

**DATED** 17 April

2015

**(1) OFFICE OF QUALIFICATIONS AND EXAMINATIONS  
REGULATION**

**and**

**(2) THE NATIONAL FOUNDATION FOR EDUCATIONAL  
RESEARCH IN ENGLAND AND WALES**

**CONTRACT REF: OF344**

**AGREEMENT relating to**

**THE SUPPLY OF SERVICES  
RELATING TO NATIONAL  
REFERENCE TESTS**

## CONTENTS

SECTION A - PRELIMINARIES.....	1	
1	DEFINITIONS AND INTERPRETATION .....	1
2	DUE DILIGENCE .....	3
3	WARRANTIES .....	4
SECTION B - THE SERVICES.....	6	
4	TERM .....	6
5	SERVICES .....	6
6	IMPLEMENTATION .....	10
7	SUPPLIER'S PERFORMANCE .....	12
8	NOT USED .....	14
9	NOT USED .....	14
SECTION C - PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS .....	15	
10	FINANCIAL AND TAXATION MATTERS .....	15
SECTION D - CONTRACT GOVERNANCE.....	17	
11	GOVERNANCE .....	17
12	RECORDS, FINANCIAL REPORTS & AUDITS .....	17
13	CHANGE .....	17
SECTION E - SUPPLIER PERSONNEL AND SUPPLY CHAIN .....	20	
14	SUPPLIER PERSONNEL .....	20
15	SUPPLY CHAIN RIGHTS AND PROTECTIONS .....	23
SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY .....	28	
16	INTELLECTUAL PROPERTY RIGHTS .....	28
17	LICENCES GRANTED BY THE SUPPLIER .....	29
18	LICENCES GRANTED BY THE AUTHORITY.....	32
19	IPRs INDEMNITY .....	33
20	AUTHORITY DATA AND SECURITY REQUIREMENTS.....	34
21	CONFIDENTIALITY .....	36
22	FREEDOM OF INFORMATION .....	38
23	PROTECTION OF PERSONAL DATA .....	39
24	PUBLICITY AND BRANDING .....	42
SECTION G - LIABILITY, INDEMNITIES AND INSURANCE .....	43	
25	LIMITATIONS ON LIABILITY .....	43
26	INSURANCE.....	45
SECTION H - REMEDIES AND RELIEF.....	46	
27	RECTIFICATION PLAN PROCESS .....	46
28	NOT USED .....	47
29	REMEDIAL ADVISER.....	47
30	STEP-IN RIGHTS .....	49
31	AUTHORITY CAUSE.....	51
32	FORCE MAJEURE .....	53
SECTION I - TERMINATION AND EXIT MANAGEMENT.....	56	
33	TERMINATION RIGHTS .....	56
34	CONSEQUENCES OF EXPIRY OR TERMINATION.....	57
SECTION J - MISCELLANEOUS AND GOVERNING LAW .....	59	
35	COMPLIANCE .....	59
36	ASSIGNMENT AND NOVATION .....	59
37	WAIVER AND CUMULATIVE REMEDIES .....	60
38	RELATIONSHIP OF THE PARTIES .....	60
39	PREVENTION OF FRAUD AND BRIBERY .....	60
40	SEVERANCE.....	62
41	FURTHER ASSURANCES .....	62
42	ENTIRE AGREEMENT .....	62
43	THIRD PARTY RIGHTS .....	62
44	NOTICES .....	63
45	DISPUTES .....	64
46	GOVERNING LAW AND JURISDICTION .....	65

## **SCHEDULES**

1. **Definitions**
2. **Service Requirements**
  - 2.1 Services Description
  - 2.2 Not used
  - 2.3 Not used
  - 2.4 Security Management
  - 2.5 Insurance Requirements
3. **Authority Responsibilities**
4. **Supplier Matters**
  - 4.1 Supplier Solution
  - 4.2 Commercially Sensitive Information
  - 4.3 Notified Key Sub-contractors
  - 4.4 Not used
5. **Software**
6. **Implementation and Testing**
  - 6.1 Implementation Plan
  - 6.2 Testing and Assurance Procedures
7. **Financial Matters**
  - 7.1 Charges and Invoicing
  - 7.2 Payments on Termination
  - 7.3 Not used
  - 7.4 Financial Distress
  - 7.5 Financial Reports and Audit Rights
  - 7.6 Not used
8. **Governance**
  - 8.1 Governance
  - 8.2 Change Control Procedure
  - 8.3 Dispute Resolution Procedure
  - 8.4 Records Provisions
  - 8.5 Exit Management
  - 8.6 Business Continuity and Disaster Recovery
  - 8.7 Conduct of Claims
9. **Employment**
  - 9.1 Staff Transfer
  - 9.2 Key Personnel
10. **NOT USED**

**BETWEEN:**

- (1) **Office of Qualifications and Examinations Regulation (OFQUAL)** of Spring Place, Herald Avenue, Coventry CV5 6UB (the “**Authority**”); and
- (2) **The National Foundation for Educational Research in England and Wales** a charity registered in England and Wales under number 313392 whose registered office is at The Mere, Upton Park, Slough SL1 2DQ (the “**Supplier**”),

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

**INTRODUCTION**

- (A) The Authority is the independent regulator of qualifications, exams and tests in England. The Authority wishes to procure a partner to design, develop, trial and operate National Reference Tests.
- (B) On 1 October 2014 the Authority advertised in the Official Journal of the European Union (reference 332246-2014 (2014/S 188-332246) (the “**OJEU Advertisement**”), inviting prospective suppliers to submit proposals for the provision of the Services (as defined below).
- (C) The Supplier is an independent charity that provides independent educational evidence and has experience in the provision of services similar to or the same as the Services.
- (D) On the basis of the Supplier’s response to the OJEU Advertisement and a subsequent tender process, the Authority selected the Supplier as its preferred supplier to provide the Services pursuant to the terms and conditions of this Agreement.
- (E) The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

**IT IS AGREED** as follows:

**SECTION A - PRELIMINARIES**

**1 DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Agreement, unless the context otherwise requires:
  - (a) the singular includes the plural and vice versa;
  - (b) reference to a gender includes the other gender and the neuter;
  - (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;

- (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
  - (e) the words “including”, “other”, “in particular”, “for example” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
  - (f) references to “writing” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
  - (g) the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
  - (h) unless otherwise provided and save for references in Annexes 1 to 3 of Schedule 5 (*Software*), references to Clauses and Schedules are references to the clauses and schedules of this Agreement and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and
  - (i) references to this Agreement are references to this Agreement as amended from time to time.
- 1.3 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Agreement with a reference to the replacement hyperlink.
- 1.4 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Clauses and Schedule 1 (*Definitions*);
  - (b) Schedule 2.1 (*Services Description*) and its Annexes;
  - (c) any other Schedules and their Annexes (other than Schedule 4.1 (*Supplier Solution*) and its Annexes); and
  - (d) Schedule 4.1 (*Supplier Solution*) and its Annexes (if any).
- 1.5 If, following Assurance of a Deliverable, there is a conflict:
- (a) between:
    - (i) any provision of Schedule 2.1 (*Services Description*) or any of its Annexes; and
    - (ii) the Assured Deliverable,then the Assured Deliverable shall take precedence over the relevant

provision of Schedule 2.1 (*Services Description*) and/or the relevant Annex from the date on which the Confirmation Certificate is issued in respect of such Assured Deliverable, but only to the extent required to resolve any conflict between the Assured Deliverable and the relevant provision of Schedule 2.1 (*Services Description*) and the relevant Annex; and/or

(b) between:

(i) any provision of Schedule 4.1 (*Supplier Solution*) or any of its Annexes; and

(ii) the Assured Deliverable,

then the Assured Deliverable shall take precedence over the relevant provision of Schedule 4.1 (*Supplier Solution*) and/or the relevant Annex from the date on which the Confirmation Certificate is issued in respect of such Assured Deliverable, but only to the extent required to resolve any conflict between the Assured Deliverable and the relevant provision of Schedule 4.1 (*Supplier Solution*) and the relevant Annex.

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

1.7 In entering into this Agreement the Authority is acting as part of the Crown.

## **2 DUE DILIGENCE**

2.1 The Supplier acknowledges that:

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

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

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

(i) the Authority Requirements;

(ii) the operating processes and procedures and the working methods of the Authority; and

(iii) the regulatory framework which governs the Authority and under which the Services will be provided by the Supplier.

2.2 Subject to the Authority's obligation under this Agreement to use its reasonable endeavours to ensure the accuracy of the Due Diligence Information, the Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor, subject to Clause 2.3, shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

(a) NOT USED;

- (b) any misinterpretation of the Authority Requirements; and/or
- (c) any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

2.3 NOT USED.

### 3 WARRANTIES

3.1 The Authority represents and warrants that:

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

3.2 The Supplier represents and warrants that:

- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b) it has full capacity and authority to enter into and to perform this Agreement;
- (c) this Agreement is executed by its duly authorised representative;
- (d) it has all necessary consents and regulatory approvals to enter into this Agreement;
- (e) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
- (f) its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- (g) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);

- (h) all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the PQQ and ITT (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;
  - (i) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
  - (j) it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;
  - (k) NOT USED;
  - (l) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement; and
  - (m) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.
- 3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing.
- 3.4 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
- 3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.6 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which a Party may have in respect of breach of that provision by the other Party.
- 3.7 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.



## SECTION B - THE SERVICES

### 4 TERM

4.1 This Agreement shall:

- (a) come into force on the Effective Date, save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 21 (*Confidentiality*), 22 (*Freedom of Information*), 24 (*Publicity and Branding*), 25 (*Limitations on Liability*), 37 (*Waiver and Cumulative Remedies*), 38 (*Relationship of the Parties*), 40 (*Severance*), 42 (*Entire Agreement*), 43 (*Third Party Rights*), 44 (*Notices*), 45 (*Disputes*) and 46 (*Governing Law and Jurisdiction*), which shall be binding and enforceable as between the Parties from the date of signature; and
- (b) unless terminated at an earlier date by operation of Law or in accordance with Clause 33 (*Termination Rights*), terminate:
  - (i) at the end of the Initial Term; or
  - (ii) subject to Clause 4.2, if the Authority elects to extend the Initial Term by giving the Supplier at least 9 months' notice before the end of the Initial Term, at the end of the Extension Period.

4.2 The Authority acknowledges that, in the event that the Supplier does not wish the Authority to extend the term of the Agreement for the Extension Period:

- (a) the Supplier shall notify the Authority in writing of its decision at least 24 months before the end of the Initial Term; and
- (b) provided that the Supplier has complied with its obligations under Clause 4.2(a), the Agreement shall expire at the end of the Initial Term and no compensation or other payment shall be due to the Supplier solely as a result of such expiry.

4.3 NOT USED

4.4 NOT USED

4.5 NOT USED

### 5 SERVICES

#### **Standard of Services**

5.1 The Supplier shall provide:

- (a) the Strategic Design Services from (and including) the Strategic Design Services Commencement Date;
- (b) the Detailed Design & Development Services from (and including) the Detailed Design & Development Services Commencement Date; and
- (c) the Delivery Services from (and including) the relevant Delivery Services Commencement Date.

- 5.2 The Supplier shall ensure that the Services:
- (a) comply in all respects with the Services Description; and
  - (b) are supplied in accordance with the Supplier Solution and the provisions of this Agreement.
- 5.3 The Supplier shall:
- (a) perform its obligations under this Agreement, including in relation to the supply of the Services, in accordance with:
    - (i) all applicable Law;
    - (ii) Good Industry Practice;
    - (iii) the Standards;
    - (iv) the Baseline Security Requirements;
    - (v) the Quality Plans;
    - (vi) NOT USED; and
    - (vii) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.3(a)(i) to 5.3(a)(v); and
  - (b) deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.
- 5.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.3(a)(i) to 5.3(a)(v), the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

#### **Supplier covenants**

- 5.5 The Supplier shall:
- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Agreement;
  - (b) save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 13 (*Change*), obtain, and maintain throughout the Term, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
  - (c) ensure that:
    - (i) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any

other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;

- (ii) (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 2.4 (*Security Management*)) the Authority is notified at least 3 months before the release of any new Software or Upgrade;
  - (iii) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
  - (iv) any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Authority Requirements; and
  - (v) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Authority) and will be Euro Compliant;
- (d) minimise any disruption to the Services and/or the Authority's operations when carrying out its obligations under this Agreement;
  - (e) ensure that any Documentation and training provided by the Supplier in relation to the Services are comprehensive, accurate and prepared in accordance with Good Industry Practice;
  - (f) co-operate with the Other Suppliers and Other Key Stakeholders and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier;
  - (g) to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
  - (h) unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 5.5(g);
  - (i) provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
  - (j) gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the

Supplier's compliance with its obligations under this Agreement;

- (k) notify the Authority in writing within 1 month of any change of Control taking place;
  - (l) notify the Authority in writing within 10 Working Days of the occurrence of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
  - (m) ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Agreement. A breach by the Supplier of this Clause 5.5(m) will be a Supplier Termination Event under Clause 33.1(b) (*Termination by the Authority*);
  - (n) manage closure or termination of the Services where relevant to take account of the Authority's disposals requirements, including recycling and scope for re-use; and
  - (o) not engage, make contact or enter into correspondence with or make any statement to any Other Key Stakeholder in connection with the Services, unless it has obtained the Authority's prior written consent.
- 5.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 5.7 Without prejudice to Clauses 19.2 and 19.3 (*IPRs Indemnity*) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:
- (a) remedy any breach of its obligations in Clauses 5.5(b) to 5.5(d) inclusive within 3 Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);
  - (b) remedy any breach of its obligations in Clause 5.5(a) and Clauses 5.5(e) to 5.5(j) inclusive within 20 Working Days of becoming aware of the breach or being notified of the breach by the Authority; and
  - (c) meet all the costs of, and incidental to, the performance of such remedial work,

and any failure of the Supplier to comply with its obligations under Clause 5.7(a) or Clause 5.7(b) within the specified or agreed timeframe shall constitute a Notifiable Default.

#### **Specially Written Software warranty**

- 5.8 Without prejudice to Clauses 5.5 and 5.7 (*Services*) and any other rights and remedies of the Authority howsoever arising, the Supplier warrants to the Authority that all components of the Specially Written Software shall:

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

**Continuing obligation to provide the Services**

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

- (a) any withholding of the Service Charges by the Authority pursuant to Clause 7.8(b) (*Supplier's Performance*);
- (b) the existence of an unresolved Dispute; and/or
- (c) any failure by the Authority to pay any Charges,

unless the Supplier is entitled to terminate this Agreement under Clause 33.3(a) (*Termination by the Supplier*) for failure to pay undisputed Charges.

5.10 NOT USED

5.11 NOT USED

5.12 NOT USED

**NOT USED**

5.13 NOT USED

**Authority Responsibilities**

The Authority shall comply with its responsibilities set out in Schedule 3 (*Authority Responsibilities*).

**6 IMPLEMENTATION**

**Quality Plans**

6.1 The Supplier shall develop and deliver to the Authority for its approval, at least 20 Working Days prior to the Detailed Design & Development Services Commencement Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").

6.2 The Supplier shall obtain the Authority Representative's written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the Authority's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Agreement.

- 6.3 Following the approval by the Authority of the Quality Plans:
- (a) the Supplier shall throughout the Term maintain and update the Quality Plans to meet or exceed the same standard as the original Quality Plans which are approved by the Authority;
  - (b) the Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and
  - (c) where any Change is agreed which necessitates a change to the Quality Plans, such change shall be agreed in accordance with the Change Control Procedure.

#### **Implementation Plan and Delays**

- 6.4 The Parties shall comply with the provisions of Schedule 6.1 (*Implementation Plan*) in relation to the agreement and maintenance of the Detailed Implementation Plan.
- 6.5 The Supplier shall:
- (a) comply with the Implementation Plan; and
  - (b) ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.6 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay it shall:
- (a) notify the Authority in accordance with Clause 27.1 (*Rectification Plan Process*); and
  - (b) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
  - (c) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

#### **Testing, Assurance and Achievement of Milestones**

- 6.7 The Parties shall comply with the provisions of Schedule 6.2 (*Testing and Assurance Procedures*) in relation to the procedures to determine whether a Milestone or Test has been Achieved and whether a Deliverable has been Assured.
- 6.8 During the provision of the Strategic Design Services and the Detailed Design & Development Services, the Supplier shall achieve a high level of precision with the aim of achieving a level of precision for the National Reference Tests of +/-1.5% at the 95% confidence interval at the three (3) prescribed grade boundaries (i.e. grades 3 and 4, grades 4 and 5 and grades 6 and 7) (the "**Precision Level**"). In order to achieve the required Precision Level, the Supplier shall:
- (a) design the National Reference Tests with good psychometric qualities in accordance with the provisions of the Supplier Solution; and
  - (b) conduct the Mathematics Tests at 300 schools and the English Language Tests at 300 schools, each such test having a cluster size of 25 pupils, as set out at Paragraph 2.8.3 (Sampling) of Schedule 2.1 (*Services Description*)

(the "Sample Size").

6.9 If:

- (a) the Preliminary Reference Test Technical Report (Deliverable reference 2.5.2 in Appendix 3 (Deliverables) of Schedule 2.1 (*Services Description*)) demonstrates that the Precision Level is not achievable with the Sample Size; and
- (b) the Supplier can demonstrate to the reasonable satisfaction of the Authority that such failure to achieve the Precision Level was not caused by the Supplier's failure to meet its obligations under this Agreement (including, without limitation, its obligations under Clause 6.8(a) and 6.8(b) above),

then, following receipt of the Preliminary Reference Test Technical Report, the Parties shall in good faith consider what Changes are necessary to the Precision Level and/or the Sample Size for the provision of the Delivery Services in order for the Authority to meet its objectives for the National Reference Tests, in particular, the provision of evidence on changes in performance standards over time in GCSE English Language and Mathematics in England at the end of Key Stage 4 (each such Change being a "Delivery Services Change"). In considering such Delivery Services Change(s), the Parties shall have reference to the analysis of the results of the Preliminary National Reference Tests.

6.10 Following agreement of the Delivery Services Change(s), the Parties shall document and implement such Delivery Services Change(s) in accordance with the Change Control Procedure.

6.11 In the event that, notwithstanding that the Parties have sought to reach agreement on the Delivery Services Change(s) in good faith, the Parties cannot agree the Delivery Services Change(s) by 1 September 2016:

- (a) the Authority shall have the right without having to refer the Dispute to the Dispute Resolution Procedure to terminate this Agreement in accordance with Clause 33.1(a) of this Agreement; or
- (b) if the Authority does not exercise its right of termination in accordance with Clause 6.11(a) above:
  - (i) the Supplier shall continue to perform the Services in accordance with the existing terms of this Agreement, as if the proposed Delivery Services Change(s) did not apply; and
  - (ii) in the absence of agreement on the Delivery Services Change for the provision of the Delivery Services, the Parties shall agree a Change Request to amend the Precision Level to the percentage that is no less precise than the percentage (plus a tolerance of 0.1%) that the Supplier achieved during the Preliminary National Reference Tests. By way of illustration, in the event that the Supplier achieved a Precision Level of 1.51% for the Preliminary National Reference Test in Mathematics, the Precision Level for the National Reference Test in Mathematics shall be no less precise than 1.61%.

## 7 SUPPLIER'S PERFORMANCE

- 7.1 The Supplier shall monitor its performance of the Services and, within 5 Working Days of the end of each month, shall send the Authority a report (the "**Performance Monitoring Report**") summarising the Supplier's performance over the previous month.
- 7.2 The Performance Monitoring Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information:
- (a) a summary of all Performance Failures that occurred during the previous month;
  - (b) which Performance Failures remain outstanding and progress in resolving them;
  - (c) the status of any outstanding Rectification Plan processes, including:
    - (i) whether or not a Rectification Plan has been agreed; and
    - (ii) where a Rectification Plan has been agreed, a summary of the Supplier's progress in implementing that Rectification Plan;
  - (d) the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the BCDR Plan;
  - (e) relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Agreement;
  - (f) such other details as the Authority may reasonably require from time to time;
  - (g) performance against its obligation to pay its Sub-contractors within 30 days of receipt of an undisputed invoice; and
  - (h) Milestone trend chart, showing performance of the overall programme.
- 7.3 The Performance Monitoring Report shall be reviewed and their contents agreed by the Parties at the next Performance Review Meeting held in accordance with Clause 7.4.
- 7.4 The Parties shall attend meetings on a monthly basis (unless otherwise agreed) to review the Performance Monitoring Reports (the "**Performance Review Meetings**"). The Performance Review Meetings shall (unless otherwise agreed):
- (a) take place within 5 Working Days of the Performance Monitoring Report being issued by the Supplier;
  - (b) take place at such location and time (within normal business hours) as the Authority shall reasonably require (unless otherwise agreed in advance); and
  - (c) be attended by the Supplier Representative and the Authority Representative.
- 7.5 The Supplier shall keep appropriate documents and records (including help desk records, staff records, timesheets, training programmes, staff training records, supplier accreditation records, complaints received, etc.) in relation to the Services being delivered. The records and documents of the Supplier shall be available for



inspection by the Authority and/or its nominee at any time and the Authority and/or its nominee may make copies of any such records and documents.

- 7.6 In addition to the requirement in Clause 7.5 to maintain appropriate documents and records, the Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the Supplier's performance of the Services.
- 7.7 The Supplier shall ensure that the Performance Monitoring Report and any variations or amendments thereto, any reports and summaries produced in accordance with this Clause 7 and any other document or record reasonably required by the Authority are available to the Authority on-line and are capable of being printed.
- 7.8 If in any Service Period following the Delivery Services Commencement Date, the Supplier fails to deliver the Delivery Services in accordance with the Authority Requirements:
- (a) the Supplier shall comply with the Rectification Plan Process; and
  - (b) the Authority may withhold a proportionate amount of the Service Charges in accordance with the process set out in Clause 10.7 (*Set Off and Withholding*) until the relevant failure is rectified to the reasonable satisfaction of the Authority, at which point the Authority shall pay the amount withheld.
- 8 **NOT USED**
- 9 **NOT USED**

## SECTION C - PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

### 10 FINANCIAL AND TAXATION MATTERS

#### Charges and Invoicing

- 10.1 In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*).
- 10.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.7 (*Testing and Achievement of Milestones*), 12 (*Records, Financial Reports & Audits*), 22 (*Freedom of Information*), 23 (*Protection of Personal Data*) and, to the extent specified therein, Clause 29 (*Remedial Adviser*) and Clause 30 (*Step-In Rights*).
- 10.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

#### VAT

- 10.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 10.5 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 10.5 shall be paid in cleared funds by the Supplier to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.

#### Set-off and Withholding

- 10.6 The Authority may set off any amount owed to it by the Supplier against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority. For the avoidance of doubt, the provisions of this Clause 10.6 shall not prevent the Authority from exercising its rights set out in any part of this Agreement in relation to withholding payments (entirely or in part) in the event that the Supplier has failed to meet any Milestone Dates or in the circumstances set out in Clause 7.8(b) (*Supplier's Performance*).
- 10.7 If the Authority wishes to:
- (a) set off any amount owed by the Supplier to the Authority against any amount due to the Supplier pursuant to Clause 10.6; or
  - (b) exercise its right pursuant to Clause 7.8(b) (*Supplier's Performance*) to withhold payment of a proportion of the Service Charges,

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

10.8 NOT USED

**Financial Distress**

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

**Promoting Tax Compliance**

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

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

## SECTION D - CONTRACT GOVERNANCE

### 11 GOVERNANCE

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

#### **Representatives**

11.2 Each Party shall have a representative for the Term who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.

11.3 The initial Supplier Representative shall be the person named as such in Schedule 9.2 (*Key Personnel*). Any change to the Supplier Representative shall be agreed in accordance with Clause 14 (*Supplier Personnel*).

11.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within 5 Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

### 12 RECORDS, FINANCIAL REPORTS & AUDITS

12.1 The Supplier shall comply with the provisions of Schedule 8.4 (*Records Provisions*) in relation to the maintenance and retention of Records.

12.2 The Parties shall comply with the provisions of:

(a) Part B (*Financial Reports*) of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and

(b) Part C (*Audit Rights*) of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

### 13 CHANGE

#### **Change Control Procedure**

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

#### **Change in Law**

13.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement nor:

(a) subject to Clause 13.5, be entitled to an increase in the Charges as the result of a General Change in Law; or

(b) be entitled to an increase in the Charges as the result of a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.

13.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 13.2(b)), the Supplier shall:

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

13.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 13.2(b)) shall be implemented in accordance with the Change Control Procedure.

13.5 If a General Change in Law occurs or will occur during the Term that:

- (a) increases the Supplier's costs associated with the provision of the Services, the Supplier shall be liable for and pay the costs associated with such General Change in Law up to the maximum sum of twenty thousand pounds (£20,000) (the "**General Change in Law Costs Cap**"). Once the Supplier's costs have exceeded the General Change in Law Cap in respect of a General Change in Law, the Authority shall, subject to the Supplier's compliance with the remainder of this Clause 13.5, be liable for and pay the costs associated with such General Change in Law to the extent such costs exceed the General Change in Law Cap, such costs to be agreed in accordance with the Change Control Procedure;
- (b) reduces the Supplier's costs associated with the provision of the Services, the Supplier shall be entitled to retain a sum equal to reduced costs associated with such General Change in Law up to the maximum sum of twenty thousand pounds (£20,000) (the "**General Change in Law Savings Cap**"). Once the Supplier's reduced costs have exceeded the General Change in Law Savings Cap in respect of a General Change in Law, the Supplier shall, as directed by the Authority, either:
  - (i) reduce the Charges in light of the reduced costs; or
  - (ii) pay the Authority a sum equivalent to the cost savings less the General Change in Law Savings Cap,

such Charges or sums to be agreed in accordance with the Change Control

Procedure;

- (c) in all matters concerning such General Change in Law, the Supplier shall:
  - (i) notify the Authority as soon as reasonably practicable of the likely effects of that change, including whether any Change is required to the Services, the Charges or this Agreement; and
  - (ii) submit a Change Request and/or Impact Assessment, together with supporting evidence to demonstrate:
    - (A) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
    - (B) how the General Change in Law has affected the cost of providing the Services; and
    - (C) that any expenditure that has been avoided has been taken into account in amending the Charges.

13.6 Any variation in the Charges resulting from a General Change in Law shall be implemented in accordance with the Change Control Procedure. Until and/or unless a change to the Charges is agreed by the Authority, the Supplier shall continue to perform the Services in accordance with its existing obligations.

## SECTION E - SUPPLIER PERSONNEL AND SUPPLY CHAIN

### 14 SUPPLIER PERSONNEL

#### 14.1 The Supplier shall:

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

#### 14.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Agreement, it may:

- (a) refuse admission to the relevant person(s) to the Authority Premises; and/or
- (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

## Key Personnel

- 14.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 9.2 (*Key Personnel*) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.
- 14.4 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 14.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- (a) requested to do so by the Authority;
  - (b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
  - (c) the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
  - (d) the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 14.6 The Supplier shall:
- (a) notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 2 weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
  - (b) ensure that any Key Role is not vacant for any longer than 10 Working Days;
  - (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least 60 Working Days' notice;
  - (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
  - (e) ensure that any replacement for a Key Role:
    - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
    - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.



## **Employment Indemnity**

14.7 The Parties agree that:

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

## **Income Tax and National Insurance Contributions**

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

- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- (b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

## **Staff Transfer**

14.9 The Parties agree that:

- (a) where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 9.1 (*Staff Transfer*) shall apply as follows:
  - (i) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A of Schedule 9.1 (*Staff Transfer*) shall apply;
  - (ii) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 9.1 (*Staff Transfer*) shall apply;
  - (iii) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 9.1 (*Staff Transfer*) shall apply; and
  - (iv) Part C of Schedule 9.1 (*Staff Transfer*) shall not apply;
- (b) where commencement of the provision of the Services or a part of the

Services does not result in a Relevant Transfer, Part C of Schedule 9.1 (*Staff Transfer*) shall apply and Parts A and B of Schedule 9.1 (*Staff Transfer*) shall not apply; and

- (c) Part D of Schedule 9.1 (*Staff Transfer*) shall apply on the expiry or termination of the Services or any part of the Services.

## **15 SUPPLY CHAIN RIGHTS AND PROTECTIONS**

### **Appointment of Sub-contractors**

- 15.1 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
  - (a) manage any Sub-contractors in accordance with Good Industry Practice;
  - (b) comply with its obligations under this Agreement in the delivery of the Services; and
  - (c) assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement.
- 15.2 Prior to sub-contracting any of its obligations under this Agreement, the Supplier shall notify the Authority in writing of:
  - (a) the proposed Sub-contractor's name, registered office and company registration number;
  - (b) the scope of any Services to be provided by the proposed Sub-contractor; and
  - (c) where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.
- 15.3 If requested by the Authority within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.2, the Supplier shall also provide:
  - (a) a copy of the proposed Sub-contract; and
  - (b) any further information reasonably requested by the Authority.
- 15.4 The Authority may, within 10 Working Days' of receipt of the Supplier's notice issued pursuant to Clause 15.2 (or, if later, receipt of any further information requested pursuant to Clause 15.3), object to the appointment of the relevant Sub-contractor if it considers that:
  - (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
  - (b) the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
  - (c) the proposed Sub-contractor employs unfit persons,

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

- 15.5 If:
- (a) the Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of 10 Working Days of receipt of:
    - (i) the Supplier's notice issued pursuant to Clause 15.2; and
    - (ii) any further information requested by the Authority pursuant to Clause 15.3; and
  - (b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 15.6),

the Supplier may proceed with the proposed appointment.

#### **Appointment of Key Sub-contractors**

- 15.6 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:
- (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
  - (b) the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
  - (c) the proposed Key Sub-contractor employs unfit persons.
- 15.7 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 4.3 (*Notified Key Sub-contractors*).
- 15.8 Except where the Authority has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:
- (a) provisions which will enable the Supplier to discharge its obligations under this Agreement;
  - (b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
  - (c) a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier;
  - (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
  - (e) obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:

- (i) data protection requirements set out in Clauses 20 (*Authority Data and Security Requirements*) and 23 (*Protection of Personal Data*);
  - (ii) FOIA requirements set out in Clause 22 (*Freedom of Information*);
  - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 5.5(m) (*Services*);
  - (iv) the keeping of records in respect of the services being provided under the Key Sub-contract; and
  - (v) the conduct of Audits set out in Part C (*Audit Rights*) of Schedule 7.5 (*Financial Reports and Audit Rights*);
- (f) provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 33.1(a) (*Termination by the Authority*) and 34.4 (*Payments by the Authority*) and Schedule 7.2 (*Payments on Termination*) of this Agreement;
- (g) a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;
- (h) a provision enabling the Supplier or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 29 (*Remedial Adviser*);
- (i) a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 30 (*Step-in Rights*);
- (j) a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and
- (k) a provision requiring the Key Sub-contractor to:
- (i) promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
    - (A) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
    - (B) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,

and in any event, provide such notification within 10 Working Days of the date on which the Key Sub-contractor first becomes aware of such; and
  - (ii) co-operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 7.4 (*Financial Distress*), including meeting with the Supplier and the Authority to discuss and review the effect of

the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Service Continuity Plan.

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

#### **Supply chain protection**

- 15.10 The Supplier shall ensure that all Sub-contracts contain a provision:

- (a) requiring the Supplier to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice; and
- (b) a right for the Authority to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.

- 15.11 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-contractor within 30 days from the receipt of a valid invoice; and
- (b) provide the Authority with a written summary of its compliance with Clause 15.11(a), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

- 15.12 Notwithstanding any provision of Clauses 21 (*Confidentiality*) and 24 (*Publicity and Branding*), if the Supplier notifies the Authority that the Supplier has failed to pay an Sub-contractor's undisputed invoice within 30 days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

#### **Termination of Sub-contracts**

- 15.13 The Authority may require the Supplier to terminate:

- (a) a Sub-contract where the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 33.1(b) (*Termination by the Authority*); and/or
- (b) a Key Sub-contract where there is a Change of Control of the relevant Key Sub-contractor that has a material and detrimental effect on the ability of the Key Sub-contractor to performance the relevant Key Sub-contract, unless:
  - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
  - (ii) the Authority has not served its notice of objection within 6 months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.

- 15.14 The Authority may require the Supplier to replace the relevant Sub-contractor where the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or

otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise.

15.15 NOT USED

15.16 NOT USED

**Retention of Legal Obligations**

15.17 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 15, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.

## SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

### 16 INTELLECTUAL PROPERTY RIGHTS

16.1 Except as expressly set out in this Agreement:

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

16.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 16.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

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

### 16A SPECIALLY WRITTEN SOFTWARE AND PROJECT SPECIFIC IPRs

16A.1 The Supplier hereby assigns to the Authority, with full title guarantee, title to and all rights and interest in the Specially Written Software and the Project Specific IPRs or shall procure that the first owner of the Specially Written Software and the Project Specific IPRs assigns them to the Authority on the same basis.

16A.2 The assignment under Clause 16A.1 shall either take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Specially Written Software or the Project Specific IPRs as appropriate.

16A.3 The Supplier shall waive or procure a waiver of any moral rights in any copyright works

assigned to the Authority under this Agreement.

16A.4 If requested to do so by the Authority, the Supplier shall without charge to the Authority execute all documents and do all such further acts as the Authority may require to perfect the assignment under Clause 16A.1 or shall procure that the owner of the Specially Written Software and the Project Specific IPRs does so on the same basis.

## 17 LICENCES GRANTED BY THE SUPPLIER

17.1 NOT USED

17.2 NOT USED

### Supplier Software and Supplier Background IPRs

17.3 The Supplier hereby grants to the Authority during the Term and any Termination Assistance Period (and in the event of an Insolvency Event affecting the Supplier for the period of twelve months (12) from the date of the Insolvency Event):

(a) subject to the provisions of Clause 34 (*Consequences of Expiry or Termination*), a royalty-free and non-exclusive licences with the right to sub-licence in accordance with Clause 17.7 to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):

(i) the Supplier Non-COTS Software for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any Replacement Body's) business or function that relate to this Agreement; and

(ii) the Supplier Non-COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any Replacement Body's) business or function that relate to this Agreement; and/or

(b) a licence to use the Supplier COTS Software and Supplier COTS Background IPRs on the licence terms identified in a letter in or substantially in the form set out in Annex 1 to Schedule 5 (*Software*) and signed by or on behalf of the Parties on or before the Effective Date, provided always that the Authority shall remain entitled to sub-licence and to assign and novate the Supplier COTS Software and Supplier COTS Background IPRs on equivalent terms to those set out in Clauses 17.7 and 17.8(b) in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs.

17.4 At any time during the Term or following termination or expiry of this Agreement, the Supplier may terminate the licence granted in respect of the Supplier Non-COTS Software under Clause 17.3(a)(i) or in respect of the Supplier Non-COTS Background IPRs under Clause 17.3(a)(ii) by giving 30 days' notice in writing (or such other period as agreed by the Parties) if the Authority or any person to whom the Authority grants a sub-licence pursuant to Clause 17.7 (*Authority's right to sub-licence*) commits any material breach of the terms of Clause 17.3(a)(i) or 17.3(a)(ii) or 17.7(a)(ii) (as the case may be) which, if the breach is capable of remedy, is not remedied within



20 Working Days after the Supplier gives the Authority written notice specifying the breach and requiring its remedy.

- 17.5 In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Clause 17.4, the Authority shall:
- (a) immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);
  - (b) at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within 6 months of the termination of the licence, the Authority may destroy the documents and other tangible materials that contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs (as the case may be); and
  - (c) ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs.

#### **Authority's right to sub-license**

17.6 NOT USED

- 17.7 The Authority may sub-license the following during the Term and any Termination Assistance Period (and in the event of Insolvency Event affecting the Supplier, for the period of twelve months (12) from the date of the Insolvency Event):
- (a) subject to the Supplier's prior written consent on a case by case basis (such consent shall not be required in respect of any third party appointed by the Authority pursuant to Clause 30 (*Step-in Rights*)), the rights granted under Clause 17.3(a) (*Supplier Software and Supplier Background IPRs*) to a third party (including, for the avoidance of doubt, any Replacement Supplier), provided that:
    - (i) the sub-license is on terms no broader than those granted to the Authority;
    - (ii) the sub-license authorises the third party to use the rights licensed in Clause 17.3(a) (*Supplier Software and Supplier Background IPRs*) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any Replacement Body's) business or function; and
    - (iii) the sub-licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Annex 2 to Schedule 5 (*Software*); and
  - (b) the rights granted under Clause 17.3(a) (*Supplier Software and Supplier Background IPRs*) to any Approved Sub-Licensee to the extent necessary to use

and/or obtain the benefit of the Specifically Written Software and/or the Project Specific IPRs, provided that:

- (i) the sub-licence is on terms no broader than those granted to the Authority; and
- (ii) the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5 (*Software*) duly executed by the Approved Sub-Licensee.

#### **Authority's right to assign/novate licences**

17.8 The Authority:

- (a) NOT USED;
- (b) may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 17.3(a) (*Supplier Software and Supplier Background IPRs*) to:
  - (i) a Replacement Body; or
  - (ii) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.

17.9 Any change in the legal status of the Authority shall not affect the validity of any licence granted in Clause 17.3 (*Supplier Software and Supplier Background IPRs*) and the successor body to the Authority shall still be entitled to the benefit of the licences granted in Clause 17.3 (*Supplier Software and Supplier Background IPRs*).

17.10 If a licence granted in Clause 17.3 (*Supplier Software and Supplier Background IPRs*) is novated under Clause 17.8 (*Authority's right to assign/novate licences*) or there is a change of the Authority's status pursuant to Clause 17.9, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.

#### **Third Party Software and Third Party IPRs**

17.11 The Supplier shall not use in the provision of the Services any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless in each case it has:

- (a) first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Authority on a royalty-free basis to the Authority and on terms no less favourable to the Authority than those set out in Clauses 17.3(a) and 17.4 (*Supplier Software and Supplier Background IPRs*) and Clause 17.8(b) (*Authority's right to assign/novate licences*); or
- (b) complied with the provisions of Clause 17.12.

17.12 If the Supplier cannot obtain for the Authority a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Clause 17.11(a), the Supplier shall:

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

17.13 The Supplier shall:

- (a) notify the Authority in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
- (b) unless instructed otherwise in writing by the Authority in any case within 20 Working Days of notification pursuant to Clause 17.12(a), use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

#### **Termination and Replacement Suppliers**

17.14 Subject to Clause 17.15, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 17.

17.15 The termination or expiry of this Agreement shall subject to Clauses 17.3 and 17.7 result in the termination of any of the licences granted by the Supplier in respect of the Supplier Software and Supplier Background IPRs only.

17.16 The Supplier shall, if requested by the Authority in writing and at the Authority's cost:

- (a) NOT USED;
- (b) use all reasonable endeavours to procure the grant to any Replacement Supplier of:
  - (i) a licence to use any Supplier COTS Software and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and/or
  - (ii) a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

### **18 LICENCES GRANTED BY THE AUTHORITY**

18.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive,

non-transferable licence during the Term to use:

- (a) the Authority Software;
- (b) the Authority Background IPRs;
- (c) the Specially Written Software;
- (d) the Project Specific IPRs; and
- (e) the Authority Data,

in each case solely to the extent necessary for performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors, provided that:

- (i) any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 21 (*Confidentiality*); and
- (ii) the Supplier shall not, without the Authority's express prior written consent, use the licensed materials for any purpose other than that set out in this Agreement or for the benefit of any person other than the Authority.

18.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to Clause 18.1 and any sub-licence granted by the Supplier in accordance with Clause 18.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:

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

## 19 IPRs INDEMNITY

19.1 The Supplier shall at all times, during and after the Term, on written demand

indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.

- 19.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- (a) procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
  - (b) replace or modify the relevant item with non-infringing substitutes, provided that:
    - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
    - (ii) the replaced or modified item does not have an adverse effect on the Services or any other services;
    - (iii) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
    - (iv) the terms and conditions of this Agreement shall apply to the replaced or modified Services.
- 19.3 If the Supplier elects to procure a licence in accordance with Clause 19.2(a) or to modify or replace an item pursuant to Clause 19.2(b), but this has not avoided or resolved the IPRs Claim, then:
- (a) the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
  - (b) without prejudice to the indemnity set out in Clause 19.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

## **20 AUTHORITY DATA AND SECURITY REQUIREMENTS**

- 20.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 20.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.
- 20.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2.1 (*Services Description*).
- 20.4 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.

- 20.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the BCDR Plan. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request.
- 20.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Baseline Security Requirements.
- 20.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 8.6 (*Business Continuity and Disaster Recovery*) and the Supplier shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of the Authority's notice; and/or
  - (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 8.6 (*Business Continuity and Disaster Recovery*).
- 20.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.
- 20.9 The Supplier shall comply with the requirements of Schedule 2.4 (*Security Management*).
- 20.10 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- 20.11 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.
- 20.12 Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 20.11, the Supplier shall continue to perform the Services in accordance with its existing obligations.

#### **Malicious Software**

- 20.13 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed by the Parties).

- 20.14 Notwithstanding Clause 20.13, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.
- 20.15 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 20.14 shall be borne by the Parties as follows:
- (a) by the Supplier, where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (except where the Authority has waived the obligation set out in Clause 20.13) or the Authority Data (whilst the Authority Data was under the control of the Supplier), unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Supplier; and
  - (b) otherwise by the Authority.

## 21 **CONFIDENTIALITY**

- 21.1 For the purposes of this Clause 21, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 21.2 Except to the extent set out in this Clause 21 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
- (a) treat the Disclosing Party’s Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
  - (b) not disclose the Disclosing Party’s Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner’s prior written consent;
  - (c) not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this Agreement; and
  - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party’s Confidential Information.
- 21.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 22 (*Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
  - (b) the need for such disclosure arises out of or in connection with:

- (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
    - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Agreement; or
    - (iii) the conduct of a Central Government Body review in respect of this Agreement; or
  - (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 21.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 21.5 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:
- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;
  - (b) its auditors; and
  - (c) its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 21.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

- 21.6 The Authority may disclose the Confidential Information of the Supplier:
- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
  - (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - (d) on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities described in Clause 21.6(a) for any purpose relating to or connected with this Agreement;



- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to Clause 30 (*Step-In Rights*), its rights to appoint a Remedial Adviser pursuant to Clause 29 (*Remedial Adviser*) and Exit Management rights; or
- (f) on a confidential basis to a proposed Replacement Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 21.

- 21.7 Nothing in this Clause 21 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

### **Transparency**

- 21.8 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. The Authority shall determine whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA. The Authority may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 21.9 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public this Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Agreement agreed from time to time.
- 21.10 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this Agreement.

## **22 FREEDOM OF INFORMATION**

- 22.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
  - (b) transfer to the Authority all Requests For Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control

in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Authority.

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

### **23 PROTECTION OF PERSONAL DATA**

23.1 With respect to the Parties' rights and obligations under this Agreement, the Parties acknowledge that the Authority is a Data Controller and that the Supplier is a Data Processor. In addition, the Parties acknowledge that, for certain purposes for which the Supplier processes Personal Data pursuant to this Agreement, the Supplier may also be a Data Controller in respect of the Personal Data and to the extent that the Supplier is a Data Controller, the Supplier will, at all times, comply with its obligations under the DPA.

23.2 The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from the Authority and perform its obligations under this Agreement;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data, including the measures as are set out in Clause 20 (*Authority Data and Security Requirements*);
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under this Agreement);
- (d) take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
  - (i) are aware of and comply with the Supplier's duties under this Clause 23 and Clauses 21 (*Confidentiality*) and 20 (*Authority Data and Security Requirements*);

- (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement; and
- (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- (e) notify the Authority within 5 Working Days if it receives:
  - (i) from a Data Subject (or third party on their behalf):
    - (A) a Data Subject Access Request (or purported Data Subject Access Request);
    - (B) a request to rectify, block or erase any Personal Data; or
    - (C) any other request, complaint or communication relating to the Authority's obligations under the DPA;
  - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
  - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) provide the Authority with cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made as referred to in Clause 23.2(e), including by promptly providing:
  - (i) the Authority with full details and copies of the complaint, communication or request;
  - (ii) where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
  - (iii) the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested by the Authority, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 23 and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

23.3 The Supplier shall not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC (together "**Restricted Countries**"). If, after the Effective Date, the Supplier or any Sub-contractor wishes to Process and/or transfer any Personal Data in or to any of the Restricted Countries, the following provisions shall apply:

- (a) the Supplier shall submit a Change Request to the Authority which, if the Authority agrees to such Change Request, shall be dealt with in accordance with the Change Control Procedure and Clauses 23.3(b) to 23.3(d);
- (b) the Supplier shall set out in its Change Request and/or Impact Assessment details of the following:
  - (i) the Personal Data which will be transferred to and/or Processed in any Restricted Countries;
  - (ii) the Restricted Countries which the Personal Data will be transferred to and/or Processed in;
  - (iii) any Sub-contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries; and
  - (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Authority's compliance with the DPA;
- (c) in providing and evaluating the Change Request and Impact Assessment, the Parties shall ensure that they have regard to and comply with then-current Authority, Central Government Bodies and Information Commissioner's Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Authority may notify in writing, including:
  - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Agreement or a separate data processing agreement between the Parties; and
  - (ii) procuring that any Sub-contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
    - (A) a direct data processing agreement with the Authority on such terms as may be required by the Authority; or
    - (B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Authority and the Sub-contractor relating to the relevant Personal Data transfer,

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

23.4 The Supplier shall use its reasonable endeavours to assist the Authority to comply with any of the Authority's obligations under the DPA and shall not perform its

obligations under this Agreement in such a way as to cause the Authority to breach any of the Authority's obligations under the DPA to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

- 23.5 The Supplier acknowledges and agrees that in the performance of the Services and in designing and/or developing any Deliverables, the Supplier shall consider all relevant DPA requirements (and in particular those in relation to principle seven of the DPA in respect of security of the Personal Data) and shall assist the Authority, as far as reasonably practicable, to implement all necessary DPA compliance requirements, such as issuing relevant data protection notices, obtaining any necessary consents from Data Subjects and implementing any such measures as may be required specifically to address the nature of the Personal Data.

## **24 PUBLICITY AND BRANDING**

24.1 The Supplier shall not:

- (a) make any press announcements or releases in connection with the Services or this Agreement or publicise this Agreement or its contents in any way including in research papers, at conferences or similar documents or events; or
- (b) directly or indirectly use the Authority's name or brand or details of the Services in any promotion or marketing,

without the prior written consent of the Authority.

- 24.2 The Supplier shall meet the Authority's branding guidelines in its provision of the Services, as notified to the Supplier from time to time.
- 24.3 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Supplier System and the Authority System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

## SECTION G - LIABILITY, INDEMNITIES AND INSURANCE

### 25 LIMITATIONS ON LIABILITY

#### Unlimited liability

25.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
- (b) fraud or fraudulent misrepresentation by it or its employees;
- (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any liability to the extent it cannot be limited or excluded by Law.

25.2 The Supplier's liability in respect of the indemnities in Clause 10.5 (VAT), Clause 14.7 (*Employment Indemnity*), Clause 14.8 (*Income Tax and National Insurance Contributions*), Clause 19 (*IPRs Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*) shall be unlimited.

25.3 The Authority's liability in respect of the indemnities in Clause 14.7 (*Employment Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*) shall be unlimited.

#### Financial and other limits

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

- (a) the Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed £10 million;
- (b) NOT USED;
- (c) the Supplier's aggregate liability in respect of all other Losses incurred by the Authority as a result of Defaults by the Supplier arising out of and/or in connection with:
  - (i) the provision of the Strategic Design Services and/or the Detailed Design & Development Services shall in no event exceed 125% of the total aggregate of the Charges set out in Table 1 of Schedule 7.1 (Milestone Payments for Strategic Design Services and Detailed Design & Development Services) which have been paid or would be payable by the Authority in respect of the Strategic Design Services and/or the Detailed Design & Development Services but for the Default by the Supplier; and
  - (ii) the provision of the Delivery Services during each Operating Year of

the Term, shall in no event exceed 125% of the total aggregate of the Charges set out in Table 2 of Schedule 7.2 (Charges for Delivery Services) which have been paid or would be payable by the Authority in respect of the Delivery Services for the applicable Operating Year but for the Default by the Supplier,

provided that where any Losses referred to in this Clause 25.4(c) have been incurred by the Authority as a result of the Supplier's abandonment of this Agreement or the Supplier's wilful default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement, the references in this Clause 25.4(c) to 125% shall be deemed to be references to 200%.

25.5 Deductions from the Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 25.4(c).

25.6 Subject to Clauses 25.1 and 25.3 (*Unlimited Liability*) and Clause 25.7 (*Consequential Losses*) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:

(a) the Authority's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of early termination of this Agreement by the Authority pursuant to Clause 33.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 33.3(a) (*Termination by the Supplier*) shall in no event exceed the following amounts:

(i) in relation to the Unrecovered Payment, the amount set out in Paragraph 4 of Schedule 7.2 (*Payments on Termination*);

(ii) in relation to the Breakage Costs Payment, the amount set out in Paragraph 3.2 of Schedule 7.2 (*Payments on Termination*); and

(iii) in relation to the Compensation Payment, the amount set out in Paragraph 6 of Schedule 7.2 (*Payments on Termination*); and

(b) the Authority's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of the Authority shall in no event exceed the total aggregate charges (including, without limitation, all Milestone Payments and Service Charges) paid and/or payable by the Authority under this Agreement.

#### **Consequential Losses**

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

(a) any indirect, special or consequential Loss; or

(b) any loss of profits, turnover, business opportunities, anticipated savings or damage to goodwill (in each case whether direct or indirect).

25.8 Notwithstanding Clause 25.7 but subject to Clause 25.4, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the

following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

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

#### 25.9 Conduct of indemnity claims

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

#### 25.10 Mitigation

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

### 26 INSURANCE

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



## SECTION H - REMEDIES AND RELIEF

### 27 RECTIFICATION PLAN PROCESS

27.1 In the event that:

- (a) there is, or is reasonably likely to be, a Delay;
- (b) NOT USED; and/or
- (c) the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

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

#### **Notification**

27.2 If:

- (a) the Supplier notifies the Authority pursuant to Clause 27.1 that a Notifiable Default has occurred; or
- (b) the Authority notifies the Supplier that it considers that a Notifiable Default has occurred,

setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify, then, unless the Notifiable Default also constitutes a Supplier Termination Event and the Authority serves a Termination Notice, the Supplier shall comply with the Rectification Plan Process.

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

#### **Submission of the draft Rectification Plan**

27.4 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 27.2 (*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

27.5 The draft Rectification Plan shall set out:

- (a) full details of the Notifiable Default that has occurred, including a root cause analysis;

- (b) the actual or anticipated effect of the Notifiable Default; and
  - (c) the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).
- 27.6 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 8.3 (*Dispute Resolution Procedure*).

#### **Agreement of the Rectification Plan**

- 27.7 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- (a) is insufficiently detailed to be capable of proper evaluation;
  - (b) will take too long to complete;
  - (c) will not prevent reoccurrence of the Notifiable Default; and/or
  - (d) will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.
- 27.8 The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within 5 Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.
- 27.9 If the Authority consents to the Rectification Plan:
- (a) the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
  - (b) the Authority may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Event.

#### **28 NOT USED**

#### **29 REMEDIAL ADVISER**

- 29.1 If:
- (a) any of the Intervention Trigger Events occur; or
  - (b) the Authority reasonably believes that any of the Intervention Trigger Events are likely to occur,

(each an “**Intervention Cause**”), the Authority may give notice to the Supplier (an “**Intervention Notice**”) giving reasonable details of the Intervention Cause and requiring:

- (i) a meeting between the Authority Representative and the Supplier Representative to discuss the Intervention Cause; and/or
- (ii) the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 29.

For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Authority has no obligation to exercise its rights under this Clause 29.1 prior to or instead of exercising its right to terminate this Agreement.

29.2 If the Authority gives notice that it requires the appointment of a Remedial Adviser:

- (a) the Remedial Adviser shall be:
  - (i) a person selected by the Supplier and approved by the Authority; or
  - (ii) if none of the persons selected by the Supplier have been approved by the Authority (or no person has been selected by the Supplier) within 10 Working Days following the date on which the Intervention Notice is given, a person identified by the Authority;
- (b) the terms of engagement and start date agreed with the Remedial Adviser must be approved by the Authority and disclosure of the Supplier’s Confidential Information shall be subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under Clause 21 (Confidentiality); and
- (c) any right of the Authority to terminate this Agreement pursuant to Clause 33.1(b) (*Termination by the Authority*) for the occurrence of that Intervention Cause shall be suspended for 60 Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties) (the “**Intervention Period**”).

29.3 The Remedial Adviser’s overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Supplier’s responsibilities under this Agreement), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:

- (a) observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
- (b) gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
- (c) write reports and provide information to the Authority in connection with the steps being taken by the Supplier to remedy the Intervention Cause;

- (d) make recommendations to the Authority and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or
- (e) take any other steps that the Authority and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.

29.4 The Supplier shall:

- (a) work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
- (b) ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
- (c) submit to such monitoring as the Authority and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
- (d) implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Authority within the timescales given by the Remedial Adviser; and
- (e) not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Authority (such consent not to be unreasonably withheld).

29.5 The Supplier shall be responsible for:

- (a) the costs of appointing, and the fees charged by, the Remedial Adviser; and
- (b) its own costs in connection with any action required by the Authority and/or the Remedial Adviser pursuant to this Clause 29.

29.6 If:

- (a) the Supplier:
  - (i) fails to perform any of the steps required by the Authority in an Intervention Notice; and/or
  - (ii) is in Default of any of its obligations under Clause 29.4; and/or
- (b) the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a “**Remedial Adviser Failure**”), the Authority shall be entitled to terminate this Agreement pursuant to Clause 33.1(b) (*Termination by the Authority*).

### 30 STEP-IN RIGHTS

- 30.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a “**Step-In Notice**”) that it will be taking action under this Clause 30, either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to

Clause 21 (*Confidentiality*)). The Step-In Notice shall set out the following:

- (a) the action the Authority wishes to take and in particular the Services that it wishes to control (the “**Required Action**”);
- (b) the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier’s Default;
- (c) the date on which it wishes to commence the Required Action;
- (d) the time period which it believes will be necessary for the Required Action;
- (e) whether the Authority will require access to the Supplier’s premises and/or the Sites; and
- (f) to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier’s obligations to provide the Services during the period that the Required Action is being taken.

30.2 Following service of a Step-In Notice, the Authority shall:

- (a) take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
- (b) keep records of the Required Action taken and provide information about the Required Action to the Supplier;
- (c) co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and
- (d) act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority’s rights under this Clause 30.

30.3 For so long as and to the extent that the Required Action is continuing, then:

- (a) the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action; and
- (b) NOT USED;
- (c) the Authority shall pay to the Supplier the Charges after subtracting the Authority’s costs of taking the Required Action.

30.4 If the Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:

- (a) the degradation of any Services not subject to the Required Action; or
- (b) the non-Achievement of a Milestone,

beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.

- 30.5 Before ceasing to exercise its step-in rights under this Clause 30, the Authority shall deliver a written notice to the Supplier (a “**Step-Out Notice**”), specifying:
- (a) the Required Action it has actually taken; and
  - (b) the date on which the Authority plans to end the Required Action (the “**Step-Out Date**”) subject to the Authority being satisfied with the Supplier’s ability to resume the provision of the Services and the Supplier’s plan developed in accordance with Clause 30.6.
- 30.6 The Supplier shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority’s approval a draft plan (a “**Step-Out Plan**”) relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.
- 30.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority’s approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 30.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause 30, provided that the Authority shall reimburse the Supplier’s reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:
- (a) limbs (c) or (d) of the definition of a Step-In Trigger Event; or
  - (b) limbs (e), (f) and (g) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Supplier’s Default).

### 31 **AUTHORITY CAUSE**

- 31.1 Notwithstanding any other provision of this Agreement, if the Supplier has failed to:
- (a) Achieve a Milestone by its Milestone Date;
  - (b) provide the Delivery Services in accordance with the Authority Requirements; and/or
  - (c) comply with its obligations under this Agreement,
- (each a “**Supplier Non-Performance**”), and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause 31):
- (i) the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;
  - (ii) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:

- (A) to terminate this Agreement pursuant to Clause 33.1(b) (*Termination by the Authority*); or
  - (B) to take action pursuant Clauses 29 (*Remedial Adviser*) or 30 (*Step-In*);
- (iii) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
- (A) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause;
  - (B) if the Authority, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause;
  - (C) NOT USED; and
  - (D) the Supplier shall be entitled to claim as compensation a sum equal to the additional costs incurred by the Supplier which the Supplier can demonstrate it has incurred solely and directly as a result of the Authority Cause and is unable to mitigate, having complied with its obligations under Clause 31.4; and/or
- (iv) where the Supplier Non-Performance constitutes a Performance Failure:
- (A) NOT USED;
  - (B) the Authority shall not be entitled to withhold any of the Service Charges pursuant to Clause 7.8(b) (Supplier's Performance);
  - (C) NOT USED; and
  - (D) the Supplier shall be entitled to invoice for the Service Charges for the relevant Delivery Services affected by the Authority Cause,

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

31.2 In order to claim any of the rights and/or relief referred to in Clause 31.1, the Supplier shall as soon as reasonably practicable (and in any event within 10 Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a "**Relief Notice**") setting out details of:

- (a) the Supplier Non-Performance;
- (b) the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Agreement;

- (c) any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
  - (d) the relief and/or compensation claimed by the Supplier.
- 31.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary.
- 31.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.
- 31.5 Without prejudice to Clause 5.9 (*Continuing obligation to provide the Services*), if a Dispute arises as to:
- (a) whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or
  - (b) the nature and/or extent of the relief and/or compensation claimed by the Supplier,

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

- 31.6 Any Change that is required to the Implementation Plan or to the Charges pursuant to this Clause 31 shall be implemented in accordance with the Change Control Procedure.

## **32 FORCE MAJEURE**

- 32.1 Subject to the remaining provisions of this Clause 32 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (*Business Continuity and Disaster Recovery*)), a Party may claim relief under this Clause 32 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 32.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 32.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 32 to the extent that consequences of the relevant Force Majeure Event:



- (a) are capable of being mitigated by any of the Services including the BCDR Services, but the Supplier has failed to do so; and/or
  - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.
- 32.4 Subject to Clause 32.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 32.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 32.6 Where, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
    - (i) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause 33.1(c) (*Termination by the Authority*) or Clause 33.3(b) (*Termination by the Supplier*); and
    - (ii) neither Party shall be liable for any Default arising as a result of such failure;
  - (b) the Supplier fails to perform its obligations in accordance with this Agreement:
    - (i) the Authority shall not be entitled:
      - (A) during the continuance of the Force Majeure Event to exercise its rights under Clause 29 (*Remedial Adviser*) and/or Clause 30 (*Step-in Rights*) as a result of such failure;
      - (B) NOT USED; and
      - (C) to withhold any of the Service Charges pursuant to Clause 7.8(b) (*Performance Failures*) to the extent that a Performance Failure has been caused by the Force Majeure Event; and
    - (ii) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.

- 32.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.
- 32.8 Relief from liability for the Affected Party under this Clause 32 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 32.7.

## SECTION I - TERMINATION AND EXIT MANAGEMENT

### 33 TERMINATION RIGHTS

#### Termination by the Authority

- 33.1 The Authority may terminate this Agreement by issuing a Termination Notice to the Supplier:
- (a) for convenience at any time (including but not limited to if funding to the Authority for the Services is stopped or reduced so that it is no longer economically feasible for the Authority to pay the Charges);
  - (b) if a Supplier Termination Event occurs; or
  - (c) if a Force Majeure Event endures for a continuous period of more than 90 days,

and this Agreement shall terminate on the date specified in the Termination Notice.

- 33.2 Where the Authority:

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

#### Termination by the Supplier

- 33.3 The Supplier may, by issuing a Termination Notice to the Authority, terminate:
- (a) this Agreement if the Authority fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds the sum of £400,000 and such amount remains outstanding 40 Working Days after the receipt by the Authority of a notice of non-payment from the Supplier; or
  - (b) any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than 90 days,

and this Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than 20 Working Days from the date of the issue of the Termination Notice). If the operation of Clause 33.3(b) would result in a Partial Termination, the provisions of Clause 33.4 (*Partial Termination*) shall apply.

## **Partial Termination**

- 33.4 If the Supplier notifies the Authority pursuant to Clause 33.3(b) (*Termination by the Supplier*) that it intends to terminate this Agreement in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Agreement by serving a Termination Notice to the Supplier within 1 month of receiving the Supplier's Termination Notice. For the purpose of this Clause 33.4, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.
- 33.5 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:
- (a) the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;
  - (b) any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and
  - (c) the Supplier shall not be entitled to reject the Change.

## **34 CONSEQUENCES OF EXPIRY OR TERMINATION**

### **General Provisions on Expiry or Termination**

- 34.1 The provisions of Clauses 5.8 (*Specially Written Software warranty*), 10.4 and 10.5 (*VAT*), 10.6 and 10.7 (*Set-off and Withholding*), 12 (*Records, Financial Reports & Audits*), 14.7 (*Employment Indemnity*), 14.8 (*Income Tax and National Insurance Contributions*), 16 (*Intellectual Property Rights*), 17 (*Licences Granted by the Supplier*), 19.1 (*IPRs Indemnity*), 21 (*Confidentiality*), 22 (*Freedom of Information*), 23 (*Protection of Personal Data*), 25 (*Limitations on Liability*), 34 (*Consequences of Expiry or Termination*), 40 (*Severance*), 42 (*Entire Agreement*), 43 (*Third Party Rights*), 45 (*Disputes*) and 46 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 7.1 (*Charges and Invoicing*), 7.2 (*Payments on Termination*), 7.5 (*Financial Reports and Audit Rights*), 8.3 (*Dispute Resolution Procedure*), 8.4 (*Records Provisions*), 8.5 (*Exit Management*), and 9.1 (*Staff Transfer*), shall survive the termination or expiry of this Agreement.

### **Exit Management**

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

### **Payments by the Authority**

- 34.3 If this Agreement is terminated by the Authority pursuant to Clause 33.1(a) (*Termination by the Authority*) or by the Supplier pursuant to

Clause 33.3(a) (*Termination by the Supplier*), the Authority shall pay the Supplier the following payments (which shall be the Supplier's sole remedy for the termination of this Agreement):

- (a) the Termination Payment; and
- (b) the Compensation Payment, if either of the following periods is less than 365 days:
  - (i) the period from (but excluding) the date that the Termination Notice is given (or, where Paragraph 2.1(a) of Part D of Schedule 7.1 (*Charges and Invoicing*) applies, deemed given) by the Authority pursuant to Clause 33.1(a) (*Termination by the Authority*) to (and including) the Termination Date; or
  - (ii) the period from (and including) the date of the non-payment by the Authority referred to in Clause 33.3(a) (*Termination by the Supplier*) to (and including) the Termination Date.

34.4 If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clauses 33.1(b), 33.1(c) and/or 33.2 (*Termination by the Authority*), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:

- (a) payments in respect of any Assets or apportionments in accordance with Schedule 8.5 (*Exit Management*); and
- (b) payments in respect of unpaid Charges for Services received up until the Termination Date.

34.5 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clauses 33.1(c) or 33.2(b) (*Termination by the Authority*) or 33.3(b) (*Termination by the Supplier*) provided that, notwithstanding Clause 34.4, if such termination occurs during the provision of Detailed Design & Development Services and prior to the Delivery Services Commencement Date the Supplier shall be entitled to recover the Unrecovered Costs (as defined in Schedule 7.2 (Payments on Termination)) capped at the sum set out in the table to Annex 1 (Maximum Payments on Termination) of Schedule 7.2 (Payments on Termination).

#### **Payments by the Supplier**

34.6 In the event of termination or expiry of this Agreement, the Supplier shall repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.

34.7 - 34.11 NOT USED

## **SECTION J - MISCELLANEOUS AND GOVERNING LAW**

### **35 COMPLIANCE**

#### **Health and Safety**

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

#### **Equality and Diversity**

- 35.3 The Supplier shall:
- (a) perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
    - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
    - (ii) NOT USED; and
    - (iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
  - (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

#### **Official Secrets Act and Finance Act**

- 35.4 The Supplier shall comply with the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and
  - (b) section 182 of the Finance Act 1989.

### **36 ASSIGNMENT AND NOVATION**

- 36.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.

36.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:

- (a) a Replacement Body; or
- (b) to any other body (including any private sector body) which performs any of the functions that previously had been performed by the Authority,

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 36.2.

36.3 A change in the legal status of the Authority shall not (subject to Clause 36.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

36.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a private sector body (any such body a "Successor Body"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under limb (i) of the definition of Supplier Termination Event (as if references in that limb (i) to the Supplier and references to a Party in the definition of Insolvency Event were references to the Successor Body).

### **37 WAIVER AND CUMULATIVE REMEDIES**

37.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

37.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

### **38 RELATIONSHIP OF THE PARTIES**

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

### **39 PREVENTION OF FRAUD AND BRIBERY**

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

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 39.2 The Supplier shall not during the Term:
  - (a) commit a Prohibited Act; and/or
  - (b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 39.3 The Supplier shall during the Term:
  - (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
  - (b) keep appropriate records of its compliance with its obligations under Clause 39.3(a) and make such records available to the Authority on request.
- 39.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 39.1 and/or 39.2, or has reason to believe that it has or any of the Supplier Personnel have:
  - (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 39.5 If the Supplier makes a notification to the Authority pursuant to Clause 39.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 12 (*Records, Financial Reports & Audits*).
- 39.6 If the Supplier is in Default under Clauses 39.1 and/or 39.2, the Authority may by notice:
  - (a) require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
  - (b) immediately terminate this Agreement.



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

#### **40 SEVERANCE**

- 40.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
- 40.2 In the event that any deemed deletion under Clause 40.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 40.3 If the Parties are unable to agree on the revisions to this Agreement within 5 Working Days of the date of the notice given pursuant to Clause 40.2, the matter shall be dealt with in accordance with Paragraph 4 (*Commercial Negotiation*) of Schedule 8.3 (*Dispute Resolution Procedure*) except that if the representatives are unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 40.3.

#### **41 FURTHER ASSURANCES**

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

#### **42 ENTIRE AGREEMENT**

- 42.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 42.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 42.3 Nothing in this Clause 42 shall exclude any liability in respect of misrepresentations made fraudulently.

#### **43 THIRD PARTY RIGHTS**

- 43.1 The provisions of Clause 19.1 (*IPRs Indemnity*), Paragraphs 2.1 and 2.6 of Part A,

Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, Paragraphs 2.1 and 2.3 of Part C and Paragraphs 1.4, 2.3 and 2.8 of Part D of Schedule 9.1 (*Staff Transfer*) and the provisions of Paragraph 6.9 of Schedule 8.5 (*Exit Management*) (together “**Third Party Provisions**”) confer benefits on persons named in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

- 43.2 Subject to Clause 43.1, a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 43.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- 43.4 Any amendments or modifications to this Agreement may be made, and any rights created under Clause 43.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

**44 NOTICES**

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

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

Manner of Delivery	Deemed time of service	Proof of service
	the next Working Day (if after 5.00pm).	

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

	Supplier	Authority
<b>Contact</b>	Richard Birkett Company Secretary	Tim Leslie Project Director
<b>Address</b>	The Mere Upton Park Slough SL1 2DQ	Spring Place Herald Avenue Coventry CV5 6UB
<b>Email</b>	<a href="mailto:r.birkett@nfer.ac.uk">r.birkett@nfer.ac.uk</a>	Tim.leslie@ofqual.gov.uk

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

- (a) Step-In Notices;
- (b) Force Majeure Notices;
- (c) notices issued by the Supplier pursuant to Clause 33.3 (*Termination by the Supplier*);
- (d) Termination Notices; and
- (e) Dispute Notices.

44.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 44.4 shall invalidate the service of the related email transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 44.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

44.6 This Clause 44 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.3 (*Dispute Resolution Procedure*)).

## 45 **DISPUTES**

45.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.

45.2 The Supplier shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.

**46 GOVERNING LAW AND JURISDICTION**

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

46.2 Subject to Clause 45 (*Disputes*) and Schedule 8.3 (*Dispute Resolution Procedure*) (including the Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

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

**SIGNED** for and on behalf of the **Office of Qualifications & Examinations Regulation** by:

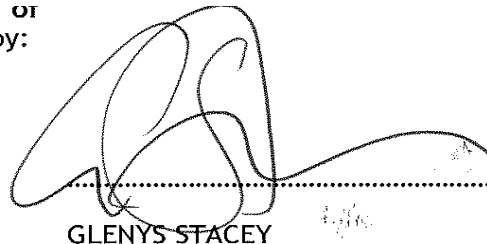
Signature:

Name:

Position:

Date:

of  
by:



GLENYS STACEY

Chief Regulator

17 April 2015

**SIGNED** for and on behalf of **The National Foundation for Educational Research in England and Wales** by:

Signature:

Name:

Position:

Date:



CAROLE WILLIS

Chief Executive

17 April 2015

## SCHEDULE 1

### Definitions

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

- “Achieve”**
- (a) in respect of a Test undertaken in relation to an IT or IT-based Deliverable, to successfully pass a Test without any Test Issues; and
  - (b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule 6.2 (*Testing and Assurance Procedures*),
- and **“Achieved”** and **“Achievement”** shall be construed accordingly;
- “Acquired Rights Directive”** the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
- “Affected Party”** the Party seeking to claim relief in respect of a Force Majeure Event;
- “Affiliate”** in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
- “Annual Contract Report”** has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights*);
- “Approved Sub-Licensee”** any of the following:
- (a) a Central Government Body;
  - (b) any third party providing services to a Central Government Body; and/or
  - (c) a Replacement Body;
- “Assets”** all assets and rights used by the Supplier to provide the Services in accordance with this Agreement, but excluding the Authority Assets;
- “Assured”** has the meaning set out in Schedule 6.2 (*Testing and Assurance Procedures*);

<b>“ATP Milestone”</b>	<p>the Milestone linked to Authority to Proceed being:</p> <p>(a) in the case of the Detailed Design &amp; Development Services, Milestone 1.3; and</p> <p>(b) in the case of the Delivery Services, Milestone 2.6;</p>
<b>“Audit”</b>	<p>any exercise by the Authority of its Audit Rights pursuant to Clause 12 (<i>Records, Reports &amp; Audit</i>) and Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);</p>
<b>“Audit Agents”</b>	<p>has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);</p>
<b>“Audit Rights”</b>	<p>the audit and access rights referred to in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);</p>
<b>“Authority Assets”</b>	<p>the Authority Materials, the Authority infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services;</p>
<b>“Authority Background IPRs”</b>	<p>(a) IPRs owned by the Authority before the Effective Date, including IPRs contained in any of the Authority’s Know-How, documentation, processes and procedures;</p> <p>(b) IPRs created by the Authority independently of this Agreement; and/or</p> <p>(c) Crown Copyright which is not available to the Supplier otherwise than under this Agreement,</p> <p>but excluding IPRs owned by the Authority subsisting in the Authority Software;</p>
<b>“Authority Cause”</b>	<p>any material breach by the Authority of any of the Authority Responsibilities, except to the extent that such breach is:</p> <p>(a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or</p> <p>(b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;</p>
<b>“Authority Data”</b>	<p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these)</p>

which are embodied in any electronic, magnetic, optical or tangible media, and which are:

- (i) supplied to the Supplier by or on behalf of the Authority; and/or
  - (ii) which the Supplier is required to procure, acquire, generate, process, store or transmit pursuant to this Agreement; or
- (b) any Personal Data for which the Authority is the Data Controller;

**“Authority Materials”** the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority to the Supplier, the IPRs in which:

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

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

**“Authority Premises”** premises owned, controlled or occupied by the Authority which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);

**“Authority Representative”** the representative appointed by the Authority pursuant to Clause 11.4 (*Representatives*);

**“Authority Requirements”** the requirements of the Authority set out in Schedules 2.1 (*Services Description*), 2.4 (*Security Management*), 2.5 (*Insurance Requirements*), 6.1 (*Implementation Plan*), 8.4 (*Records Provisions*), 8.5 (*Exit Management*) and 8.6 (*Business Continuity and Disaster Recovery*);

**“Authority Responsibilities”** the responsibilities of the Authority specified in Schedule 3 (*Authority Responsibilities*);

**“Authority Software”** software which is owned by or licensed to the Authority (other than under or pursuant to this Agreement) and which is or will be used by the Supplier for the purposes of providing the Services;

**“Authority System”** the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Agreement which is owned by the Authority or licensed to it by a

	third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Services;
<b>“Authority to Proceed” or “ATP”</b>	<p>the authorisation to the Supplier to commence the provision of:</p> <ul style="list-style-type: none"> <li>(a) the Detailed Design &amp; Development Services; and</li> <li>(b) the Delivery Services to the Authority,</li> </ul> <p>provided by the Authority in the form of a Milestone Achievement Certificate in respect of the relevant ATP Milestone;</p>
<b>“Awarding Organisation”</b>	an organisation recognised to award or authenticate regulated qualifications under the Apprenticeships, Skills, Children and Learning Act 2009;
<b>“Baseline Security Requirements”</b>	the Authority's baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 2.4 ( <i>Security Management</i> ), as updated from time to time by the Authority and notified to the Supplier;
<b>“BCDR Plan”</b>	any plan prepared pursuant to Paragraph 2 of Schedule 8.6 ( <i>Business Continuity and Disaster Recovery</i> ), as may be amended from time to time;
<b>“BCDR Services”</b>	the business continuity and disaster recovery services set out in Schedule 8.6 ( <i>Business Continuity and Disaster Recovery</i> );
<b>“Breakage Costs Payment”</b>	has the meaning given in Schedule 7.2 ( <i>Payments on Termination</i> );
<b>“Central Government Body”</b>	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> <li>(a) Government Department;</li> <li>(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>(c) Non-Ministerial Department; or</li> <li>(d) Executive Agency;</li> </ul>
<b>“Change”</b>	any change to this Agreement;



<b>“Change Authorisation Note”</b>	a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2 of Schedule 8.2 ( <i>Change Control Procedure</i> );
<b>“Change Control Procedure”</b>	the procedure for changing this Agreement set out in Schedule 8.2 ( <i>Change Control Procedure</i> );
<b>“Change in Law”</b>	any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
<b>“Change Request”</b>	a written request for a Contract Change substantially in the form of Annex 1 of Schedule 8.2 ( <i>Change Control Procedure</i> );
<b>“Charges”</b>	the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 7.1 ( <i>Charges and Invoicing</i> ), including any Milestone Payment or Service Charge;
<b>“Commercially Sensitive Information”</b>	the information listed in Schedule 4.2 ( <i>Commercial Sensitive Information</i> ) comprising the information of a commercially sensitive nature relating to the Supplier, its IPRs or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
<b>“Compensation Payment”</b>	has the meaning given in Schedule 7.2 ( <i>Payments on Termination</i> );
<b>“Confidential Information”</b>	<p>(a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:</p> <ul style="list-style-type: none"> <li>(i) the Disclosing Party Group; or</li> <li>(ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;</li> </ul> <p>(b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient’s attention or into the Recipient’s possession in connection with this Agreement;</p> <p>(c) all test questions and responses produced or generated as a result of or in connection with the Services;</p> <p>(d) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the</p>

Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom;

- (e) Information disclosed by an Awarding Organisation to the Authority and/or the Supplier; and
- (f) Information derived from any of the above,

but not including any Information which:

- (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
- (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
- (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;
- (iv) was independently developed without access to the Confidential Information; or
- (v) relates to the Supplier's:
  - 1. performance under this Agreement; or
  - 2. failure to pay any Sub-contractor as required pursuant to Clause 15.11(a) (*Supply Chain Protection*);

**“Contract Change”** any change to this Agreement other than an Operational Change;

**“Contract Year”** (a) a period of 12 months commencing on the Effective Date; or  
(b) thereafter a period of 12 months commencing on each anniversary of the Effective Date;

provided that the final Contract Year shall end on the expiry or termination of the Term;

**“Control”** the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **“Controls”** and **“Controlled”** shall be interpreted accordingly;

<b>“Costs”</b>	has the meaning given in Schedule 7.1 ( <i>Charges and Invoicing</i> );
<b>“CRTPA”</b>	the Contracts (Rights of Third Parties) Act 1999;
<b>“Data Controller”</b>	has the meaning given in the DPA;
<b>“Data Processor”</b>	has the meaning given in the DPA;
<b>“Data Subject”</b>	has the meaning given in the DPA;
<b>“Data Subject Access Request”</b>	a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;
<b>“Default”</b>	<p>any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:</p> <ul style="list-style-type: none"> <li>(a) in the case of the Authority, of its employees, servants, agents; or</li> <li>(b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel,</li> </ul> <p>in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other;</p>
<b>“Defect”</b>	<ul style="list-style-type: none"> <li>(a) any error, damage or defect in the manufacturing of a Deliverable; or</li> <li>(b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or</li> <li>(c) any failure of any Deliverable to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria or prevents it from being Fit for Purpose; or</li> <li>(d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria or prevents it from being Fit for Purpose;</li> </ul>

<b>“Delay”</b>	<ul style="list-style-type: none"> <li>(a) a delay in the Achievement of a Milestone by its Milestone Date; or</li> <li>(b) a delay in the design, development, assurance, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;</li> </ul>
<b>“Deliverable”</b>	an item or feature delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Agreement, including (without limitation) the items listed in Appendix 3 ( <i>Deliverables</i> ) of Schedule 2.1 ( <i>Services Description</i> );
<b>“Delivery Services”</b>	the delivery services described as such in the Services Description;
<b>“Delivery Services Commencement Date”</b>	<p>the later of:</p> <ul style="list-style-type: none"> <li>(a) the date identified in the Implementation Plan upon which the Delivery Services is to commence; and</li> <li>(b) the date upon which the Supplier Achieves Milestone 2.6 on completion of the Detailed Design &amp; Development Services;</li> </ul>
<b>“Detailed Design &amp; Development Services”</b>	the detailed design and development services described as such in the Services Description;
<b>“Detailed Design &amp; Development Services Commencement Date”</b>	<p>the later of:</p> <ul style="list-style-type: none"> <li>(a) the date identified in the Implementation Plan upon which the Detailed Design &amp; Development Services is to commence; and</li> <li>(b) the date upon which the Supplier Achieves Milestone 1.3 on completion of the Strategic Design Services;</li> </ul>
<b>“Detailed Implementation Plan”</b>	the plan developed and revised from time to time in accordance with Paragraphs 3 and 4 of Schedule 6.1 ( <i>Implementation Plan</i> ), which shall include the Supplier’s resource plan;
<b>“Disclosing Party”</b>	has the meaning given in Clause 21.1 ( <i>Confidentiality</i> );
<b>“Disclosing Party Group”</b>	<ul style="list-style-type: none"> <li>(a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and</li> <li>(b) where the Disclosing Party is the Authority, the Authority and any Central Government Body with which the Authority or the Supplier interacts in connection with this Agreement;</li> </ul>

<b>“Dispute”</b>	any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
<b>“Dispute Notice”</b>	a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
<b>“Dispute Resolution Procedure”</b>	the dispute resolution procedure set out in Schedule 8.3 ( <i>Dispute Resolution Procedure</i> );
<b>“Documentation”</b>	<p>all information, advice, guidance (including FAQs) and training materials, descriptions of the Services, details of the Supplier System (including where relevant (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:</p> <ul style="list-style-type: none"> <li>(a) is required to be supplied by the Supplier to the Authority under this Agreement would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services;</li> <li>(b) is required by the Supplier in order to provide the Services; and/or</li> <li>(c) has been or shall be generated for the purpose of providing the Services;</li> </ul>
<b>“DOTAS”</b>	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

<b>“DPA”</b>	the Data Protection Act 1998 and any other applicable Laws relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or a relevant Central Government Body in relation to such Laws;
<b>“Due Diligence Information”</b>	any information supplied to the Supplier by or on behalf of the Authority prior to the Effective Date;
<b>“Effective Date”</b>	the date on which this Agreement is signed by both Parties;
<b>“EIRs”</b>	the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issues by the Information Commissioner or any Central Government Body in relation to such Regulations;
<b>“Employee Liabilities”</b>	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:</p> <ul style="list-style-type: none"> <li>(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</li> <li>(b) unfair, wrongful or constructive dismissal compensation;</li> <li>(c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;</li> <li>(d) compensation for less favourable treatment of part-time workers or fixed term employees;</li> <li>(e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;</li> <li>(f) employment claims whether in tort, contract or statute or otherwise;</li> <li>(g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</li> </ul>

<b>“Employment Regulations”</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;
<b>“Euro Compliant”</b>	<p>that: (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Authority’s business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):</p> <ul style="list-style-type: none"> <li>(a) be able to perform all such functions in any number of currencies and/or in euros;</li> <li>(b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations;</li> <li>(c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;</li> <li>(d) incorporate protocols for dealing with rounding and currency conversion;</li> <li>(e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and</li> <li>(f) permit the input of data in euro and display an outcome in euro where such data, supporting the Authority’s normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK;</li> </ul>
<b>“Exit Management”</b>	services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in Schedule 8.5 ( <i>Exit Management</i> );
<b>“Exit Plan”</b>	the plan produced and updated by the Supplier during the Term in accordance with Paragraph 4 of Schedule 8.5 ( <i>Exit Management</i> );
<b>“Expedited Dispute Timetable”</b>	the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 8.3 ( <i>Dispute Resolution Procedure</i> );

<b>“Expert”</b>	has the meaning given in Schedule 8.3 ( <i>Dispute Resolution Procedure</i> );
<b>“Expert Determination”</b>	the process described in Paragraph 6 of Schedule 8.3 ( <i>Dispute Resolution Procedure</i> );
<b>“Extension Period”</b>	a period of 2 years from the end of the Initial Term;
<b>“Financial Distress Event”</b>	the occurrence of one or more of the events listed in Paragraph 3.1 of Schedule 7.4 ( <i>Financial Distress</i> );
<b>“Financial Distress Service Continuity Plan”</b>	a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that a Financial Distress Event occurs;
<b>“Financial Model”</b>	has the meaning given in Schedule 7.5 ( <i>Financial Reports and Audit Rights</i> );
<b>“Financial Reports”</b>	has the meaning given in Schedule 7.5 ( <i>Financial Reports and Audit Rights</i> );
<b>“FOIA”</b>	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act;
<b>“Force Majeure Event”</b>	any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier’s or a Sub-contractor’s supply chain;
<b>“Force Majeure Notice”</b>	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
<b>“Former Supplier”</b>	has the meaning given in Schedule 9.1 ( <i>Staff Transfer</i> );
<b>“General Anti-Abuse Rule”</b>	(a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;



<b>“General Change in Law”</b>	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier);
<b>“Good Industry Practice”</b>	at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
<b>“Halifax Abuse Principle”</b>	the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>“Health and Safety Policy”</b>	the health and safety policy of the Authority as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;
<b>“HMRC”</b>	HM Revenue & Customs;
<b>“Impact Assessment”</b>	has the meaning given in Schedule 8.2 ( <i>Change Control Procedure</i> );
<b>“Implementation Plan”</b>	<p>(a) the Outline Implementation Plan; or</p> <p>(b) (if and when approved by the Authority pursuant to Paragraph 3 of Schedule 6.1 (<i>Implementation Plan</i>)), the Detailed Implementation Plan,</p> <p>relating to the provision of the Strategic Design Services, Detailed Design &amp; Development Services and Delivery Services, as updated in accordance with Paragraph 4 of Schedule 6.1 (<i>Implementation Plan</i>) from time to time;</p>
<b>“Implementation Services”</b>	the Strategic Design Services and the Detailed Design & Development Services described as such in the Services Description;
<b>“Indemnified Person”</b>	the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Agreement;
<b>“Information”</b>	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration,

electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);

- "Initial Financial Model"** has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights*);
- "Initial Term"** the period from the Effective Date to 30<sup>th</sup> November 2020;
- "Insolvency Event"**
- (a) the other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:
    - (i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or
    - (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;
  - (b) the other Party commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
  - (c) a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;
  - (d) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within 14 days;
  - (e) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
  - (f) where the other Party is a company, a LLP or a partnership:
    - (i) a petition is presented (which is not dismissed within 14 days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party other than

for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;

- (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over the other Party;
- (iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver; or
- (iv) (being a partnership) the holder of an agricultural floating charge over the assets of that other Party has become entitled to appoint or has appointed an agricultural receiver; or

(g) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

**“Intellectual Property Rights” or “IPRs”**

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction;
- (c) rights in analytical methods and algorithms developed and/or used by the Supplier in providing the Services; and
- (d) all other rights having equivalent or similar effect in any country or jurisdiction;

**“Intervention Cause”** has the meaning given in Clause 29.1(b) (*Remedial Adviser*);

**“Intervention Notice”** has the meaning given in Clause 29.1(b) (*Remedial Adviser*);

**“Intervention Period”** has the meaning given in Clause 29.2(c) (*Remedial Adviser*);

<b>“Intervention Trigger Event”</b>	<ul style="list-style-type: none"> <li>(a) any event falling within limb (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event;</li> <li>(b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;</li> <li>(c) NOT USED;</li> <li>(d) NOT USED; and/or</li> <li>(e) the Supplier not Achieving a Key Milestone within 75 days of its relevant Milestone Date;</li> </ul>
<b>“IPRs Claim”</b>	any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Authority Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Agreement or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Agreement;
<b>“IT”</b>	information and communications technology;
<b>“Key Milestone”</b>	Milestone 1.3, Milestone 2.6 and Milestone 3.2;
<b>“Key Personnel”</b>	those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 9.2 ( <i>Key Personnel</i> ) against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 14.5 and 14.6 ( <i>Key Personnel</i> );
<b>“Key Roles”</b>	a role described as a Key Role in Schedule 9.2 ( <i>Key Personnel</i> ) and any additional roles added from time to time in accordance with Clause 14.4 ( <i>Key Personnel</i> );
<b>“Key Sub-contract”</b>	each Sub-contract with a Key Sub-contractor;
<b>“Key Sub-contractor”</b>	any Sub-contractor: <ul style="list-style-type: none"> <li>(a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or</li> <li>(b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed)</li> </ul>

10% of the aggregate Charges forecast to be payable under this Agreement (as set out in the Financial Model);

<b>“Know-How”</b>	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party’s possession before this Agreement;
<b>“Law”</b>	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
<b>“Licensed Software”</b>	all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to the Authority for the purposes of or pursuant to this Agreement, including any Supplier Software and/or any Third Party Software;
<b>“Losses”</b>	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
<b>“Malicious Software”</b>	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;
<b>“Management Information”</b>	the management information specified in Clause 7 ( <i>Supplier's Performance</i> ), Schedule 7.1 ( <i>Charges and Invoicing</i> ) and Schedule 8.1 ( <i>Governance</i> ) to be provided by the Supplier to the Authority;
<b>“Milestone”</b>	an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date;
<b>“Milestone Achievement Certificate”</b>	the certificate to be granted by the Authority when the Supplier has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 3 of Schedule 6.2 ( <i>Testing and Assurance Procedures</i> );
<b>“Milestone Date”</b>	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;

<b>“Milestone Payment”</b>	a payment identified in Schedule 7.1 ( <i>Charges and Invoicing</i> ) to be made following the issue of a Milestone Achievement Certificate;
<b>“Milestone Retention”</b>	has the meaning given in Schedule 7.1 ( <i>Charges and Invoicing</i> );
<b>“month”</b>	a calendar month and <b>“monthly”</b> shall be interpreted accordingly;
<b>“Multi-Party Dispute Resolution Procedure”</b>	has the meaning given in Paragraph 9.1 of Schedule 8.3 ( <i>Dispute Resolution Procedure</i> );
<b>“Multi-Party Procedure Initiation Notice”</b>	has the meaning given in Paragraph 9.2 of Schedule 8.3 ( <i>Dispute Resolution Procedure</i> );
<b>“New Releases”</b>	an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
<b>“Non-trivial Customer Base”</b>	a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;
<b>“Notifiable Default”</b>	shall have the meaning given in Clause 27.1 ( <i>Rectification Plan Process</i> );
<b>“Object Code”</b>	software and/or data in machine-readable, compiled object code form;
<b>“Occasion of Tax Non-Compliance”</b>	<p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <ul style="list-style-type: none"> <li>(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> <li>(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or</li> </ul>

	(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;
<b>“Open Source Software”</b>	computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPRs in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;
<b>“Operating Year”</b>	(a) the period of 12 months commencing on the Delivery Services Commencement Date; or  (b) thereafter a period of 12 months commencing on each anniversary of the Delivery Services Commencement Effective Date, provided that the final Operating Year shall end on the expiry or termination of the Term;
<b>“Operational Change”</b>	any change in the Supplier's operational procedures which in all respects, when implemented:  (a) will not affect the Charges and will not result in any other costs to the Authority;  (b) will not adversely affect the output of the Services or increase the risks in performing or receiving the Services;  (c) will not affect the efficacy of the National Reference Tests or the inter-year comparability in the results of the NRT;  (d) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and  (e) will not require a change to this Agreement;
<b>“Other Key Stakeholder”</b>	the stakeholders referred to in Schedule 2.1 ( <i>Services Description</i> );
<b>“Other Supplier”</b>	any supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
<b>“Outline Implementation Plan”</b>	the outline plan set out at Annex 1 of Schedule 6.1 ( <i>Implementation Plan</i> ), which shall include the Supplier's resource plan;
<b>“Partial Termination”</b>	the partial termination of this Agreement to the extent that it relates to the provision of any part of the Services as further provided for in Clause 33.2(b) ( <i>Termination by the Authority</i> ) or

33.3(b) (*Termination by the Supplier*);

<b>“Parties” and “Party”</b>	have the meanings respectively given on page 1 of this Agreement;
<b>“Performance Failure”</b>	a failure to perform the Delivery Services in accordance with the Authority Requirements;
<b>“Performance Monitoring Report”</b>	has the meaning given in Clause 7.1 ( <i>Supplier’s Performance</i> );
<b>“Performance Review Meeting”</b>	has the meaning given in Clause 7.4 ( <i>Supplier’s Performance</i> );
<b>“Personal Data”</b>	personal data and sensitive personal data (as defined in the DPA) which is Processed by the Supplier or any Sub-contractor on behalf of the Authority or a Central Government Body pursuant to or in connection with this Agreement;
<b>“Process”</b>	has the meaning given to it under the DPA and <b>“Processed”</b> and <b>“Processing”</b> shall be construed accordingly;
<b>“Programme Board”</b>	the body described in Paragraph 5 of Schedule 8.1 ( <i>Governance</i> );
<b>“Prohibited Act”</b>	<p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:</p> <ul style="list-style-type: none"><li>(i) induce that person to perform improperly a relevant function or activity; or</li><li>(ii) reward that person for improper performance of a relevant function or activity;</li></ul> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</p> <p>(c) an offence:</p> <ul style="list-style-type: none"><li>(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);</li><li>(ii) under legislation or common law concerning fraudulent acts; or</li><li>(iii) defrauding, attempting to defraud or conspiring to defraud the Authority; or</li></ul>



	(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;
<b>“Project Specific IPRs”</b>	<p>(a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>(b) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Agreement;</p> <p>but shall not include the Supplier Background IPRs or the Specially Written Software;</p>
<b>“Quality Plans”</b>	has the meaning given in Clause 6.1 ( <i>Quality Plans</i> );
<b>“Quarter”</b>	the first three Service Periods and each subsequent three Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement);
<b>“Recipient”</b>	has the meaning given in Clause 21.1 ( <i>Confidentiality</i> );
<b>“Records”</b>	has the meaning given in Schedule 8.4 ( <i>Records Provisions</i> );
<b>“Rectification Plan”</b>	a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
<b>“Rectification Plan Failure”</b>	<p>(a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 27.4 (<i>Submission of the draft Rectification Plan</i>) or 27.8 (<i>Agreement of the Rectification Plan</i>);</p> <p>(b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 27.7 (<i>Agreement of the Rectification Plan</i>);</p> <p>(c) the Supplier failing to rectify a material Default within the later of:</p> <p>(i) 30 Working Days of a notification made pursuant to Clause 27.2 (<i>Notification</i>); and</p> <p>(ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the</p>

Rectification Plan by which the Supplier must rectify the material Default;

- (d) the Supplier not Achieving Milestone 3.2 by 30 June in any year;
- (e) the Supplier not Achieving Milestone 1.3 or Milestone 2.6 within 90 days of its relevant Milestone Date; and/or
- (f) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of 6 months for the same (or substantially the same) root cause as that of the original Notifiable Default;

<b>“Rectification Plan Process”</b>	the process set out in Clauses 27.4 ( <i>Submission of the Rectification Plan</i> ) to 27.9 ( <i>Agreement of the Rectification Plan</i> );
<b>“Registers”</b>	has the meaning given in Schedule 8.5 ( <i>Exit Management</i> );
<b>“Reimbursable Expenses”</b>	has the meaning given in Schedule 7.1 ( <i>Charges and Invoicing</i> );
<b>“Relevant IPRs”</b>	IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority or a third party in the fulfilment of the Supplier’s obligations under this Agreement including IPRs in the Specially Written Software, the Supplier Non-COTS Software, the Supplier Non-COTS Background IPRs, the Third Party Non-COTS Software and the Third Party Non-COTS IPRs but excluding any IPRs in the Authority Software, the Authority Background IPRs, the Supplier COTS Software, the Supplier COTS Background IPRs, the Third Party COTS Software and/or the Third Party COTS IPRs;
<b>“Relevant Requirements”</b>	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
<b>“Relevant Tax Authority”</b>	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
<b>“Relevant Transfer”</b>	a transfer of employment to which the Employment Regulations applies;
<b>“Relief Notice”</b>	has the meaning given in Clause 31.2 ( <i>Authority Cause</i> );
<b>“Remedial Adviser”</b>	the person appointed pursuant to Clause 29.2 ( <i>Remedial Adviser</i> );
<b>“Remedial Adviser Failure”</b>	has the meaning given in Clause 29.6 ( <i>Remedial Adviser</i> );

<b>"Replacement Body"</b>	any body (including a private sector body) to whom the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement;
<b>"Replacement Services"</b>	any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Agreement, whether those services are provided by the Authority internally and/or by any third party;
<b>"Replacement Supplier"</b>	any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);
<b>"Request For Information"</b>	a Request for Information under the FOIA or the EIRs;
<b>"Required Action"</b>	has the meaning given in Clause 30.1(a) ( <i>Step-In Rights</i> );
<b>"Restricted Countries"</b>	has the meaning given in Clause 23.3 ( <i>Protection of Personal Data</i> );
<b>"Risk Register"</b>	the register of risks and contingencies that have been factored into any Costs due under this Agreement, a copy of which is set out in Annex 4 of Schedule 7.1 ( <i>Charges and Invoicing</i> );
<b>"Security Management Plan"</b>	the Supplier's security plan as attached as Annex 2 of Schedule 2.4 ( <i>Security Management</i> ) and as subsequently developed and revised pursuant to Paragraphs 3 and 4 of Schedule 2.4 ( <i>Security Management</i> );
<b>"Service Charges"</b>	the periodic payments made in accordance with Schedule 7.1 ( <i>Charges and Invoicing</i> ) in respect of the supply of the Delivery Services;
<b>"Service Period"</b>	a calendar month, save that: <ul style="list-style-type: none"> <li>(a) the first service period shall begin on the Delivery Service Commencement Date and shall expire at the end of the calendar month in which the Delivery Service Commencement Date falls; and</li> <li>(b) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term;</li> </ul>
<b>"Services"</b>	any and all of the services to be provided by the Supplier under this Agreement, including those set out in Schedule 2.1 ( <i>Services Description</i> );

<b>“Service Transfer Date”</b>	has the meaning given in Schedule 9.1 ( <i>Staff Transfer</i> );
<b>“Services Description”</b>	the services description set out in Schedule 2.1 ( <i>Services Description</i> );
<b>“Sites”</b>	<p>any premises (including the Authority Premises, the Supplier’s premises or third party premises):</p> <p>(a) from, to or at which:</p> <p style="padding-left: 40px;">(i) the Services are (or are to be) provided; or</p> <p style="padding-left: 40px;">(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or</p> <p>(b) where:</p> <p style="padding-left: 40px;">(i) any part of the Supplier System is situated; or</p> <p style="padding-left: 40px;">(ii) any physical interface with the Authority System takes place;</p>
<b>“Software”</b>	Specially Written Software, Supplier Software and Third Party Software;
<b>“Software Supporting Materials”</b>	has the meaning given in Clause 17.1(b) ( <i>Specially Written Software and Project Specific IPRs</i> );
<b>“Source Code”</b>	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
<b>“Specially Written Software”</b>	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-contractor or other third party on behalf of the Supplier) specifically for the purposes of this Agreement, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Agreement;
<b>“Specific Change in Law”</b>	a Change in Law that relates specifically to the business of the Authority and/or the Services;
<b>“Staffing Information”</b>	has the meaning given in Schedule 9.1 ( <i>Staff Transfer</i> );

<b>“Standards”</b>	the standards, polices and/or procedures identified in Schedule 2.1 ( <i>Services Description</i> );
<b>“Step-In Notice”</b>	has the meaning given in Clause 30.1 ( <i>Step-In Rights</i> );
<b>“Step-In Trigger Event”</b>	<ul style="list-style-type: none"> <li>(a) any event falling within the definition of a Supplier Termination Event;</li> <li>(b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;</li> <li>(c) a Force Majeure Event that is materially preventing or materially delaying the performance of the Services or any material part of the Services;</li> <li>(d) the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Agreement;</li> <li>(e) the Authority as a regulatory body determines that the exercise by the Authority of its rights under Clause 30 (<i>Step-In Rights</i>) is necessary;</li> <li>(f) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or</li> <li>(g) a need by the Authority to take action to discharge a statutory duty;</li> </ul>
<b>“Step-Out Date”</b>	has the meaning given in Clause 30.5(b) ( <i>Step-In Rights</i> );
<b>“Step-Out Notice”</b>	has the meaning given in Clause 30.5 ( <i>Step-In Rights</i> );
<b>“Step-Out Plan”</b>	has the meaning given in Clause 30.6 ( <i>Step-In Rights</i> );
<b>“Strategic Design Services”</b>	the strategic design services described as such in the Services Description;
<b>“Strategic Design Services Commencement Date”</b>	the date set out in the Implementation Plan;
<b>“Sub-contract”</b>	any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or

any part thereof or necessary for the management, direction or control of the Services or any part thereof;

**“Sub-contractor”**

any third party with whom:

- (a) the Supplier enters into a Sub-contract; or
- (b) a third party under (a) above enters into a Sub-contract, or the servants or agents of that third party;

**“Successor Body”**

has the meaning given in Clause 36.4 (*Assignment and Novation*);

**“Supplier Background IPRs”**

- (a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or
- (b) Intellectual Property Rights created by the Supplier independently of this Agreement,

which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;

**“Supplier COTS Background IPRs”**

Supplier Background IPRs that:

- (a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and
- (b) has a Non-trivial Customer Base;

**“Supplier COTS Software”**

Supplier Software (including open source software) that:

- (a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and
- (b) has a Non-trivial Customer Base;

**“Supplier Equipment”**

the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from the Authority) for the provision of the Services;

<b>“Supplier Non-COTS Background IPRs”</b>	Supplier Background IPRs that are not Supplier COTS Background IPRs;
<b>“Supplier Non-COTS Software”</b>	Supplier Software that is not Supplier COTS Software;
<b>“Supplier Non-Performance”</b>	has the meaning given in Clause 31.1 ( <i>Authority Cause</i> );
<b>“Supplier Personnel”</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations under this Agreement;
<b>“Supplier Representative”</b>	the representative appointed by the Supplier pursuant to Clause 11.3 ( <i>Representatives</i> );
<b>“Supplier Software”</b>	software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 ( <i>Software</i> );
<b>“Supplier Solution”</b>	the Supplier’s solution for the Services set out in Schedule 4.1 ( <i>Supplier Solution</i> ) including any Annexes of that Schedule;
<b>“Supplier System”</b>	the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);
<b>“Supplier Termination Event”</b>	<ul style="list-style-type: none"> <li>(a) NOT USED;</li> <li>(b) the Supplier committing a material Default which is irremediable;</li> <li>(c) as a result of the Supplier's Default, the Authority incurring Losses which exceed 50% of the value of the aggregate liability cap as set out in Clause 25.6(a) (<i>Financial Limits</i>);</li> <li>(d) a Remedial Adviser Failure;</li> <li>(e) a Rectification Plan Failure;</li> <li>(f) where a right of termination is expressly reserved in this Agreement, including pursuant to: <ul style="list-style-type: none"> <li>(i) Clause 19 (<i>IPRs Indemnity</i>);</li> </ul> </li> </ul>

- (ii) Clause 39.6(b) (*Prevention of Fraud and Bribery*); and/or
- (iii) Paragraph 4 of Schedule 7.4 (*Financial Distress*);
- (g) the representation and warranty given by the Supplier pursuant to Clause 3.2(i) (*Warranties*) being materially untrue or misleading;
- (h) the Supplier committing a material Default under Clause 10.10 (*Promoting Tax Compliance*) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 10.10 (*Promoting Tax Compliance*) which in the reasonable opinion of the Authority are acceptable;
- (i) the Supplier committing a material Default under any of the following Clauses:
  - (i) Clause 5.5(k) (*Services*);
  - (ii) Clause 5.5 (m) (*Services*);
  - (iii) Clause 23 (*Protection of Personal Data*);
  - (iv) Clause 22 (*Freedom of Information*);
  - (v) Clause 21 (*Confidentiality*); and
  - (vi) Clause 35 (*Compliance*); and/or
  - (vii) in respect of any security requirements set out in Schedule 2.1 (*Services Description*), Schedule 2.4 (*Security Management*) or the Baseline Security Requirements; and/or
  - (viii) in respect of any requirements set out in Schedule 9.1 (*Staff Transfer*);
- (j) NOT USED;
- (k) an Insolvency Event occurring in respect of the Supplier;
- (l) NOT USED;
- (m) a change of Control of the Supplier unless:
  - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
  - (ii) the Authority has not served its notice of objection within 6 months of the later of the date on which the Change of Control took place or the date on which the Authority was given notice of the Change of Control;



- (n) a change of Control of a Key Sub-contractor unless, within 6 months of being notified by the Authority that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Authority pursuant to Clause 15.6 (*Appointment of Key Sub-contractors*); or
- (o) any failure by the Supplier to enter into or to comply with an Admission Agreement under the Annex to either Part A or Part B of Schedule 9.1 (*Staff Transfer*); or
- (p) a material disclosure of the Test questions, Test booklets and/or any relevant marking scheme caused by the act or omission of the Supplier, its employees, agents or contractors;

<b>“Term”</b>	the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement;
<b>“Termination Assistance Notice”</b>	has the meaning given in Paragraph 5.10 of Schedule 8.5 ( <i>Exit Management</i> );
<b>“Termination Assistance Period”</b>	in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 5.2 of Schedule 8.5 ( <i>Exit Management</i> );
<b>“Termination Date”</b>	the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;
<b>“Termination Notice”</b>	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination;
<b>“Termination Payment”</b>	the payment determined in accordance with paragraph 2 of Schedule 7.2 ( <i>Payments on Termination</i> );
<b>“Termination Services”</b>	the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 8.5 ( <i>Exit Management</i> ), and any other services required pursuant to the Termination Assistance Notice;
<b>“Test Issues”</b>	has the meaning given in Schedule 6.2 ( <i>Testing and Assurance Procedures</i> );

<b>“Tests” and “Testing”</b>	any tests required to be carried out under this Agreement, as further described in Schedule 6.2 ( <i>Testing Procedure</i> ) and <b>“Tested”</b> shall be construed accordingly;
<b>“Test Success Criteria”</b>	has the meaning given in Schedule 6.2 ( <i>Testing and Assurance Procedures</i> );
<b>“Third Party Beneficiary”</b>	has the meaning given in Clause 43.1 ( <i>Third Party Rights</i> );
<b>“Third Party COTS IPRs”</b>	Third Party IPRs that: <ul style="list-style-type: none"> <li>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</li> <li>(b) has a Non-trivial Customer Base;</li> </ul>
<b>“Third Party COTS Software”</b>	Third Party Software (including open source software) that: <ul style="list-style-type: none"> <li>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</li> <li>(b) has a Non-trivial Customer base;</li> </ul>
<b>“Third Party IPRs”</b>	Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
<b>“Third Party Non-COTS IPRs”</b>	Third Party IPRs that are not Third Party COTS IPRs;
<b>“Third Party Non-COTS Software”</b>	Third Party Software that is not Third Party COTS Software;
<b>“Third Party Provisions”</b>	has the meaning given in Clause 43.1 ( <i>Third Party Rights</i> );
<b>“Third Party Software”</b>	software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 ( <i>Software</i> );
<b>“Transferring Assets”</b>	has the meaning given in Paragraph 6.2(a) of Schedule 8.5 ( <i>Exit Management</i> );

<b>“Transferring Authority Employees”</b>	has the meaning given in Schedule 9.1 ( <i>Staff Transfer</i> );
<b>“Transferring Former Supplier Employees”</b>	has the meaning given in Schedule 9.1 ( <i>Staff Transfer</i> );
<b>“Transferring Supplier Employees”</b>	has the meaning given in Schedule 9.1 ( <i>Staff Transfer</i> );
<b>“UK”</b>	the United Kingdom;
<b>“Unrecovered Payment”</b>	has the meaning given in Schedule 7.2 ( <i>Payments on Termination</i> );
<b>“Updates”</b>	in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
<b>“Upgrades”</b>	any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term;
<b>“VAT”</b>	value added tax as provided for in the Value Added Tax Act 1994; and
<b>“Working Day”</b>	any day other than a Saturday, Sunday or public holiday in England and Wales.

#56209470

**AGREEMENT FOR THE SUPPLY OF SERVICES RELATING  
TO NATIONAL REFERENCE TESTS**

**SCHEDULE 2.1**

**SERVICES DESCRIPTION**

#56211344

**Contract Ref: OF344**  
**National Reference Tests**

**Schedule 2.1 (Services Description)**

**Section 3 - Services Description**

This Services Description comprises:

- Paragraph 1 – Purpose of the National Reference Tests
- Paragraph 2 – Framework for the National Reference Tests
- Paragraph 3 – Services to be provided by the Supplier
- Paragraph 4 – General Requirements

**1. Purpose of the National Reference Tests**

The National Reference Tests will provide evidence for Ofqual on changes in performance standards over time in GCSE English Language and Mathematics in England at the end of Key Stage 4.

While the design of the National Reference Tests will mirror that of GCSE English Language and Mathematics, it will be important to be able to distinguish between:

- a) Genuine changes in performance; and
- b) Changes that are due to increasing familiarity with the typical content and style of GCSE questions or that do not generalise in the domains of Mathematics and English Language.

During the detailed design of the National Reference Tests, therefore, it will be critical to strike a balance between making questions accessible to candidates and ensuring that the questions are not too close in style to those used in the GCSE question papers and to those of any specific Awarding Organisation. In this way, performance in the National Reference Tests should be resistant to the possible increase over time in formulaic approaches to question answering.

The evidence generated from the National Reference Tests will be considered each year by Ofqual, together with Awarding Organisations that award GCSEs and supported as appropriate by other independent experts.

A key requirement of the Supplier's Solution for the National Reference Tests is that it is required to achieve a precision in the results of +/- 1.5% at the 95% confidence interval at the three prescribed grade boundaries (i.e. Grades 3 and 4, Grades 4 and 5 and Grades 6 and 7). For more detail on this requirement, see paragraph 2.9 below.

## **Contract Ref: OF344**

### **National Reference Tests**

A key feature of the Supplier's Solution for the National Reference Tests is that to ensure the comparability of the results year on year, a substantial majority of the Test questions for Mathematics and English Language are the same each year

## **2. Framework for the National Reference Tests**

### **2.1. Overview**

The National Reference Tests will, from 2016, provide evidence for Ofqual on changes in performance standards over time in GCSE English Language and Mathematics in England at the end of Key Stage 4. The evidence generated from the National Reference Tests will be considered every year by Ofqual prior to the awarding of GCSEs and, on consideration of the evidence, Ofqual will agree with the Awarding Organisations that deliver GCSEs whether to intervene in national GCSE standards if they feel that those standards are not being maintained. The Supplier therefore needs to deliver the completed Technical and General Reports, including the results and supporting data, by end May. The National Reference Tests will mirror GCSE English Language and Mathematics, although individual candidates will take a smaller sample of questions than they would for their full GCSEs. The National Reference Tests will be taken by a sample of students every year.

The Supplier shall develop a Framework for the National Reference Tests that will specify (inter alia) the purpose, format, content, sampling requirements and reporting requirements of the National Reference Tests.

### **2.2. Student-level Sampling**

The National Reference Tests will:

- Comprise a multiple, overlapping booklet design to maximise the coverage of the GCSE subject criteria in English Language and Mathematics and minimise exposure of the entire Test content while minimising the time required to test students;
- Comprise 8 different test versions to be produced for each subject.
- Include extended response answers (short essays) in the English Language Tests. While the use of essay questions introduces some complexity in the analysis and potential for loss of precision in the results, it is considered critical that the design of the National Reference Tests covers adequately the reading and writing expectations in GCSE English Language.

### **2.3. Nature of the National Reference Tests**

The National Reference Tests will:

**Contract Ref: OF344**  
**National Reference Tests**

- Be based on the English Language and Mathematics GCSE subject content and assessment objectives which will be applicable from September 2015;
- Cover all aspects of the English Language and Mathematics GCSE subject content and assessment objectives that contribute to a candidate's final grade.
- Be securely administered and kept secret as the intention is that the questions will not change over time. Schools will not be able to use the questions for teaching purposes.
- Use substantially the same Test questions each year and be delivered in a manner and at a time of year that enables results to be compared year on year.
- Be delivered on paper.

**2.4. National Reference Tests – Format**

The National Reference Tests will:

- Be comprised of English Language and Mathematics Tests and adopt the requirements set out in Tables 1 and 2 below.
- Ensure no student will have to sit both an English Language Test and a Mathematics Test.
- Have a total testing time of 50 minutes per student.
- Comprise (in both English Language and Mathematics) eight different Test versions, with the versions spiralled (randomly distributed) among the sample.

## Contract Ref: OF344 National Reference Tests

Table 1: Format and scope of the English Language Tests

Component	Description	Number of marks	Timing component (mins)
English Reading	Language Read and understand a wide range of texts	25	25
English Writing	Language Communicate clearly, effectively and imaginatively. Organise information and ideas.	25	25

Table 2: Format and scope of the Mathematics Tests

Component	Description	Number of marks	Timing component (mins)
Mathematics AO1	Use and apply standard techniques	20]	20
Mathematics AO2 & AO1	Reason, interpret and communicate mathematically	15	15
Mathematics AO3 & AO1	Solve problems within mathematics and in other contexts	15	15

### 2.5. National Reference Tests – Mode

The National Reference Tests will:

- Be delivered on paper;
- Take account of the needs of students with disabilities; in particular, the Supplier may need to provide a paper-based version of an on-screen test to reflect the needs of some students.

### 2.6. Content Domain

The National Reference Tests will ensure that:

- The content coverage for the National Reference Tests reflects the content coverage required for the GCSE specifications in English language and Mathematics.
- Any content that will not form part of the final mark and grade for GCSEs is not included in the Tests.
- Spoken language will not be assessed in the English Language Test.



**Contract Ref: OF344**  
**National Reference Tests**

**2.6.1. Content Domain for English Language**

The content domain for the English Language National Reference Test must:

- Be designed on the basis that students read and are assessed on high-quality, challenging texts from the 19th, 20th and 21st centuries.
- Use texts in the examinations that have not previously been named for study by the Awarding Organisations;
- Reflect a range of genres and types.
- Include one or more extracts from texts in each Test version, the extracts acting as a starting point for a student’s writing.

**2.6.2. Content Domain for Mathematics**

The content domain for the Mathematics National Reference Test must:

- Reflect the full range of content for GCSE specifications in Mathematics.
- Contain content suitable for highly attaining students.
- Provide students with access to the same mathematical formulae as they do in the Mathematics GCSE.
- Allow for calculators to be used within all Test versions.

**2.7. Cognitive Domain**

The cognitive demand of the National Reference Tests must represent a similar level of demand as the GCSEs in English Language and Mathematics and the cognitive domain of the National Reference Tests must reflect the cognitive domain of the corresponding GCSEs.

**2.7.1. Cognitive Domain for English Language**

The cognitive domain for the English Language National Reference Test will sample from the detail set out in Table 3 below:

Table 3: Cognitive Domain for English Language<sup>1</sup>

Reading	Critical reading and comprehension	<ul style="list-style-type: none"> <li>• Identifying and interpreting themes, ideas and information in a range of literature and other high-quality writing;</li> </ul>
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<sup>1</sup> "GCSE English language and GCSE English literature - Gov.uk." 2013. 21 May. 2014 <<https://www.gov.uk/government/publications/gcse-english-language-and-gcse-english-literature-new-content>>

**Contract Ref: OF344**  
**National Reference Tests**

		<ul style="list-style-type: none"> <li>• Reading in different ways for different purposes, and comparing and evaluating the usefulness relevance and presentation of content for these purposes;</li> <li>• Drawing inferences and justifying these with evidence; supporting a point of view by referring to evidence within the text;</li> <li>• Identifying bias and misuse of evidence, including distinguishing between statements that are supported by evidence and those that are not;</li> <li>• Reflecting critically and evaluatively on text, using the context of the text and drawing on knowledge and skills gained from wider reading;</li> <li>• Recognising the possibility of different responses to a text.</li> </ul>
	Summary and synthesis	<ul style="list-style-type: none"> <li>• Identifying the main theme or themes summarising ideas and information from a single text;</li> <li>• Synthesising from more than one text.</li> </ul>
	Evaluation of a writer's choice of vocabulary, form, grammatical and structural features	<ul style="list-style-type: none"> <li>• Explaining and illustrating how vocabulary and grammar contribute to effectiveness and impact, using linguistic and literary terminology accurately to do so and paying attention to detail;</li> <li>• Analysing and evaluating how form and structure contribute to the effectiveness and impact of a text.</li> </ul>
	Comparing texts	<ul style="list-style-type: none"> <li>• Comparing two or more texts critically with respect to the above.</li> </ul>
Writing	Producing clear and coherent text	<ul style="list-style-type: none"> <li>• Writing effectively for different purposes and audiences: to describe, narrate, explain, instruct, give and respond to information, and argue;</li> <li>• Selecting vocabulary, grammar, form, and structural and organisational features judiciously to reflect audience, purpose and context;</li> <li>• Using language imaginatively and creatively;</li> <li>• Using information provided by others to write in different forms;</li> <li>• Maintaining a consistent point of view;</li> <li>• Maintaining coherence and consistency across a text.</li> </ul>
	Writing for impact	<ul style="list-style-type: none"> <li>• Selecting, organising and emphasising facts, ideas and key points;</li> <li>• Citing evidence and quotation effectively and pertinently to support views;</li> <li>• Creating emotional impact;</li> <li>• Using language creatively,</li> <li>• Imaginatively and persuasively, including rhetorical devices (such as rhetorical questions, antithesis, parenthesis).</li> </ul>

**2.7.2. Cognitive Domain for Mathematics**

The cognitive domain for the Mathematics National Reference Test will:

## Contract Ref: OF344 National Reference Tests

- Reflect that of the Mathematics GCSE<sup>2</sup> and enable students to:
  - Develop fluent knowledge, skills and understanding of mathematical methods and concepts.
  - Acquire, select and apply mathematical techniques to solve problems.
  - Reason mathematically, make deductions and inferences and draw conclusions.
  - Comprehend, interpret and communicate mathematical information in a variety of forms appropriate to the information and context.
- Enable all versions of the National Reference Tests to be taken by students who may be preparing to take either the Foundation or the higher-tier GCSE. Test versions will not be tiered.

### 2.8. National Reference Tests – Detailed Requirements

This paragraph 2.8 provides further details of the requirements for each component of the National Reference Tests and the sampling matrix design as a whole.

#### 2.8.1. Summary of National Reference Tests Design

The Supplier shall sample the subject content and develop Test questions separately from any concept of the overlapping, multiple Test Booklet design.

##### English Language (Reading)

The Reading Tests will consist of one or more extracts from a text, followed by constructed response questions and/or an extended response question. The constructed response answers will require several lines to answer, and will require thought, but no substantial planning of structure. The extended response answer will require planning and structure. For example, one Test version may focus on summary and synthesis, which requires an extended response question, while another may have shorter constructed response questions which elicit themes, use of evidence and context. The length of answers required may mean that it is not possible to balance demand between different Test versions.

##### English Language (Writing)

The Writing Tests will consist of one or more extracts from texts, followed by an extended response answer worth 25 marks. The extended response answer will

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<sup>2</sup> "GCSE mathematics - Publications - GOV.UK." 2013. 21 May. 2014  
<<https://www.gov.uk/government/publications/gcse-mathematics-subject-content-and-assessment-objectives>>

**Contract Ref: OF344**  
**National Reference Tests**

require planning and structure as well as thought. The length of answers required may mean that it is not possible to balance demand between different Test versions.

**Mathematics**

Each Mathematics Test version will have a total of 50 marks available, divided between 13 questions. The marks will reflect the weighting of the assessment objectives in the Mathematics GCSE. Each Test version will be designed to contain the same weighting of assessment objectives, but (in order to maximise the sampling of the curriculum) the content domain in different Test versions may differ. As far as possible the Tests should be designed to exhibit the same level of demand.

**2.8.2. Marking and Mark Schemes**

The Tests will be externally marked on-screen by trained markers.

Mark schemes will be developed alongside Test materials so the Tests can be marked reliably; however neither they, nor the Tests, will be published.

**Marking English Language (Writing)**

Levels of response mark schemes will be developed for the English Language (Writing) extended response answers. The mark scheme will not be broken down into different dimensions in order to prompt a truly holistic judgement. The mark scheme will not have content in the levels but will describe the process and skills required at each level. Exemplar responses at each level will be collected following each session and be available during marking. Each level will contain an equal number of marks to avoid spurious bias in the mark distribution.

**Marking English Language (Reading)**

Where constructed response questions are used, details will be given of how full and partial credit can be awarded. Exemplar responses at each of the mark points will be collected and made available for each question. Where extended response questions are used, the marking will follow the procedure set out above for marking English Language (Writing).

**Marking Mathematics**

The normal principles of marking Mathematics used in GCSE Mathematics will apply. The principles include consideration of working out and application of method marks.

**Marking Quality Control**

Questions will be distributed to markers at question level, so each student's set of Test questions is distributed among as many markers as possible.

All extended response questions will be blind double marked (the response of the first marker will not be known to the second). Where the marks given by different markers

**Contract Ref: OF344**  
**National Reference Tests**

are outside a given tolerance, (the tolerance will be agreed by the Authority and the Supplier following a consideration of evidence generated during the field trials to be undertaken as part of the Detailed Design & Development Services (see paragraph 3.2 below), questions will be marked (again blind) by a third independent, experienced marker. The mark given will be the average of the mark given by the third marker and the marker closer to the third marker). Where the marks given by different markers are within tolerance, then the final mark will be an average of the two. A sample of extended response questions used in previous sessions, when available, will be seeded into the marking so that potential marking drift over time can be monitored.

The marking of constructed response questions will follow the usual seeding procedures used for live GCSE marking. Where possible, seeds will remain the same over time. As there are no stakes involved for individual students, there will be no marking review processes.

**2.8.3. Sampling**

The sample of students to be selected for the National Reference Tests will be representative of the cohort of students taking the GCSEs in Mathematics and English Language in a particular year. The sample will be representative of the national cohort in terms of age, gender, ability and other demographic factors.

All children who are registered at maintained schools, special schools, academies (including free schools) or independent schools in England and are at the end of key stage 4 will be eligible to be selected to take part in the National Reference Tests. The sample may include some students who have already taken their GCSE or are not following a GCSE syllabus, but it is assumed that such students will represent a negligible proportion of the total. The Supplier shall ensure the proportion of students who are not taking the relevant GCSE that summer are monitored, and (if necessary) that the Supplier's analysis takes any changing proportions into account.

A two-stage sampling model will be used where schools are sampled first and students are sampled from within these schools. To minimise the design effect, as a minimum, schools will be stratified according to their GCSE performance. The sampling of students within schools can be random, as there is no requirement to report on subgroups of students.

Ofqual does not require the Supplier Solution data-sets to be representative in other aspects other than that used for stratification. Any additional analyses to be undertaken by Ofqual will utilise the data-sets required for the Tests provided in the Supplier Solution together with other data-sets separately available to Ofqual. Ofqual does not require the Supplier to construct the sample to support analysis of sub-groups.

## Contract Ref: OF344 National Reference Tests

When selecting schools to be included within the sample, there is no lower limit on the number of eligible students within a particular school. When determining the sample of schools, the Supplier shall determine whether a specific school should be included as part of the sampling approach balancing the need to identify a nationally representative sample of students with a desire to minimise the overall impact on the school community.

The sample of students for the English Language Test and the sample of students for the Mathematics Test can include students from the same school, but a single student should not sit both the English Language and Mathematics Tests; a student selected within a school should only sit one Test.

The sample(s) identified should be random and therefore not take account of the tiering of GCSE Mathematics and numbers of students in the differing ability groups.

- For the Mathematics Tests, the minimum number of schools to be sampled will be 300, with a cluster size of 25;
- For the English Language Tests, the minimum number of schools to be sampled will be 300, with a cluster size of 25

The Supplier shall manage the non-participation of schools and students by identifying replacement schools/students and the Supplier shall ensure the minimum sample sizes are achieved after the inclusion of replacement schools/students. The Supplier is expected to monitor and report on replacement schools/students over time.

### 2.8.4. Reporting

The Supplier will be required to produce two substantial reports following the delivery of the annual National Reference Tests. The Reports shall be appropriate for their intended audience, as follows:

- **The Technical Report.** The intended audience for the Technical report is the technical community who will use the report to evidence changes in standards in the GCSE
- **The General Report.** The intended audience for the General report is those in the wider educational community who have an interest in the results of the Tests, but do not require the same level of technical detail as the direct users of the evidence generated from the Tests.

The timeline for the production of the Reports is set out in paragraph 3.4 below.

#### (a) The Technical Report - Overview

The technical report on the National Reference Tests will provide sufficient detail for Ofqual and its advisory committee to evaluate whether or not to expect an increase or

**Contract Ref: OF344**  
**National Reference Tests**

decrease in GCSE outcomes in Mathematics and English Language. The report will contain sufficient evidence of the validity and reliability of the Tests to enable robust decision making. The report will provide a regulatory tool to help Ofqual ensure that the Awarding Organisations are maintaining standards over time in the GCSEs in Mathematics and English Language.

In order for Ofqual to make an informed decision on whether GCSE outcomes are expected to increase or decrease, the technical report will present the findings and conclusions from an analysis of changes in performance on the National Reference Tests for English Language and Mathematics, along with relevant confidence intervals.

The technical report will be at a sufficient level of technical detail to enable Ofqual to make an informed judgement on whether GCSE outcomes in English Language and Mathematics are expected to change that year.

For English Language, the technical report should differentiate between the assessment of performance in reading and performance in writing.

**(b) The Technical Report – Reporting of Changes in Performance**

Following delivery of the Final Reports and Data for the National Reference Tests conducted in 2017, the Supplier shall (by end September 2017) ‘map’ the standards from the English and Mathematics GCSEs onto the 2017 results for the National Reference Tests. The mapping process will incorporate a lookup table of cumulative percentage outcomes and marks<sup>3</sup> in the National Reference Tests.

In the following years, the difference between the cumulative percentages of students achieving each mark in the National Reference Tests year-on-year will act as a proxy measure for the change in national performance in the GCSE, given that the National Reference Tests will have been taken by a nationally representative sample of students undertaking the GCSEs.

In the first year, for example, it may be the case that the percentage of students achieving grade 4 in the reformed GCSE English is 50 per cent. The mark (scaled mark or ability measure) can then be found on the English National Reference Tests above which a similar cumulative percentage of students score. If the following year, 49 per cent of students score above the same mark in the English National Reference Tests, then the National Reference Tests are suggesting that performance in the English GCSE subject criteria appear to have declined by 1 per cent at this grade boundary. This mapping process is illustrated in Figure 1.

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<sup>3</sup> With an overlapping booklet design or equipercetile equating these are likely to be scaled marks or ability measures

**Contract Ref: OF344**  
**National Reference Tests**

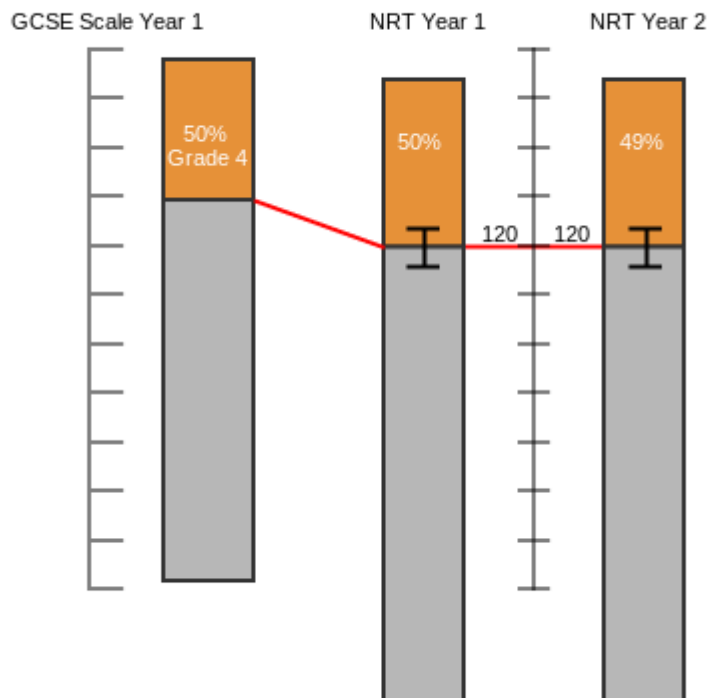


Figure 1: Mapping GCSE standards onto the National Reference Tests

**(c) The Technical Report - Reporting of Precision**

Any change in performance in the National Reference Tests will be qualified by reference to the precision of the Tests. The National Reference Tests will only include a subset of all possible questions, and will be taken by a subset of all possible students. Furthermore, the technical properties of the National Reference Tests may affect the conclusions that can be drawn from them. The technical properties include measures of reliability and validity.

The Supplier’s approach to the estimation of precision will adopt the following procedure:

- As only a sample of the GCSE population will take the National Reference Tests, the sample estimate of the population parameter for the test will contain sampling error.
- Further, the sample for the National Reference Tests will be drawn using a two stage-stratified sampling design, with schools sampled according to their GCSE performance. In such designs the actual sample size will generally be considerably larger than its effective Simple Random Sample (SRS) size due to the intra-class correlation between students within schools (intra-class



## **Contract Ref: OF344**

### **National Reference Tests**

correlation is a measure of the similarity between students within schools with respect to certain variables of interest).

- The actual sample size and the effective SRS size are related through the so-called design effect. The Supplier shall calculate the design effect using the Balanced Repeated Replication (BRR) approach following each test administration.

#### **(d) The General Report**

The General Report will be published by Ofqual on GCSE results day in order to increase public understanding of any changes in GCSE outcomes and to increase public confidence in the GCSE results.

The General Report will be aimed at a non-technical audience and is intended as a high level overview that can be easily referred to in order to justify the decisions that have been taken on GCSE standards. The Supplier shall include a selection of non-live example questions in the report to aid understanding. The Supplier Solution must accommodate the release of any example non-live questions.

#### **2.8.5. Quality Control of Questions and Test Versions**

To ensure that the Tests are of high quality, the Supplier shall ensure all questions are subject to a field trial prior to their inclusion in the final versions of the (overlapping) Tests Booklets. The questions must meet the criteria specified in Appendix 2 before inclusion in the final versions of Tests booklets. The final versions of the Test Booklets themselves will not need to be field trialled before undertaking the Preliminary National Reference Tests in 2016 ('the Preliminary National Reference Tests').

The ongoing quality of the National Reference Tests and the Test questions will be monitored by Ofqual through a separate research programme.

The Supplier's Psychometric Framework shall propose psychometric quality criteria. The psychometric criteria will ensure that all questions are contributing to a coherent measurement of the GCSE subject criteria, and the Test versions are delivering an expected level of measurement precision, given the practical constraints of sample size and Test booklet design.

#### **2.8.6. Diversity and Inclusion**

The Supplier Solution shall ensure that:

- Reasonable testing accommodations are made for students with learning difficulties and sensory handicaps;
- No translations will be made available to the test booklets;

## **Contract Ref: OF344**

### **National Reference Tests**

- The Test Framework monitors non-completion due to lack of suitable testing accommodations.

Further details of Ofqual's requirements are set out at paragraph 4.3 (Ofqual's Public Sector Equality Duty).

#### **2.8.7. Availability of Data**

All the data produced from the National Reference Tests (including that produced by the Supplier in the analysis of the results from the Tests) will be owned by Ofqual and made available to Ofqual upon request. Where requested, the data will be provided to Ofqual in advance of the production of the Technical Report and the General Report so that Ofqual can perform its own analyses where required. Ofqual will decide whether or not to release the data for more general research. Any public release of data will be owned, controlled and managed by Ofqual.

The data relating to Test results must be coded in such a way that the Test questions can easily be matched to the question data and any analysis in the Technical and General Reports reproduced.

#### **2.9. Sample Size and Precision of the Tests**

The confidence intervals at the 95% level for the percentages of students achieving a certain score and above in the National Reference Tests must be within the range +/- 1.5% and the likely design effect associated with a two-stage sampling design. The Supplier Solution will be based on the following sample sizes:

- For the Mathematics Tests, the minimum number of schools to be sampled will be 300, with a cluster size of 25;
- For the English Language Tests, the minimum number of schools to be sampled will be 300, with a cluster size of 25

As part of the Strategic Design Services and the Detailed Design & Development Services, the Supplier shall confirm that the required level of precision can be achieved. Should the Supplier be unable to demonstrate the required precision will be achieved by the Supplier Solution, the Supplier may be required to adjust the sample sizes and / or other Test attributes to ensure the required precision is achieved in accordance with clauses 6.8 to 6.11 of the Agreement. The National Reference Tests will, within the constraints of the sample size, detect changes in performance in the GCSE English Language and Mathematics subjects from one year to the next. The National Reference Tests must discriminate across the ability range, with the required Tests' precision being demonstrated at the key grade boundaries between grades 3 and 4, between grades 4 and 5, and between 6 and 7.

**Contract Ref: OF344**  
**National Reference Tests**

**3. Services to be provided by the Supplier**

**3.1. Description of Strategic Design Services**

From the Strategic Design Services Commencement Date, the Supplier shall provide the Strategic Design Services in order to prepare the high-level design for the National Reference Tests.

In providing the Strategic Design Services, the Supplier shall:

- Develop the Supplier’s Framework document for the National Reference Tests against Ofqual’s requirements
- Adhere to any Compliance Plan put in place under paragraph 4.2(c);
- Provide support to Ofqual in discussing the Supplier’s Test Framework for the National Reference Tests with the Awarding Organisations;
- Define the detailed requirements for the Supplier Solution to support the design, development and delivery of the National Reference Tests, including:
  - ICT infrastructure;
  - Quality Management System including any business processes documentation and operational procedures manual;
  - Organisational design and resourcing plans for the following:
    - Test question authors;
    - Test administrators;
    - Test markers and assessors; and
    - Test analysts;
- Develop an assessment strategy that will validate the Supplier Solution against the requirements for the National Reference Tests Framework (see Paragraph 2 above), including the required Sample Size and precision;
- Define, develop and test the sampling software application to support the sampling framework. The sampling software algorithm shall deliver results within the required precision for the Tests (see Paragraph 2.9 for more detail).
- Define, develop and test the software application to support the analysis of Test questions;
- Define the specification for the data sets required from the Awarding Organisations and Department for Education to be used in the sampling algorithm in order to prepare the National Reference Tests;

## Contract Ref: OF344 National Reference Tests

- Define and put in place the necessary procedures to obtain the data sets from the Awarding Organisations and Department for Education to be used in the sampling algorithm in order to prepare the National Reference Tests;
- Define the sample of schools / students to be used in delivering the Strategic Design Services;
- Develop the reporting framework for the National Reference Tests including the structure, content and format of reports to be prepared by the Supplier following completion of the National Reference Tests (including the Preliminary National Reference Tests), including:
  - The General Report;
  - The Technical Report;
  - Management Information prepared by the Supplier and having the content and in the format approved by Ofqual to enable Ofqual to:
    - Assess the Supplier's performance of its obligations under the Agreement; and
    - Validate any Charges due and payable under the Agreement.
- Prepare the Detailed Implementation Plan for the provision of the:
  - Detailed Design & Development Services;
  - Delivery Services;
- Prepare draft specimen Test questions, specimen Test mark schemes and specimen Test Booklets;
- Prepare the first tranche of Test questions and report the number of items and domain coverage against the test frameworks.
- Provide support to Ofqual in discussing ('market testing') the Supplier Solution for the National Reference Tests with stakeholder focus groups (or similar) (including: Awarding Organisations; teachers and schools). (The purpose being to provide evidence that would be used to build public confidence in the National Reference Tests);
- Review any specimen Test questions, specimen Test Booklets and specimen Test mark schemes to take account of the results of any 'market testing' exercise;
- Develop information, advice and guidance relating to the National Reference Tests (including a list of frequently asked questions) in a format to be agreed to be used by the Supplier in the provision of its customer support activities.

**Contract Ref: OF344**  
**National Reference Tests**

- Prepare and deliver to Ofqual the Deliverables for the Strategic Design Services as set out at Appendix 3.

**3.2. Description of Detailed Design & Development Services**

From the Detailed Design & Development Services Commencement Date, the Supplier shall provide the Detailed Design & Development Services in order to develop and implement the Supplier Solution for the National Reference Tests.

In providing the Detailed Design & Development Services, the Supplier shall:

- Develop, implement and test the Supplier Solution for the National Reference Tests, including:
  - the ICT Infrastructure;
  - Quality Management System including business processes;
  - Organisational design; and
  - Appointment of key Supplier Personnel to perform the Detailed Design & Development Services and the Delivery Services including Mathematics and English Language subject experts, question writers, test administrators and Test markers;
- Obtain the data sets from Awarding Organisations and Department for Education to be used in the sampling algorithm in order to prepare the National Reference Tests;
- Develop the training materials required to support the delivery of the Services;
- Define the sample of schools / students to be used in delivering the Detailed Design & Development Services, including any Pilot Testing and the Preliminary Reference Tests;
- Undertake field trials of the Supplier Solution including field trial Test Booklets and a sample of Test Questions using a sample size of not less than 100 Students to confirm to Ofqual that the Supplier Solution will deliver results within the agreed precision;
- Develop and submit the report on the field trial and prepare and submit the data supporting the field trial;
- Review and update the Supplier Solution, including Test Booklets and a sample of Test Questions in light of any field trial;
- Identify and engage with schools and students in order to achieve the agreed sample size for the Preliminary National Reference Tests in accordance with the Detailed Implementation Plan;

## Contract Ref: OF344 National Reference Tests

- Identify replacement schools and students in order to achieve the Sample Size for the Preliminary National Reference Tests;
- Develop the detailed:
  - Test Questions for each of the 8 Test booklets ensuring all Test questions are tagged with the appropriate meta-data information relating to their curriculum properties; and
  - Marking assessment schemes to support the Test booklets;
- Construct the 8 overlapping Test booklets;
- Construct any additional overlapping Test Booklets to accommodate students with special needs and other special access requirements;
- Document the functional and technical requirements for the software application to support the analysis of Test questions;
- Update the Detailed Implementation Plan for the performance of:
  - the Detailed Design and & Development Services; and
  - the Delivery Services;
- Implement the communications strategy and plan for the National Reference Tests;
- Conduct the Preliminary National Reference Tests at each School in accordance with the Detailed Implementation Plan, including:
  - Liaison with the school to identify and arrange appropriate accommodation and schedule of each the Preliminary National Reference Tests with students;
  - Attendance at school on date and time of Preliminary National Reference Tests in order to:
    - Set-up accommodation and/or facilities for performance of Preliminary National Reference Test;
    - Distribute Test booklets to students and provide relevant instruction on completion of the Preliminary National Reference Test;
    - Invigilate the conduct of the Preliminary National Reference Test; and
    - Collect and return Test booklets to the Supplier for marking and analysis.
- Following completion of the Preliminary National Reference Tests:

**Contract Ref: OF344**  
**National Reference Tests**

- Mark each Test booklet in accordance with the agreed marking assessment scheme;
- Analyse the results from completed Test Booklets.
- Provide technical support to Ofqual in its review of the output from the Preliminary National Reference Tests with the Awarding Organisations through attending meetings and providing responses to correspondence;
- Conduct quality audits and address any non-compliance issues in accordance with Quality Management System;
- Review and update information, advice and guidance relating to the National Reference Tests (including list of frequently asked questions) in a format to be agreed to be used by the Supplier in the provision of its Customer support activity;
- Prepare and deliver to Ofqual the Deliverables for the Detailed Design & Development Services as set out at Appendix 3.

**3.3. Description of the Delivery Services**

From the Delivery Services Commencement Date and for the remainder of the Term, the Supplier shall provide the Delivery Services for the National Reference Tests.

In providing the Delivery Services, the Supplier shall:

- Maintain the Supplier Solution, including:
  - The ICT infrastructure;
  - Quality Management System including business processes; and
  - Organisational design.
- Ensure that Supplier Personnel are available to perform the Delivery Services;
- Obtain the data sets from Awarding Organisations and Department for Education in accordance with the approved Detailed Implementation Plan;
- Define the sample of schools / students;
- Identify and engage schools and students in order to achieve the agreed sample size for the National Reference Tests in accordance with the Detailed Implementation Plan;
- In the event that the sample size is not achieved, identify and engage with replacement schools and students in order to achieve the agreed Sample Size;
- Prepare the Sampling Overview Report for Ofqual for the annual National Reference Test;

## Contract Ref: OF344 National Reference Tests

- Conduct the National Reference Test at each school in accordance with the Detailed Implementation Plan, including:
  - Liaison with the school to identify and arrange appropriate accommodation and schedule of each the National Reference Tests with students;
  - Attendance at school on date and time of National Reference Test in order to:
    - Set-up accommodation and/or facilities for the performance of the National Reference Test;
    - Distribute Test booklets to students and to provide relevant instruction on the completion of the National Reference Test;
    - Invigilate the conduct of the National Reference Test;
    - Collect and return Test booklets to the Supplier for marking and analysis;
- Undertake in accordance with the approved Detailed Implementation Plan a refresh of the:
  - Sampling algorithm and supporting software;
  - Test analysis software;
  - Test questions for each Test booklet to ensure integrity / security of the Test booklets;
  - Marking assessment schemes;
  - Communications strategy.
- Review and update information, advice and guidance relating to the National Reference Tests (including list of frequently asked questions) in a format to be agreed to be used by the Supplier in the provision of the customer support centre.
- Following completion of each National Reference Test, the Supplier shall:
  - Mark and moderate each Test Booklet in accordance with the agreed marking assessment scheme;
  - Analyse the results from completed National Reference Tests.
- Provide technical support to Ofqual in its review of the output from the National Reference Tests with the Awarding Organisations through attending meetings and providing responses to correspondence;
- Following completion of the National Reference Tests in 2017, undertake:



**Contract Ref: OF344**  
**National Reference Tests**

- A ‘mapping’ exercise to ‘map’ the results from the 2017 GCSE awarding cycle onto the results from the 2017 National Reference Tests; and
- Update the General and Technical Reports and associated data from the 2017 National Reference Tests.
- Prepare and deliver to Ofqual the Deliverables for the Delivery Services as set out at Appendix 3.

**3.4. Timeline for the National Reference Tests**

The Supplier shall meet the following timescales for delivery of the Strategic Design Services and the Detailed Design & Development Services:

	Date
Commencement of the Strategic Design Services	1.1 17 April 2015
Completion of the Strategic Design Services	<b>1.2 13 July 2015</b>
Delivery of Final versions of the Technical Report and the General Report on the Preliminary National Reference Tests	End May 2016
Completion of Detailed Design & Development Services	1.3 <b>1 September 2016</b>

The Supplier’s Outline Implementation Plan for the Strategic Design Services and Detailed Design & Development Services will set out how the Supplier shall achieve the above timescales.

The Supplier shall achieve the following timescales for completion of the Delivery Services in each year:

	Date
Annual Cycle Commencement Date	Start September
Delivery of final versions of the Technical Report and the General Report on the National Reference Tests	End May
Annual Cycle Completion Date	End August

## **Contract Ref: OF344**

### **National Reference Tests**

Annual completion of the National Reference Tests and delivery of the Reports and Data are of critical importance to the success of the National Reference Tests. Failure to deliver the National Reference Tests Reports and Data may have a significant impact on the annual GCSE awarding activity.

Excepting for public holidays, Ofqual expects the Supplier to complete both the Preliminary National Reference Tests and the subsequent annual 'cycle' of National Reference Tests (as part of the Delivery Services) in accordance with a regular schedule as set out above. The Tests must be undertaken at the same time each year to minimise the effects of changes in performance between cohorts who have taken the Tests at different points in their academic development.

A Milestone each year is the delivery of the Final Reports for the annual National Reference Tests. Ofqual requires this activity to be completed by the end of May each year.

Following completion of the National Reference Tests in 2017, the Supplier shall complete a 'mapping' exercise to 'map' the results from the 2017 GCSE awarding cycle onto the results from that year's National Reference Tests. This 'one-off' exercise shall be completed by the end of September 2017. The Supplier shall update the General and Technical Reports from the 2017 National Reference Tests as required.

## **4. General Requirements**

### **4.1. Legislation Supporting National Reference Tests**

As at the Effective Date, Ofqual is working with the Department for Education to formulate legislation that will require schools' leaders to support the National Reference Tests. This legislation will be similar to that currently enacted for the conduct of the Key Stage 2 Science Sample National Assessments in England. The legislation may be enacted in Q3 or Q4 2015.

In the event legislation is put in place for the conduct of any of the National Reference Tests, Ofqual will agree with the Supplier an appropriate reduction to the Charges in accordance with paragraphs 2.4 and 2.5 of Schedule 7.1.

### **4.2. Supplier Solution and Awarding Organisations**

#### **(a) Awarding Organisations – Engagement**

Throughout the Term, the Supplier shall support Ofqual through the provision of technical support at meetings and workshops and responding to correspondence.

## **Contract Ref: OF344**

### **National Reference Tests**

The Supplier is expected to provide support in the engagement of Awarding Organisations in a number of areas including:

- Confirming the Supplier's National Reference Tests Framework;
- Commenting on the Supplier's approach to
  - Test sampling;
  - Data requirements and acquisition;
  - Timing of Test delivery and reporting as presented in the Supplier's Detailed Implementation Plan;
- The 'look and feel' of the Tests (whether paper-based or on-screen);
- The required levels of user support and advice;
- The format and timing of any outputs from the National Reference Tests.

#### **(b) Awarding Organisations – A 'Neutral' Solution**

As a 'national' Test to be used throughout England, the National Reference Tests will need to be equally applicable and relevant to all schools supported by the individual Awarding Organisations.

The Supplier Solution for the National Reference Tests must not therefore be reflective either in style or substance of any single Awarding Organisation's GCSE curriculum and examination in either Mathematics or English Language.

#### **(c) Awarding Organisation as a Supplier (or Sub-contractor)**

Where the Supplier and/or one or more of its Sub-contractors is an Awarding Organisation, the Supplier shall provide to Ofqual, and adhere to, a Compliance Plan. The Compliance Plan shall be subject to Ofqual's approval and must be in place prior to the commencement of the Services.

With respect to the design and delivery of the National Reference Tests, the Compliance Plan must set out how the Supplier will seek to ensure that the Supplier, any of its Sub-contractors which is an Awarding Organisation, and the Supplier Solution will address the risk of -

- bias (both actual and perceived) for or against one or more Awarding Organisations,

## **Contract Ref: OF344**

### **National Reference Tests**

- any commercial advantage in respect of the sale of regulated qualifications being provided to one of more Awarding Organisations, including through opportunities to directly or indirectly market regulated qualifications,
- any confidential information in relation to either the National Reference Test or an Awarding Organisation being used by an Awarding Organisation in the design, delivery or award of GCSEs, and
- any adverse effect on the standards of regulated qualifications, or public confidence in regulated qualifications.

In particular, Ofqual expects that any Supplier Personnel (and/or Sub-contractor's personnel) who are involved in the design, delivery or award of GCSEs (including those involved in Test Question Writing, Test Administration or Test Marking) will not be involved in the design and delivery of the National Reference Tests.

Where the Supplier (and/or a Sub-contractor) proposes to utilise one or more members of staff in both the delivery of the Services and in the design, delivery or award of GCSEs, the Compliance Plan must provide details of the controls the Supplier (and/or the relevant Sub-contractor) will put in place to ensure that any confidential information to which any such member of staff becomes privy through his or her role in the delivery of the Services is not used in his or her role in relation to the design, delivery or award of GCSEs.

In addition, the Compliance Plan must also provide details of the mechanisms by which the Supplier (and/or a Sub-contractor) ensures that confidential information in relation to the National Reference Tests is not made available to any part of the Supplier's (and/or Sub-contractor's) business which is involved in the design, delivery or award of GCSEs.

Ofqual reserves the right to impose any conditions of recognition<sup>4</sup> on whichever of a Supplier or its sub-contractors is an Awarding Organisation which it considers necessary for the purpose of ensuring that the design and delivery of the National Reference Test does not adversely affect the standards of, or public confidence in, regulated qualifications.

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<sup>4</sup> Any such conditions of recognition will be imposed under section 132(3)(d) of the Apprenticeships, Skills, Children and Learning Act 2009.

**Contract Ref: OF344**  
**National Reference Tests**

### **4.3. Ofqual’s Public Sector Equality Duty**

The Supplier Solution must ensure Ofqual is able to meet its Public Sector Equality Duty. In particular, the Supplier:

- Must minimise bias in the questions that are included in the Tests. (Ofqual has defined minimising bias in its Criteria for Recognition<sup>5</sup> ([Criteria for Recognition](#)). The definition is “Minimising Bias is about ensuring that an assessment does not produce unreasonably adverse outcomes for Learners who share a common attribute. The Minimisation of Bias is related to fairness to all Learners and is also closely related to statutory equality duties.”). The Supplier is required to take this requirement into account throughout the delivery of the Services.
- must have in place clear arrangements for making reasonable adjustments for disabled learners. The Supplier shall incorporate in the Supplier Solution the arrangements for reasonable adjustments that are set out by the Joint Council for Qualifications.<sup>6</sup>
- Must monitor and be able to report on the National Reference Tests for any feature which could disadvantage a group of learners who share a particular characteristic. For this purpose, the characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- Must ensure that its sampling framework does not exclude students with protected characteristics from being selected to take the Tests.

### **4.4. Communications and Support for Schools**

The Supplier’s responsibilities for communications are limited to those schools that are directly involved in the National Reference Tests. All other communications with stakeholders, including members of the public, shall be referred to Ofqual.

Throughout the Term, the Supplier shall support Ofqual in its communications activities for the National Reference Tests. This support includes but is not limited to:

- Attendance at key meetings with Stakeholders;

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<sup>5</sup> <http://ofqual.gov.uk/how-we-regulate/becoming-a-recognised-awarding-organisation/>

<sup>6</sup> <http://www.jcq.org.uk/exams-office/access-arrangements-and-special-consideration/regulations-and-guidance/access-arrangements-and-reasonable-adjustments-2014-2015>

## **Contract Ref: OF344**

### **National Reference Tests**

- Providing review and comment on communications materials produced by Ofqual for the National Reference Tests;
- Providing review, comment and technical input to questions raised by Stakeholders.

The Supplier will not be permitted to use its involvement in the National Reference Tests in any of its promotional / marketing materials or associated activities.

The Supplier shall provide support to those schools that are directly involved in the National Reference Tests.

#### **4.5. Branding**

The Supplier shall not apply its own branding or corporate identity to any element of the Supplier Solution. Any branding requirements for the National Reference Tests shall be agreed as part of the delivery of the Strategic Design Services.

All documentation produced by the Supplier for external publication shall comply with Ofqual's guidelines for branding and 'tone of voice':

- Appendix – 4 (Ofqual Document – 'Corporate Identity – Our Design Guidelines')
- Appendix 5 – (Ofqual Document – 'Ofqual's Tone of Voice').

#### **4.6. ICT Development and Operational Requirements**

All software and hardware procured by the Supplier for the delivery of the Services shall be developed, tested, implemented and operated using a recognised, 'industry standard' proprietary methodology / technique.

All digital content and documentation submitted by the Supplier for publication on the Ofqual web site must comply with the following:

- <https://www.gov.uk/service-manual/>;
- <https://www.gov.uk/service-manual/digital-by-default>

The Supplier shall ensure that any upgrades or technical refresh of the ICT component of the Supplier Solution shall not compromise:

- the security of the National Reference Tests; or
- the comparability of the Tests' results year on year.

## **Contract Ref: OF344**

### **National Reference Tests**

#### **4.7. Data Requirements**

All data in the Supplier Solution needs to be exportable to an open format; all data stores must be able to provide complete extracts of their information in an open and machine readable format (e.g. XML, CSV).

Should the Supplier Solution need to import and export data to and from other systems, it should follow appropriate interface standards, for example:

- Electronic Government Interoperability Framework (e-GIF) 6.1 March 2005

#### **4.8. Confidentiality**

All Test booklets, Test questions and marking schemes and their contents must at all times be treated as Confidential Information.

#### **4.9. Security**

The Supplier's responsibilities for security are set out in Schedule 2.4.

Ofqual wishes to retain public confidence in the ongoing integrity of the results from the National Reference Tests. Ensuring the Tests' questions and mark schemes are secure and not released into the public domain is an important requirement. Disclosure of Test questions could undermine public confidence in the Tests.

The Supplier shall ensure that the scope of its Information Security Management System shall include the implementation and maintenance of controls over all Test questions, Test booklets (paper based and / or screen based) and other National Reference Test materials and data.

Where appropriate, the Supplier Solution shall:

- Ensure that any hosted environment cannot be physically accessed by persons that are not intended to have access;
- Ensure that the data it holds cannot be acquired by or distributed to persons or other systems that are not intended to have access to that data;
- Protectively mark data where required to meet security requirements. This will include all printed reports, documents and manuals;
- Brief any Supplier personnel involved in the development or delivery of the Supplier Solution, on the security requirements and ensure that they clearly understand and comply with these.
- Conduct, regular security reviews of access privileges for administrators and users;

## **Contract Ref: OF344**

### **National Reference Tests**

- Ensure any data held within the Supplier Solution (including data in transit) shall be encrypted to industry standards;
- Use industry good practice measures to protect the Supplier Solution from attack from, at least:
  - denial of service attacks;
  - virus
  - currently known forms of malware.

#### **4.10. National Statistics**

The results of the National Reference Tests are to be classified as 'National Statistics'. Ofqual's Head of Profession for Statistics is accountable to the National Statistician at the UK Statistics Authority.

Any sampling, data collection, weighting and reporting shall meet the statistical requirements set out in the UK Code of Practice for National Statistics which can be obtained at:

<http://www.statisticsauthority.gov.uk/assessment/code-of-practice/index.html>.

To enable Ofqual's Head of Profession for Statistics to discharge their duties, the Supplier shall record and inform Ofqual (as required) of the names of all resources involved in the analysis of results from the National Reference Tests and production of the Results.

#### **4.11. Project Management**

In performing its obligations under this Agreement, the Supplier shall adopt PRINCE / MSP / P3O Project Management principles or another proprietary project management that is approved by Ofqual.

The Supplier shall ensure that all planning deliverables are developed and maintained using Microsoft Project 2010 and made available as required in both hard and soft-copy format to the Authority.

#### **4.12. Project Progress Reporting, Risk and Issue Management**

At least one (1) Working Day before each Service Management Board Meeting (and in any event at least once a month), the Supplier shall submit to the Authority a report ("**Progress Report**") which sets out the progress of and outlook for the Supplier's activities in relation to the delivery of the Services, including:

- A commentary on the overall status of the delivery of the Services;



## Contract Ref: OF344 National Reference Tests

- Key items for discussion with the Authority, including any actions or decisions which may be required by the Authority in the next two (2) Months;
- A qualitative assessment of overall progress of the delivery of the Services shown as either:
  - Red – the Implementation Plan is unlikely to achieve the next Milestone, or the Milestone has not been achieved;
  - Amber - the Implementation Plan is at risk of not achieving the next Milestone; or
  - Green - the Implementation Plan is on target to achieve the next Milestone.
- A quantitative assessment of activities and deliverables:
  - Set out in the Implementation Plan and associated with the next Milestone(s);
  - Associated with past Milestone(s) for which there are deliverables outstanding; or
  - Associated with any Rectification Plan which has not been fully implemented in accordance with its terms.
- Each activity or deliverable is shown with its associated percentage complete;
- A qualitative assessment of progress of each such activity or deliverable referred to above as either:
  - Red – the activity or deliverable is unlikely to complete in time for the next Milestone to be achieved (or, if applicable, as required in the relevant Rectification Plan), or the activity is not complete and the associated Milestone Date has passed;
  - Amber - the activity or deliverable is at risk of not completing in time for the next Milestone and/or Rectification Plan to be achieved; or
  - Green - the activity or deliverable is on target to complete in time for the next Milestone and/or Rectification Plan to be achieved.
- A risk update showing:
  - The ten (10) highest-ranked risks in the Supplier’s Risk Register, based on the categorisation of the risks;
  - A list of new risks added to the Risk Register since the last Progress Report; and

## **Contract Ref: OF344**

### **National Reference Tests**

- A list of risks in the Risk Register that have had a categorisation change from low to medium or medium to high since the last Progress Report;
- An issues update showing:
  - A list of new issues added to the Issues Register since the last Progress Report; and
  - A list of open issues in the Issues Register and a description of the actions taken to resolve each issue;
- A dependency update showing all dependencies on the Authority or a third party for the next two Milestones;
- A summary of the next steps in the Implementation Plan.

#### **4.13. Supplier Conduct**

Whilst engaged with schools and other stakeholders, the Supplier Personnel (including those of any Sub-contractor) shall conduct themselves in a professional manner and comply with the general requirements of Ofqual's Research Code of Practice (as may be amended from time to time).

See Appendix 6 – Ofqual Code of Practice for Research.

#### **4.14. Training, Information Advice and Guidance**

The Supplier shall ensure that all Supplier Personnel involved in the delivery of the Services receive an appropriate level of training. In particular, the Supplier shall be responsible for:

- The development of a training strategy and plan for all Supplier Personnel; and
- The design and delivery of all training of Supplier Personnel (both initial training and refresher training) in the provision of the Supplier Solution. including the preparation and update of any support materials and supporting training.

The Supplier also shall make provision for any necessary training of Ofqual personnel, Awarding Organisations' staff and contractors and (if appropriate) any schools' staff who will be users of the Supplier Solution.

The Supplier shall provide on-line access to all support material for users of the National Reference Tests. This is expected to include any necessary 'information, advice and guidance' such as self-help training materials, process documentation, operational procedures, FAQ, general guides and other background information.

**Contract Ref: OF344**  
**National Reference Tests**

**Appendices**

**Contract Ref: OF344**  
**National Reference Tests**

## **Appendix 1**

Not used

**Contract Ref: OF344**  
**National Reference Tests**

**Appendix 2 - Quality Criteria for the Questions in the Field Trial**

**Introduction**

It is important that once the National Reference Test is live, the Test booklets remain unchanged for as long as possible. While there may be some change in the quality of the items as measured by field trialling a sample of the test questions, the field trialling of test questions should be used to remove obvious issues with poor targeting, ambiguity or construct irrelevant difficulty.

All questions will be field trialled with at least 100 responses per question gathered from a suitable target sample of students. Only questions that pass the quality control tests will be used in the live tests. Although the focus is on question quality, not Test quality, it is assumed that the questions will be field trialled in batches, and therefore statistics such as item - Test correlations can be calculated.

*Quality Control Measures*

*Short, Constructed Response Questions*

An item facility between 0.2 and 0.8.

*Rationale: With relatively short Tests it is important that as much information as possible is provided by each item. Items that are too easy or too hard are inefficient.*

Item-Test correlation above 0.2.

*Rationale: Low item-Test correlations could suggest the need for more complex Test-equating models. Ideally the psychometric complexity should be minimised. Similar item-Test correlations would suggest that a simple psychometric model such as the Rasch model would suffice.*

At least 5 responses per mark.

*Rationale: As the booklets are going to be used in an equating design, it is important that category thresholds are relatively stable. To achieve stability in category thresholds, a reasonable number of responses is required per category.*

*Extended Response Questions*

All extended response items will be blind double marked. The correlation between markers on the responses to each question should exceed 0.7.

*Rationale: It is important that as much consistency in the marking is achieved as possible. Poor consistency should highlight issues such as ambiguity in the item design, or the need to tighten the mark scheme.*

**Contract Ref: OF344  
National Reference Tests**

**Appendix 3 – Deliverables**

Milestone Ref	Deliverable Ref	Service	Deliverable	Requirement for Document Assurance or Test Certificate (see Schedule 6.2)	Purpose
1.1	1.1.1	Strategic Design	Compliance Plan	Document Assurance	To identify the Supplier's (and, where applicable, a Sub-contractor's) control framework ensuring the confidentiality of both the National Reference Tests data and other Awarding Organisations' data relating to their GCSEs from other staff involved in its GCSE business activities
1.1	1.1.2	Strategic Design	Supplier Test Framework	Document Assurance	The Supplier Framework for the National Reference Tests provides a basis for the design and development of the National Reference Test. The framework specifies the high level purpose, format, and content, sampling requirements and reporting requirements of the National Reference Tests.
1.1	1.1.3	Strategic Design	Test Data Requirements	Document Assurance	To identify the scope, format and timing of the data sets required to support the sampling activities. To include the responsibilities and controls to be established to ensure the completeness, accuracy and integrity of data.
1.1	1.1.4	Strategic Design	Test Question Framework	Document Assurance	To set out the Supplier's approach to the preparation, review and refresh of Test questions that will achieve the <ul style="list-style-type: none"> <li>• Required coverage of the content and cognitive domains of the GCSE curriculum;</li> <li>• Required accessibility and inclusion properties;</li> <li>• Appropriate levels of demand.</li> </ul>
1.1	1.1.5	Strategic Design	Marking and Assessment Strategy	Document Assurance	To set out the strategy for the marking of the National Reference Tests including the roles and responsibilities for marking and quality control, the different approaches to the marking of the subjects, question scoring, use of seeded questions, marking tolerance, re-marking. To define the mark scheme materials.

## Contract Ref: OF344 National Reference Tests

Milestone Ref	Deliverable Ref	Service	Deliverable	Requirement for Document Assurance or Test Certificate (see Schedule 6.2)	Purpose
1.1	1.1.6	Strategic Design	Psychometrics Framework	Document Assurance	To define the Supplier's approach to ensuring the psychometric properties of the Test questions provide an appropriate level of coverage across the subjects and balance the numbers and nature of the questions across the expected grades. To set out the psychometric requirements over the lifetime of the Tests including Test refresh and question replacement. Approach to special access arrangements.
1.1	1.1.7	Strategic Design	Sampling Framework	Document Assurance	To define the detailed approach to determining the required sample sizes of schools and students including the approach to sampling precision, design effect, the sampling design and supporting calculations. To set out the approach to identifying replacement sample schools and students.
1.1	1.1.8	Strategic Design	Test Booklet (Design)	Document Assurance	To define the design requirements for the Test Booklets including the approach to question allocation, requirements for overlap, construction process, refresh and replacement of Test questions, expected psychometric properties. To define the 'look and feel' of the booklets and design and production / printing requirements.
1.1	1.1.9	Strategic Design	Management Information Framework	Document Assurance	The suite of reports and supporting data required for the ongoing reporting of progress, risks and issues at each of the governance bodies required under the Agreement. To enable the effective management of the Agreement.
1.2	1.2.1	Strategic Design	Specimen Questions and Mark Schemes	Document Assurance	To provide the wider public and schools community with: <ul style="list-style-type: none"> <li>• A commentary on: <ul style="list-style-type: none"> <li>○ The rationale for the development of the National Reference Tests and curriculum mapping of the assessments.</li> <li>○ The scope and format of the specimen materials;</li> </ul> </li> </ul>

## Contract Ref: OF344 National Reference Tests

Milestone Ref	Deliverable Ref	Service	Deliverable	Requirement for Document Assurance or Test Certificate (see Schedule 6.2)	Purpose
					<ul style="list-style-type: none"> <li>Exemplar mathematics sample questions and mark schemes for public use.</li> <li>Exemplar English Language sample questions and mark schemes for public use.</li> </ul>
1.2	1.2.2	Strategic Design	Test Contingency Strategy and Plan	Document Assurance	<p>To define the Supplier's overall approach and detailed activities to contingency should there be a compromise to the:</p> <ul style="list-style-type: none"> <li>Security of the Tests be compromised; and / or</li> <li>Ongoing provision of the Tests.</li> </ul>
1.2	1.2.3	Strategic Design	ICT Systems Architecture	Document Assurance	<p>A schematic setting out a visual representation of the hardware, software and networking components of the Supplier Solution including all shared and dedicated components and components sourced from 3<sup>rd</sup> parties. The location and nature of any data input, storage and outputs. The components to be developed to deliver the National Reference Test Solution. Changes planned by the Supplier to the Systems Architecture during the Term of the Agreement.</p>
1.2	1.2.4	Strategic Design	Functional and technical requirements specification for the sampling software application;	Document Assurance	<p>Document that sets out the detailed functional and technical requirements to support the development, testing and operation of the sampling application software. The documents should set out:</p> <ul style="list-style-type: none"> <li>Any mathematical or other specialist algorithms / calculations to be used in the sampling activity</li> <li>Input and output data requirements;</li> <li>Expected reporting requirements;</li> <li>Requirements for the hardware platform, interfaces and network;</li> <li>Key features of the development approach;</li> <li>Key requirements for testing and acceptance.</li> </ul>



**Contract Ref: OF344**  
**National Reference Tests**

Milestone Ref	Deliverable Ref	Service	Deliverable	Requirement for Document Assurance or Test Certificate (see Schedule 6.2)	Purpose
1.2	1.2.5	Strategic Design	Functional and technical requirements specification for the analysis software application;	Document Assurance	<p>Document that sets out the detailed functional and technical requirements to support the development, testing and operation of the analysis application software. The documents should set out:</p> <ul style="list-style-type: none"> <li>• Any mathematical or other specialist algorithms / calculations to be used in the analysis of the results of Tests' marking;</li> <li>• Input and output data requirements;</li> <li>• Expected reporting requirements;</li> <li>• Requirements for the hardware platform, interfaces and network;</li> <li>• Key features of the development approach;</li> <li>• Key requirements for testing and acceptance.</li> </ul>
1.2	1.2.6	Strategic Design	Sampling Software	Test Certificate	The operational software application that will deliver the Supplier's requirement's for the calculation and identification of the sample of schools and students required for the performance of the Tests.
1.2	1.2.7	Strategic Design	Analysis Software	Test Certificate	The operational software application that will deliver the Supplier's requirement's for the analysis of the results of the marking of the Tests and the production of the key inputs to the General and Technical Reports for the Tests.
1.2	1.2.8	Strategic Design	Not used		
1.2	1.2.9	Strategic Design	Customer Support Strategy and Plan	Document Assurance	To set out the Supplier's approach to the provision and ongoing maintenance of support to Schools engaged in the Tests including available channels and the scope and nature of the media to be used; roles and responsibilities; operating processes and procedures to be adopted. To set out the scope and approach to the Supplier support provided to

## Contract Ref: OF344 National Reference Tests

Milestone Ref	Deliverable Ref	Service	Deliverable	Requirement for Document Assurance or Test Certificate (see Schedule 6.2)	Purpose
					Ofqual in managing its communications with stakeholders groups.
1.2	1.2.10	Strategic Design	School Engagement Strategy and plan	Document Assurance	<p>To set out the Supplier's approach to:</p> <ul style="list-style-type: none"> <li>• The identification and effective participation of schools and students in the National Reference Tests;</li> <li>• Incentivisation to be proposed for schools' / student participation;</li> <li>• Management of replacement schools / students;</li> <li>• Media and materials to be adopted.</li> </ul>
1.2	1.2.11	Strategic Design	Information Advice and Guidance	Document Assurance	<p>Documents that are provided to general public (including schools and other stakeholders) to set out key features and supporting guidance including:</p> <ul style="list-style-type: none"> <li>• The background and rationale for the Tests;</li> <li>• Roles and responsibilities for administration of the Tests;</li> <li>• Expectations of schools;</li> <li>• Process to be adopted and timing of the Tests;</li> <li>• Exemplar materials including: <ul style="list-style-type: none"> <li>○ Test scripts for Mathematics and English Language;</li> <li>○ Expected outputs / reports.</li> </ul> </li> </ul>
1.2	1.2.12	Strategic Design	Quality Management System	Document Assurance	<p>The documented policies, processes and procedures that control the Supplier's activities in both developing and delivering the Authority's requirements for the National Reference Tests. The Quality Management System should document as a minimum:</p> <ul style="list-style-type: none"> <li>• Roles and responsibilities;</li> <li>• Key processes;</li> </ul>

## Contract Ref: OF344 National Reference Tests

Milestone Ref	Deliverable Ref	Service	Deliverable	Requirement for Document Assurance or Test Certificate (see Schedule 6.2)	Purpose
					<ul style="list-style-type: none"> <li>Monitoring and corrective action;</li> <li>Documentation and records.</li> </ul>
1.2	1.2.13	Strategic Design	Reporting Framework	Document Assurance	<p>For the General Report, the Technical Report and supporting Data Files (including those to be delivered following the Preliminary Reference Test in 2016):</p> <ul style="list-style-type: none"> <li>To define the scope and approach to the drafting and approval of the Reports;</li> <li>Detailed contents;</li> <li>Written style and 'look and feel';</li> <li>Approach to reporting Tests' results;</li> <li>Reporting of National Statistics.</li> </ul>
1.3	1.3.1	Strategic Design	(Detailed) Implementation Plan	Document Assurance	Refer to Schedule 6.1 of the Agreement.
1.4	1.4.1	Strategic Design	Completion of First Wave of Test Questions	Document Assurance	<p>To document how many marks are to be written for the first wave and outline the types of items that will be written, the content and the cognitive demand.</p> <p>To describe the approach to be used for gaining qualitative feedback on how the items are perceived and approached, and the process to be used for the cognitive labs to informally trial the items.</p> <p>To describe the evidence that will be used to determine the suitability of the items for taking forward to the NRT and this will inform further item writing and reviews of items written.</p>
2.1	2.1.1	Detailed Design & Development	Field Trial Test Booklets	Document Assurance	Test Booklets to be used in the Field Trials, based on the design agreed in Deliverable 1.1.8.

## Contract Ref: OF344 National Reference Tests

Milestone Ref	Deliverable Ref	Service	Deliverable	Requirement for Document Assurance or Test Certificate (see Schedule 6.2)	Purpose
2.1	2.1.2	Detailed Design & Development	Field Trial Mark Scheme	Document Assurance	Mark Scheme to be used in the Field Trials, based on the design agreed in Deliverable 1.1.5.
2.1	2.1.3	Detailed Design & Development	Preliminary Reference Tests School / Student Sample Data	Document Assurance	To identify the size and nature of the data sets for: <ul style="list-style-type: none"> <li>The sample of schools and students that will be used to fulfil the requirements of the Preliminary National Reference Tests.</li> <li>The cohort of replacement schools and students.</li> </ul> To identify the controls in place to ensure the completeness, accuracy and integrity of the sample data set(s); For Test Administration personnel, to define the: <ul style="list-style-type: none"> <li>Scope and approach to training;</li> <li>Media / channels to be utilised;</li> <li>Timing of training including refresh.</li> </ul>
2.2	2.2.1	Detailed Design & Development	Training Materials for Test Administrators	Document Assurance	Updated version of Deliverable 1.2.1 for use in the Preliminary Reference Tests.
2.2	2.2.2	Detailed Design & Development	Updated Information Advice and Guidance	Document Assurance	Updated version of Deliverable 1.2.1 for use in the Preliminary Reference Tests.
2.3	2.3.1	Detailed Design & Development	Field Trial Report	Document Assurance	To provide a detailed report on the approach, findings and conclusions from the Supplier's Field Trials.
2.3	2.3.2	Detailed Design & Development	Field Trial Data	Document Assurance	To provide supporting data to the Authority for its further analysis of the Field Trials.
2.3	2.3.3	Detailed Design & Development	Preliminary Reference Test Booklets	Document Assurance	Test Booklets to be used in the Preliminary Reference Tests, updated from Deliverable 2.1.1 following the analysis of the Field Trials and re-refresh of Questions.
2.3	2.3.4	Detailed Design & Development	Preliminary Reference Test Mark Schemes and	Document Assurance	Mark Schemes and Question Sampling Design to be used in the Preliminary Reference Tests, updated from Deliverable 2.1.2 following the analysis of the Field Trials and re-refresh of Questions

**Contract Ref: OF344**  
**National Reference Tests**

Milestone Ref	Deliverable Ref	Service	Deliverable	Requirement for Document Assurance or Test Certificate (see Schedule 6.2)	Purpose
			Question Sampling Design		
2.4	2.4.1	Detailed Design & Development	Preliminary Reference Test Sampling Overview Report	Document Assurance	To provide a detailed report on the approach, findings and conclusions from the Supplier's Preliminary Reference Tests in relation to the proposals agreed in Deliverable 2.1.3.
2.4	2.4.2	Detailed Design & Development	Preliminary Reference Test Marking Quality Report	Document Assurance	To provide a detailed report on the quality of marking achieved in the Supplier's Preliminary Reference Tests
2.5	2.5.1	Detailed Design & Development	Preliminary Reference Test General Report	Document Assurance	To report on the results of the Preliminary Reference Test as agreed in Deliverable 1.2.13.
2.5	2.5.2	Detailed Design & Development	Preliminary Reference Test Technical Report	Document Assurance	To report on the results of the Preliminary Reference Test as agreed in Deliverable 1.2.13.
2.5	2.5.3	Detailed Design & Development	Preliminary Reference Test Data Files	Document Assurance	To provide the Authority with supporting data of the Preliminary National Reference Tests as agreed in Deliverable 1.2.13.
2.6	2.6.1	Detailed Design & Development	Updated version of the sampling software for the National Reference Test in 2017	Test Certificate	Updated version of Deliverable 1.2.6..
2.6	2.6.2	Detailed Design & Development	Updated Information Advice and Guidance for the National Reference Test in 2017	Document Assurance	Updated version of Deliverable 2.2.2.

## Contract Ref: OF344 National Reference Tests

Milestone Ref	Deliverable Ref	Service	Deliverable	Requirement for Document Assurance or Test Certificate (see Schedule 6.2)	Purpose
2.6	2.6.3	Detailed Design & Development	Updated Training materials for Test administrators for the National Reference Test in 2017	Document Assurance	Updated version of Deliverable 2.2.1.
2.6	2.6.4	Detailed Design & Development	Updated Test Booklets and Mark Schemes for the National Reference Test in 2017	Document Assurance	Updated version of Deliverables 2.3.3 and 2.3.4 following analysis of the Preliminary Reference Tests and re-fresh of questions and Mark Schemes.
2.6	2.6.5	Detailed Design & Development	Updated analysis software for the National Reference Test in 2017	Test Certificate	Updated version of Deliverable 1.2.7.
2.6	2.6.6	Detailed Design & Development	Updated Detailed Implementation Plan	Document Assurance	Refer to Schedule 6.1 of the Agreement.
3.1	3.1.1	Delivery	School / Student Sample Data	Document Assurance	<p>To identify the size and nature of the data sets for:</p> <ul style="list-style-type: none"> <li>The sample of schools and students that will be used to fulfil the requirements of the National Reference Tests.</li> <li>The cohort of replacement schools and students.</li> </ul> <p>To identify the controls in place to ensure the completeness, accuracy and integrity of the sample data set(s);</p>
3.1	3.1.2	Delivery	Sampling Overview Report	Document Assurance	To provide a detailed report on the approach, findings and conclusions from the National Reference Tests in relation to the proposals agreed in Deliverable 2.1.3.

**Contract Ref: OF344**  
**National Reference Tests**

Milestone Ref	Deliverable Ref	Service	Deliverable	Requirement for Document Assurance or Test Certificate (see Schedule 6.2)	Purpose
3.1	3.1.3	Delivery	Test Booklets	Document Assurance	Test Booklets to be used in the National Reference Tests as agreed in Deliverable 2.6.4 for the Tests to be conducted in 2017 and Deliverable 3.3.4 in subsequent years.
3.1	3.1.4	Delivery	Test Question Mark Scheme	Document Assurance	Mark Schemes to be used in the National Reference Tests as agreed in Deliverable 2.6.4 for the Tests to be conducted in 2017 and Deliverable 3.3.4 in subsequent years.
3.2	3.2.1	Delivery	Marking Quality Report	Document Assurance	To provide a detailed report on the quality of marking achieved in the National Reference Tests
3.2	3.2.2	Delivery	Tests General Report	Document Assurance	To report on the results of the National Reference Tests as agreed in Deliverable 1.2.13
3.2	3.2.3	Delivery	Tests Technical Report	Document Assurance	To report on the results of the National Reference Tests as agreed in Deliverable 1.2.13
3.2	3.2.4	Delivery	Tests Data Files	Document Assurance	To report on the results of the National Reference Tests as agreed in Deliverable 1.2.13
3.3	3.3.1	Delivery	Updated version of the sampling software	Test Certificate	Updated version of Deliverable 2.6.1 in 2017, updated version of Deliverable 3.3.1 in subsequent years.

## Contract Ref: OF344 National Reference Tests

Milestone Ref	Deliverable Ref	Service	Deliverable	Requirement for Document Assurance or Test Certificate (see Schedule 6.2)	Purpose
3.3	3.3.2	Delivery	Updated Information Advice and Guidance	Document Assurance	Updated version of Deliverable 2.6.2 in 2017, updated version of Deliverable 3.3.2 in subsequent years.
3.3	3.3.3	Delivery	Updated Training materials for Test administrators	Document Assurance	Updated version of Deliverable 2.6.3 in 2017, updated version of Deliverable 3.3.3 in subsequent years.
3.3	3.3.4	Delivery	Updated Test Booklets and Mark Schemes	Document Assurance	Updated version of Deliverable 3.1.3.
3.3	3.3.5	Delivery	Updated analysis software	Test Certificate	Updated version of Deliverable 2.6.5 in 2017, updated version of Deliverable 3.3.5 in subsequent years.
3.4	3.4.1	Delivery	Updated Tests General Report 2017	Document Assurance	To update Deliverable 3.2.2 following the mapping of GCSE results onto the National Reference Test Results in 2017 only
3.4	3.4.2	Delivery	Updated Tests Technical Report 2017	Document Assurance	To update Deliverable 3.2.3 following the mapping of GCSE results onto the National Reference Test Results in 2017 only
3.4	3.4.3	Delivery	Updated Tests Data Files 2017	Document Assurance	To update Deliverable 3.2.4 following the mapping of GCSE results onto the National Reference Test Results in 2017 only



**Contract Ref: OF344**  
**National Reference Tests**

#56211403

**AGREEMENT FOR THE SUPPLY OF SERVICES RELATING TO  
NATIONAL REFERENCE TESTS**

**SCHEDULE 2.4**

**SECURITY MANAGEMENT**

## Security Management

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

- “Breach of Security”** the occurrence of:
- (a) any unauthorised access to or use of the Services, the Authority Premises, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and/or any IT, information or data (including the Confidential Information and the Authority Data) used by the Authority and/or the Supplier in connection with this Agreement; and/or
  - (b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with this Agreement,
- in either case as more particularly set out in Schedule 2.1 (*Services Description*) and the Baseline Security Requirements;
- “ISMS”** the information security management system and processes developed by the Supplier in accordance with Paragraph 3 as updated from time to time in accordance with this Schedule; and
- “Security Tests”** tests to validate the ISMS and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security.

### 2 INTRODUCTION

- 2.1 The Parties acknowledge that the purpose of the ISMS and Security Management Plan are to ensure a good organisational approach to security under which the specific requirements of this Agreement will be met.
- 2.2 The Parties shall each appoint a member of the Programme Board to be responsible for security. The initial member of the Programme Board appointed by the Supplier for such purpose shall be the person named as such in Schedule 9.2 (*Key Personnel*) and the provisions of Clauses 14.5 and 14.6 (*Key Personnel*) shall apply in relation to such person.
- 2.3 The Authority shall clearly articulate its high level security requirements so that the Supplier can ensure that the ISMS, security related activities and any mitigations are driven by these fundamental needs.
- 2.4 Both Parties shall provide a reasonable level of access to any members of their

personnel for the purposes of designing, implementing and managing security.

- 2.5 The Supplier shall use as a minimum Good Industry Practice in the day to day operation of any system holding, transferring or processing Authority Data and any system that could directly or indirectly have an impact on that information, and shall ensure that Authority Data remains under the effective control of the Supplier at all times.
- 2.6 The Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Authority.
- 2.7 The Authority and the Supplier acknowledge that information security risks are shared between the Parties and that a compromise of either the Supplier or the Authority's security provisions represents an unacceptable risk to the Authority requiring immediate communication and co-operation between the Parties.

### **3 ISMS**

- 3.1 By the date specified in the Implementation Plan the Supplier shall develop and submit to the Authority for the Authority's approval in accordance with Paragraph 4.4 an ISMS for the purposes of this Agreement, which:
  - (a) shall have been tested in accordance with Schedule 6.2 (*Testing Procedures*); and
  - (b) shall comply with the requirements of Paragraphs 3.3 to 3.5.
- 3.2 The Supplier acknowledges that the Authority places great emphasis on the reliability of the Services and confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and that it shall be responsible for the effective performance of the ISMS.
- 3.3 The ISMS shall:
  - (a) unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Authority Premises, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and any IT, information and data (including the Authority Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Agreement;
  - (b) meet the relevant standards in ISO/IEC 27001 and ISO/IEC 27002 in accordance with Paragraph 7;
  - (c) at all times provide a level of security which:
    - (i) is in accordance with Law and this Agreement;
    - (ii) as a minimum demonstrates Good Industry Practice;
    - (iii) complies with the Baseline Security Requirements;
    - (iv) addresses issues of incompatibility with the Supplier's own

- organisational security policies;
  - (v) meets any specific security threats of immediate relevance to the Services and/or Authority Data;
  - (vi) complies with the security requirements as set out in Schedule 2.1 (*Services Description*); and
  - (vii) complies with the Authority's IT policies;
- (d) document the security incident management processes and incident response plans;
- (e) document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Services of any new threat, vulnerability or exploitation technique of which the Supplier becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Authority approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy; and
- (f) be certified by (or by a person with the direct delegated authority of) a Supplier's main board representative, being the Chief Security Officer, Chief Information Officer, Chief Technical Officer or Chief Financial Officer (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Security Management Plan).
- 3.4 Subject to Clause 20.11 (*Authority Data and Security Requirements*) the references to standards, guidance and policies set out in Paragraph 3.3 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time. Any change which the Authority proposes to make to such standards, guidance and policies shall be subject to the Change Control Procedure.
- 3.5 In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in Paragraph 3.3, the Supplier shall immediately notify the Authority Representative of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which provision the Supplier shall comply with.
- 3.6 If the ISMS submitted to the Authority pursuant to Paragraph 3.1 is approved by the Authority, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the ISMS is not approved by the Authority, the Supplier shall amend it within 10 Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Authority pursuant to this Paragraph 3 may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in Paragraphs 3.3 to 3.5 shall be deemed to be reasonable.

3.7 Approval by the Authority of the ISMS pursuant to Paragraph 3.6 or of any change to the ISMS shall not relieve the Supplier of its obligations under this Schedule.

#### 4 **SECURITY MANAGEMENT PLAN**

4.1 Within 20 Working Days after the Effective Date, the Supplier shall prepare and submit to the Authority for approval in accordance with Paragraph 4.3 a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of Paragraph 4.2.

4.2 The Security Management Plan shall:

- (a) be based on the initial Security Management Plan set out in Annex 2;
- (b) comply with the Baseline Security Requirements;
- (c) identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule is complied with by the Supplier;
- (d) detail the process for managing any security risks from Sub-contractors and third parties authorised by the Authority with access to the Services, processes associated with the delivery of the Services, the Authority Premises, the Sites, the Supplier System, the Authority System (to extent that it is under the control of the Supplier) and any IT, Information and data (including the Authority Confidential Information and the Authority Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Services;
- (e) unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Authority Premises, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and any IT, Information and data (including the Authority Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Agreement or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;
- (f) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Schedule (including the requirements set out in Paragraph 3.4);
- (g) demonstrate that the Supplier Solution has minimised the Authority and Supplier effort required to comply with this Schedule through consideration of available, appropriate and practicable pan-government accredited services (for example, 'platform as a service' offerings from the G-Cloud catalogue);
- (h) set out the plans for transiting all security arrangements and responsibilities from those in place at the Effective Date to those incorporated in the ISMS at the date set out in Schedule 6.1 (*Implementation Plan*) for the Supplier to meet the full obligations of the security requirements set out in Schedule 2.1 (*Services Description*) and this Schedule;

- (i) set out the scope of the Authority System that is under the control of the Supplier;
  - (j) be structured in accordance with ISO/IEC 27001 and ISO/IEC 27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards; and
  - (k) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Authority engaged in the Services and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.
- 4.3 If the Security Management Plan submitted to the Authority pursuant to Paragraph 4.1 is approved by the Authority, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not approved by the Authority, the Supplier shall amend it within 10 Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Authority pursuant to this Paragraph 4.3 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 4.2 shall be deemed to be reasonable.
- 4.4 Approval by the Authority of the Security Management Plan pursuant to Paragraph 4.3 or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Schedule.

## **5 AMENDMENT AND REVISION OF THE ISMS AND SECURITY MANAGEMENT PLAN**

- 5.1 The ISMS and Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:
- (a) emerging changes in Good Industry Practice;
  - (b) any change or proposed change to the Supplier's IT environment, the Services and/or associated processes;
  - (c) any new perceived or changed security threats; and
  - (d) any reasonable change in requirement requested by the Authority.
- 5.2 The Supplier shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Authority. The results of the review shall include, without limitation:
- (a) suggested improvements to the effectiveness of the ISMS;
  - (b) updates to the risk assessments;

- (c) proposed modifications to respond to events that may impact on the ISMS including the security incident management process, incident response plans and general procedures and controls that affect information security; and
  - (d) suggested improvements in measuring the effectiveness of controls.
- 5.3 Subject to Paragraph 5.4, any change which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to Paragraph 5.1, an Authority request, a change to Schedule 2.1 (*Services Description*) or otherwise) shall be subject to the Change Control Procedure and shall not be implemented until approved in writing by the Authority.
- 5.4 The Authority may, where it is reasonable to do so, approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than set out in the Change Control Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Agreement.

## **6 SECURITY TESTING**

- 6.1 The Supplier shall conduct relevant Security Tests from time to time (and at least annually across the scope of the ISMS) and additionally after significant architectural changes to the IT Environment or after any change or amendment to the ISMS, (including security incident management processes and incident response plans) or the Security Management Plan. Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier's ability to deliver the Services, the Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.
- 6.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Authority with the results of such Security Tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.
- 6.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to this Agreement, the Authority shall be entitled, at any time upon giving reasonable notice to the Supplier, to request the Supplier to perform such tests (including penetration tests) as the Authority may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Supplier shall perform such tests and provide the Authority with the results of such tests (in a form approved by the Authority in advance) as soon as practicable after completion of each test and the Authority shall be entitled to send a representative to witness the conduct of such tests. If any such test adversely affects the Supplier's ability to deliver the Services, the Supplier shall be granted relief against any resultant under-performance for the period of such test.
- 6.4 Where any Security Test carried out pursuant to Paragraphs 6.2 or 6.3 reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Supplier shall promptly notify the Authority of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier



proposes to make in order to correct such failure or weakness. Subject to the Authority's prior written approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Baseline Security Requirements or security requirements (as set out in Schedule 2.1 (*Services Description*)) or the requirements of this Schedule, the change to the ISMS or Security Management Plan shall be at no cost to the Authority.

- 6.5 If any repeat Security Test carried out pursuant to Paragraph 6.4 reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a material Default for the purposes of Clause 27.1(c) (*Rectification Plan Process*).

## **7 ISMS COMPLIANCE**

- 7.1 The Authority shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001, the specific security requirements set out in Schedule 2.1 (*Services Description*) and the Baseline Security Requirements.
- 7.2 If, on the basis of evidence provided by such audits, it is the Authority's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001, the specific security requirements set out in Schedule 2.1 (*Services Description*) and/or the Baseline Security Requirements is not being achieved by the Supplier, then the Authority shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement any necessary remedy. If the Supplier does not become compliant within the required time then the Authority shall have the right to obtain an independent audit against these standards in whole or in part.
- 7.3 If, as a result of any such independent audit as described in Paragraph 7.2 the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001, the specific security requirements set out in Schedule 2.1 (*Services Description*) and/or the Baseline Security Requirements then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.

## **8 BREACH OF SECURITY**

- 8.1 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 attempted Breach of Security.
- 8.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 8.1, the Supplier shall:
- (a) immediately take all reasonable steps (which shall include any action or changes reasonably required by the Authority) necessary to:
    - (i) minimise the extent of actual or potential harm caused by any Breach of Security;

- (ii) remedy such Breach of Security to the extent possible and protect the integrity of the IT Environment to the extent within its control against any such Breach of Security or attempted Breach of Security;
  - (iii) apply a tested mitigation against any such Breach of Security or attempted Breach of Security and, provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier's ability to deliver the Services, the Supplier shall be granted relief against any resultant under-performance for such period as the Authority, acting reasonably, may specify by written notice to the Supplier;
  - (iv) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and
  - (v) supply any requested data to the Authority or the Computer Emergency Response Team for UK Government ("GovCertUK") on the Authority's request within 2 Working Days and without charge (where such requests are reasonably related to a possible incident or compromise); and
- (b) as soon as reasonably practicable provide to the Authority full details (using the reporting mechanism defined by the ISMS) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.

8.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the ISMS with the Baseline Security Requirements or security requirements (as set out in Schedule 2.1 (*Services Description*)) or the requirements of this Schedule, then any required change to the ISMS shall be at no cost to the Authority.

## **9 VULNERABILITES AND CORRECTIVE ACTION**

9.1 The Authority and the Supplier acknowledge that from time to time vulnerabilities in the IT Environment will be discovered which unless mitigated will present an unacceptable risk to the Authority's information.

9.2 The severity of threat vulnerabilities for Supplier COTS Software and Third Party COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the ISMS and using the appropriate vulnerability scoring systems including:

- (a) the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST <http://nvd.nist.gov/cvss.cfm>); and
- (b) Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.

9.3 The Supplier shall procure the application of security patches to vulnerabilities within a maximum period from the public release of such patches with those vulnerabilities categorised as 'Critical' within 14 days of release, 'Important' within

30 days of release and all 'Other' within 60 days of release, except where:

- (a) the Supplier can demonstrate that a vulnerability is not exploitable within the context of any Service (e.g. because it resides in a software component which is not running in the service) provided vulnerabilities which the Supplier asserts cannot be exploited within the context of a Service must be remedied by the Supplier within the above timescales if the vulnerability becomes exploitable within the context of the Service;
- (b) the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of 5 days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Authority; or
- (c) the Authority agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the ISMS.

9.4 The Supplier Solution and Implementation Plan shall include provisions for major version upgrades of all Supplier COTS Software and Third Party COTS Software to be upgraded within 6 months of the release of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the 'n-1 version') throughout the Term unless:

- (a) where upgrading such Supplier COTS Software and Third Party COTS Software reduces the level of mitigations for known threats, vulnerabilities or exploitation techniques, provided always that such upgrade is made within 12 months of release of the latest version ; or
- (b) is agreed with the Authority in writing.

9.5 The Supplier shall:

- (a) implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Central Government Body;
- (b) ensure that the IT Environment (to the extent that the IT Environment is within the control of the Supplier) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;
- (c) ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the IT Environment by actively monitoring the threat landscape during the Term;
- (d) pro-actively scan the IT Environment (to the extent that the IT Environment is within the control of the Supplier) for vulnerable components and address discovered vulnerabilities through the processes described in the ISMS as developed under Paragraph 3.3(e);
- (e) from the date specified in the Security Management Plan (and before the first Operational Service Commencement Date) provide a report to the Authority within 5 Working Days of the end of each month detailing both patched and outstanding vulnerabilities in the IT Environment (to the extent that the IT Environment is within the control of the Supplier) and any elapsed time

between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;

- (f) propose interim mitigation measures to vulnerabilities in the IT Environment known to be exploitable where a security patch is not immediately available;
- (g) remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Supplier Solution and IT Environment); and
- (h) inform the Authority when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the IT Environment and provide initial indications of possible mitigations.

9.6 If the Supplier is unlikely to be able to mitigate the vulnerability within the timescales under Paragraph 9, the Supplier shall immediately notify the Authority.

9.7 A failure to comply with Paragraph 9.3 shall constitute a Notifiable Default, and the Supplier shall comply with the Rectification Plan Process.

## ANNEX 1

### Baseline Security Requirements

#### Higher Classifications

1. The Supplier shall not handle Authority information classified SECRET or TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Supplier shall seek additional specific guidance from the Authority.

#### End User Devices

2. When Authority data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system component which has been formally assured through a recognised certification process of the UK Government Communications Electronics Security Group (“CESG”) to at least Foundation Grade, for example, under the CESG Commercial Product Assurance scheme (“CPA”).
3. Devices used to access or manage Authority data and services must be under the management authority of Authority or Supplier and have a minimum set of security policy configuration enforced. These devices must be placed into a ‘known good’ state prior to being provisioned into the management authority of the Authority. Unless otherwise agreed with the Authority in writing, all Supplier devices are expected to meet the set of security requirements set out in the CESG End User Devices Platform Security Guidance (<https://www.gov.uk/government/collections/end-user-devices-security-guidance-2>). Where the guidance highlights shortcomings in a particular platform the Supplier may wish to use, then these should be discussed with the Authority and a joint decision shall be taken on whether the residual risks are acceptable. Where the Supplier wishes to deviate from the CESG guidance, then this should be agreed in writing on a case by case basis with the Authority.

#### Data Processing, Storage, Management and Destruction

4. The Supplier and Authority recognise the need for the Authority’s information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the Supplier must be able to state to the Authority the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Authority information will be subject to at all times.
5. The Supplier shall agree any change in location of data storage, processing and administration with the Authority in advance where the proposed location is outside the UK. Such approval shall not be unreasonably withheld or delayed unless specified otherwise in this Agreement and provided that storage, processing and management of any Authority information is only carried out offshore within:
  - (a) the European Economic Area (EEA);
  - (b) in the US if the Supplier and or any relevant Subcontractor have signed up to the US-EU Safe Harbour Agreement; or
  - (c) in another country or territory outside the EEA if that country or territory ensures an adequate level of protection by reason of its domestic law or of

the international commitments it has entered into which have been defined as adequate by the EU Commission.

6. The Supplier shall:

- (a) provide the Authority with all Authority Data on demand in an agreed open format;
- (b) have documented processes to guarantee availability of Authority Data in the event of the Supplier ceasing to trade;
- (c) securely destroy all media that has held Authority Data at the end of life of that media in line with Good Industry Practice; and
- (d) securely erase any or all Authority Data held by the Supplier when requested to do so by the Authority.

### Networking

- 7. The Authority requires that any Authority Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted using a product or system component which has been formally assured through a certification process recognised by CESG, to at least Foundation Grade, for example, under CPA or through the use of pan-government accredited encrypted networking services via the Public Sector Network (“PSN”) framework (which makes use of Foundation Grade certified products).
- 8. The Authority requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.

### Security Architectures

- 9. The Supplier shall apply the ‘principle of least privilege’ (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Authority Information.
- 10. When designing and configuring the IT Environment (to the extent that the IT Environment is within the control of the Supplier) the Supplier shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a CESG Certified Professional certification (<http://www.cesg.gov.uk/awaresstraining/IA-certification/Pages/index.aspx>) for all bespoke or complex components of the Supplier Solution.

### Personnel Security

- 11. Supplier Personnel shall be subject to pre-employment checks that include, as a minimum: identity, unspent criminal convictions and right to work.
- 12. The Supplier shall agree on a case by case basis Supplier Personnel roles which require specific government clearances (such as ‘SC’) including system administrators with privileged access to IT systems which store or process Authority Data.

13. The Supplier shall prevent Supplier Personnel who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Authority Data except where agreed with the Authority in writing.
14. All Supplier Personnel that have the ability to access Authority Data or systems holding Authority Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Authority in writing, this training must be undertaken annually.
15. Where the Supplier or Sub-Contractors grants increased IT privileges or access rights to Supplier Personnel, those Supplier Personnel shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need elevated privileges or leave the organisation, their access rights shall be revoked within 1 Working Day.

#### **Identity, Authentication and Access Control**

16. The Supplier shall operate an access control regime to ensure all users and administrators of the Supplier Solution are uniquely identified and authenticated when accessing or administering the Services. Applying the 'principle of least privilege', users and administrators shall be allowed access only to those parts of the Supplier Solution they require. The Supplier shall retain an audit record of accesses.

#### **Audit and Monitoring**

17. The Supplier shall collect audit records which relate to security events in the systems or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include:
  - (a) Logs to facilitate the identification of the specific asset which makes every outbound request external to the IT Environment (to the extent that the IT Environment is within the control of the Supplier). To the extent the design of the Supplier Solution and Services allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.
  - (b) Security events generated in the IT Environment (to the extent that the IT Environment is within the control of the Supplier) and shall include: privileged account logon and logoff events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.
18. The Supplier and the Authority shall work together to establish any additional audit and monitoring requirements for the IT Environment.
19. The Supplier shall retain audit records collected in compliance with Paragraph 17 for a period of at least 6 months.

**ANNEX 2**  
**Security Management Plan**  
**(Redacted Plan)**



**AGREEMENT FOR THE SUPPLY OF SERVICES RELATING  
TO NATIONAL REFERENCE TESTS**

**SCHEDULE 2.5**

**INSURANCE REQUIREMENTS**

## Insurance Requirements

### **1 OBLIGATION TO MAINTAIN INSURANCES**

- 1.1 Without prejudice to its obligations to the Authority under this Agreement, including its indemnity obligations, the Supplier shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 and any other insurances as may be required by applicable Law (together the “Insurances”). The Supplier shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are:
- (a) of good financial standing;
  - (b) appropriately regulated; and
  - (c) except in the case of any Insurances provided by an Affiliate of the Supplier, of good repute in the international insurance market.
- 1.4 Where any Insurances are provided by an Affiliate of the Supplier, the Supplier shall provide to the Authority on the Effective Date (or inception of the relevant Insurances if later) and thereafter within 10 Working Days of written request from the Authority evidence of good financial standing of the relevant Affiliate in a form satisfactory to the Authority. In the absence of a Financial Distress Event, the Authority shall not make any such request more than annually.
- 1.5 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Supplier is legally liable.

### **2 GENERAL OBLIGATIONS**

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

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

### **3 FAILURE TO INSURE**

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

### **4 EVIDENCE OF INSURANCES**

The Supplier shall upon the Effective Date and within 15 Working Days after the renewal or replacement of each of the Insurances, provide evidence, in the form of a letter from the relevant insurance broker or such other evidence reasonably requested by the Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Agreement.

### **5 AGGREGATE LIMIT OF INDEMNITY**

Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":

- (a) if a claim or claims which do not relate to this Agreement are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Supplier shall immediately submit to the Authority:
- (i) details of the policy concerned; and
  - (ii) its proposed solution for maintaining the minimum limit of indemnity specified; and
- (b) if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Agreement are paid by insurers, the Supplier shall:
- (i) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Agreement; or
  - (ii) if the Supplier is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Authority full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

## **6 CANCELLATION**

- 6.1 Subject to Paragraph 6.2, the Supplier shall notify the Authority in writing at least 5 Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2 Without prejudice to the Supplier's obligations under Paragraph 4, Paragraph 6.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

## **7 INSURANCE CLAIMS**

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Agreement for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services and/or this Agreement, the Supplier shall co-operate with the Authority and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.
- 7.2 Except where the Authority is the claimant party, the Supplier shall give the Authority notice within 20 Working Days after any insurance claim in excess of £250,000 relating to or arising out of the provision of the Services or this Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.

## ANNEX 1

### Required Insurances

#### **PART A: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE**

##### **1. Insured**

The Supplier.

##### **2. Interest**

To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

- (a) death or bodily injury to or sickness, illness or disease contracted by any person; and
- (b) loss of or damage to property,

happening during the period of insurance (as specified in Paragraph 5) and arising out of or in connection with the provision of the Services and in connection with this Agreement.

##### **3. Limit of indemnity**

Not less than £10 million in respect of any one occurrence, the number of occurrences being unlimited, and £10 million in the aggregate per annum in respect of products and pollution liability.

##### **4. Territorial limits**

£10 million - England and Northern Ireland.

##### **5. Period of insurance**

From the Effective Date for the Term and renewable on an annual basis unless agreed otherwise by the Authority in writing.

##### **6. Cover features and extensions**

Indemnity to principals clause.

##### **7. Principal exclusions**

- 7.1. War and related perils.
- 7.2. Nuclear and radioactive risks.
- 7.3. Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.
- 7.4. Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

- 7.5. Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 7.6. Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7. Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8. Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

#### **8. Maximum deductible threshold (Excess)**

Not to exceed £250.00 for each and every third party property damage claim (personal injury claims to be paid in full).

### **PART B: PROFESSIONAL INDEMNITY INSURANCE**

#### **1. Insured**

The Supplier.

#### **2. Interest**

To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the Insured during the period of insurance (as specified in Paragraph 5) by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Services.

#### **3. Limit of indemnity**

Not less than £5 million in respect of any one claim and in the aggregate per annum.

#### **4. Territorial Limits**

£5 million - England and Northern Ireland.

#### **5. Period of insurance**

From the Effective Date and renewable on an annual basis unless agreed otherwise by the Authority in writing (a) throughout the Term or until earlier termination of this Agreement and (b) for a period of 6 years thereafter.

#### **6. Cover features and extensions**

Retroactive cover to apply to any claims made policy wording in respect of this Agreement or retroactive date to be no later than the Effective Date.

#### **7. Principal exclusions**

- 7.1. War and related perils.
- 7.2. Nuclear and radioactive risks.

#### **8. Maximum deductible threshold**

Not to exceed £1,000 for each and every claim.

#### **PART C: UNITED KINGDOM COMPULSORY INSURANCES**

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

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**AGREEMENT FOR THE SUPPLY OF SERVICES RELATING  
TO NATIONAL REFERENCE TESTS**

**SCHEDULE 3**

**AUTHORITY RESPONSIBILITIES**



## **Authority Responsibilities**

### **1. INTRODUCTION**

- 1.1 The responsibilities of the Authority set out in this Schedule shall constitute the Authority Responsibilities under this Agreement. Any obligations of the Authority in Schedule 2.1 (*Services Description*) and Schedule 4.1 (*Supplier Solution*) shall not be Authority Responsibilities and the Authority shall have no obligation to perform any such obligations unless they are specifically stated to be “Authority Responsibilities” and cross referenced in the table in Paragraph 3.
- 1.2 The responsibilities specified within this Schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

### **2. GENERAL OBLIGATIONS**

The Authority shall:

- a) perform those obligations of the Authority which are set out in the Clauses of this Agreement and the Paragraphs of the Schedules (except Schedule 2.1 (*Services Description*) and Schedule 4.1 (*Supplier Solution*));
- b) use all reasonable endeavours to provide the Supplier with access to appropriate members of the Authority’s staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;
- c) provide sufficient and suitably qualified staff to fulfil the Authority’s roles and duties under this Agreement as defined in the Implementation Plan;
- d) use all reasonable endeavours to provide accurate documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Agreement provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority; and
- e) procure for the Supplier such agreed access and use of the Authority Premises (as a licensee only) as is reasonably required for the Supplier to comply with its obligations under this Agreement, such access to be provided during the Authority’s normal working hours on each Working Day or as otherwise agreed by the Authority (such agreement not to be unreasonably withheld or delayed).

3. **SPECIFIC OBLIGATIONS**

The Authority shall, in relation to this Agreement perform the Authority's responsibilities identified as such in this Agreement the details of which are set out below:

<b>Obligation</b>	<b>Location (Schedule / Paragraph)</b>
The Authority shall facilitate the provision from the Awarding Organisations to the Supplier of the Awarding Organisations' data which is required for the Supplier to provide the Services.	N/A
Acknowledging that it has responsibility to establish the support of the educational sector to participate in the Tests, the Authority will use its reasonable endeavours to implement communication plans that it has agreed with the Supplier.	

**AGREEMENT FOR THE SUPPLY OF SERVICES RELATING  
TO NATIONAL REFERENCE TESTS**

**SCHEDULE 4.1**

**SUPPLIER SOLUTION  
(REDACTED DOCUMENT)**

**AGREEMENT FOR THE SUPPLY OF SERVICES RELATING  
TO NATIONAL REFERENCE TESTS**

**SCHEDULE 4.2**

**COMMERCIALLY SENSITIVE INFORMATION**

### Commercially Sensitive Information

No.	Item(s)	Duration of Confidentiality
1.	Name of Key Personnel (Schedule 9.2).	During the Term of the Agreement and for 2 years following termination or expiry of the Agreement.
2.	Rate per Man Day and rate per Man Hour as set out in Table 3 (Schedule 7.1).	During the Term of the Agreement and for 2 years following termination or expiry of the Agreement.
3.	The Supplier Solution as set out in Schedule 4.1.	During the Term of the Agreement and for 2 years following termination or expiry of the Agreement.
4.	The Milestone Payments for the Strategic Design and Detailed Design & Development Services as set out in Table 1 of Schedule 7.1 (excluding the Total Charges for each Service).  The variable charges in the notes to Table 2 (Charges for Delivery Services) of Schedule 7.1.	1 During the Term of the Agreement and for 2 years following termination or expiry of the Agreement.
5.	Annex 1 of Schedule 7.5.	During the Term of the Agreement and for 2 years following termination or expiry of the Agreement.
6.	Schedule 8.4 Records - Any information provided pursuant to the Authority's request under Schedule 8.4, which is not publically available.	During the Term of the Agreement and for 2 years following

No.	Item(s)	Duration of Confidentiality
		termination or expiry of the Agreement.
7.	Annex 2 (Security Management Plan) to Schedule 2.4.	During the Term of the Agreement and for 2 years following termination or expiry of the Agreement.
8.	Schedule 8.6 - Business Continuity and Disaster Recovery. Any information provided to the Authority under Schedule 8.6, which is not publically available.	During the Term of the Agreement and for 2 years following termination or expiry of the Agreement.
9.	Schedule 8.5 - Exit Plan. Any information provided to the Authority under Schedule 8.5, which is not publically available.	During the Term of the Agreement and for 2 years following termination or expiry of the Agreement.

**AGREEMENT FOR THE SUPPLY OF SERVICES RELATING TO  
NATIONAL REFERENCE TESTS**

**SCHEDULE 4.3**

**NOTIFIED KEY SUB-CONTRACTORS**

### Notified Key Sub-Contractors

- 1.1 In accordance with Clause 15.7 (*Appointment of Key Sub-contractors*), the Supplier is entitled to sub-contract its obligations under this Agreement to the Key Sub-contractors listed in the table below.
- 1.2 The Parties agree that they will update this Schedule periodically to record any Key Sub-contractors appointed by the Supplier with the consent of the Authority after the Effective Date for the purposes of the delivery of the Services.

Key Sub-contractor name and address (if not the same as the registered office)	Registered office and company number	Related product/ Service description	Key Sub-contract price expressed as a percentage of total projected Charges over the Term	Key role in delivery of the Services	Credit Rating Threshold
Cito B.V.	09151851 <b>Visiting address:</b> Amsterdamse weg 13, 6814 CM Arnhem, Netherlands  <b>Postal address:</b> P.O. Box 1034, 6801 MG Arnhem, Netherlands	Psychometric design, including framework development and analysis services	<b>Value</b>	Psychometrics Framework Design Sampling Framework Design Test Design Psychometrics Analysis Reporting	<b>Value</b>



**AGREEMENT FOR THE SUPPLY OF SERVICES RELATING TO NATIONAL REFERENCE TESTS**

**SCHEDULE 5**

**SOFTWARE**





ANNEX 1

FORM OF LETTER RE SUB-LICENSING OF SUPPLIER COTS SOFTWARE AND SUPPLIER COTS  
BACKGROUND IPRS

N/A

[Supplier letterhead]

[insert Authority name and address]

[Date]

Dear Sirs

LICENCES FOR SUPPLIER COTS SOFTWARE AND SUPPLIER COTS BACKGROUND IPRS

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

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

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

Yours faithfully,

Signed:

On behalf of [name of the Supplier]

## ANNEX 2

### FORM OF CONFIDENTIALITY UNDERTAKING

#### CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [*date*] 20

**BETWEEN:**

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

**WHEREAS:**

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

**IT IS AGREED as follows:**

**1 Interpretation**

1.1 In this Agreement, unless the context otherwise requires:

**“Confidential Information”** means:

- (a) Information, including all personal data within the meaning of the Data Protection Act 1998, and however it is conveyed, provided by the Authority to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:
  - (i) the Supplier; or
  - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;
- (b) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and development

information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to the Authority pursuant to or in connection with the Sub-licence;

(c) other Information provided by the Authority pursuant to this Agreement to the Sub- licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub- licensee's attention or into the Sub- licensee's possession in connection with the Sub- licence; and

(d) Information derived from any of the above,

but not including any Information that:

(a) was in the possession of the Sub- licensee without obligation of confidentiality prior to its disclosure by the Authority;

(b) the Sub- licensee obtained on a non- confidential basis from a third party who is not, to the Sub- licensee's knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Sub- licensee;

(c) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or

(d) was independently developed without access to the Confidential Information;

**“Information”** means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

**“Sub-licence”** has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

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

## **2 Confidentiality Obligations**

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

- 2.1.1 treat all Confidential Information as secret and confidential;
- 2.1.2 have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- 2.1.3 not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Agreement;
- 2.1.4 not transfer any of the Confidential Information outside the United Kingdom;
- 2.1.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;
- 2.1.6 not to make copies of the Confidential Information, except as permitted by the Sub-licence;
- 2.1.7 immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- 2.1.8 upon the expiry or termination of the Sub-licence:
  - (a) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;

- (b) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub-licensee) from any computer, word processor, voicemail system or any other device; and
- (c) make no further use of any Confidential Information.

### **3 Permitted Disclosures**

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

### **4 General**

- 4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
  - 4.2.1 to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
  - 4.2.2 to require the Supplier to disclose, continue disclosing or update any Confidential Information; or



- 4.2.3 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub- licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub- licensee of any of the provisions of this Agreement. Accordingly, the Sub- licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Sub- licensee to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.
- 4.9 This Agreement is personal to the parties and no party shall assign, transfer or deal in any other manner with any or all of its rights and obligations under this Agreement.

## 5 Notices

- 5.1 Any notice to be given under this Agreement (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.
- 5.2 Any Notice:
- 5.2.1 if to be given to the Supplier shall be sent to:
- [Address]
- Attention: [Contact name and/or position, e.g. “The Finance Director”]
- 5.2.2 if to be given to the Sub- licensee shall be sent to:

[Name of Organisation]

[Address]

Attention: [            ]

**6 Governing law**

6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.

6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

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

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

Signature:

Date:

\_\_\_\_\_

Name:

Position:

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

Signature:

Date:

\_\_\_\_\_

Name:

Position:

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**AGREEMENT FOR THE SUPPLY OF SERVICES RELATING TO  
NATIONAL REFERENCE TESTS**

**SCHEDULE 6.1**

**IMPLEMENTATION PLAN**

## Implementation Plan

### 1 INTRODUCTION

#### 1.1 This Schedule:

- (a) defines the process for the preparation and implementation of the Outline Implementation Plan and Detailed Implementation Plan; and
- (b) identifies the Milestones (and associated Deliverables) including the Milestones which trigger payment to the Supplier of the applicable Milestone Payments following the issue of the applicable Milestone Achievement Certificate.

### 2 OUTLINE IMPLEMENTATION PLAN

- 2.1 The Outline Implementation Plan for the provision the Strategic Design Services, Detailed Design & Development Services and Delivery Services is set out in Annex 1.
- 2.2 All changes to the Outline Implementation Plan shall be subject to the Change Control Procedure, provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with Clause 31 (*Authority Cause*)).

### 3 APPROVAL OF THE DETAILED IMPLEMENTATION PLAN

- 3.1 The Supplier shall submit a draft of the Detailed Implementation Plan to the Authority for approval no later than 20 Working Days before completion of the Strategic Design Services.
- 3.2 The Supplier shall ensure that the draft Detailed Implementation Plan:
  - (a) incorporates all of the Milestones and Milestone Dates for the provision of the Detailed Design & Development Services and Delivery Services set out in the Outline Implementation Plan;
  - (b) includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:
    - (i) the completion of each Deliverable and the Assurance or Testing of each Deliverable;
    - (ii) the completion of any software development and Testing to be undertaken in accordance with Schedule 6.2 (*Testing and Assurance Procedures*);
    - (iii) the completion of any field trials of the Tests;
    - (iv) the completion of any recruitment and training activities; and
    - (v) the completion of all Test booklets and mark schemes relevant to the Milestone;
  - (c) the delivery of the agreed schools/student sample;

- (d) clearly outlines all the steps required to implement the Milestones to be Achieved in the 15 months following completion of the Strategic Design Services, together with a high level plan for the remainder of the Term, in conformity with the Authority Requirements;
  - (e) clearly outlines the required roles and responsibilities of both Parties, including staffing requirements; and
  - (f) is produced using a software tool as specified, or agreed by the Authority.
- 3.3 Prior to the submission of the draft Detailed Implementation Plan to the Authority in accordance with Paragraph 3.1, the Authority shall have the right:
- (a) to review any documentation produced by the Supplier in relation to the development of the Detailed Implementation Plan, including:
    - (i) details of the Supplier's intended approach to the Detailed Implementation Plan and its development;
    - (ii) copies of any drafts of the Detailed Implementation Plan produced by the Supplier; and
    - (iii) any other work in progress in relation to the Detailed Implementation Plan; and
  - (b) to require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan.
- 3.4 Following receipt of the draft Detailed Implementation Plan from the Supplier, the Authority shall:
- (a) review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
  - (b) notify the Supplier in writing that it approves or rejects the draft Detailed Implementation Plan no later than 20 Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Authority.
- 3.5 If the Authority, acting reasonably, rejects the draft Detailed Implementation Plan:
- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
  - (b) the Supplier shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 3.4 and this Paragraph 3.5 shall apply again to any re-submitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 3.6 If the Authority approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of the Authority's notice of approval.

#### **4 UPDATES TO AND MAINTAINANCE OF THE DETAILED IMPLEMENTATION PLAN**

4.1 Following the approval of the Detailed Implementation Plan by the Authority in accordance with Paragraph 3:

- (a) the Supplier shall submit a revised Detailed Implementation Plan to the Authority every 3 months, starting 3 months from the date of approval of the first version of Detailed Implementation Plan. With each revision of the Detailed Implementation Plan providing the Authority with visibility of the steps required to implement the Milestones to be Achieved in the following 15 months in accordance with the provisions of Paragraph 3.1(d);
- (b) without prejudice to Paragraph 4.1(a), the Authority shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the Supplier and the Supplier shall submit a draft revised Detailed Implementation Plan to the Authority within 20 Working Days of receiving such a request from the Authority (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);
- (c) any revised Detailed Implementation Plan shall (subject to Paragraph 4.2) be submitted by the Supplier for approval in accordance with the procedure set out in Paragraph 3; and
- (d) the Supplier's performance against the Implementation Plan shall be monitored at meetings of the Service Management Board (as defined in Schedule 8.1 (*Governance*)). In preparation for such meetings, the current Detailed Implementation Plan shall be provided by the Supplier to the Authority not less than 5 Working Days in advance of each meeting of the Service Management Board.

4.2 Save for any amendments which are of a type identified and notified by the Authority (at the Authority's discretion) to the Supplier in writing as not requiring approval, any material amendments to the Detailed Implementation Plan shall be subject to the Change Control Procedure, provided that:

- (a) any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and
- (b) in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 31 (*Authority Cause*).

4.3 Any proposed amendments to the Detailed Implementation Plan shall not come into force until they have been approved in writing by the Authority.

#### **5 GOVERNMENT REVIEWS**

The Supplier acknowledges that the Services may be subject to Government review at key stages of the project (such as Gateway Reviews). The Supplier shall cooperate with any bodies undertaking such review and shall allow for such reasonable assistance as may be required for this purpose within the Charges.

## ANNEX 1

### OUTLINE IMPLEMENTATION PLAN

#### **PART A: Strategic Design Services and Detailed Design & Development Services**

**Text**

**PART B: Delivery Services**

**Text**



**AGREEMENT FOR THE SUPPLY OF SERVICES RELATING TO  
NATIONAL REFERENCE TESTS**

**SCHEDULE 6.2**

**TESTING AND ASSURANCE PROCEDURES**

## Testing and Assurance Procedures

### DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>"Assured"</b>	in relation to a Deliverable, means that: <ul style="list-style-type: none"><li>(a) the Supplier has submitted such Deliverable to the Authority; and</li><li>(b) the Authority has issued a Confirmation Certificate in respect of such Deliverable pursuant to Paragraph 3.1(a) of Part A of Schedule 6.2,</li></ul> (and "Assurance" shall be construed accordingly);
<b>"Component"</b>	any constituent parts of the infrastructure for a service, hardware or software;
<b>"Confirmation Certificate"</b>	a certificate materially in the form of the document contained in Annex 2 issued by the Authority in accordance with Paragraph 3.1 of Part A of Schedule 6.2;
<b>"Fit for Purpose"</b>	means, in relation to non-IT or non-IT based Deliverables, that the relevant Deliverable: <ul style="list-style-type: none"><li>(a) is complete taking into account the stage of the implementation of the Services (or the stage reached in the implementation of any Change);</li><li>(b) meets the Success Criteria;</li><li>(c) meets any criteria or requirements relevant to that Deliverables set out in the Agreement and/or agreed between the Parties;</li><li>(d) is comprehensible to someone with the knowledge and skills of the intended audience;</li><li>(e) reflects Good Industry Practice;</li><li>(f) is consistent with any physical or actual assets or processes that it describes; and</li><li>(g) takes account of the Authority's reasonable comments following prior review unless otherwise agreed between the Parties;</li></ul>
<b>"Severity Level"</b>	the level of severity of a Test Issue, the criteria for which are described in Annex 1;
<b>"Success Criteria"</b>	means the following: <ul style="list-style-type: none"><li>(a) Scope - that the relevant Deliverable is complete and consistent with the relevant table of contents;</li></ul>

- (b) Accuracy - that the relevant Deliverable is accurate in presentation and technical content;
- (c) Format - that the relevant Deliverable is produced in an agreed format and look and feel;
- (d) Language - that the relevant Deliverable is written in an appropriate manner and is understandable;
- (e) Usability - that the relevant Deliverable is appropriate for the intended audience and user base; and
- (f) Integrity - that the relevant Deliverable has correct referencing and content consistent with other Deliverables;

<b>“Test Issue”</b>	any failure of an IT or IT-based Deliverable to meet the Authority's requirements as set out in this Agreement or as otherwise agreed between the Parties;
<b>“Test Issue Management Log”</b>	a log for the recording of Test Issues as described further in Paragraph 7.1 of Part C of Schedule 6.2;
<b>“Test Plan”</b>	<p>a plan:</p> <ul style="list-style-type: none"> <li>(a) for the Testing of IT or IT-based Deliverables; and</li> <li>(b) setting out other agreed criteria related to the achievement of Milestones,</li> </ul> <p>as described further in Paragraph 3 of Part C of Schedule 6.2;</p>
<b>“Test Reports”</b>	the reports to be produced by the Supplier setting out the results of Tests;
<b>“Test Specification”</b>	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 5 of Part C of Schedule 6.2;
<b>“Test Strategy”</b>	a strategy for the conduct of Testing as described further in Paragraph 2 of Part C of Schedule 6.2;
<b>“Test Success Criteria”</b>	criteria, to be agreed between the Parties prior to a Test being undertaken, to demonstrate whether or not an IT or IT-based Deliverable meets the Authority's requirements as set out in this Agreement or as otherwise agreed between the Parties;
<b>“Test Witness”</b>	any person appointed by the Authority pursuant to Paragraph 8.1 of Part C of Schedule 6.2.

## **PART A - GENERAL**

### **1 RISK**

- 1.1 The issue of a Confirmation Certificate, a Milestone Achievement Certificate and/or a conditional Milestone Achievement Certificate shall not:
- (a) operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Authority's requirements for that Deliverable or Milestone; or
  - (b) affect the Authority's right subsequently to reject:
    - (i) all or any part of a Deliverable to which a Confirmation Certificate relates; or
    - (ii) any Milestone to which the Milestone Achievement Certificate relates.
- 1.2 Notwithstanding the issuing of any Milestone Achievement Certificate, the Supplier shall remain solely responsible for ensuring that:
- (a) the Supplier Solution as designed and developed is suitable for the delivery of the Services and meets the Authority Requirements; and
  - (b) the Services are implemented in accordance with this Agreement.

### **2 TESTING AND ASSURANCE OVERVIEW**

- 2.1 All Deliverables listed in Appendix 3 (Deliverables) to Schedule 2.1 (Services Description) shall either:
- (a) in the case of Deliverables other than IT or IT-based Deliverables, be submitted to the Authority for Assurance in accordance with Part B of this Schedule 6.2; or
  - (b) in the case of IT or IT-based Deliverables, be submitted to the Authority for Testing in accordance with Part C of this Schedule 6.2. All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, the Test Plans and the Test Specifications.
- 2.2 The Supplier shall use reasonable endeavours to submit each Deliverable for Assurance, Testing or re-Testing (as the case may be) by or before the date set out in the Implementation Plan for the commencement of Assurance or Testing in respect of the relevant Deliverable.
- 2.3 Before submitting any Deliverables for Assurance or Testing, the Supplier shall subject the relevant Deliverables to its own internal quality control measures.
- 2.4 Any Disputes between the Authority and the Supplier regarding Assurance or Testing shall be referred to the Dispute Resolution Procedure using the Expedited Dispute Timetable.

### **3 ISSUE OF CONFIRMATION CERTIFICATE**

- 3.1 The Authority shall issue a Confirmation Certificate when:
- (a) in the case of Deliverables other than IT or IT-based Deliverables, the Authority confirms in writing to the Supplier in accordance with

Paragraph 1.1(b)(i) of Part B of this Schedule 6.2 that it will not be exercising its Assurance Rights in respect of the Deliverable; or

- (b) in the case of IT or IT-based Deliverables, the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.

#### **4 ISSUE OF MILESTONE ACHIEVEMENT CERTIFICATE**

4.1 The Authority shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following:

- (a) the issuing by the Authority of Confirmation Certificates and/or conditional Confirmation Certificates in respect of all Deliverables related to that Milestone which are due to be Assured or Tested; and
- (b) performance by the Supplier to the reasonable satisfaction of the Authority of any other tasks identified in the Implementation Plan as associated with that Milestone.

4.2 The grant of a Milestone Achievement Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of Schedule 7.1 (*Charges and Invoicing*).

4.3 If a Milestone is not Achieved, the Authority shall promptly issue a report to the Supplier setting out (as applicable):

- (a) the reason why the Authority is exercising its Assurance Rights; or
- (b) the applicable Test Issues; and
- (c) any other reasons for the relevant Milestone not being Achieved,

and such failure shall (unless the Authority exercises its discretion in Paragraph 4.4 below) constitute a Notifiable Default for the purposes of Clause 27.1 (*Rectification Plan Process*).

4.4 Notwithstanding the Supplier's failure to Achieve a Milestone, the Authority may at its discretion (without waiving any rights in relation to the other options) choose to issue a Milestone Achievement Certificate conditional on the remediation (as applicable) of the reason why the Authority is exercising its Assurance Rights and/or the Test Issues in each case in accordance with an agreed Rectification Plan provided that:

- (a) any Rectification Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Authority agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Authority within 10 Working Days of receipt of the Authority's report pursuant to Paragraph 4.3); and
- (b) where the Authority issues a conditional Milestone Achievement Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

## PART B - ASSURANCE OF NON-IT DELIVERABLES

### 1 Assurance Process

1.1 Unless agreed otherwise by the Authority in writing, the Supplier shall submit to the Authority for review and comment:

- (a) a draft of the General Report and the Technical Report (as defined in Paragraph 2.8.4 of Schedule 2.1 (*Services Description*) no later than 20 Working Days prior to the relevant Milestone Date; and
- (b) a draft of any other Deliverable that is required to be submitted for Assurance no later than 10 Working Days prior to the relevant Milestone Date.

1.2 Where the Supplier is required to submit a Deliverable to the Authority for Assurance (as set out in this Agreement, the Implementation Plan or as otherwise agreed by the Parties):

- (a) the Supplier shall give the Authority at least 5 Working Days' notice prior to submitting such Deliverable to the Authority for review (provided that the Supplier shall not delay its submission of a Deliverable to meet this requirement); and
- (b) following its review of such Deliverable, the Authority shall either:
  - (i) notify the Supplier that it will not be exercising its Assurance Rights; or
  - (ii) if the Authority considers (in its absolute discretion) that the nature of, or information contained in, such Deliverable:
    - (A) is not Fit for Purpose;
    - (B) indicates that the Supplier is at risk of not complying with the Implementation Plan; and/or
    - (C) indicates that the Supplier is not, or may not be, complying with its obligations under the Agreement,

the Authority may notify the Supplier that it is exercising its Assurance Rights in respect of such Deliverable.

1.3 If the Authority exercises its Assurance Rights in respect of a Deliverable, the Authority may require the Supplier to:

- (a) promptly escalate the matter to such level of seniority within the Supplier's Personnel as the Authority may require;
- (b) provide additional reporting (or more granular reporting) in relation to the Supplier's work on, or relating to, such Deliverable;
- (c) provide the Authority with copies of any data relating to such Deliverable;
- (d) allow the Authority (or the Authority's agents or contractors) to witness and/or participate in the Supplier's planning, review and implementation

activities in relation to such Deliverable;

- (e) update the Deliverable so that the Deliverable is Fit for Purpose and the Supplier complies with its obligations under the Agreement; and/or
- (f) submit a revised Implementation Plan (or Rectification Plan) to the Authority for approval which reflects the status of the Supplier's activities in relation to such Deliverable,

and the Supplier shall comply with such request.

- 1.4 If the Authority is not satisfied with the Supplier's response to its request pursuant to Paragraph 1.2, the Authority may by written notice to the Supplier require it to submit a draft Rectification Plan in relation to such Deliverable and without prejudice to the Authority's other rights and remedies) such failure shall constitute a Notifiable Default for the purposes of Clause 27.1 (*Rectification Plan Process*).

## **PART C - TESTING OF IT AND IT-BASED DELIVERABLES**

### **1 TESTING OF IT AND IT-BASED DELIVERABLES**

- 1.1 The Supplier shall not submit any IT or IT-based Deliverable for Testing:
- (a) unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
  - (b) until the Authority has issued a Confirmation Certificate in respect of any prior, dependant Deliverable(s); and
  - (c) until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).
- 1.2 Prior to the issue of a Confirmation Certificate, the Authority shall be entitled to review the relevant Test Reports and the Test Issue Management Log.

### **2 TEST STRATEGY**

- 2.1 The Supplier shall develop the final Test Strategy as soon as practicable after the Effective Date but in any case no later than 20 Working Days (or such other period as the Parties may agree in writing) after the Effective Date.
- 2.2 The final Test Strategy shall include:
- (a) an overview of how Testing will be conducted in accordance with the Implementation Plan;
  - (b) the process to be used to capture and record Test results and the categorisation of Test Issues;
  - (c) the method for mapping the expected Test results to the Test Success Criteria;
  - (d) the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;
  - (e) the procedure to be followed to sign off each Test;
  - (f) the process for the production and maintenance of Test Reports and reporting, including templates for the Test Reports and the Test Issue Management Log, and a sample plan for the resolution of Test Issues;
  - (g) the names and contact details of the Authority's and the Supplier's Test representatives;
  - (h) a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and Authority and/or third party involvement in the conduct of the Tests;
  - (i) the technical environments required to support the Tests; and
  - (j) the procedure for managing the configuration of the Test environments.



### **3 TEST PLANS**

- 3.1 The Supplier shall develop Test Plans and submit these for the approval of the Authority as soon as practicable but in any case no later than 20 Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start date for the relevant Testing (as specified in the Implementation Plan).
- 3.2 Each Test Plan shall include as a minimum:
- (a) the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being tested and, for each Test, the specific Test Success Criteria to be satisfied; and
  - (b) a detailed procedure for the Tests to be carried out, including:
    - (i) the timetable for the Tests, including start and end dates;
    - (ii) the Testing mechanism;
    - (iii) dates and methods by which the Authority can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;
    - (iv) the mechanism for ensuring the quality, completeness and relevance of the Tests;
    - (v) the format and an example of Test progress reports and the process with which the Authority accesses daily Test schedules;
    - (vi) the process which the Authority will use to review Test Issues and the Supplier's progress in resolving these in a timely basis;
    - (vii) the Test Schedule;
    - (viii) the re-Test procedure, the timetable and the resources which would be required for re-Testing; and
    - (ix) the process for escalating Test Issues from a re-test situation to the taking of specific remedial action to resolve the Test Issue.
- 3.3 The Authority shall not unreasonably withhold or delay its approval of the Test Plans provided that the Supplier shall incorporate any reasonable requirements of the Authority in the Test Plans.

### **4 TEST SUCCESS CRITERIA**

The Test Success Criteria for each Test shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 3 above.

### **5 TEST SPECIFICATION**

- 5.1 Following approval of a Test Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least 10 Working Days (or such other period as the Parties may agree in the Test

Strategy or otherwise agree in writing) prior to the start of the relevant Testing (as specified in the Implementation Plan).

5.2 Each Test Specification shall include as a minimum:

- (a) the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Authority and the extent to which it is equivalent to live operational data;
- (b) a plan to make the resources available for Testing;
- (c) Test scripts;
- (d) Test pre-requisites and the mechanism for measuring them; and
- (e) expected Test results, including:
  - (i) a mechanism to be used to capture and record Test results; and
  - (ii) a method to process the Test results to establish their content.

## **6 TESTING**

6.1 The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 8.

6.2 The Supplier shall notify the Authority at least 10 Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Tests and the Authority shall ensure that the Test Witnesses attend the Tests, except where the Authority has specified in writing that such attendance is not necessary.

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

6.4 The Supplier shall provide to the Authority in relation to each Test:

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

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

- (a) an overview of the Testing conducted;
- (b) identification of the relevant Test Success Criteria that have been satisfied;
- (c) identification of the relevant Test Success Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have

not been met;

- (d) the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
- (e) the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 7.1; and
- (f) the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.

## **7 TEST ISSUES**

- 7.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.
- 7.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Authority upon request.
- 7.3 The Authority shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

## **8 TEST WITNESSING**

- 8.1 The Authority may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Authority, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 8.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 8.3 The Test Witnesses:
  - (a) shall actively review the Test documentation;
  - (b) will attend and engage in the performance of the Tests on behalf of the Authority so as to enable the Authority to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
  - (c) shall not be involved in the execution of any Test;
  - (d) shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;

- (e) may produce and deliver their own, independent reports on Testing, which may be used by the Authority to assess whether the Tests have been Achieved;
- (f) may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
- (g) may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

## 9 TEST QUALITY AUDIT

- 9.1 Without prejudice to its rights pursuant to Clause 12.2(b) (*Records, Reports & Audits*), the Authority may perform on-going quality audits in respect of any part of the Testing (each a “**Testing Quality Audit**”) subject to the provisions set out in the agreed Quality Plan.
- 9.2 The focus of the Testing Quality Audits shall be on:
  - (a) adherence to an agreed methodology;
  - (b) adherence to the agreed Testing process;
  - (c) adherence to the Quality Plan;
  - (d) review of status and key development issues; and
  - (e) identification of key risk areas.
- 9.3 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 9.4 The Authority will give the Supplier at least 5 Working Days' written notice of the Authority's intention to undertake a Testing Quality Audit and the Supplier may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Supplier's reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the Authority will materially and adversely impact the Implementation Plan.
- 9.5 A Testing Quality Audit may involve document reviews, interviews with the Supplier Personnel involved in or monitoring the activities being undertaken pursuant to this Schedule, the Authority witnessing Tests and demonstrations of the Deliverables to the Authority. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Supplier and the Authority on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Authority to enable it to carry out the Testing Quality Audit.
- 9.6 If the Testing Quality Audit gives the Authority concern in respect of the Testing procedures or any Test, the Authority shall:
  - (a) discuss the outcome of the Testing Quality Audit with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities; and
  - (b) subsequently prepare a written report for the Supplier detailing its concerns,

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

- 9.7 In the event of an inadequate response to the Authority's report from the Supplier, the Authority (acting reasonably) may withhold a Confirmation Certificate (and consequently delay the grant of a Milestone Achievement Certificate) until the issues in the report have been addressed to the reasonable satisfaction of the Authority.

## ANNEX 1

### Test Issues - Severity Levels

1. **Severity Level 1 Test Issue:** a Test Issue that causes non-recoverable conditions, e.g. it is not possible to continue using a Component, a Component crashes, there is database or file corruption, or data loss;
2. **Severity Level 2 Test Issue:** a Test Issue for which, as reasonably determined by the Authority, there is no practicable workaround available, and which:
  - (a) causes a Component to become unusable;
  - (b) causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
  - (c) has an adverse impact on any other Component(s) or any other area of the Services;
3. **Severity Level 3 Test Issue:** a Test Issue which:
  - (a) causes a Component to become unusable;
  - (b) causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
  - (c) has an impact on any other Component(s) or any other area of the Services;but for which, as reasonably determined by the Authority, there is a practicable workaround available;
4. **Severity Level 4 Test Issue:** a Test Issue which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Services; and
5. **Severity Level 5 Test Issue:** a Test Issue that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Services.

ANNEX 2

Confirmation Certificate

To: [NAME OF SUPPLIER]

FROM: OFFICE OF QUALIFICATIONS AND EXAMINATIONS REGULATION

[Date]

Dear Sirs,

CONFIRMATION CERTIFICATE

Deliverables: [*insert description of Deliverables*]

We refer to the agreement (the “**Agreement**”) relating to the provision of the Services between the Office of Qualifications and Examinations Regulation (the “**Authority**”) and [*name of Supplier*] (the “**Supplier**”) dated [*date*].

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (*Definitions*) or Schedule 6.2 (*Testing and Assurance Procedures*) of the Agreement.

**[If Deliverables have been subject to Assurance:]**

[We confirm that we will not be exercising our Assurance Rights in respect of the Deliverables listed above]

**[If Deliverables have been subject to Testing:]**

[We confirm that the Deliverables listed above have been tested successfully in accordance with the Test Plan relevant to those Deliverables.]

*\*delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of [*name of Authority*]

ANNEX 3

Milestone Achievement Certificate

To: [NAME OF SUPPLIER]

FROM: OFFICE OF QUALIFICATIONS AND EXAMINATIONS REGULATION

[Date]

Dear Sirs,

MILESTONE ACHIEVEMENT CERTIFICATE

Milestone: [*insert description of Milestone*]

We refer to the agreement (the “**Agreement**”) relating to the provision of the Services between the Office of Qualifications and Examinations Regulation (the “**Authority**”) and [*name of Supplier*] (the “**Supplier**”) dated [*date*].

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (*Definitions*) or Schedule 6.2 (*Testing and Assurance Procedures*) of the Agreement.

[We confirm that all the Deliverables relating to Milestone [*number*] have either been the subject of a successful Assurance process or have been tested successfully in accordance with the Test Plan relevant to this Milestone]

OR

[This Milestone Achievement Certificate is granted pursuant to Paragraph 4.4 of Part A of Schedule 6.2 (*Testing and Assurance Procedures*) of the Agreement on the condition that the reason why the Authority is exercising its Assurance Rights and/or any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]\*

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

Yours faithfully

[Name]

[Position]

acting on behalf of [*Authority*]

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**AGREEMENT FOR THE SUPPLY OF SERVICES RELATING TO  
NATIONAL REFERENCE TESTS**

**SCHEDULE 7.1**

**CHARGES AND INVOICING**

## Charges and Invoicing

### DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>"Additional Services"</b>	has the meaning given in Paragraph 4.1 of Part A of Schedule 7.1;
<b>"Annual Service Fee"</b>	has the meaning given in Paragraph 1.3(a) of Part A of Schedule 7.1;
<b>"Man Day"</b>	7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
<b>"Man Hour"</b>	the hours spent by the Supplier Personnel properly working on the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
<b>"Milestone Retention"</b>	has the meaning given in Paragraph 2.2 of Part A of Schedule 7.1;
<b>"Monthly Service Charge"</b>	has the meaning given in Paragraph 1.3(b) of Part A of Schedule 7.1;
<b>"Reimbursable Expenses"</b>	<p>reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Authority's expenses policy current from time to time, but not including:</p> <ul style="list-style-type: none"><li>(a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Authority otherwise agrees in advance in writing; and</li><li>(b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;</li></ul>
<b>"Supporting Documentation"</b>	sufficient information in writing to enable the Authority reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from the Authority detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts.

## PART A

### Pricing

#### 1 APPLICABLE PRICING MECHANISM

1.1 The Charges for the:

- (a) Strategic Design Services and Detailed Design & Development Services shall comprise Milestone Payments only; and
- (b) Delivery Services shall comprise:
  - (i) the Annual Service Fee payable in Milestone Payments;
  - (ii) the Monthly Service Charges; and
  - (iii) an additional Milestone Payment in 2017.

1.2 The Milestone Payments due in respect of the Strategic Design Services and Detailed Design & Development Services are set out in Table 1 (Milestone Payments for Strategic Design and Detailed Design & Development Services) of Annex 1 to this Schedule 7.1.

1.3 The Service Charges for the Delivery Services shall comprise:

- (a) an Annual Service Fee, which fee shall comprise three (3) Milestone Payments as set out in Table 2 (Charges for Delivery Services) of Annex 1 to this Schedule 7.1; and
- (b) a Monthly Service Charge, which fee shall be a fixed monthly sum as set out in Table 2 (Charges for Delivery Services) of Annex 1 to this Schedule 7.1.

1.4 Unless otherwise agreed in accordance with Schedule 8.2 (*Change Control Procedure*), the Supplier shall not be entitled to, nor shall the Authority be obliged to pay, any sums in excess of the:

- (a) Milestone Payments; or
- (b) Monthly Service Charges.

#### 2 MILESTONE PAYMENTS

2.1 Each Milestone Payment shall be a fixed price and shall not be subject to indexation.

2.2 For each Milestone Payment due in respect of the Strategic Design Services and/or the Detailed Design & Development Services, the Authority shall be entitled to retain a sum equal to ten per cent (10%) of the relevant Milestone Payment (the “**Milestone Retention**”).

2.3 On the Achievement of the relevant Milestone, the Supplier shall (subject to Paragraphs 2.4 to 2.5 below) be entitled to invoice the Authority for the Milestone Payment associated with that Milestone less the applicable Milestone Retention in accordance with Part B of this Schedule 7.1.

2.4 The Supplier acknowledges the criticality of the Milestone Date for Milestone 3.2 and that, if it fails to Achieve Milestone 3.2 by 31 May in any year, the utility and value

of the National Reference Tests to the Authority for that year will be substantially diminished. The Parties have therefore agreed that, if the Supplier fails to Achieve Milestone 3.2 by 31 May in any year, subject to Clause 31 (Authority Cause), the following provisions shall apply (without prejudice to the Authority's other rights and remedies) to compensate the Authority for the lost utility and value of the National Reference Tests in that year:

- (a) If Milestone 3.2 is Achieved on or after 1 June in that year, then the relevant Milestone Payment for Milestone 3.2 will be reduced by 10% of the total annual Service Fee as set out in Table 2 to Annex 1 to this Schedule 7.1;
- (b) If Milestone 3.2 is Achieved on or after 15 June in that year, then the relevant Milestone Payment for Milestone 3.2 will be reduced by a further 10% of the total annual Service Fee as set out in Table 2 to Annex 1 to this Schedule 7.1.

2.5 The Supplier:

- (a) agrees that the application of Paragraph 2.4 is commercially justifiable where it fails to Achieve Milestone 3.2 by 31 May in any year; and
- (b) acknowledges that it has taken legal advice on the application of Paragraph 2.4 and has had the opportunity to price for that risk when calculating the Charges.

2.6 Each invoice relating to a Milestone Payment shall be supported by a Milestone Achievement Certificate.

**Release of Milestone Retentions**

2.7 On Achievement of:

- (a) Milestone 1.4 in relation to the Strategic Design Services, the Supplier shall be entitled to invoice the Authority for an amount equal to all Milestone Retentions relating to Milestone 1.1, Milestone 1.2 and Milestone 1.3; and
- (b) Milestone 2.6 in relation to the Detailed Design & Development Services, the Supplier shall be entitled to invoice the Authority for an amount equal to all Milestone Retentions relating to Milestones 2.1 to 2.5 (inclusive).

**3 MONTHLY SERVICE CHARGES**

3.1 The Monthly Service Charges payable in respect of the Delivery Services shall be fixed for the duration of the Agreement (including any extension thereof in accordance with Clause 4.1(b)) and shall not be subject to indexation.

3.2 The Authority shall commence payment of the Monthly Service Charges from the later of:

- (a) 1 December 2016; and
- (b) the day after the Achievement of Milestone 2.6.

3.3 The Monthly Service Charges shall be invoiced by the Supplier for each Service Period in arrears in accordance with the requirements of Part B of this Schedule 7.1.

3.4 If the Delivery Services:

- (a) commence on a day other than the first day of a month; and/or
- (b) end on a day other than the last day of a month,

the Monthly Service Charge for the relevant Service Period shall be pro-rated based on the proportion which the number of days in the month for which the Delivery Services are provided bears to the total number of days in that month.

- 3.5 In the event that the Authority, acting reasonably, is not satisfied with the performance of the Delivery Services, the Authority shall be entitled to withhold payment of the Monthly Service Charges in accordance with Clause 7.8(b) (*Supplier's Performance*).

#### **4 ADDITIONAL SERVICES**

- 4.1 The Authority may require the Supplier to provide any or all of the Additional Services from time to time. For the purposes of this Agreement, "Additional Services" shall include additional research, analysis and/or reporting.
- 4.2 If the Authority gives notice to the Supplier that it requires the Supplier to provide any Additional Services, the Charges for the relevant Additional Services shall be calculated in accordance with Table 3 (Rate Card for Calculation of Time and Materials Charges for Additional Services) of Annex 1 to this Schedule 7.1.
- 4.3 The Supplier shall be entitled to propose an increase to any of the rates set out in Table 3 of Annex 1 to this Schedule 7.1 on an annual basis, the first such increase not to occur before the first anniversary of the Effective Date. Any such increase shall be capped at a level determined by multiplying the relevant amount or sum by the percentage increase or changes in the Consumer Price Index published for the 12 months ended on the 31 January immediately preceding the relevant adjustment date.

#### **5 REIMBURSEABLE EXPENSES**

- 5.1 Where any Additional Services are provided in accordance with Paragraph 4 above, the Supplier shall be entitled to be reimbursed by the Authority for Reimbursable Expenses (in addition to being paid the relevant Charges), provided that such Reimbursable Expenses are supported by Supporting Documentation.
- 5.2 The Authority shall provide a copy of its current expenses policy to the Supplier upon request.
- 5.3 Except as expressly set out in Paragraph 5.1, the Charges shall include all costs and expenses relating to the Deliverables, the Services and/or the Supplier's performance of its obligations under this Agreement and no further amounts shall be payable by the Authority to the Supplier in respect of such performance, including in respect of matters such as:
- (a) any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document and report reproduction, shipping, desktop and office equipment costs required by the Supplier Personnel, including network or data interchange costs or other telecommunications charges; or
  - (b) any amount for any services provided or costs incurred by the Supplier prior to the Effective Date.

#### **6 VARIATIONS TO CHARGES**

- 6.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 8.2 (*Change Control Procedure*).

#### **Introduction of Legislation to Compel Engagement with NRT**

- 6.2 In the event that secondary legislation is implemented to compel schools and pupils to take the National Reference Test:
- (a) the Authority shall request, and the Parties shall agree, a Change Request for the scope of the Delivery Services in accordance with Schedule 8.2 (*Change Control Procedure*); and
  - (b) the Supplier shall calculate the reduction in the Charges in accordance with the provisions of Table 4 (Charges Associated with Encouraging Schools to Participate in National Reference Tests) of Annex 1 to this Schedule 7.1.

#### **Change to Supplier Solution**

- 6.3 Unless the Authority submits a Change Request to vary any of its requirements set out in Schedule 2.1 (*Services Description*) or elsewhere in this Agreement, the Supplier shall be liable for the costs of any change to the Supplier Solution (including increases or amendments to the elements of its Supplier Solution such as sample size and the number of Test booklets) required in order meet the Precision Level for the National Reference Tests set out in Clauses 6.8 to 6.11 (inclusive) (Implementation) of the Agreement and/or any of the Authority's other requirements set out in this Agreement. The Supplier shall not be entitled to any increase in any Milestone Payment or in any other Charges in the event it is required to make any such change.

#### **Disclosure of Test questions**

- 6.4 The Supplier shall be liable for all costs resulting from a disclosure of any Test questions and/or marking scheme caused by an act or omission of the Supplier, its employees, agents or contractors including, the costs of rewriting the questions, rectifying the reason for the disclosure and the costs of any extra testing (including field trials) which is required to demonstrate comparability of the new Test with the old (disclosed) Test.
- 6.5 The Authority shall be liable for any additional costs incurred by the Supplier (including, without limitation, the costs of rewriting the questions, rectifying the reason for the disclosure and the costs of any extra testing (including field trials) which is required to demonstrate comparability of the new Test with the old (disclosed) Test) resulting from a disclosure of any Test questions and/or marking scheme to the extent that such costs arise other than as a result of an act or omission of the Supplier, its employees, agents or contractors, and provided that the Supplier shall use reasonable endeavours to minimise any such additional costs. The Authority shall pay the Charges for any such additional effort or change agreed in accordance with Schedule 8.2 (*Change Control Procedure*).

#### **7 NOT USED**

## PART B

### Invoicing and Payment Terms

#### 1 SUPPLIER INVOICES

- 1.1 The Supplier shall prepare and provide to the Authority for approval of the format a template invoice within 10 Working Days of the Effective Date which shall include, as a minimum, the details set out in Paragraph 1.2 below together with such other information as the Authority may reasonably require to assess whether the Charges that will be detailed therein are properly payable. If the template invoice is not approved by the Authority, then the Supplier shall make such amendments as may be reasonably required by the Authority.
- 1.2 The Supplier shall ensure that each invoice contains the following information:
- (a) the date of the invoice;
  - (b) a unique invoice number;
  - (c) the Service Period or other period(s) to which the relevant Charge(s) relate;
  - (d) the correct reference for this Agreement;
  - (e) the reference number of the purchase order to which it relates (if any);
  - (f) the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
  - (g) a description of the Services;
  - (h) any payments due in respect of:
    - (i) Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;
    - (ii) Additional Services;
    - (iii) Milestone Retentions; and
    - (iv) the Monthly Service Charges;
  - (i) the total Charges gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to the Authority under the terms of this Agreement, and, separately, any VAT or other sales tax payable in respect of each of the same;
  - (j) reference to any reports required by the Authority in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Services);
  - (k) a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries; and
  - (l) the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).

- 1.3 The Supplier shall invoice the Authority in respect of Services in accordance with the requirements of Part B. The Supplier shall first submit to the Authority a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within 5 Working Days of its receipt by the Authority, following which the Supplier shall be entitled to submit its invoice.
- 1.4 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Authority as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.
- 1.5 The Supplier shall submit all invoices and Supporting Documentation to:
- Finance Department (Accounts Payable)  
Ofqual  
Spring Place  
Herald Avenue  
Coventry  
CV5 6UB
- with a copy (again including any Supporting Documentation) to such other person and at such place as the Authority may notify to the Supplier from time to time.
- 1.6 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
- 1.7 The Authority shall regard an invoice as valid only if it complies with the provisions of this Part B. Where any invoice does not conform to the Authority's requirements set out in this Part B, the Authority shall return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.

## **2 PAYMENT TERMS**

- 2.1 Subject to the relevant provisions of this Schedule, the Authority shall make payment to the Supplier within 30 days of receipt of a valid invoice by the Authority at its nominated address for invoices.
- 2.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.



## ANNEX 1

### Pricing Mechanism

**TABLE 1: MILESTONE PAYMENTS FOR STRATEGIC DESIGN SERVICES AND DETAILED DESIGN & DEVELOPMENT SERVICES**

Ref:	Milestone	Milestone Payment (£)	Milestone Retention	Trigger for Milestone release	Milestone Date
<b>Strategic Design Services</b>					
1.1	Achievement of the Supplier Framework for the National Reference Test Technical Design	Value	10% of Milestone Payment	Milestone 1.4	Text
1.2	Achievement of the Supplier's Operational Design for the National Reference Tests	Value	10% of Milestone Payment	Milestone 1.4	Text
1.3	Achievement of the Supplier's Detailed Implementation Plan for Detailed Design & Development and Delivery Services	Value	10% of Milestone Payment	Milestone 1.4	Text
1.4	Text	Value	-	-	Text

**TABLE 1: MILESTONE PAYMENTS FOR STRATEGIC DESIGN SERVICES AND DETAILED DESIGN & DEVELOPMENT SERVICES**

<b>Ref:</b>	<b>Milestone</b>	<b>Milestone Payment (£)</b>	<b>Milestone Retention</b>	<b>Trigger for Milestone release</b>	<b>Milestone Date</b>
	<b>Total Charges for Strategic Design Services</b>	<b>£623,121</b>	10% of Milestone Payment	N/A	N/A
<b>Detailed Design &amp; Development Services</b>					
2.1	Achievement of the implementation of the National Reference Test Technical Solution	<b>Value</b>	10% of Milestone Payment	Milestone 2.6	<b>Text</b>
2.2	Achievement of the implementation of the National Reference Test Operational Solution	<b>Value</b>	10% of Milestone Payment	Milestone 2.6	<b>Text</b>
2.3	Achievement of the National Reference Test Field Trials	<b>Value</b>	10% of Milestone Payment	Milestone 2.6	<b>Text</b>
2.4	Achievement of the Preliminary National Reference Tests	<b>Value</b>	10% of Milestone Payment	Milestone 2.6	<b>Text</b>

**TABLE 1: MILESTONE PAYMENTS FOR STRATEGIC DESIGN SERVICES AND DETAILED DESIGN & DEVELOPMENT SERVICES**

<b>Ref:</b>	<b>Milestone</b>	<b>Milestone Payment (£)</b>	<b>Milestone Retention</b>	<b>Trigger for Milestone release</b>	<b>Milestone Date</b>
2.5	Achievement of the Preliminary National Reference Test Results and National Reference Tests Database	<b>Value</b>	10% of Milestone Payment	Milestone 2.6	<b>Text</b>
2.6	Achievement of the Detailed Implementation Plan for Annual National Reference Tests (including review and update of Supplier's National Reference Test Technical Solution and National Reference Test Operational Solution)	<b>Value</b>			<b>Text</b>
<b>Total Charges for Detailed Design &amp; Development Services</b>					<b>£2,960,066</b>

**TABLE 2: CHARGES FOR DELIVERY SERVICES**

Nature of Charge		Percentage of Total Annual Service Charge for Delivery Services	Charges (*)	Notes and Milestone Dates
<b>Total Annual Charge</b>		100%	£1,572,661	
<b>Monthly Service Charge</b>		40%	<b>Value</b>	Payable in twelve (12) equal monthly instalments
<b>Annual Service Fee, comprising:</b>		60%	<b>Value</b>	Payable in three (3) Milestone Payments, as follows:
3.1	Achievement of the Sample for the Annual National Reference Tests	20%	<b>Value</b>	<b>Text</b>
3.2	Achievement of the Tests Results within the agreed precision and delivery of the Reports and Data	60%	<b>Value</b>	<b>Text</b>
3.3	Refresh of the Supplier Technical Solution and Operational Solution for the next annual National Reference Tests	20%	<b>Value</b>	<b>Text</b>

Note: (\*) Milestone Dates for subsequent years shall be determined from the current Implementation Plan.

In 2017, there will also be an additional one-off Milestone Payment as follows:

Ref	Nature of charge	Amount of Milestone Payment	Notes and Milestone Dates
3.4	Achievement of the mapping of 2017GCSE award results onto 2017 National Reference Test results	Value	Text

**Text**

**TABLE 3: RATE CARD FOR CALCULATION OF TIME AND MATERIALS CHARGES FOR ADDITIONAL SERVICES**

<b>Post / Grade</b>	<b>Rate (£) (excl VAT) per Man Day</b>	<b>Rate (£) (excl VAT) per Man Hour</b>
Text	Value	Value
Text	Value	Value
Text	Value	Value
Text	Value	Value
Text	Value	Value
Text	Value	Value
Text	Value	Value
Text	Value	Value
Text	Value	Value

Example roles in delivering the Services	Post / grade from the Rate Card (Table 3) applying to the role
Project Manager	Text
Subject Matter Expert (English Language)	Text
Psychometrics Analysis Lead	Text
Schools Engagement / Registration lead	Text
Question writer	Text
Test Administrator on site in schools	Text
Marker	Text
Psychometrics analyst	Text

**TABLE 4: CHANGES IN CHARGES ASSOCIATED WITH ENCOURAGING SCHOOLS TO PARTICIPATE IN NATIONAL REFERENCE TESTS**

<b>NATURE OF COST</b>	<b>RESULTING REDUCTION IN CHARGES (£) (*)</b>
Field Trial	Value
Preliminary Reference Test	Value
Delivery 2017	Value
Delivery 2018	Value
Delivery 2019	Value
Delivery 2020	Value

**Text**



**ANNEX 2**  
**NOT USED**

**AGREEMENT FOR THE SUPPLY OF SERVICES RELATING TO  
NATIONAL REFERENCE TESTS**

**SCHEDULE 7.2**

**PAYMENTS ON TERMINATION**

## Payments on Termination

### 1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

<b>“Applicable Supplier Personnel”</b>	any Supplier Personnel who: <ul style="list-style-type: none"><li>(a) at the Termination Date:<ul style="list-style-type: none"><li>(i) are employees of the Supplier;</li><li>(ii) are Dedicated Supplier Personnel;</li><li>(iii) have not transferred (and are not in scope to transfer at a later date) to the Authority or the Replacement Supplier by virtue of the Employment Regulations; and</li></ul></li><li>(b) are dismissed or given notice of dismissal by the Supplier within:<ul style="list-style-type: none"><li>(i) 40 Working Days of the Termination Date; or</li><li>(ii) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and</li></ul></li><li>(c) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and</li><li>(d) the Supplier can demonstrate to the satisfaction of the Authority:<ul style="list-style-type: none"><li>(i) are surplus to the Supplier's requirements after the Termination Date, notwithstanding its obligation to provide services to its other customers;</li><li>(ii) are genuinely being dismissed for reasons of redundancy; and</li><li>(iii) have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement under this provision in respect of such employees;</li></ul></li></ul>
<b>“Breakage Costs Payment”</b>	an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with Paragraph 3;
<b>“Compensation Payment”</b>	the payment calculated in accordance with Paragraph 6;
<b>“Contract Breakage Costs”</b>	the amounts payable by the Supplier to its Key Sub-contractors or other third parties (as applicable) for terminating all relevant Key Sub-contracts or Third

	Party Contracts as a direct result of the early termination of this Agreement;
<b>“Dedicated Supplier Personnel”</b>	all Supplier Personnel then assigned to the Services or any part of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the Authority whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services;
<b>“Profit Already Paid”</b>	the Supplier Profit paid or payable to the Supplier under this Agreement for the period from the Effective Date up to (and including) the Termination Date;
<b>“Redundancy Costs”</b>	<p>the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount apportioned between the Supplier and the Authority based on the time spent by such employee on the Services as a proportion of the total Service duration:</p> <ul style="list-style-type: none"> <li>(a) any statutory redundancy payment; and</li> <li>(b) in respect of an employee who was a Transferring Former Supplier Employee or a Transferring Authority Employee, any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the Supplier under the Employment Regulations;</li> </ul>
<b>“Request for Estimate”</b>	<p>a written request sent by the Authority to the Supplier, requiring that the Supplier provide it with an accurate estimate of the:</p> <ul style="list-style-type: none"> <li>(a) Termination Payment and Compensation Payment that would be payable if the Authority exercised its right under Clause 33.1(a) (<i>Termination by the Authority</i>) to terminate this Agreement for convenience on a specified Termination Date; and</li> <li>(b) Unrecovered Costs that would be payable if the Authority exercised its rights under Clauses 33.1(c) or 33.2(b) (<i>Termination by the Authority</i>) to terminate all or part this Agreement for a continuing Force Majeure Event;</li> </ul>

“Shortfall Period”	has the meaning given in Paragraph 6.2;
“Supplier Margin”	the relevant percentage margin set out in the Financial Model;
“Termination Estimate”	has the meaning given in Paragraph 11.2;
“Third Party Contract”	a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services;
“Total Costs Incurred”	the costs incurred by the Supplier up to the Termination Date in the performance of this Agreement and detailed in the Financial Model (but excluding Contract Breakage Costs, Redundancy Costs and any costs the Supplier would not otherwise be able to recover through the Charges);
“Unrecovered Costs”	the costs incurred by the Supplier in the performance of this Agreement (as summarised in the Financial Model) to the extent that the same remain at the Termination Date to be recovered through Charges that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7.1 ( <i>Charges and Invoicing</i> ) as such costs and Charges are forecast in the Financial Model;
“Unrecovered Payment”	an amount equal to the lower of: <ul style="list-style-type: none"> <li>(a) the sum of the Unrecovered Costs and the Unrecovered Profit; and</li> <li>(b) the amount specified in Paragraph 4; and</li> </ul>
“Unrecovered Profit”	$(\text{Total Costs Incurred} \times \text{Supplier Margin}) - \text{Profit Already Paid} + \text{Milestone Retentions remaining unpaid at the Termination Date.}$

## **2 TERMINATION PAYMENT**

2.1 The Termination Payment payable pursuant to:

- (a) Clause 34.3(a) (*Payments by the Authority*) shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment; and
- (b) Clause 34.5 (*Payments by the Authority*) shall be an amount equal to the Unrecovered Costs capped at the lower of (i) the sum set out in the table to Annex 1 (*Maximum Payments on Termination*) and (ii) 120% of the estimate for the Unrecovered Costs set out in a Termination Estimate.

## **3 BREAKAGE COSTS PAYMENT**

3.1 The Supplier may recover through the Breakage Costs Payment only those costs

incurred by the Supplier directly as a result of the termination of this Agreement which:

- (a) would not have been incurred had this Agreement continued until expiry of the Initial Term, or in the event that the Term has been extended, the expiry of the Extension Period;
- (b) are unavoidable, proven, reasonable, and not capable of recovery;
- (c) are incurred under arrangements or agreements that are directly associated with this Agreement;
- (d) are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier; and
- (e) relate directly to the termination of the Services.

### **Limitation on Breakage Costs Payment**

3.2 The Breakage Costs Payment shall not exceed the lower of:

- (a) the relevant limit set out in Annex 1; and
- (b) 120% of the estimate for the Breakage Costs Payment set out in the relevant Termination Estimate.

### **Redundancy Costs**

3.3 The Authority shall not be liable under this Schedule for any costs associated with Supplier Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.

3.4 Where the Supplier can demonstrate that a member of Supplier Personnel will be made redundant following termination of this Agreement, but redeployment of such person is possible and would offer value for money to the Authority when compared with redundancy, then the Authority shall pay the Supplier the actual direct costs incurred by the Supplier or its Sub-contractor arising out of the redeployment of such person (including retraining and relocation costs) subject to a maximum amount of £30,000 per relevant member of the Supplier Personnel.

### **Contract Breakage Costs**

3.5 The Supplier shall be entitled to Contract Breakage Costs only in respect of Third Party Contracts or Sub-contracts which:

- (a) are not assigned or novated to a Replacement Supplier at the request of the Authority in accordance with Schedule 8.5 (*Exit Management*); and
- (b) the Supplier can demonstrate:
  - (i) are surplus to the Supplier's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other customers; and
  - (ii) have been entered into by it in the ordinary course of business.

- 3.6 The Supplier shall seek to negotiate termination of any Third Party Contracts or Sub-contracts with the relevant third party or Sub-contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.
- 3.7 Except with the prior written agreement of the Authority, the Authority shall not be liable for any costs (including cancellation or termination charges) that the Supplier is obliged to pay in respect of:
- (a) the termination of any contractual arrangements for occupation of, support of and/or services provided for Supplier premises which may arise as a consequence of the termination of this Agreement; and/or
  - (b) Assets not yet installed at the Termination Date.

#### **4 UNRECOVERED PAYMENT**

The Unrecovered Payment shall not exceed the lower of:

- (a) the relevant limit set out in Annex 1;
- (b) 120% of the estimate for the Unrecovered Payment set out in the relevant Termination Estimate; and
- (c) the Charges that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7.1 (*Charges and Invoicing*) as forecast in the Financial Model.

#### **5 MITIGATION OF CONTRACT BREAKAGE COSTS, REDUNDANCY COSTS AND UNRECOVERED COSTS**

- 5.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs, Redundancy Costs and Unrecovered Costs by:
- (a) the appropriation of Assets, employees and resources for other purposes;
  - (b) at the Authority's request, assigning any Third Party Contracts and Sub-contracts to the Authority or a third party acting on behalf of the Authority; and
  - (c) in relation to Sub-contracts that are not to be assigned to the Authority or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.
- 5.2 If Assets, employees and resources can be used by the Supplier for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs, Redundancy Costs and Unrecovered Costs payable by the Authority or a third party to the Supplier. In the event of any Dispute arising over whether the Supplier can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the Dispute shall be referred to an Expert for determination in accordance with the procedure detailed in Schedule 8.3 (*Dispute Resolution Procedure*).

#### **6 COMPENSATION PAYMENT**

- 6.1 The Compensation Payment payable pursuant to Clause 34.3(b) (*Payments by the*

*Authority*) shall be an amount equal to the total forecast Charges which would have been payable over the Shortfall Period multiplied by the Supplier Margin.

6.2 For the purposes of Paragraph 6.1, the “**Shortfall Period**” means:

- (a) where the Authority terminates this Agreement pursuant to Clause 33.1(a) (*Termination by the Authority*), a number of days equal to the number of days by which the notice given (or deemed given pursuant to Paragraph 2.1(a) of Part D of Schedule 7.1 (*Charges and Invoicing*)) falls short of 365 days; or
- (b) where the Supplier terminates this Agreement pursuant to Clause 33.3(a) (*Termination by the Supplier*), a number of days equal to the number of days by which the period from (and including) the date of the non-payment by the Authority to (and including) the Termination Date falls short of 365 days,

but in each case subject to the limit set out in Paragraph 6.3.

6.3 The Compensation Payment shall be no greater than the lower of:

- (a) the relevant limit set out in Annex 1; and
- (b) 120% of the estimate for the Compensation Payment set out in the relevant Termination Estimate.

## **7 FULL AND FINAL SETTLEMENT**

7.1 Any:

- (a) Termination Payment and/or Compensation Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Authority pursuant to Clause 33.1(a) (*Termination by the Authority*) or termination by the Supplier pursuant to Clause 33.3(a) (*Termination by the Supplier*) (as applicable); or
- (b) payment of Unrecovered Costs pursuant to Clause 34.5 shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination of all or part of this Agreement for a continuing Force Majeure Event pursuant to Clauses 33.1(c) or 33.2(b) (*Termination by the Authority*) or Clause 33.3(b) (*Termination by the Supplier*),

and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

## **8 INVOICING FOR THE PAYMENTS ON TERMINATION**

All sums due under this Schedule shall be payable by the Authority to the Supplier in accordance with the payment terms set out in Schedule 7.1 (*Charges and Invoicing*).

## **9 SET OFF**

The Authority shall, in accordance with Clause 10.6 (*Set-off and Withholding*), be entitled to set off any amount owed to it by the Supplier against any amount due to



the Supplier under this Agreement or under any other agreement between the Supplier and the Authority. For the avoidance of doubt, the provisions of this Paragraph 9 shall not prevent the Authority from exercising its rights set out in any part of this Agreement in relation to withholding payments (entirely or in part) in the event that the Supplier has failed to meet any Milestone Dates or in the circumstances set out in Clause 7.8(b) (*Supplier's Performance*).

## **10 NO DOUBLE RECOVERY**

- 10.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that the Authority makes any payments pursuant to Schedule 8.5 (*Exit Management*) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.
- 10.2 The value of the Termination Payment and/or the Compensation Payment and/or Unrecovered Costs (in relation to any termination for a continuing Force Majeure Event pursuant to Clauses 33.1(c) or 33.2(b) (*Termination by the Authority*) or Clause 33.3(b) (*Termination by the Supplier*), shall be reduced or extinguished to the extent that the Supplier has already received the Charges or the financial benefit of any other rights or remedy given under this Agreement so that there is no double counting in calculating the relevant payment.
- 10.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

## **11 ESTIMATE OF TERMINATION PAYMENT AND COMPENSATION PAYMENT**

- 11.1 The Authority may issue a Request for Estimate at any time during the Term provided that no more than 1 Request for Estimate may be issued in any Contract Year.
- 11.2 The Supplier shall within 20 Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination Payment, Compensation Payment and the Unrecovered Costs in relation to any termination for a continuing Force Majeure Event pursuant to Clauses 33.1(c) or 33.2(b) (*Termination by the Authority*) or Clause 33.3(b) (*Termination by the Supplier*) that would be payable by the Authority based on a postulated Termination Date specified in the Request for Estimate (such estimate being the “**Termination Estimate**”). The Termination Estimate shall:
- (a) be based on the relevant amounts set out in the Financial Model;
  - (b) include:
    - (i) details of the mechanism by which the Termination Payment is calculated;
    - (ii) full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and
    - (iii) such information as the Authority may reasonably require; and
  - (c) state the period for which that Termination Estimate remains valid, which shall be not less than 20 Working Days.

- 11.3 The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Authority to terminate this Agreement.
- 11.4 If the Authority issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Supplier and the Authority.

## ANNEX 1

### Maximum Payments on Termination

The table below sets out the maximum amount of the Unrecovered Payment, Breakage Costs Payment, Compensation Payment and Unrecovered Costs (in relation to any termination by the Authority for a continuing Force Majeure Event pursuant to Clauses 33.1(c) or 33.2(b) (*Termination by the Authority*) that the Authority shall be liable to pay to the Supplier pursuant to this Agreement:

<b>Termination Date</b>	<b>Maximum Unrecovered Payment</b>	<b>Maximum Breakage Costs Payment</b>	<b>Maximum Compensation Payment</b>	<b>Unrecovered Costs (payable pursuant to Clause 34.5)</b>
Anytime during the provision of the Strategic Design Services	Value	Value	Value	Value
Anytime during the provision of the Detailed Design & Development Services	Value	Value	Value	Value
Anytime during the provision of the Delivery Services in Year 1	Value	Value	Value	Text
Anytime during the provision of the Delivery Services in Year 2	Value	Value	Value	Text
Anytime during the provision of the Delivery Services in Year 3	Value	Value	Value	Text
Anytime during the provision of the Delivery Services in Year 4	Value	Value	Value	Text
Anytime during the provision of the Delivery Services in Year 5	Value	Value	Value	Text

**AGREEMENT FOR THE SUPPLY OF SERVICES RELATING TO  
NATIONAL REFERENCE TESTS**

**SCHEDULE 7.4**

**FINANCIAL DISTRESS**

## Financial Distress

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

- “Credit Rating Level” a credit rating level as specified in Annex 2;
- “Credit Rating Threshold” the minimum Credit Rating Level for the Supplier as set out in Annex 3 and for each Key Sub-contractor as set out in Schedule 4.3 (*Notified Key Sub-contractors*); and
- “Rating Agencies” the rating agencies listed in Annex 1.

### 2 CREDIT RATING AND DUTY TO NOTIFY

- 2.1 The Supplier warrants and represents to the Authority for the benefit of the Authority that as at the Effective Date the long term credit ratings issued for the Supplier by each of the Rating Agencies are as set out in Annex 3.
- 2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if there is any downgrade in the credit rating issued by any Rating Agency for either the Supplier (and in any event within 10 Working Days of the occurrence of the downgrade).
- 2.3 If there is any downgrade credit rating issued by any Rating Agency for the Supplier, the Supplier shall ensure that the Supplier’s auditors thereafter provide the Authority within 10 Working Days of the end of each Contract Year and within 10 Working Days of written request by the Authority (such requests not to exceed 4 in any Contract Year) with written calculations of the quick ratio for the Supplier as at the end of each Contract Year or such other date as may be requested by the Authority. For these purposes the “quick ratio” on any date means:

$$\frac{A + B + C}{D}$$

where:

- A is the value at the relevant date of all cash in hand and at the bank of the Supplier;
- B is the value of all marketable securities held by the Supplier determined using closing prices on the Working Day preceding the relevant date;
- C is the value at the relevant date of all account receivables of the Supplier; and
- D is the value at the relevant date of the current liabilities of the Supplier.

- 2.4 The Supplier shall:
- (a) regularly monitor the credit ratings of the Supplier and each Key Sub-contractor with the Rating Agencies; and

- (b) promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or Key Sub-contractor Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-contractor Financial Distress Event (and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event, the Key Sub-contractor Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-contractor Financial Distress Event).

2.5 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraph 3.1(a), the credit rating of the Supplier or relevant Key Sub-contractor (as the case may be) shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Supplier or relevant Key Sub-contractor (as the case may be) at or below the applicable Credit Rating Level.

### **3 CONSEQUENCES OF A FINANCIAL DISTRESS EVENT**

3.1 In the event of:

- (a) the credit rating of the Supplier or any Key Sub-contractor dropping below the applicable Credit Rating Threshold;
- (b) the Supplier or any Key Sub-contractor issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier or any Key Sub-contractor;
- (d) the Supplier or any Key Sub-contractor committing a material breach of covenant to its lenders;
- (e) a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or
- (f) any of the following:
  - (i) commencement of any litigation against the Supplier or any Key Sub-contractor with respect to financial indebtedness greater than £5 million or obligations under a service contract with a total contract value greater than £5 million;
  - (ii) non-payment by the Supplier or any Key Sub-contractor of any financial indebtedness;
  - (iii) any financial indebtedness of the Supplier or any Key Sub-contractor becoming due as a result of an event of default; or
  - (iv) the cancellation or suspension of any financial indebtedness in respect of the Supplier or any Key Sub-contractor,

in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Agreement;

then, immediately upon notification of the Financial Distress Event (or if the Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in Paragraphs 3.3 to 3.6.

3.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1(e), the Authority shall not exercise any of its rights or remedies under Paragraph 3.3 without first giving the Supplier 10 Working Days to:

- (a) rectify such late or non-payment; or
- (b) demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.

3.3 The Supplier shall (and shall procure that any relevant Key Sub-contractor shall):

- (a) at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within 3 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement; and
- (b) where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 3.3(a)) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement:
  - (i) submit to the Authority for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing); and
  - (ii) provide such financial information relating to the Supplier as the Authority may reasonably require.

3.4 The Authority shall not withhold its approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Authority does not approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Authority within 5 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the Authority or referred to the Dispute Resolution Procedure under Paragraph 3.5.

3.5 If the Authority considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Supplier's obligations in accordance with the Agreement, then it may either agree a further time period for

the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.

- 3.6 Following approval of the Financial Distress Service Continuity Plan by the Authority, the Supplier shall:
- (a) on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Agreement;
  - (b) where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 3.6(a), submit an updated Financial Distress Service Continuity Plan to the Authority for its approval, and the provisions of Paragraphs 3.4 and 3.5 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and
  - (c) comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 3.7 Where the Supplier reasonably believes that the relevant Financial Distress Event under Paragraph 3.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 3.6.

#### **4 TERMINATION RIGHTS**

- 4.1 The Authority shall be entitled to terminate this Agreement under Clause 33.1(b) (*Termination by the Authority*) if:
- (a) the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.4(b);
  - (b) the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 3.3 to 3.5; and/or
  - (c) the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 3.6(c).

#### **5 PRIMACY OF CREDIT RATINGS**

- 5.1 Without prejudice to the Supplier's obligations and the Authority's rights and remedies under Paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of Paragraphs 3.1(b) to 3.1(f), the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:
- (a) the Supplier shall be relieved automatically of its obligations under Paragraphs 3.3 to 3.6; and
  - (b) the Authority shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 3.3(b)(ii).



**ANNEX 1**  
**RATING AGENCIES**

- Dun and Bradstreet

## **ANNEX 2**

### **CREDIT RATING LEVELS**

- D&B Rating 3A1
- Financial Strength 3A
- Risk indicator 1 (minimum risk of business failure)

### ANNEX 3

#### CREDIT RATINGS AND CREDIT RATING THRESHOLDS

Entity	Credit rating (long term)	Credit Rating Threshold
NFER	3A1	Text
Cito B.V.	N2	Text

**AGREEMENT FOR THE SUPPLY OF SERVICES RELATING TO  
NATIONAL REFERENCE TESTS**

**SCHEDULE 7.5**

**FINANCIAL REPORTS AND AUDIT RIGHTS**

## Financial Reports and Audit Rights

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>“Annual Contract Report”</b>	the annual contract report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B of this Schedule 7.5;
<b>“Audit Agents”</b>	(a) the Authority’s internal and external auditors; (b) the Authority’s statutory or regulatory auditors; (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (d) HM Treasury or the Cabinet Office; (e) any party formally appointed by the Authority to carry out audit or similar review functions; and (f) successors or assigns of any of the above;
<b>“Contract Amendment Report”</b>	the contract amendment report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B of this Schedule 7.5;
<b>“Final Reconciliation Report”</b>	the final reconciliation report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B of this Schedule 7.5;
<b>“Financial Model”</b>	the Initial Financial Model, the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently approved by the Authority in accordance with Paragraph 2 of Part B of this Schedule 7.5;
<b>“Financial Reports”</b>	the Initial Financial Model and the reports listed in the table in Paragraph 1.1 of Part B of this Schedule 7.5;
<b>“Financial Representative”</b>	a reasonably skilled and experienced member of the Supplier Personnel who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Financial Reports;
<b>“Initial Financial Model”</b>	the initial financial model set out in Annex 1 to Schedule 7.5;
<b>“Material Change”</b>	a Change which: (a) materially changes the profile of the Charges; or (b) varies the total Charges payable during the Term (as forecast in the latest Financial Model) by: (i) 5% or more; or (ii) £1 million or more.

**PART A**  
**NOT USED**

## PART B

### Financial Reports

#### 1 PROVISION OF THE FINANCIAL REPORTS

- 1.1 The Initial Financial Model is set out in Annex 1 to this Schedule 7.5. During the Term the Supplier shall provide the following Financial Reports to the Authority, in the frequency specified below:

Financial Report	When to be provided
Contract Amendment Report	Within 1 month of a Material Change being agreed between the Supplier and the Authority
Annual Contract Report	Within 1 month of the end of the Contract Year to which that report relates
Final Reconciliation Report	Within 6 months after the end of the Term

- 1.2 The Supplier shall provide to the Authority the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as Annex 1 to this Schedule 7.5. The Authority shall be entitled to make reasonable modifications to the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.
- 1.3 A copy of each Financial Report shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.
- 1.4 Each Financial Report shall:
- (a) be completed by the Supplier using reasonable skill and care;
  - (b) incorporate and use the same defined terms as are used in this Agreement;
  - (c) quote all monetary values in pounds sterling;
  - (d) quote all costings (inclusive of VAT paid by the Supplier) and/or Charges (exclusive of any VAT) (as applicable); and
  - (e) quote all costings and/or Charges (as applicable) based on current prices.
- 1.5 Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Financial Report), acting with express authority, as:
- (a) being accurate and not misleading;
  - (b) having been prepared in conformity with generally accepted accounting

principles within the United Kingdom;

- (c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and
- (d) compliant with the requirements of Paragraph 1.6.

1.6 The Supplier shall:

- (a) prepare each Financial Report using the same methodology as that used for the Initial Financial Model;
- (b) ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the costs and Supplier profit margin forecast by the Supplier.

1.7 During the Term, and for a period of 18 months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Authority may have on any of the Financial Reports.

1.8 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:

- (a) the costs incurred (or those forecast to be incurred) by the Supplier; and/or
- (b) the forecast Charges for the remainder of the Term,

the Supplier shall, as soon as practicable, notify the Authority in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this Paragraph 1.8 shall not have the effect of amending any provisions of this Agreement.

## **2 FINANCIAL MODEL**

2.1 Following the delivery by the Supplier of each Annual Contract Report and any Contract Amendment Report:

- (a) the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;
- (b) the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the Initial Financial Model or immediately preceding Annual Contract Report or Contract Amendment Report (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Authority; and
- (c) the Authority shall either within 10 Working Days of the meeting referred to in Paragraph 2.1(a) notify the Supplier that:
  - (i) the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the Supplier shall make any necessary modifications to the Financial Report and/or supply the Authority with such supporting evidence as is required to address the Authority's concerns within



10 Working Days of such notification and the Authority shall following receipt of such amended Financial Report and/or supporting information, approve or reject such Financial Report; or

(ii) the Authority has approved the relevant Financial Report.

2.2 Following approval by the Authority of the relevant Financial Report in accordance with Paragraph 2.1(c), that version shall become, with effect from the date of such approval, the current approved version of the Financial Model for the purposes of this Agreement, a version of which shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.

2.3 If the Parties are unable to reach agreement on any Financial Report within 30 Working Days of its receipt by the Authority, the matter shall be referred for determination in accordance with Schedule 8.3 (*Dispute Resolution Procedure*).

### **3 DISCUSSION OF FINAL RECONCILIATION REPORT**

3.1 NOT USED.

3.2 Following the delivery by the Supplier of the Final Reconciliation Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

### **4 KEY SUB-CONTRACTORS**

4.1 The Supplier shall, if requested by the Authority, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.

4.2 Without prejudice to Paragraph 1.1 of Part C, the Supplier shall:

- (a) be responsible for reviewing the financial models/reports of its Key Sub-contractors and for any associated costs and expenses incurred or forecast to be incurred; and
- (b) on written request by the Authority, provide the Authority or procure that the Authority is provided with:
  - (i) full copies of audit reports for the Key Sub-contractors. The Authority shall be entitled to rely on such audit reports; and
  - (ii) further explanation of, and supporting information in relation to, any audit reports provided.

## PART C

### Audit Rights

#### 1 AUDIT RIGHTS

1.1 The Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Agreement, including for the following purposes:

- (a) to verify the integrity and content of any Financial Report;
- (b) to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments);
- (c) NOT USED;
- (d) NOT USED;
- (e) to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
- (f) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- (g) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Key Sub-contractors or their ability to perform the Services;
- (h) to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (i) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
- (j) to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
- (k) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (l) to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
- (m) to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;

- (n) to inspect the Supplier's IT environment (or any part of it) and the wider service delivery environment (or any part of it);
  - (o) to review the accuracy and completeness of the Registers;
  - (p) to review any records created during the Term;
  - (q) to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
  - (r) to review the Supplier's compliance with the Standards;
  - (s) to inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or
  - (t) to review the integrity, confidentiality and security of the Authority Data.
- 1.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement, the Authority may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.
- 1.3 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

## **2 CONDUCT OF AUDITS**

- 2.1 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 2.2 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:
- (a) all information requested by the Authority within the permitted scope of the audit;
  - (b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
  - (c) access to the Supplier Solution; and
  - (d) access to Supplier Personnel.
- 2.3 NOT USED.
- 2.4 The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.

- 2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

### **3 USE OF SUPPLIER'S INTERNAL AUDIT TEAM**

- 3.1 As an alternative to the Authority's right pursuant to Paragraph 1.1 to exercise an audit either itself or through its Audit Agents, the Authority may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Paragraph 1.1.
- 3.2 Following the receipt of a request from the Authority under Paragraph 3.1 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:
- (a) the resultant audit reports; and
  - (b) all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

### **4 RESPONSE TO AUDITS**

- 4.1 If an audit undertaken pursuant to Paragraphs 1 or 3 identifies that:
- (a) the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
  - (b) there is an error in a Financial Report, the Supplier shall promptly rectify the error;
  - (c) the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
    - (i) the amount overpaid;
    - (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
    - (iii) the reasonable costs incurred by the Authority in undertaking the audit,the Authority may exercise its right to deduct such amount from the Charges if it prefers; and
  - (d) the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.

## Annex 1

### Form of Initial Financial Model

The following Financial Model details the breakdown of the total Charges by "Cost Element" for the Services and the Supplier's performance of its obligations under this Agreement. A breakdown of the Supplier Personnel (including Sub-contractor) resources is provided in the resource plan attached at Annex 2 (Resource Plan):

Cost Element	Strategic Design Services	Detailed Design & Development Services	Delivery Services	Forecast for recovery of capital expenditure incurred by the Supplier during the Term	Notes
	£ (excluding VAT and including Supplier Margin)				
<b>Supplier Personnel</b>					
<b>Fixed</b>	Value	Value	Value	Text	Includes Supplier Personnel on permanent or fixed term contracts 1 year or longer on a full time or part time basis.
<b>Temporary</b>	Value	Value	Value	Text	Includes temporary / agency staff and consultants and employees on fixed term contracts less than 1 year on a full time or part time basis.
<b>Recruitment</b>	Value	Value	Value	Text	Includes costs specifically incurred in the recruitment of Supplier Personnel engaged in the provision of the Services.
<b>Training</b>	Value	Value	Value	Text	Includes costs specifically incurred in the training of Supplier Personnel engaged in the provision of the Services.
<b>Expenses</b>	Value	Value	Value	Text	Includes hotel, travel and other subsistence costs for Supplier Personnel engaged in the provision of the Services.

Cost Element	Strategic Design Services	Detailed Design & Development Services	Delivery Services	Forecast for recovery of capital expenditure incurred by the Supplier during the Term	Notes
	£ (excluding VAT and including Supplier Margin)				
Total (Supplier Personnel)	Value	Value	Value	Text	
Supplier Equipment					<b>Note:</b> Where Supplier Equipment is not purchased exclusively for the provision of the Services, clearly indicate the contribution toward the total costs of purchase, lease or hire of such Supplier Equipment.
Hardware - Purchase	Value	Value	Value	Text	Includes costs of purchase of computer equipment (including servers and storage devices) purchased for the provision of the Services.
Hardware - Lease	Value	Value	Value	Text	Includes costs of lease or hire of computer equipment (including servers and storage devices) purchased for the provision of the Services.
Hardware -Support and maintenance	Value	Value	Value	Text	Includes costs for support and maintenance of computer equipment purchased, leased or hired for the provision of the Services.
Telecommunications - Purchase	Value	Value	Value	Text	Includes costs of purchase of telecommunications equipment purchased for the provision of the Services.

Cost Element	Strategic Design Services	Detailed Design & Development Services	Delivery Services	Forecast for recovery of capital expenditure incurred by the Supplier during the Term	Notes
	£ (excluding VAT and including Supplier Margin)				
Telecommunications - Lease	Value	Value	Value	Text	Includes costs of lease or hire of telecommunications equipment purchased for the provision of the Services.
Telecommunications - Support and maintenance	Value	Value	Value	Text	Includes costs for support and maintenance of telecommunications equipment purchased, leased or hired for the provision of the Services.
Total (Supplier Equipment)	Value	Value	Value	Text	
Supplier Software					<b>Note:</b> Where Supplier Software is not purchased exclusively for the provision of the Services, clearly indicate the contribution toward the total costs of costs of such Supplier Software.
Supplier COTS Software	Value	Value	Value	Text	Includes costs of purchase of licences of Supplier COTS Software.
Supplier COTS Software - Support and maintenance	Value	Value	Value	Text	Includes costs of purchase of support and maintenance of Supplier COTS Software.
Supplier Non-COTS Software	Value	Value	Value	Text	Includes costs of purchase of licences of Supplier Non-COTS Software.

Cost Element	Strategic Design Services	Detailed Design & Development Services	Delivery Services	Forecast for recovery of capital expenditure incurred by the Supplier during the Term	Notes
	£ (excluding VAT and including Supplier Margin)				
Supplier Non- COTS Software - Support and maintenance	Value	Value	Value	Text	Includes costs of purchase of support and maintenance of Supplier Non-COTS Software.
Third Party COTS Software	Value	Value	Value	Text	Includes costs of purchase of licences of Third Party COTS Software.
Third Party COTS Software - Support and maintenance	Value	Value	Value	Text	Includes costs of purchase of support and maintenance of Third Party COTS Software.
Third Party Non-COTS Software	Value	Value	Value	Text	Includes costs of purchase of licences of Third Party Non-COTS Software.
Third Party Non-COTS Software - Support and maintenance	Value	Value	Value	Text	Includes costs of purchase of support and maintenance of Third Party Non-COTS Software.
Total (Supplier Software)	Value	Value	Value	Text	
Supplier premises					<b>Note:</b> Where Supplier premises are not used exclusively for the provision of the Services, clearly indicate the contribution toward the total costs of such Supplier premises.
Supplier Personnel accommodation	Value	Value	Value	Text	Includes costs of office accommodation for the Supplier Personnel engaged in the provision of the Services.



Cost Element	Strategic Design Services	Detailed Design & Development Services	Delivery Services	Forecast for recovery of capital expenditure incurred by the Supplier during the Term	Notes
	£ (excluding VAT and including Supplier Margin)				
Services accommodation	Value	Value	Value	Text	Includes costs of accommodation for the provision of the Services (e.g. storage of Supplier Equipment, etc.).
Total (Supplier premises)	Value	Value	Value	Text	
Delivery costs					
Schools engagement costs	Value	Value	Value	Text	Includes the costs of engaging with Schools to encourage engagement in the National Reference Tests.
Printing	Value	Value	Value	Text	Includes the costs of printing Test Booklets and other materials used in the provision of the Delivery Services.
Examination attendance	Value	Value	Value	Text	Includes the costs of attending Schools to administer the National Reference Tests.
Examination marking	Value	Value	Value	Text	Includes the costs of marking completed Test Booklets.
Examination reporting	Value	Value	Value	Text	Includes the costs of reporting the results of the National Reference Tests.
Total (Delivery costs)	Value	Value	Value	Text	
Other					<b>Note:</b> Please list the additional costs associated with the provision of the Services.

Cost Element	Strategic Design Services	Detailed Design & Development Services	Delivery Services	Forecast for recovery of capital expenditure incurred by the Supplier during the Term	Notes
	£ (excluding VAT and including Supplier Margin)				
Data Capture	Value	Value	Value	Text	
Postage & Stationary	Value	Value	Value	Text	
Additional Insurance	Value	Value	Value	Text	
Results Mapping	Value	Value	Value	Text	This is a one off payment in the 2017 during the provision of the Delivery Services.
Total (Other)	Value	Value	Value	Text	
<b>TOTAL</b>	Value	Value	Value	Text	
Supplier Margin (%)	Value	Value	Value	Text	

**Annex 2**  
**Resource Plan**

**Text**

**AGREEMENT FOR THE SUPPLY OF SERVICES RELATING TO  
NATIONAL REFERENCE TESTS**

**SCHEDULE 8.1**

**GOVERNANCE**

## **Governance**

### **1 DEFINITIONS**

In this Schedule, the following definitions shall apply:

<b>“Board Member”</b>	the initial persons appointed by the Authority and Supplier to the Boards as set out in Annex 1 and any replacements from time to time agreed by the Parties in accordance with Paragraph 3.3;
<b>“Boards”</b>	the Service Management Board, Programme Board, Change Management Board and Technical Board and <b>“Board”</b> shall mean any of them;
<b>“Change Management Board”</b>	the body described in Paragraph 6;
<b>“Project Managers”</b>	the individuals appointed as such by the Authority and the Supplier in accordance with Paragraph 2;
<b>“Service Management Board”</b>	the body described in Paragraph 4; and
<b>“Technical Board”</b>	the body described in Paragraph 7.

### **2 MANAGEMENT OF THE SERVICES**

- 2.1 The Supplier and the Authority shall each appoint a project manager for the purposes of this Agreement through whom the Services shall be managed at a day-to-day level.
- 2.2 Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Agreement can be fully realised.

### **3 BOARDS**

#### **Establishment and structure of the Boards**

- 3.1 The Boards shall be established by the Authority for the purposes of this Agreement on which both the Supplier and the Authority shall be represented.
- 3.2 In relation to each Board, the:
  - (a) Authority Board Members;
  - (b) Supplier Board Members;
  - (c) frequency that the Board shall meet (unless otherwise agreed between the Parties);
  - (d) location of the Board's meetings; and
  - (e) planned start date by which the Board shall be established,

shall be as set out in Annex 1.

- 3.3 In the event that either Party wishes to replace any of its appointed Board Members, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority Board Member has at all times a counterpart Supplier Board Member of equivalent seniority and expertise.

#### **Board meetings**

- 3.4 Each Party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:
- (a) a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and
  - (b) he/she is debriefed by such delegate after the Board Meeting.
- 3.5 A chairperson shall be appointed by the Authority for each Board as identified in Annex 1. The chairperson shall be responsible for:
- (a) scheduling Board meetings;
  - (b) setting the agenda for Board meetings and circulating to all attendees in advance of such meeting;
  - (c) chairing the Board meetings;
  - (d) monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;
  - (e) ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within seven (7) Working Days after the Board meeting; and
  - (f) facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.
- 3.6 Board meetings shall be quorate as long as at least two (2) representatives from each Party are present.
- 3.7 The Parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

#### **4 ROLE OF THE SERVICE MANAGEMENT BOARD**

The Service Management Board shall be responsible for the executive management of the Services and shall:

- (a) be accountable to the Programme Board for comprehensive oversight of the Services and for the senior management of the operational relationship between the Parties;
- (b) report to the Programme Board on significant issues requiring decision and resolution by the Programme Board and on progress against the high level Implementation Plan;
- (c) receive reports from the Project Managers on matters such as issues relating to delivery of existing Services and performance against Performance Indicators, progress against the Implementation Plan and possible future developments;
- (d) review and report to the Programme Board on service management, co-ordination of individual projects and any integration issues;
- (e) deal with the prioritisation of resources and the appointment of Project Managers on behalf of the Parties;
- (f) identify, review and report to the Programme Board on ideas for service improvements in respect of the Services;
- (g) identify and manage risks relating to the management of the Services;
- (h) provide assurance to the Programme Board that risks are being effectively managed across the Services, including reporting the 'top 5' risks to the Programme Board on a monthly basis;
- (i) identify the risks to be reported to the Programme Board via the regular risk reports;
- (j) subject to the Change Control Procedure, accept or reject new risks proposed for inclusion in the Risk Register;
- (k) ratify or refuse requests to close risks on the Risk Register;
- (l) identify risks relating to or arising out of the performance of the Services and provisional owners of these risks;
- (m) NOT USED; and
- (n) develop operational/supplier relationships and develop and propose the relationship development strategy and ensure the implementation of the same.

## **5 ROLE OF THE PROGRAMME BOARD**

### **5.1 The Programme Board shall:**

- (a) provide senior level guidance, leadership and strategy for the overall delivery of the Services;
- (b) be the point of escalation from the Change Management Board, the Technical Board and the Service Management Board; and

- (c) carry out the specific obligations attributed to it in Paragraph 5.2.

5.2 The Programme Board shall:

- (a) ensure that this Agreement is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by the Authority and the commercial benefit derived by the Supplier;
- (b) receive and review reports from the Service Management Board and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;
- (c) determine business strategy and provide guidance on policy matters which may impact on the implementation of the Services or on any Optional Services;
- (d) authorise the commissioning and initiation of, and assess opportunities for, Optional Services; and
- (e) provide guidance and authorisation to the Change Management Board on relevant Changes.

**6 ROLE OF THE CHANGE MANAGEMENT BOARD**

6.1 The Change Management Board shall assess the impact and approve or reject all Change Requests. Changes which will have a significant impact on the Services shall be escalated to the Programme Board.

6.2 The Change Management Board shall:

- (a) analyse and record the impact of all Changes, specifically whether the proposed Change:
  - (i) has an impact on other areas or aspects of this Agreement and/or other documentation relating to the Services;
  - (ii) has an impact on the ability of the Authority to meet its agreed business needs within agreed time-scales;
  - (iii) will raise any risks or issues relating to the proposed Change; and
  - (iv) will provide value for money in consideration of any changes to the Financial Model and future Charges;
- (b) provide recommendations, seek guidance and authorisation from the Programme Board, as required; and
- (c) approve or reject (close) all proposed Changes.

**7 ROLE OF THE TECHNICAL BOARD**

7.1 The Technical Board shall be accountable to the Programme Board for oversight of the delivery of the Services, ensuring that the Services provide a positive benefit to the maintenance of GCSE Standards in English Language and Mathematics.



7.2 The Technical Board shall:

- (a) ensure compliance with the curriculum and Standards;
- (b) grant dispensations for variations from such compliance where appropriate;
- (c) assure the relevance of the approach taken to test sampling;
- (d) assure the relevance of the approach taken to the design, development and delivery of test questions and the analysis of test results;
- (e) assure the coherence and consistency of the operational architecture for the Supplier Solution;
- (f) monitor developments in the curriculum, psychometrics, new technology and reporting on their potential benefit to the Services;
- (g) provide advice, guidance and information on issues associated with the curriculum, psychometrics, and changes in technology; and
- (h) assure that the operational and technical architecture of the Supplier Solution is aligned to the Authority Requirements and has sufficient flexibility to cope with future requirements of the Authority.

**8 CONTRACT MANAGEMENT MECHANISMS**

8.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Agreement.

8.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for:

- (a) the identification and management of risks;
- (b) the identification and management of issues; and
- (c) monitoring and controlling project plans.

8.3 The Risk Register shall be updated by the Supplier and submitted for review by the Service Management Board.

**9 ANNUAL REVIEW**

9.1 An annual review meeting shall be held throughout the Term on a date to be agreed between the Parties.

9.2 The meetings shall be attended by the Director of Research and Project Director of the Supplier and the Chief Regulator of the Authority and any other persons considered by the Authority necessary for the review.

## ANNEX 1

### Service Management Board Representation and Structure

Authority Board Members of Service Management Board	National Reference Test Project Director (Chairperson) Other Authority Board Members to be advised by the Authority prior to the relevant meeting
Supplier Board Members of Service Management Board	Project Director(or Assessment Manager) (all phases) with:  Design Lead during Strategic Design Phase and Detailed Design and Development Phase  Delivery Lead during Detailed Design and Development Phase and Delivery Phase
Start Date for Service Management Board meetings	One (1) week after the Effective Date
Frequency of Service Management Board meetings	Monthly
Location of Service Management Board meetings	Authority Premises

### Programme Board Representation and Structure

Authority Board Members of Programme Board	Executive Director, General Qualifications (Chairperson) Other Authority Board Members to be advised by the Authority prior to the relevant meeting
Supplier Board Members of Programme Board	Project Director and/or Assessment Manager Other key personnel relevant to the stage in the project, to be advised by the Supplier prior to the meeting
Start date for Programme Board meetings	Six (6) weeks after the Effective Date
Frequency of Programme Board meetings	Quarterly
Location of Programme Board meetings	Authority Premises

### Change Management Board Representation and Structure

Authority Board Members of Change Management Board	National Reference Test Project Director (Chairperson) Other Authority Board Members to be advised by the Authority prior to the relevant meeting
Supplier Board Members of Change Management Board	Project Director(or Assessment Manager) and/or Design Lead Delivery Lead Sampling and Psychometrics Design Lead if required
Start Date for Change Management Board meetings	Five (5) weeks after Effective Date
Frequency of Change Management Board meetings	Monthly (if required)
Location of Change Management Board meetings	Authority Premises

### Technical Board Representation and Structure

Authority Board Members of Technical Board	National Reference Test Project Director (Chairperson) Other Authority Board Members to be advised by the Authority prior to the relevant meeting
Supplier Board Members of Technical Board	Assessment Manager Design Lead Delivery Lead Sampling and Psychometrics Lead (Project Director if required) Other Supplier key personnel relevant to the stage in the project, to be advised by the Supplier prior to the meeting
Start Date for Technical Board meetings	Three (3) weeks after Effective Date
Frequency of Technical Board meetings	Monthly (if required)
Location of Technical Board meetings	Authority Premises

**AGREEMENT FOR THE SUPPLY OF SERVICES RELATING TO  
NATIONAL REFERENCE TESTS**

**SCHEDULE 8.2**

**CHANGE CONTROL PROCEDURE**

## Change Control Procedure

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>“Authority Change Manager”</b>	the person appointed to that position by the Authority from time to time and notified in writing to the Supplier or, if no person is notified, the Authority Representative;
<b>“Change Request”</b>	a written request for a Contract Change which shall be substantially in the form of Annex 1;
<b>“Change Communication”</b>	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
<b>“Fast-track Change”</b>	any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;
<b>“Impact Assessment”</b>	an assessment of a Change Request in accordance with Paragraph 5;
<b>“Impact Assessment Estimate”</b>	has the meaning given in Paragraph 4.3;
<b>“Receiving Party”</b>	the Party which receives a proposed Contract Change; and
<b>“Supplier Change Manager”</b>	the person appointed to that position by the Supplier from time to time and notified in writing to the Authority or, if no person is notified, the Supplier Representative.

### 2 GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

- 2.1 This Schedule sets out the procedure for dealing with Contract Changes.
- 2.2 Operational Changes shall be processed in accordance with Paragraph 9. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.
- 2.3 The Parties shall deal with Contract Changes as follows:
- (a) either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
  - (b) unless this Agreement otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 before the Contract Change can be either approved or implemented;
  - (c) the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;

- (d) the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;
  - (e) save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2; and
  - (f) if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.
- 2.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule 6.2 (*Testing and Assurance Procedures*), and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.
- 2.5 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2, then:
- (a) unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and
  - (b) any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Agreement.
- 2.6 The Supplier shall:
- (a) within 10 Working Days of the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
  - (b) thereafter provide to the Authority such further copies of the updated Agreement as the Authority may from time to time request.

### **COSTS**

#### **3.1 Subject to Paragraphs 3.3 and 3.4:**

- (a) the costs of preparing each Change Request shall be borne by the Party making the Change Request; and
- (b) the costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Party making the Change Request, provided that the Authority shall not be required to pay any such costs if:
  - (i) such costs are below £1,000;

- (ii) the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or
  - (iii) such costs exceed those in the accepted Impact Assessment Estimate.
- 3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Schedule 7.1 (*Charges and Invoicing*). The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.
- 3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier. In particular:
  - (a) the Supplier shall be liable for the costs of any change to the Supplier Solution (including increases or amendments to the elements of its Supplier Solution such as sample size and the number of Test booklets) required in order meet the required level of precision for the National Reference Tests set out in Schedule 2.1 (Services Description) and/or any of the Authority's other requirements set out in this Agreement; and
  - (b) the Supplier shall be liable for all costs resulting from a disclosure of any Test questions and/or marking scheme caused by an act or omission of the Supplier, its employees, agents or contractors including, without limitation, the costs of rewriting the questions, rectifying the reason for the disclosure and the costs of any extra testing (including field trials) which is required to demonstrate comparability of the new Test with the old (disclosed) Test,and the Supplier shall not be entitled to any increase in any Milestone Payment or in any other Charges in the event it is required to make any such change.
- 3.4 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Authority shall be paid for by the Authority and, in such event, the Supplier shall be entitled to include in the relevant Impact Assessment(s) completed under Paragraph 5 details of any additional costs required by the relevant Contract Change.

#### **4 CHANGE REQUEST**

- 4.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 1 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.
- 4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within 10 Working Days of the date of issuing the Change Request.
- 4.3 If the Authority issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within 10 Working Days of the date of

receiving the Change Request an estimate (“**Impact Assessment Estimate**”) of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Authority within 10 Working Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Authority.

4.4 If the Authority accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Authority as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient information is received by the Authority to fully understand:

- (a) the nature of the request for clarification; and
- (b) the reasonable justification for the request,

the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

## **5 IMPACT ASSESSMENT**

5.1 Each Impact Assessment shall be completed in good faith and shall include:

- (a) details of the proposed Contract Change including the reason for the Contract Change;
- (b) details of the impact of the proposed Contract Change on the Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Agreement;
- (c) any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:
  - (i) the Services Description, the Performance Indicators and/or the Target Performance Levels;
  - (ii) the format of Authority Data, as set out in the Services Description;
  - (iii) the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;
  - (iv) other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority's IT infrastructure;
- (d) details of the cost of implementing the proposed Contract Change;
- (e) details of the on-going costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;



- (f) a timetable for the implementation, together with any proposals for the testing of the Contract Change;
  - (g) details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
  - (h) such other information as the Authority may reasonably request in (or in response to) the Change Request.
- 5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 23 (*Protection of Personal Data*).
- 5.3 Subject to the provisions of Paragraph 5.4, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment, it.
- 5.4 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within 5 Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority within 10 Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
- 5.5 The calculation of costs for the purposes of Paragraphs 5.1(d) and (e) shall:
- (a) be based on the Financial Model;
  - (b) NOT USED;
  - (c) include estimated volumes of each type of resource to be employed and the applicable rate card;
  - (d) include full disclosure of any assumptions underlying such Impact Assessment;
  - (e) include evidence of the cost of any assets required for the Change; and
  - (f) include details of any new Sub-contracts necessary to accomplish the Change.

## **6 AUTHORITY'S RIGHT OF APPROVAL**

- 6.1 Within 15 Working Days of receiving the Impact Assessment from the Supplier or within 10 Working Days of receiving the further information that it may request pursuant to Paragraph 5.4, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:
- (a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
  - (b) in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any

proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or

- (c) in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within 5 Working Days of such request. Subject to Paragraph 5.4, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change within 10 Working Days.

6.2 If the Authority approves the proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 7, then it shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. The Authority's signature of the Change Authorisation Note shall constitute (or, where the Authority has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Agreement.

6.3 If the Authority does not sign the Change Authorisation Note within 10 Working Days, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within 5 Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

## **7 SUPPLIER'S RIGHT OF APPROVAL**

7.1 Following an Impact Assessment, if:

- (a) the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:
  - (i) materially and adversely affect the risks to the health and safety of any person; and/or
  - (ii) require the Services to be performed in a way that infringes any Law; and/or
- (b) the Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and/or flexibility required to implement the proposed Contract Change,

then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within 5 Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 4.3.

## **8 FAST-TRACK CHANGES**

8.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.

8.2 If:

- (a) the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed 4 in any 12 month period; and
- (b) both Parties agree the value of the proposed Contract Change over the remaining Term and any period for which Termination Services may be required does not exceed £25,000 and the proposed Contract Change is not significant (as determined by the Authority acting reasonably),

then the Parties shall confirm to each other in writing that they shall use the process set out in Paragraphs 4, 5, 6 and 7 but with reduced timescales, such that any period of 15 Working Days is reduced to 5 Working Days, any period of 10 Working Days is reduced to 2 Working Days and any period of 5 Working Days is reduced to 1 Working Day.

8.3 The Parties may agree in writing to revise the parameters set out in Paragraph 8.2 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Contract Change notwithstanding that the total number of Contract Changes to which such procedure is applied will then exceed 4 in a 12 month period.

## **9 OPERATIONAL CHANGE PROCEDURE**

9.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes, provided they do not:

- (a) have an impact on the business of the Authority;
- (b) require a change to this Agreement;
- (c) have a direct impact on use of the Services;
- (d) involve the Authority in paying any additional Charges or other costs; or
- (e) have an adverse effect on the Authority's use of the Test results year on year to evaluate changes in performance standards or the inter-year comparability in the results of the NRT.

9.2 The Authority may request an Operational Change by submitting a written Request for Operational Change (“RFOC”) to the Supplier Representative.

9.3 The RFOC shall include the following details:

- (a) the proposed Operational Change; and
- (b) the time-scale for completion of the Operational Change.

- 9.4 The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.
- 9.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Authority when the Operational Change is completed.

10 **COMMUNICATIONS**

For any Change Communication to be valid under this Schedule, it must be sent to either the Authority Change Manager or the Supplier Change Manager, as applicable. The provisions of Clause 44 (*Notices*) shall apply to a Change Communication as if it were a notice.

**ANNEX 1**

**Change Request Form**

CR NO.:	TITLE:	TYPE OF CHANGE:
CONTRACT:	REQUIRED BY DATE:	
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED ( <i>OPTIONAL FIELD</i> ):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

**ANNEX 2**

**Change Authorisation Note**

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
[KEY MILESTONE DATE: <i>[if any]</i> ]		
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS):		
SIGNED ON BEHALF OF THE AUTHORITY:		SIGNED ON BEHALF OF THE SUPPLIER:
Signature: _____		Signature: _____
Name: _____		Name: _____
Position: _____		Position: _____
Date: _____		Date: _____

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**AGREEMENT FOR THE SUPPLY OF SERVICES RELATING TO  
NATIONAL REFERENCE TESTS**

**SCHEDULE 8.3**

**DISPUTE RESOLUTION PROCEDURE**

## Dispute Resolution Procedure

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“CEDR”	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
“Counter Notice”	has the meaning given in Paragraph 7.2;
“Expert”	in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute;
“Expert Determination”	determination by an Expert in accordance with Paragraph 6;
“Mediation Notice”	has the meaning given in Paragraph 4.2;
“Mediator”	the independent third party appointed in accordance with Paragraph 5.2 to mediate a Dispute;
“Multi-Party Dispute”	a Dispute which involves the Parties and one or more Related Third Parties;
“Multi-Party Dispute Representatives”	has the meaning given in Paragraph 9.6;
“Multi-Party Dispute Resolution Board”	has the meaning given in Paragraph 9.6;
“Related Third Party”	a party to: (a) another contract with the Authority or the Supplier which is relevant to this Agreement; or (b) a Sub-contract; and
“Supplier Request”	a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

### 2 DISPUTE NOTICES

2.1 If a Dispute arises then:

- (a) the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
- (b) if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute



Notice.

2.2 A Dispute Notice:

(a) shall set out:

- (i) the material particulars of the Dispute;
- (ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
- (iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and

(b) may specify in accordance with the requirements of Paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case Paragraph 2.3 shall apply.

2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to Paragraph 2.2(b), then:

(a) if it is served by the Authority it shall be treated as a Multi-Party Procedure Initiation Notice; and

(b) if it is served by the Supplier it shall be treated as a Supplier Request,

and in each case the provisions of Paragraph 9 shall apply.

2.4 Subject to Paragraphs 2.5 and 3.2 and so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:

(a) first by commercial negotiation (as prescribed in Paragraph 4);

(b) then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5); and

(c) lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 46 (*Governing Law and Jurisdiction*)).

2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.

2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice.

**3 EXPEDITED DISPUTE TIMETABLE**

3.1 In exceptional circumstances where the use of the times in this Schedule would be

unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within 5 Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.

- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
- (a) in Paragraph 4.2(c), 10 Working Days;
  - (b) in Paragraph 5.2, 10 Working Days;
  - (c) in Paragraph 6.2, 5 Working Days; and
  - (d) in Paragraph 7.2, 10 Working Days.
- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

#### **4 COMMERCIAL NEGOTIATION**

- 4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Authority's Chief Operating Officer and the Supplier's Commercial Director and Company Secretary.
- 4.2 If:
- (a) either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;
  - (b) the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this Paragraph 4; or
  - (c) the Parties have not settled the Dispute in accordance with Paragraph 4.1 within 30 Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation in accordance with Paragraph 5 (a "**Mediation Notice**").

#### **5 MEDIATION**

- 5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to be incorporated by reference into this Agreement.

- 5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within 20 Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.
- 5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 5.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

## **6 EXPERT DETERMINATION**

- 6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a matter of an IT technical, financial technical or other technical nature (as the Parties may agree) and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 or, if applicable, mediation in accordance with Paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.
- 6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Working Days of the relevant request made pursuant to Paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:
- (a) if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);
  - (b) if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
  - (c) if the Dispute relates to a matter of a technical nature not falling within Paragraphs 6.2(a) or (b), on the instructions of the president (or equivalent) of:
    - (i) an appropriate body agreed between the Parties; or
    - (ii) if the Parties do not reach agreement on the relevant body within 15 Working Days of the relevant request made pursuant to Paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.
- 6.3 The Expert shall act on the following basis:
- (a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;

- (b) the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- (d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the Parties;
- (e) the process shall be conducted in private and shall be confidential; and
- (f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

## **7 ARBITRATION**

- 7.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.
- 7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have 15 Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.
- 7.3 If the Authority serves a Counter Notice, then:
  - (a) if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or
  - (b) if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.
- 7.4 If the Authority does not serve a Counter Notice within the 15 Working Day period referred to in Paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
- 7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:
  - (a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**") (subject to Paragraphs 7.5(e), (f) and (g));

- (b) the arbitration shall be administered by the LCIA;
- (c) the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) if the Parties fail to agree the appointment of the arbitrator within 10 Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the chair of the arbitral tribunal shall be British;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the seat of the arbitration shall be London.

## **8 URGENT RELIEF**

Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

- (a) for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or
- (b) where compliance with Paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

## **9 MULTI-PARTY DISPUTES**

- 9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 9 (the "**Multi-Party Dispute Resolution Procedure**").
- 9.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier which sets out the Authority's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a "**Multi-Party Procedure Initiation Notice**".
- 9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with Paragraph 7, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.
- 9.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:

- (a) a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
  - (b) not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 8.
- 9.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
- 9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the “**Multi-Party Dispute Resolution Board**”) comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:
  - (a) the Authority;
  - (b) the Supplier;
  - (c) each Related Third Party involved in the Multi-Party Dispute; and
  - (d) any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,(together “**Multi-Party Dispute Representatives**”).
- 9.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:
  - (a) the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall endeavour to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
  - (b) the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within 5 Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
  - (c) in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.
- 9.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third

Parties within 25 Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:

- (a) either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Paragraph 5 shall apply;
- (b) either Party may request that the Multi-Party Dispute is referred to an expert in which case Paragraph 6 shall apply; and/or
- (c) subject to Paragraph 9.9, Paragraph 7 shall apply to the Multi-Party Dispute,

and in each case references to the “Supplier” or the “Parties” in such provisions shall include a reference to all Related Third Parties.

- 9.9 If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-Contractor, by the Supplier.

**AGREEMENT FOR THE SUPPLY OF SERVICES RELATING TO  
NATIONAL REFERENCE TESTS**

**SCHEDULE 8.4**

**RECORDS PROVISION**



## Records Provisions

### 1 REPORTS

The Authority may require any or all of the following reports:

- (a) delay reports;
- (b) reports relating to Testing and tests carried out under Schedule 2.4 (*Security Management*) and Schedule 8.6 (*Business Continuity and Disaster Recovery*);
- (c) reports which the Supplier is required to supply as part of the Management Information;
- (d) annual reports on the Insurances;
- (e) security reports; and
- (f) Force Majeure Event reports.

### 2 RECORDS

- 2.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Annex 1 (together, the “**Records**”):
  - (a) in accordance with the requirements of the Public Records Office (PRO) and Good Industry Practice;
  - (b) in chronological order;
  - (c) in a form that is capable of audit; and
  - (d) at its own expense.
- 2.2 The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.
- 2.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.
- 2.4 The Supplier shall, during the Term and a period of at least 7 years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.
- 2.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least 7 years after the expiry or termination of this Agreement.
- 2.6 Without prejudice to the foregoing, the Supplier shall provide the Authority:
  - (a) as soon as they are available, and in any event within 60 Working Days after the end of the first 6 months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the

Supplier, of its un-audited interim management accounts and, if applicable, of consolidated un-audited interim management accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such 6 month period; and

- (b) as soon as they shall have been sent to its shareholders or trustees (as applicable) in order to be laid before an annual general meeting of the Supplier, but not later than 180 Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders or trustees (as applicable).

## ANNEX 1

### Records to be kept by the Supplier

The Records to be kept by the Supplier are:

1. This Agreement, its Schedules and all amendments to such documents.
2. All other documents which this Agreement expressly requires to be prepared.
3. Records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel.
4. Notices, reports and other documentation submitted by any Expert.
5. All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT Environment and Supplier Equipment.
6. Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
7. All formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of the Services.
8. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
9. Documents prepared by the Supplier in support of claims for the Charges.
10. Documents submitted by the Supplier pursuant to the Change Control Procedure.
11. Documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure.
12. Documents evidencing any change in trusteeship, ownership or any interest in the Supplier, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
13. Invoices and records related to VAT sought to be recovered by the Supplier.
14. Financial records, including audited and un-audited accounts of the Supplier.
15. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
16. All documents relating to the insurances to be maintained under this Agreement and any claims made in respect of them.
17. All journals and audit trail data referred to in Schedule 2.4 (*Security Management Plan*).
18. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement.

**AGREEMENT FOR THE SUPPLY OF SERVICES RELATING TO  
NATIONAL REFERENCE TESTS**

**SCHEDULE 8.5**

**EXIT MANAGEMENT**

## Exit Management

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>“Emergency Exit”</b>	any termination of this Agreement which is a: <ul style="list-style-type: none"><li>(a) termination of the whole or part of this Agreement in accordance with Clause 33 (<i>Termination Rights</i>), except where the period of notice given under that Clause is greater than or equal to 6 months;</li><li>(b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 33 (<i>Termination Rights</i>); or</li><li>(c) wrongful termination or repudiation of this Agreement by either Party;</li></ul>
<b>“Exclusive Assets”</b>	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;
<b>“Exit Information”</b>	has the meaning given in Paragraph 3.1;
<b>“Exit Manager”</b>	the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties’ respective obligations under this Schedule;
<b>“Net Book Value”</b>	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of the same date as this Agreement;
<b>“Non-Exclusive Assets”</b>	those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services but which are also used by the Supplier or Key Sub-contractor for other purposes of material value;
<b>“Ordinary Exit”</b>	any termination of this Agreement which occurs: <ul style="list-style-type: none"><li>(a) pursuant to Clause 33 (<i>Termination Rights</i>) where the period of notice</li></ul>

given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or

(b) as a result of the expiry of the Initial Term or any Extension Period;

**“Registers”**

the register and configuration database referred to in Paragraphs 2.1(a) and 2.1(b);

**“Transferable Assets”**

those of the Exclusive Assets which are capable of legal transfer to the Authority, as set out in Annex 2 (Transferable Assets);

**“Transferring Contracts”**

has the meaning given in Paragraph 6.2(c).

**2 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT**

2.1 During the provision of the Detailed Design & Development Services and for the remainder of the Term, the Supplier shall:

- (a) create and maintain a Register of all:
  - (i) Assets, detailing (where relevant) their:
    - (A) make, model and asset number;
    - (B) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
    - (C) Net Book Value;
    - (D) condition and physical location; and
    - (E) use (including technical specifications); and
  - (ii) Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
- (b) NOT USED;
- (c) agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
- (d) at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.

- 2.2 The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.
- 2.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within 3 months of the Effective Date:
- (a) Each Party's Exit Manager shall be responsible for ensuring that the relevant Party's employees, agents and, in the case of the Supplier, Sub-contractors comply with the relevant Party's obligations under this Schedule;
  - (b) Each Party shall ensure that their respective Exit Managers have the requisite authority to arrange and procure any resources of the relevant Party as are reasonably necessary to enable the relevant Party to comply with the requirements set out in this Schedule; and
  - (c) Each Party's Exit Manager shall liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule and each Party's compliance with it.

### **3 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES**

- 3.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
- (a) details of the Service(s);
  - (b) a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
  - (c) an inventory of Authority Data in the Supplier's possession or control;
  - (d) NOT USED;
  - (e) a list of on-going and/or threatened disputes in relation to the provision of the Services;
  - (f) to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Agreement; and
  - (g) such other material and information as the Authority shall reasonably require, (together, the "Exit Information").
- 3.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement, except that the Authority shall not under this Paragraph 3.2 disclose any Supplier's Confidential

Information which shall expressly include the Commercially Sensitive Information and specifically set out in Schedule 4.2 (Commercially Sensitive Information).

3.3 The Supplier shall:

- (a) notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and
- (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Authority.

3.4 The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than 3 updates in any 6 month period.

3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

- (a) prepare an informed offer for those Services; and
- (b) not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

**4 EXIT PLAN**

4.1 The Supplier shall, within 3 months after the Effective Date, deliver to the Authority an Exit Plan which:

- (a) sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Authority and/or its Replacement Supplier on the expiry or termination of this Agreement;
- (b) complies with the requirements set out in Paragraph 4.2; and
- (c) is otherwise reasonably satisfactory to the Authority.

4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

4.3 The Exit Plan shall set out, as a minimum:

- (a) how the Exit Information is obtained;
- (b) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;



- (c) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
  - (d) the management structure to be employed during the Termination Assistance Period;
  - (e) a detailed description of both the transfer and cessation processes, including a draft timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
  - (f) how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
  - (g) the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Annex 1 as are applicable);
  - (h) a draft timetable and list of potential critical issues for providing the Termination Services;
  - (i) any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
  - (j) how the Termination Services would be provided (if required) during the Termination Assistance Period;
  - (k) procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 9.1 (*Staff Transfer*); and
  - (l) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.
- 4.4 The Parties acknowledge that the migration of the Services from the Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
- 4.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Authority for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

## **Finalisation of the Exit Plan**

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

## **5 TERMINATION SERVICES**

### **Notification of Requirements for Termination Services**

- 5.1 The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a “**Termination Assistance Notice**”) at least 4 months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- (a) the date from which Termination Services are required;
  - (b) the nature of the Termination Services required; and
  - (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 12 months after the date that the Supplier ceases to provide the Services.
- 5.2 The Authority shall have an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice, provided that:
- (a) such extension shall not extend for more than 3 months after the date the Supplier ceases to provide the Termination Services; and
  - (b) it shall notify the Supplier to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire.

The Authority shall have the right to terminate its requirement for Termination Services by serving not less than 40 Working Days' written notice upon the Supplier to such effect.

### **Termination Assistance Period**

- 5.3 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:

- (a) continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 5.1, provide the Termination Services;
- (b) in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
- (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 5.3(b) without additional costs to the Authority;
- (d) NOT USED; and
- (e) at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.

5.4 Without prejudice to the Supplier's obligations under Paragraph 5.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 5.3(b) without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.

5.5 NOT USED.

#### **Termination Obligations**

5.6 The Supplier shall comply with all of its obligations contained in the final form of the Exit Plan approved by the Authority in accordance with Paragraph 4.6.

5.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), the Supplier shall:

- (a) cease to use the Authority Data;
- (b) provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
- (c) erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
- (d) return to the Authority such of the following as is in the Supplier's possession or control:
  - (i) all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Agreement;

- (ii) all materials created by the Supplier under this Agreement in which the IPRs are owned by the Authority;
  - (iii) any parts of the IT environment and any other equipment which belongs to the Authority; and
  - (iv) any items that have been on-charged to the Authority, such as consumables that remain unused;
- (e) vacate any Authority Premises; and
- (f) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after expiry or termination to:
- (i) such information relating to the Services as remains in the possession or control of the Supplier; and
  - (ii) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 5.7(f)(i) and (ii).

5.8 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.

5.9 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by one Party to the other Party in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

## **6 ASSETS, SUB-CONTRACTS AND SOFTWARE**

6.1 Following notice of termination of this Agreement and during the Termination Assistance Period and except to the extent that such change does not or will not affect the provision of Services or the Charges, the Supplier shall not, without the Authority's prior written consent:

- (a) terminate, enter into or vary any Sub-contract;
- (b) (subject to normal maintenance requirements) make material modifications to, or dispose of, any Exclusive Assets or acquire any new Exclusive Assets; or
- (c) terminate, enter into or vary any licences for Software in connection with the Services.

6.2 Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 5.3(e), the Authority shall provide written notice to

the Supplier setting out which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier (“**Transferring Assets**”) in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets the Authority and/or its Replacement Supplier requires to provide the Services or Replacement Services.

6.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:

(a) a Termination Payment is payable by the Authority to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or

(b) the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Agreement, in which case the Authority shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.

6.4 Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.

6.5 Where the Supplier is notified that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:

(a) NOT USED;

(b) use its reasonable endeavours to procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.

6.6 NOT USED

6.7 NOT USED

6.8 NOT USED

6.9 NOT USED

## **7 SUPPLIER PERSONNEL**

7.1 The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 9.1 (*Staff Transfer*) shall apply.

7.2 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.

- 7.3 During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Transferring Supplier Employees to present the case for transferring their employment to the Authority and/or the Replacement Supplier in relation to a Relevant Transfer.
- 7.4 The Supplier shall promptly notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 7.5 The Supplier shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees whose employment or engagement is transferred to the Authority and/or the Replacement Supplier. This Paragraph 7.5 shall not apply to any re-employment or re-engagement of an employee responding to a bona fide public advertisement.

## **8 CHARGES**

- 8.1 During the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), the Authority shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.
- 8.2 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 8.3 Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

## **9 APPORTIONMENTS**

- 9.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- (a) the amounts shall be annualised and divided by 365 to reach a daily rate;
  - (b) the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
  - (c) the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

9.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 9.1 as soon as reasonably practicable.

## ANNEX 1

### Scope of the Termination Services

- 1.1 The Termination Services to be provided by the Supplier shall include such of the following services as the Authority may specify:
- (a) ceasing all non-critical Software changes in respect of the Specially Written Software (except where agreed in writing with the Authority);
  - (b) notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
  - (c) supporting the Authority in respect of transition from the Agreement to delivery of the National Reference Test to be provided by the Replacement Supplier in March 2021 or 2023 (as applicable);
  - (d) providing reasonable assistance and expertise as necessary to examine business processes supporting the provision of the Services (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority and/or the Replacement Supplier after the end of the Termination Assistance Period;
  - (e) NOT USED;
  - (f) providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
  - (g) with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
  - (h) providing the Authority with any problem logs which have not previously been provided to the Authority;
  - (i) NOT USED;
  - (j) providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services
  - (k) reviewing all Software libraries for the Specially Written Software used in connection with the Services and providing details of these to the Authority and/or the Replacement Supplier;
  - (l) making available to the Authority and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry;
  - (m) assisting in establishing naming conventions for any new production site;



- (n) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas for the Specially Written Software;
- (o) generating a computer listing of the Source Code of agreed syntax and scripts in a form and on media reasonably requested by the Authority for the Specially Written Software;
- (p) agreeing with the Authority a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
- (q) NOT USED;
- (r) NOT USED;
- (s) assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;
- (t) in respect of the maintenance and support of the Specially Written Software, providing historical performance data for the previous 12 months;
- (u) assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by the Authority (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
- (v) NOT USED;
- (w) answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;
- (x) agreeing with the Authority and/or the Replacement Supplier a plan for the migration of the Authority Data to the Authority and/or the Replacement Supplier;
- (y) providing access to the Authority and/or the Replacement Supplier during the Termination Assistance Period for the purpose of the smooth transfer of the Services to the Authority and/or the Replacement Supplier:
  - (i) NOT USED; and
  - (ii) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- (z) knowledge transfer services, including:
  - (i) transferring all training material developed for the Services;
  - (ii) providing for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the

Services which may, as appropriate, include information, records and documents; and

- (iii) providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors.

1.2 The Supplier shall:

- (a) provide a documented plan relating to the training matters referred to in Paragraph 1.1(k) for agreement by the Authority at the time of termination or expiry of this Agreement;
- (b) co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1(o), providing skills and expertise of a suitable standard; and
- (c) fully co-operate in the execution of the Authority Data migration plan agreed pursuant to Paragraph 1.1(w), providing skills and expertise of a reasonably acceptable standard.

1.3 NOT USED.

1.4 The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to Paragraph 1.1(z) shall include:

- (a) copies of up-to-date procedures and operations manuals developed for the provision of the Services;
- (b) product information;
- (c) agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;
- (d) key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule;
- (e) information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
- (f) details of physical and logical security processes and tools which will be available to the Authority; and
- (g) any relevant interface information.

1.5 During the Termination Assistance Period the Supplier may at its discretion (acting reasonably) grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or the Authority) access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:

- (a) any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 1.5 shall:
  - (i) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
  - (ii) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Authority deems reasonable; and
- (b) the Authority and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

## ANNEX 2

### Transferable Assets

The Transferable Assets include:

- Hardware purchased by the Supplier for the sum identified in the Initial Financial Model and which includes:
  - 23 laptop devices; and
  - 23 desktop telephone devices.

**AGREEMENT FOR THE SUPPLY OF SERVICES RELATING TO  
NATIONAL REFERENCE TESTS**

**SCHEDULE 8.6**

**BUSINESS CONTINUITY AND DISASTER RECOVERY**

## 1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

- “Business Continuity Plan”** has the meaning given in Paragraph 2.2(a)(ii);
- “Business Continuity Services”** has the meaning given in Paragraph 4.2(b);
- “Disaster”** the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for period of three (3) days or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
- “Disaster Recovery Plan”** has the meaning given in Paragraph 2.2(a)(iii);
- “Disaster Recovery Services”** the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
- “Disaster Recovery System”** the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services; and
- “Related Service Provider”** any person who provides services to the Authority in relation to this Agreement from time to time.

## 2 BCDR PLAN

2.1 At least 40 Working Days prior to the Detailed Design & Development Services Commencement Date, the Supplier shall prepare and deliver to the Authority for the Authority’s written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

- (a) ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and
- (b) recover the Services in the event of a Disaster.

2.2 The BCDR Plan shall:

- (a) be divided into three parts:
  - (i) Part A which shall set out general principles applicable to the BCDR Plan;
  - (ii) Part B which shall relate to business continuity (the **“Business Continuity Plan”**); and

- (iii) Part C which shall relate to disaster recovery (the “**Disaster Recovery Plan**”); and
  - (b) unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4 and 5.
- 2.3 Following receipt of the draft BCDR Plan from the Supplier, the Authority shall:
  - (a) review and comment on the draft BCDR Plan as soon as reasonably practicable; and
  - (b) notify the Supplier in writing that it approves or rejects the draft BCDR Plan no later than 10 Working Days after the date on which the draft BCDR Plan is first delivered to the Authority.
- 2.4 If the Authority rejects the draft BCDR Plan:
  - (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
  - (b) the Supplier shall then revise the draft BCDR Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft BCDR Plan to the Authority for the Authority's approval within 10 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 2.3 and this Paragraph 2.4 shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

### **3 PART A OF THE BCDR PLAN AND GENERAL PRINCIPLES AND REQUIREMENTS**

- 3.1 Part A of the BCDR Plan shall:
  - (a) set out how the business continuity and disaster recovery elements of the Plan link to each other;
  - (b) provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider;
  - (c) contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Service Provider with respect to issues concerning business continuity and disaster recovery where applicable;
  - (d) detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Authority and any of its other Related Service Providers in each case as notified to the Supplier by the Authority from time to time;
  - (e) contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;
  - (f) contain a risk analysis, including:

- (i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
  - (ii) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
  - (iii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider; and
  - (iv) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- (g) provide for documentation of processes, including business processes, and procedures;
  - (h) set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Authority;
  - (i) identify the procedures for reverting to “normal service”;
  - (j) 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 the accepted amount of data loss and to preserve data integrity;
  - (k) identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDR Plan; and
  - (l) provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority’s business continuity plans.

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

- (a) the Services are provided in accordance with this Agreement at all times during and after the invocation of the BCDR Plan;
- (b) the adverse impact of any Disaster, service failure, or disruption on the operations of the Authority is minimal as far as reasonably possible;
- (c) it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force; and
- (d) there is a process for the management of disaster recovery testing detailed in the BCDR Plan.

3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.

3.4 The Supplier shall not be entitled to any relief from its obligations under the Agreement or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Agreement.



#### **4 BUSINESS CONTINUITY PLAN - PRINCIPLES AND CONTENTS**

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:
- (a) the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
  - (b) the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
- (a) address the various possible levels of failures of or disruptions to the Services;
  - (b) address potential breaches of security to the Test Question Booklets and Mark Schemes (whether on-line or paper based);
  - (c) set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the “**Business Continuity Services**”);
  - (d) NOT USED; and
  - (e) clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

#### **5 DISASTER RECOVERY PLAN - PRINCIPLES AND CONTENTS**

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall include the following:
- (a) the technical design and build specification of the Disaster Recovery System;
  - (b) details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
    - (i) data centre and disaster recovery site audits;
    - (ii) backup methodology and details of the Supplier's approach to data back-up and data verification;

- (iii) identification of all potential disaster scenarios;
  - (iv) risk analysis;
  - (v) documentation of processes and procedures;
  - (vi) hardware configuration details;
  - (vii) network planning including details of all relevant data networks and communication links;
  - (viii) invocation rules;
  - (ix) Service recovery procedures; and
  - (x) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
- (c) NOT USED;
  - (d) details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
  - (e) access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
  - (f) testing and management arrangements.

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

- 6.1 The Supplier shall review the BCDR Plan (and the risk analysis on which it is based):
- (a) on a regular basis and as a minimum once every 6 months;
  - (b) within three calendar months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 8; and
  - (c) where the Authority requests any additional reviews (over and above those provided for in Paragraphs 6.1(a) and 6.1(b)) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.
- 6.2 Each review of the BCDR Plan pursuant to Paragraph 6.1 shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event

since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the BCDR Plan, provide to the Authority a report (a “**Review Report**”) setting out:

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

6.3 Following receipt of the Review Report and the Supplier’s Proposals, the Authority shall:

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

6.4 If the Authority rejects the Review Report and/or the Supplier’s Proposals:

- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the Review Report and/or the Supplier’s Proposals as the case may be (taking reasonable account of the Authority’s comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier’s Proposals to the Authority for the Authority’s approval within 20 Working Days of the date of the Authority’s notice of rejection. The provisions of Paragraph 6.3 and this Paragraph 6.4 shall apply again to any resubmitted Review Report and Supplier’s Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

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

## **7 TESTING OF THE BCDR PLAN**

- 7.1 The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 7.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
- 7.2 If the Authority requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.
- 7.4 The Supplier shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 7.5 The Supplier shall, within 20 Working Days of the conclusion of each test, provide to the Authority a report setting out:
- (a) the outcome of the test;
  - (b) any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
  - (c) the Supplier's proposals for remedying any such failures.
- 7.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
- 7.7 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Supplier of any of its obligations under this Agreement.
- 7.8 The Supplier shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

## **8 INVOCATION OF THE BCDR PLAN**

- 8.1 In the event of:

- (a) a complete loss of service; or
- (b) a Disaster,

or where, in the reasonable opinion of the Supplier, it is necessary to do so to mitigate and/or avoid the occurrence of either events described above, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Authority promptly of such invocation).

**AGREEMENT FOR THE SUPPLY OF SERVICES RELATING TO  
NATIONAL REFERENCE TESTS**

**SCHEDULE 8.7**

**CONDUCT OF CLAIMS**

## Conduct of Claims

### 1 INDEMNITIES

- 1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Agreement (the “**Indemnifier**”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 1.3 Subject to Paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
  - (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
  - (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute;
  - (c) the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
  - (d) the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:
  - (a) the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
  - (b) the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or

- (c) the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

## **2 SENSITIVE CLAIMS**

- 2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "**Sensitive Claim**"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

## **3 RECOVERY OF SUMS**

- 3.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
  - (a) an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
  - (b) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

## **4 MITIGATION**

- 4.1 Each of the Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.



**AGREEMENT FOR THE SUPPLY OF SERVICES RELATING TO  
NATIONAL REFERENCE TESTS**

**SCHEDULE 9.1**

**STAFF TRANSFER**

## Staff Transfer

### 1. DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>“Admission Agreement”</b>	The agreement to be entered into by which the supplier agrees to participate in the Schemes as amended from time to time;
<b>“Eligible Employee”</b>	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
<b>“Fair Deal Employees”</b>	those Transferring Authority Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;
<b>“Former Supplier”</b>	a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
<b>“New Fair Deal”</b>	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013;
<b>“Notified Sub-contractor”</b>	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
<b>“Replacement Sub-contractor”</b>	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
<b>“Relevant Transfer”</b>	a transfer of employment to which the Employment Regulations applies;
<b>“Relevant Transfer Date”</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
<b>“Schemes”</b>	the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account

and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Supplier by the Minister for the Cabinet Office);

- “Service Transfer”** any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
- “Service Transfer Date”** the date of a Service Transfer;
- “Staffing Information”** in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:
- (a) their ages, dates of commencement of employment or engagement and gender;
  - (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
  - (c) the identity of the employer or relevant contracting Party;
  - (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
  - (e) their wages, salaries and profit sharing arrangements as applicable;
  - (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
  - (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
  - (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;

- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

<b>“Supplier’s Final Supplier Personnel List”</b>	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;
<b>“Supplier’s Provisional Supplier Personnel List”</b>	a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
<b>“Transferring Authority Employees”</b>	those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;
<b>“Transferring Former Supplier Employees”</b>	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and
<b>“Transferring Supplier Employees”</b>	those employees of the Supplier and/or the Supplier’s Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. **INTERPRETATION**

Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

## PART A

### Transferring Authority Employees at commencement of Services

#### 1. RELEVANT TRANSFERS

1.1 The Authority and the Supplier agree that:

- (a) the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Authority Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between the Authority and the Transferring Authority Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-contractor and each such Transferring Authority Employee.

1.2 The Authority shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Authority Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Authority; and (ii) the Supplier and/or any Notified Sub-contractor (as appropriate).

#### 2. AUTHORITY INDEMNITIES

2.1 Subject to Paragraph 2.2, the Authority shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities in respect of any Transferring Authority Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission by the Authority occurring before the Relevant Transfer Date;
- (b) the breach or non-observance by the Authority before the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Authority Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Authority Employees which the Authority is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing the Transferring Authority Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Authority Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- (e) a failure of the Authority to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees arising before the Relevant Transfer Date;
- (f) any claim made by or in respect of any person employed or formerly employed by the Authority other than a Transferring Authority Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Authority in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Authority Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Supplier or any Sub-contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Authority as a Transferring Authority Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Authority Employee, that his/her contract of employment has been transferred from the Authority to the Supplier and/or any

Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- (a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority; and
- (b) the Authority may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-contractor, or take such other reasonable steps as the Authority considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Authority shall indemnify the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

- (a) shall not apply to:
    - (i) any claim for:
      - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
      - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

- (ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
  - (b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority within 6 months of the Effective Date.
- 2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Authority nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

### 3. **SUPPLIER INDEMNITIES AND OBLIGATIONS**

- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority against any Employee Liabilities in respect of any Transferring Authority Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- (a) any act or omission by the Supplier or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;
  - (b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Authority Employees; and/or
    - (ii) any custom or practice in respect of any Transferring Authority Employees which the Supplier or any Sub-contractor is contractually bound to honour;
  - (c) any claim by any trade union or other body or person representing any Transferring Authority Employees arising from or connected with any failure by the Supplier or any Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
  - (d) any proposal by the Supplier or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Authority Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Authority Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
  - (e) any statement communicated to or action undertaken by the Supplier or any Sub-contractor to, or in respect of, any Transferring Authority Employee



before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority in writing;

- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Authority Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees in respect of the period from (and including) the Relevant Transfer Date; and
- (h) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Authority's failure to comply with its obligations under regulation 13 of the Employment Regulations.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Authority whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Authority's failure to comply with its obligations under the Employment Regulations.

3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Authority Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Authority and the Supplier.

4. **INFORMATION**

The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority in writing such information as is necessary to enable the Authority to carry out its duties under regulation 13 of the Employment Regulations. The Authority shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. **PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.

5.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Authority Employee as set down in:

- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
- (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
- (c) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
- (d) the New Fair Deal.

5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Change Control Procedure.

6. **PENSIONS**

The Supplier shall, and shall procure that each of its Sub-contractors shall, comply with the pensions provisions in the following Annex.

## ANNEX TO PART A

### PENSIONS

#### 1. PARTICIPATION

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Authority undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees.
- 1.3 The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

#### 2 FUTURE SERVICE BENEFITS

- 2.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

#### 3 FUNDING

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

#### 4 PROVISION OF INFORMATION

The Supplier and the Authority respectively undertake to each other:

- (a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the

Admission Agreement, and to supply the information as expeditiously as possible; and

- (b) not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

## **5 INDEMNITY**

The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

## **6 EMPLOYER OBLIGATION**

The Supplier shall comply with the requirements of Part 1 of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

## **7 SUBSEQUENT TRANSFERS**

The Supplier shall:

- (a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- (b) provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- (c) for the period either
  - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or
  - (ii) after the date which is two (2) years prior to the date of expiry of this Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

## PART B

### Transferring Former Supplier Employees at commencement of Services

#### 1 RELEVANT TRANSFERS

- 1.1 The Authority and the Supplier agree that:
- (a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
  - (b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-contractor and each such Transferring Former Supplier Employee.
- 1.2 The Authority shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Authority shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

#### 2 FORMER SUPPLIER INDEMNITIES

- 2.1 Subject to Paragraph 2.2, the Authority shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- (a) any act or omission by the Former Supplier arising before the Relevant Transfer Date;
  - (b) the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
    - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;

- (c) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- (d) a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- (e) any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (f) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Supplier and/or any Sub-contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Authority as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Supplier Employee, that his/her contract

of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- (a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Supplier; and
- (b) the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

- (a) shall not apply to:
  - (i) any claim for:
    - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
    - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

- (ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
  - (b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority and, if applicable, the Former Supplier, within 6 months of the Effective Date.
- 2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

### **3 SUPPLIER INDEMNITIES AND OBLIGATIONS**

- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- (a) any act or omission by the Supplier or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;
  - (b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
    - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
  - (c) any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
  - (d) any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;



- (e) any statement communicated to or action undertaken by the Supplier or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date; and
- (h) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

#### **4 INFORMATION**

The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and/or at the Authority's direction, the Former Supplier, in writing such information as is necessary to enable the Authority and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

#### **5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

5.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in:

- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
- (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
- (c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
- (d) the New Fair Deal.

5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

#### **6 PROCUREMENT OBLIGATIONS**

Notwithstanding any other provisions of this Part B, where in this Part B the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

#### **7 PENSIONS**

The Supplier shall, and shall procure that each Sub-contractor shall, comply with the pensions provisions in the following Annex in respect of any Transferring Former Supplier Employees who transfer from the Former Supplier to the Supplier.

### **ANNEX TO PART B**

#### **PENSIONS**

#### **1 PARTICIPATION**

1.1 The Supplier undertakes to enter into the Admission Agreement.

- 1.2 The Supplier and the Authority undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees.
- 1.3 The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

## **2 FUTURE SERVICE BENEFITS**

- 2.1 If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

## **3 FUNDING**

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

## **4 PROVISION OF INFORMATION**

The Supplier and the Authority respectively undertake to each other:

- (a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the

Admission Agreement, and to supply the information as expeditiously as possible; and

- (b) not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

## **5 INDEMNITY**

The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

## **6 EMPLOYER OBLIGATION**

The Supplier shall comply with the requirements of Part 1 of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

## **7 SUBSEQUENT TRANSFERS**

The Supplier shall:

- (a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- (b) provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- (c) for the period either
  - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or
  - (ii) after the date which is two (2) years prior to the date of expiry of this Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

## PART C

### No transfer of employees at commencement of Services

#### 1 PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 The Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.
- 1.2 If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- (a) the Supplier shall, and shall procure that the relevant Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and
  - (b) the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2(b) is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the 15 Working Day period specified in Paragraph 1.2(b):
- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved,
- the Supplier and/or the Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

#### 2 INDEMNITIES

- 2.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:
- (a) indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure

that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

- (b) procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.
- 2.4 The indemnities in Paragraph 2.1:
- (a) shall not apply to:
    - (i) any claim for:
      - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
      - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
    - (ii) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and
  - (b) shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Supplier and/or any Sub-contractor to the Authority and, if applicable, Former Supplier within 6 months of the Effective Date.

### **3 PROCUREMENT OBLIGATIONS**

Where in this Part C the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it

extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

**PART D**  
**EMPLOYMENT EXIT PROVISIONS**

**1 PRE-SERVICE TRANSFER OBLIGATIONS**

- 1.1 The Supplier agrees that within 20 Working Days of the earliest of:
- (a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
  - (b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
  - (c) the date which is 12 months before the end of the Term; and
  - (d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),

it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.

- 1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:
- (a) the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
  - (b) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.
- 1.4 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1(a), 1.1(b) and 1.1(c), the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):
- (a) replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;



- (b) make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services; and
- (c) a description of the nature of the work undertaken by each employee by location.

1.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

- (a) the most recent month's copy pay slip data;

- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

## **2 EMPLOYMENT REGULATIONS EXIT PROVISIONS**

- 2.1 The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- (a) any act or omission of the Supplier or any Sub-contractor whether occurring before, on or after the Service Transfer Date;
  - (b) the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:

- (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
  - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier

and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
- (b) arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

2.5 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- (a) the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
- (b) the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

2.7 If after the 15 Working Day period specified in Paragraph 2.5(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved

the Authority shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

(a) shall not apply to:

(i) any claim for:

(A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date .

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.

2.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Supplier Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

(a) the Supplier and/or any Sub-contractor; and

(b) the Replacement Supplier and/or the Replacement Sub-contractor.

2.12 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such

information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

2.13 Subject to Paragraph 2.14, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:

- (a) any act or omission of the Replacement Supplier and/or Replacement Sub-contractor;
- (b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and

- (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
  - (g) a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and
  - (h) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

**ANNEX**

**LIST OF NOTIFIED SUB-CONTRACTORS**

#56179909



**AGREEMENT FOR THE SUPPLY OF SERVICES RELATING TO  
NATIONAL REFERENCE TESTS**

**SCHEDULE 9.2**

**KEY PERSONNEL  
(REDACTED TABLE)**