule;

2.2.6 complies with the security requirements as set out in Schedule 2-2; and

2.2.7 complies with the CUSTOMER’s ICT standards.
2.3 Subject to Clause 16.3 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.

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

3. ISMS AND SECURITY MANAGEMENT PLAN

3.1 Introduction

3.1.1 The CONTRACTOR 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.

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

3.1.3 The CONTRACTOR shall comply with its obligations set out in the Security Management Plan.

3.1.4 Both the ISMS and the Security Management Plan shall, unless otherwise specified by the CUSTOMER, aim to protect all aspects of the Ordered IT Products and all processes associated with the delivery of the Ordered IT Products, including the CUSTOMER Premises, the Sites, the CONTRACTOR 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 CONTRACTOR in connection with this Contract.

3.2 Development of the Security Management Plan

3.2.1 Within twenty (20) Working Days after signature of this Contract and in accordance with paragraph 3.4 of this Schedule, the CONTRACTOR 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.

3.2.2 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 CONTRACTOR 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 3.2.2 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.

3.3 Content of the Security Management Plan

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

3.3.2 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 CONTRACTOR’s ISMS at the date set out in the Implementation Plan for the CONTRACTOR to meet the full obligations of the security requirements at Schedule 2-2.

3.3.3 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.

3.3.4 The Security Management Plan shall be written in plain English in language which is readily comprehensible to the staff of the CONTRACTOR and the CUSTOMER engaged in the Ordered IT Products and shall only reference documents which are in the possession of the CUSTOMER or whose location is otherwise specified in this Schedule.

3.4 Amendment and Revision of the ISMS and Security Management Plan

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

3.4.1.1 emerging changes in Good Industry Practice;

3.4.1.2 any change or proposed change to the CONTRACTOR System, the Ordered IT Products and/or associated processes;

3.4.1.3 any new perceived or changed security threats; and/or
3.4.1.4 any reasonable request by the CUSTOMER.

3.4.2 The CONTRACTOR 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:

3.4.2.1 suggested improvements to the effectiveness of the ISMS;

3.4.2.2 updates to the risk assessments;

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

3.4.2.4 suggested improvements in measuring the effectiveness of controls.

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

3.4.4 Any change or amendment which the CONTRACTOR proposes to make to the ISMS or Security Management Plan (as a result of a CUSTOMER request or change to the Schedule 2-2 or otherwise) shall be subject to the Contract Change Procedure and shall not be implemented until approved in writing by the CUSTOMER.

4. TESTING

4.1 The CONTRACTOR 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.

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

4.3 Without prejudice to any other right of audit or access granted to the CUSTOMER pursuant to this Contract, the CUSTOMER and/or its authorised representatives shall be entitled, at any time and without giving notice to the CONTRACTOR, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the CONTRACTOR's compliance with the ISMS and the Security Management Plan. The CUSTOMER may notify the CONTRACTOR 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 IT Products. If such tests adversely affect the CONTRACTOR’s ability to deliver the Ordered IT Products to the agreed Service Levels, the CONTRACTOR shall be granted relief against any resultant under-performance for the period of the tests.
4.4 Where any Security Test carried out pursuant to paragraphs 4.2 or 4.3 of this Schedule reveals any actual or potential Breach of Security, the CONTRACTOR shall promptly notify the CUSTOMER of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the CONTRACTOR proposes to make in order to correct such failure or weakness. Subject to the CUSTOMER's approval in accordance with paragraph 3.4.4 of this Schedule, the CONTRACTOR 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 2-2), the change to the ISMS or Security Management Plan shall be at no cost to the CUSTOMER.

5. COMPLIANCE WITH ISO/IEC 27001

5.1 [*** The CONTRACTOR 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. ***]

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

5.3 The 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.

5.4 If, on the basis of evidence provided by such audits, it is the CUSTOMER's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the CONTRACTOR, then the CUSTOMER shall notify the CONTRACTOR of the same and give the CONTRACTOR 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 CONTRACTOR does not become compliant within the required time then the CUSTOMER has the right to obtain an independent audit against these standards in whole or in part.

5.5 If, as a result of any such independent audit as described in paragraph 5.4 of this Schedule the CONTRACTOR is found to be non-compliant with the principles and practices of ISO/IEC 27001 then the CONTRACTOR shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the CUSTOMER in obtaining such audit.

6. BREACH OF SECURITY

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

6.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 6.1 of this Schedule, the CONTRACTOR shall:

6.2.1 immediately take all reasonable steps necessary to:

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

6.2.1.2 prevent an equivalent breach in the future.

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

6.2.2 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 2-16
SOFTWARE AND SOFTWARE LICENCE TERMS

1. INTRODUCTION

1.1. This Schedule details the various elements of the Software and categorises them into CONTRACTOR Software and Third Party Software.

1.2. Annexes A and B of this Schedule sets out the licence terms for the CONTRACTOR Software and Third Party Software (including Open Source Ordered Software), respectively.

1.3. The CONTRACTOR shall update this Schedule periodically to record any software subsequently acquired from third parties or developed for the delivery of the Ordered IT Products.

2. CONTRACTOR SOFTWARE

2.1. The CONTRACTOR Software comprises the following items:

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<th>Software</th>
<th>Supplier (if Affiliate of the CONTRACTOR)</th>
<th>Purpose</th>
<th>[Number of Licences]</th>
<th>[Restrictions]</th>
<th>[Number of Copies]</th>
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3. THIRD PARTY SOFTWARE

3.1. The Third Party Software shall [*** include ***] [*** consist of ***] the following items, including any Open Source Ordered Software:

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<th>Supplier</th>
<th>Purpose</th>
<th>[Number of Licences]</th>
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</table>

Schedule 2-16 (Software and Software Licence Terms) v 1.00
Page 1 of 4
<table>
<thead>
<tr>
<th>Software</th>
<th>Supplier</th>
<th>Purpose</th>
<th>[Number of Licences]</th>
<th>[Restrictions]</th>
<th>Number of Copies</th>
<th>[Other]</th>
</tr>
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Annex A

CONTRACTOR Software

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

Third Party Software

[*** insert licence terms ***]
1. INTRODUCTION

1.1. This Schedule contains the list of insurances to be maintained by the CONTRACTOR.

1.2. The CONTRACTOR shall:

   1.2.1. 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

   1.2.2. not cancel these insurances or make any material change to them without the express written consent of the CUSTOMER.

1.3. The CONTRACTOR 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 CONTRACTOR 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

2.1. [– Tenderer must complete as per Annex 3 of the ITT]

<table>
<thead>
<tr>
<th>Class</th>
<th>Minimum Sum Insured</th>
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<tbody>
<tr>
<td>Public Liability</td>
<td>£xxx million</td>
</tr>
<tr>
<td>Employers Liability</td>
<td>in accordance with any legal requirement for the time being in force.</td>
</tr>
<tr>
<td>Professional Indemnity</td>
<td>£xxx million</td>
</tr>
<tr>
<td>[Product Liability]</td>
<td>£xxx million</td>
</tr>
<tr>
<td>[Others]</td>
<td>£xxx million</td>
</tr>
<tr>
<td>[*** specify any other insurances (including business continuity ***]</td>
<td>[<em><strong>£xxx million</strong></em>]</td>
</tr>
</tbody>
</table>