
Dated 14th September

2015

Commercial Partner Agreement

NDA Archives Limited (1)
Crimson UK Limited (2)

Contract Reference NDA9/00389

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THIS CONTRACT is dated

14th September 2015

PARTIES

- (1) NDA Archives Limited incorporated and registered in England and Wales with company number 09109416 whose registered office is at Herdus House, Ingwell Drive, Westlakes Science and Technology Park, Moor Row, Cumbria, England CA24 3HU ("Customer").
- (2) Crimson UK Limited incorporated and registered in England and Wales with company number 06990819 whose registered office is at The Databank Unit 5 Redhill Distribution Centre, Salbrook Road, Redhill, Surrey RH1 5DY ("Supplier").

WHEREAS

- A. By an advertisement in the Supplement to the Official Journal of the European Union dated 19 March 2014 (reference CJ00185) NDA invited expressions of interest from economic operators wishing to be appointed to provide services to the Customer with a view to promoting and supporting improved value for money across NDA estate in relation to information governance and records management.
- B. The Supplier submitted an expression of interest and was selected to supply the Services to the Customer on the terms and conditions of this Contract.

1 CONTRACT PERIOD

- 1.1 This Contract shall take effect on the Effective Date and shall continue for the Term.
- 1.2 If the Customer wishes to extend this Contract beyond the expiry of the Initial Term, it shall give the Supplier at least six (6) months' written notice of such intention at any time prior to the expiry of the Initial Term provided always that the Customer shall not be entitled to extend the Initial Term by more than two (2) years.
- 1.3 If the Customer does not wish to extend this Contract beyond the Initial Term, this Contract shall expire on expiry of the Initial Term. After such expiry, the Supplier shall still be obliged to comply with the provisions of Clause 16 (*Assistance on Expiry or Termination*), Schedule 16 (*Exit Planning and Service Transfer Arrangements*) and Schedule 17 (*Employees*).

2 SERVICES

- 2.1 The Customer shall appoint the Supplier, and the Supplier shall provide the Services to the Customer on behalf of itself and each End User pursuant to the terms and conditions of this Contract, in consideration for the payment of the Monthly Contract Charges.
- 2.2 The Supplier shall supply the Services in accordance with the Business Plans and the Method Statements in order to meet the requirements set out in the Specification.
- 2.3 Except as expressly provided otherwise in this Contract, the Customer may inspect and examine the manner in which the Supplier supplies Services at the Customer's Premises during normal business hours on reasonable notice.
- 2.4 If the Customer informs the Supplier in writing that the Customer reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Customer.
- 2.5 The Supplier agrees that the Customer relies on the skill and judgment of the Supplier in the supply of the Services and the performance of its obligations under the Contract.
- 2.6 The Customer shall comply with the Customer Responsibilities.

- 2.2 The Supplier shall supply the Services in accordance with the Business Plans and the Method Statements in order to meet the requirements set out in the Specification.
- 2.3 Except as expressly provided otherwise in this Contract, the Customer may inspect and examine the manner in which the Supplier supplies Services at the Customer's Premises during normal business hours on reasonable notice.
- 2.4 If the Customer informs the Supplier in writing that the Customer reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Customer.
- 2.5 The Supplier agrees that the Customer relies on the skill and judgment of the Supplier in the supply of the Services and the performance of its obligations under the Contract.
- 2.6 The Customer shall comply with the Customer Responsibilities.
- 2.7 Subject to Clause 2.8, the Supplier is appointed as the exclusive supplier of the Design and Construction Services and the Core Services (excluding the Facilities Management Services and the Security Services).
- 2.8 The Supplier acknowledges that:
- (a) it is not being appointed as an exclusive supplier of any of the Facilities Management Services, Security Services or Additional Services;
 - (b) the Customer may at any time perform any part of the Facilities Management Services, Security Services or Additional Services itself or procure them from a third party; and
 - (c) the Customer may perform any part of the Design and Construction Services or Core Services if the Contract is terminated pursuant to Clause 34 (*Termination*).
- 2.9 The Supplier shall be responsible for and bear all costs incurred in the implementation, maintenance and development of the Services and the Supplier System, including:
- (a) the costs of contracts which are entered into by the Supplier to enable it to provide the Services;
 - (b) all maintenance, licence fees and support of the Supplier System; and
 - (c) the development of the Supplier System in accordance with this Contract.

Provision and Removal of Equipment

- 2.10 The Supplier shall provide all the Equipment necessary for the supply of the Services unless otherwise provided by the Customer as Customer Equipment.
- 2.11 The Supplier shall not deliver any Equipment nor begin any work on the Customer's Premises without obtaining Approval.
- 2.12 All Equipment brought onto the Customer's Premises shall be at the Supplier's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless and to the extent that the Supplier is able to demonstrate that such loss or damage was caused by or contributed to by the Customer's Default. The Supplier shall be wholly responsible for the haulage or carriage of the Equipment to the Customer's Premises and the removal thereof when it is no longer required by the Customer and in each case at the Supplier's sole cost. Unless otherwise stated in this Contract, Equipment brought onto the Customer's Premises will remain the property of the Supplier.
- 2.13 The Supplier shall maintain all items of equipment within the Customer's Premises in a safe, serviceable and clean condition.
- 2.14 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
- (a) remove from the Customer's Premises any Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with the Contract; and
 - (b) replace such item with a suitable substitute item of Equipment.
- 2.15 As soon as reasonably practicable following termination or expiry of the Contract, the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Customer's Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Customer's Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or Supplier's Staff, provided always that the Supplier shall not be obliged to put the Customer's Premises or any objects contained thereon in any better condition than they were in when the Supplier first used them unless such obligation forms an explicit part of the Services.

Quality

- 2.16 In providing each of the Services, the Supplier shall at all times:
- (a) provide the Services in accordance with Good Industry Practice;

- (b) provide the Services in accordance with applicable Law;
 - (c) obtain, maintain and comply with all Consents;
 - (d) allocate sufficient resources to provide the Services in accordance with the terms of this Contract; and
 - (e) ensure that any of the Staff who are engaged in the provision of any of the Services shall, if required by the Customer, attend such meetings at the Customer's Premises or elsewhere as may be reasonably required by the Customer.
- 2.17 The Supplier shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards' authorisation body. To the extent that the standard to which the Services must be provided has not been specified in the Contract, the Supplier shall agree the relevant standard for the provision of the Services with the Customer prior to the supply of the Services commencing.
- 2.18 The Supplier shall ensure that the Staff shall at all times during the Term:
- (a) faithfully and diligently perform those duties and exercise such powers as necessary in connection with the provision of the Services;
 - (b) obey all lawful instructions and reasonable directions of the Customer and provide the Services to the reasonable satisfaction of the Customer; and
 - (c) apply all due skill, care, diligence and are appropriately experienced, qualified and trained.
- 2.19 The Supplier shall perform its obligations under the Contract in a timely manner.
- 2.20 The Supplier shall at all times during the Term ensure that:
- (a) the Services conform in all respects with the Specification;
 - (b) the Services conform in all respects with all applicable Laws, Quality Standards; and
 - (c) the Services are supplied in accordance with the Method Statements and the Business Plans.

Delivery

- 2.21 Time of delivery in relation to commencing the Services shall be of the essence and if the Supplier fails to commence delivery of the Services within the time specified in accordance the Business Plans and without prior written Approval (not to be unreasonably withheld or delayed), the Customer may release itself from any obligation

to accept and pay for the Services and/or may terminate the Contract, in either case without prejudice to any other rights and remedies of the Customer, including but not limited to the application of Schedule 8 (*Service Levels and Service Credits*).

- 2.22 Except where otherwise provided in the Contract and in relation to the Additional Services, the Services shall be provided by the Staff or the Sub-contractors at the Customer's Premises.

Testing

- 2.23 The Parties shall carry out their obligations set out in Schedule 11 (*Testing*).

Cooperation

- 2.24 The Supplier shall cooperate fully and promptly with the Customer and any third parties (including but not limited to the HC) requested by the Customer including, without limitation, by:

- (a) providing such reasonable co-operation and information in relation to the Services to such of the Customer's or any End User's other suppliers as the Customer may reasonably require for the purposes of enabling any such person to create and maintain any interfaces that the Customer may reasonably require;
- (b) providing such information about the manner in which the Services are provided as is reasonably necessary for third parties to provide their services to the Customer or any End User or to carry out activities which have been delegated by the Customer or an End User;
- (c) making available to, or accepting existing information from, the third parties and developing any relevant documentation;
- (d) meeting the Customer and the third parties to discuss the Services where necessary to engage in joint problem resolution; and
- (e) providing such other cooperation as reasonably required by the Customer in relation to the delivery of the Services.

- 2.25 The Supplier shall inform the Customer of any disputes or disagreements between it and any third parties (including but not limited to the HC) that arise when fulfilling its obligations under this Contract which might, in the Supplier's reasonable opinion, adversely affect the delivery of the Services and the Supplier shall use all reasonable endeavours to settle such disputes or disagreements as soon as possible so as to avoid or minimise disruption to the provision of the Services or the performance of any of its obligations under this Contract.

2.26 The Customer shall use all reasonable endeavours to cooperate, and shall use reasonable endeavours to procure that any End User or any third party supplier cooperates, with any reasonable requests of the Supplier for the provision of information and/or the performance of any actions necessary to enable the Supplier to fulfil its obligations under this Contract.

3 DUE DILIGENCE

3.1 The Supplier acknowledges that it:

- (a) has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;
- (b) has raised all relevant due diligence questions with the Customer before the Commencement Date; and
- (c) has entered into this Contract in reliance on its own due diligence alone.

3.2 Save as provided in this Contract, no representations, warranties or conditions are given or assumed by the Customer in respect of any information which is provided to the Supplier by the Customer and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

4 DEVELOPMENT OF THE BUSINESS PLANS

4.1 The Supplier shall prepare and deliver to the Customer for the Customer's approval a draft of each of the Detailed Business Plans within thirty (30) Calendar Days of the Commencement Date. The Supplier shall not be entitled to propose any variations to the Key Milestone Dates set out in the Outline Business Plans. The Customer shall review and comment on the draft Detailed Business Plans as soon as reasonably practicable. Following such review and consultation, the Customer shall formally approve or reject each of the draft Detailed Business Plans no later than thirty (30) Calendar Days after the date on which the draft Detailed Business Plans are first delivered to the Customer.

4.2 Once the draft Detailed Business Plans are approved, they shall replace the Outline Business Plans.

4.3 If the Customer rejects either of the draft Detailed Business Plans, the Customer shall inform the Supplier in writing of its reasons for its rejection. The Supplier shall then revise the relevant draft Detailed Business Plan(s) (taking reasonable account of the Customer's comments) and shall re-submit revised draft Detailed Business Plan(s) to the Customer for the Customer's approval within thirty (30) Calendar Days of the date of the Customer's notice of rejection. The provisions of Clause 4.1, Clause 4.2 and this Clause 4.3 shall apply again to any resubmitted draft Detailed Business Plan, provided

that either party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

5 IMPLEMENTATION OF THE BUSINESS PLANS

- 5.1 Subject to Clause 5.2, the Supplier shall perform each of the tasks identified in the Business Plans by the applicable Milestone Date assigned to the particular task in each Business Plan.
- 5.2 If, at any time, the Supplier becomes aware that it will not (or is unlikely to) successfully achieve any Milestone by the applicable Milestone Date, it shall immediately notify the Customer of the fact of the Delay, the reasons for the Delay, the consequences of the Delay for the rest of the relevant Business Plan and how the Supplier proposes to mitigate the Delay. The Supplier shall also inform the Customer if it believes that the Delay is wholly or partly due to a Customer's Default in which circumstances the provisions of Clause 6 shall apply.
- 5.3 Whether the Delay is due to a Customer's Default or not, the Supplier shall take all reasonable steps to eliminate or mitigate the consequences of the Delay, including deploying all necessary additional resources and efforts.
- 5.4 Any disputes about or arising out of Delays shall be resolved through the Dispute Resolution Procedure. Pending the resolution of the dispute, both parties shall continue to work together to resolve the causes of, and mitigate the effects of, the Delay.

6 CONSEQUENCES OF DELAY CAUSED BY THE CUSTOMER

- 6.1 If the Supplier would have been able to successfully achieve or procure the successful achievement of a Milestone by its Milestone Date, but has failed to do so as a result of a Customer's Default, the Supplier shall be allowed an extension of time to achieve the Milestone equal to the Delay caused by that Customer's Default.
- 6.2 If the Supplier has incurred any unmitigable loss or expense as a direct result of a Delay due to a Customer's Default, the Supplier shall, in addition to the extension allowed pursuant to Clause 6.1, be entitled to compensation to place the Supplier in the same position it would have been in, had the Customer's Default not occurred. The Supplier shall provide the Customer with any information the Customer may reasonably require in order to assess the validity of any claim to compensation by the Supplier.

7 HARWELL SOUTHERN ARCHIVE

- 7.1 In consideration of the Supplier's obligations under this Contract, the Customer shall use reasonable endeavours to procure that Magnox Limited will grant to the Supplier and the Supplier will accept from Magnox Limited the model lease in respect of the Harwell Southern Archive (the "**Harwell Lease**") in the form attached at Appendix 1 of

Schedule 3 (*Harwell Southern Archive Specification*) and otherwise on the terms set out in this Clause 7.

- 7.2 The Supplier cannot require the Customer to procure that Magnox Limited grants the Harwell Lease to any other person other than the Supplier (here meaning Crimson UK Ltd, incorporated and registered in England and Wales with company number 06990819, only).
- 7.3 The Supplier cannot assign, sublet, charge or otherwise share or part with the benefit of this Clause 7 whether in relation to the whole or part of the property to be demised by the Harwell Lease without Approval (which shall be subject to the Supplier obtaining Magnox Limited's written approval under the Harwell Lease).
- 7.4 The parties confirm that:
- (a) Magnox Limited served a notice on the Supplier, as required by section 38A(3)(a) of the Landlord and Tenant Act 1954 and which applies to the tenancy to be created by the Harwell Lease, before this agreement was entered into; and
 - (b) _____ who was duly authorised by the Supplier to do so, made a statutory declaration dated 22 July 2015 in accordance with the requirements of section 38A(3)(b) of the Landlord and Tenant Act 1954.
- 7.5 The Supplier acknowledges that, prior to the date of this Contract, Magnox Limited has given the Supplier and those authorised by the Supplier, the opportunity to inspect, survey and carry out investigations as to the condition of the property to be demised by the Harwell Lease and the Supplier accepts the condition of the said property as evidenced by the Schedule of Condition annexed to the Harwell Lease.
- 7.6 No representation or warranty is given by Magnox Limited or the Customer that the property to be demised by the Harwell Lease may be lawfully used for the use permitted by the Harwell Lease and the Supplier confirms that it has made all necessary enquiries to satisfy itself on this point.
- 7.7 The Supplier is not entitled to and will not be permitted to take occupation or possession of the property to be demised by the Harwell Lease prior to completion of the grant of the Harwell Lease and this Clause 7 shall not operate as a demise.
- 7.8 Title to the property to be demised by the Harwell Lease has been deduced to the Supplier before the date of this Contract. The Supplier is not entitled to raise any enquiry, objection, or requisition in relation to such title, save for any new matters arising after the date of this Contract.
- 7.9 The Harwell Lease will be granted free from encumbrances other than:

- (a) any matters, other than financial charges, contained or referred to in the entries or records made in registers maintained by HM Land Registry as at 26 June 2015 at 16:30:23 under title number ON286029;
- (b) all matters contained or referred to in the Harwell Lease;
- (c) any matters reasonably discoverable by inspection of the property to be demised by the Harwell Lease before the date of this Contract;
- (d) any matters which the Customer and Magnox Limited do not and could not reasonably know about;
- (e) any matters, other than financial charges, disclosed or which would have been disclosed by the searches and enquiries that a prudent tenant would have made before entering into this Contract;
- (f) public requirements;
- (g) any matters which are, or (where the Harwell Lease will not be registered) would be, unregistered interests which override first registration under Schedule 1 to the Land Registration Act 2002.

7.10 The Supplier is deemed to have full knowledge of the matters referred to in Clause 7.9 and will not raise any enquiry, objection, requisition or claim in respect of any of them.

7.11 It is anticipated that completion of the Harwell Lease will take place on or before 1 January 2016.

7.12 The Supplier shall perform the Services set out in Schedule 3 (*Harwell Southern Archive Specification*)

8 DESIGN AND CONSTRUCTION SERVICES

8.1 The Supplier shall provide the Design and Construction Services during Mobilisation.

8.2 The Supplier shall ensure that each of the Design and Construction Services meets and satisfies the requirements set out in Schedule 1 (*Services*), the Quality Standards and the Mobilisation Service Levels as set out in Appendix 1 (*Service Levels and Severity Levels*) of Schedule 8 (*Service Levels and Service Credits*).

8.3 In the event of the Supplier's failure to provide any of the Design and Construction Services the Customer may, without prejudice to its other rights, require the Supplier to re-perform the applicable Design and Construction Services.

9 CORE SERVICES

- 9.1 The Supplier shall provide the Core Services to the Customer and each End User from the Core Services Commencement Date until the Expiry Date.
- 9.2 The Supplier shall ensure that each of the Core Services meets and satisfies the Specification, the Quality Standards, the Harwell Southern Archive Service Levels (if applicable) and the Operation Service Levels (if applicable) as set out in Appendix 1 (*Service Levels and Severity Levels*) of Schedule 8 (*Service Levels and Service Credits*).
- 9.3 With effect from the relevant Core Services Commencement Date, the Customer shall make such parts of the Customer's Operating Environment available to the Supplier as the Supplier may reasonably require so as to enable it to provide the Core Services to the Customer pursuant to this Contract, provided that the Supplier does not adversely impact any element of the Customer's Operating Environment. However, in such circumstances:
- (a) all access shall be strictly limited to the part of the Customer's Operating Environment and to such of the Staff as is required for proper performance of the Supplier's obligations under this Contract; and
 - (b) the Supplier shall comply with all security, audit and other procedures and requirements of the Customer which are notified to it from time to time by the Customer in relation to access.
- 9.4 In the event of the Supplier's failure to provide any of the Core Services, the Customer may, without prejudice to its other rights, require the Supplier to re-perform the applicable Core Services.

10 ADDITIONAL SERVICES

- 10.1 The Supplier shall provide the Additional Services from the Effective Date until the Expiry Date.
- 10.2 The Supplier shall ensure that each of the Additional Services meets and satisfies the requirements set out in Schedule 1 (*Services*) and the Quality Standards.
- 10.3 In the event of the Supplier's failure to provide any of the Additional Services the Customer may, without prejudice to its other rights, require the Supplier to re-perform the applicable Additional Services.

11 SERVICE LEVELS

- 11.1 The Supplier shall provide the Services to meet or exceed the Service Levels and any failure to meet the Service Levels shall entitle the Customer to a Quarterly Service Credit Amount calculated in accordance with the provisions of Schedule 8 (*Service Levels and Service Credits*).
- 11.2 If a Critical Service Failure occurs, the Customer shall:
- (a) review the cause of the Critical Service Failure; and
 - (b) at its sole discretion, decide whether to:
 - (i) require the Supplier to amend its processes so as to reduce the likelihood of further such failures arising in the future; or
 - (ii) exercise its right to terminate this Contract with immediate effect, as set out in paragraph 2.3(b) (*Service Levels*) of Part A (*Service Levels*) of Schedule 8 (*Service Levels and Service Credits*).
- 11.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels, in accordance with Part B (*Performance Monitoring*) of Schedule 8 (*Service Levels and Service Credits*).

12 PAYMENT AND MONTHLY CONTRACT CHARGES

12.1 Monthly Contract Charges

- (a) In consideration of the Supplier's performance of its obligations under the Contract, the Customer shall pay the Monthly Contract Charges in accordance with Clause 12.2.
- (b) The Customer shall, in addition to the Monthly Contract Charges and following delivery by the Supplier of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

12.2 Payment and VAT

- (a) The Supplier shall issue invoices monthly in arrears (either in paper format or electronically by email). The Customer shall pay the Supplier within thirty (30) Calendar Days of receipt of a Valid Invoice, submitted in accordance with this Clause 12.2(a) and the provisions of the Contract.

- (b) The Customer shall pay all sums properly due and payable to the Supplier in cleared funds.
- (c) The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services provided and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.
- (d) Where the Supplier enters into a Sub-contract it shall ensure that a provision is included in such Sub-contract which requires payment to be made of all sums due by the Supplier to the Sub-contractor within a specified period not exceeding thirty (30) Working Days from the receipt of a validly issued invoice, in accordance with the terms of the Sub-contract.
- (e) The Supplier shall add VAT to the Monthly Contract Charges at the prevailing rate as applicable.
- (f) The Supplier shall indemnify the Customer on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Customer 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 the Contract. Any amounts due under this Clause 12.2(f) shall be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.
- (g) The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Contract under Clause 34.3 (*Termination on Default*) for failure to pay undisputed sums of money. Interest shall be payable by the Customer on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

12.3 Disputed and Undisputed Sums

- (a) With respect to the Monthly Contract Charges, the Customer may withhold payment of any disputed amount pending agreement or determination of the Supplier's entitlement in relation to the disputed amount, provided that the Customer's authorised representative notifies the Supplier within the payment period set out in Clause 12.2(a) above of the amount of the Monthly Contract Charges that is, in the Customer's view, payable (the "**Undisputed Amount**") and that the Customer is withholding payment approval of any disputed amounts, giving its reasons for doing so.

- (b) The parties shall comply with the requirements of this Clause 12 (*Payment and Monthly Contract Charges*) and Schedule 9 (*Payment and Deductions*) and the Customer shall pay the Supplier the correctly-invoiced Monthly Contract Charges.

12.4 Recovery of Sums Due

- (a) Any overpayment by either Party, whether of the Monthly Contract Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- (b) All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

12.5 Euro

- (a) Any requirement of Law to account for the Services in Euro, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Customer.
- (b) The Customer shall provide all reasonable assistance to facilitate compliance with Clause 12.5(a) by the Supplier.

13 CONTINUOUS IMPROVEMENT

- 13.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services pursuant to which it will regularly review with the Customer the Services and the manner in which it is providing the Services with a view to reducing the Customer's costs and/or improving the quality and efficiency of the Services.
- 13.2 The Supplier shall use reasonable endeavours to procure that any third party licensor of Supplier Software identifies new or potential improvements to the Supplier Software and notifies the Supplier of the same to enable the Supplier to meet its obligation pursuant to Clause 13.1. The Supplier shall do all such things as are necessary to enable it to sub-license the new or potential improvements as envisaged in this Clause 13.2 to the Customer.
- 13.3 In relation to the Supplier Software the Supplier shall (at all times subject to Clause 13.6):
 - (a) promptly inform the Customer of any new version of the Supplier Software which from time to time is publicly marketed and offered by the Supplier (or any third party licensor of the Supplier Software) in the course of its normal

business, and being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product. The Supplier shall offer to license (or sub-license, as the context requires) such new version to the Customer on the terms on which they are generally made available to the Supplier's customers by the Supplier; and/or

- (b) provide the Customer with all releases (whether issued by the Supplier or a third party licensor of the Supplier) of the Supplier Software which corrects faults, adds functionality or otherwise amends or upgrades the Supplier Software (but which is not a new version pursuant to Clause 13.3(a) generally made available to its customers. The Supplier warrants that no release will adversely affect the then existing facilities or functions of the Archive Management Software.

- 13.4 Subject to Clause 13.6, any amendments to the Services, required by the Customer to implement or effect such improvements identified as a result of the Supplier's compliance with Clause 13.1 shall be implemented by the Supplier only on a going forward basis (subject to compliance with EU procurement Law) and the Supplier shall implement such variation amendment or improvement at no additional cost to the Customer.
- 13.5 The Supplier shall ensure that the information that it provides to the Customer in accordance with Clause 13.1 shall be sufficient for the Customer to decide whether any improvement to the Services should be implemented. The Supplier shall provide any further information that the Customer requests in connection with any improvements to the Services identified by the Supplier.
- 13.6 If as a result of Clauses 13.1 or 13.3 an amendment to the Archive Management Software is required then this shall be implemented in accordance with the Change Control Procedure and such improvement shall be subject to Testing in accordance with Schedule 11 (*Testing*).
- 13.7 Notwithstanding the Supplier's obligations under Clause 13.1 to 13.5 above, the Customer shall be entitled (at its own cost from time to time and no more than once in any Contract Year) to benchmark the Rate Card Rates and performance of the Services against other suppliers providing services substantially the same as the Services during the Term in order to compare the Rate Card Rates and level of performance of the Services with charges and service offered by third parties so as to provide the Customer with information for comparison purposes.

- 13.8 The Customer shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in Clause 13.7 above.
- 13.9 The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Customer in order to undertake the benchmarking in accordance with Clause 13.7 and such information requirements shall be at the discretion of the Customer.
- 13.10 Where, as a consequence of any benchmarking carried out by the Customer under Clause 13.7, the Customer decides improvements to the Services should be implemented such improvements shall be implemented in accordance with the Change Control Procedure.
- 13.11 Any alterations or variations to the Monthly Contract Charges or the provision of the Services shall be implemented by the Supplier (subject to EU procurement law) in accordance with Clause 47 (*Variation*).

14 GOVERNANCE

- 14.1 The Customer's board will hold board meetings quarterly (as a minimum).
- 14.2 The Customer may request that:
- (a) subject to the Customer providing reasonable notice of the date and location of a board meeting, a senior representative of the Supplier shall attend any Customer board meeting; and
 - (b) subject to the Customer providing reasonable notice of any information request, the Supplier shall provide such information as the Customer reasonably requires for the purposes of a board meeting;
- 14.3 The Customer:
- (a) shall approve the Business Plans in accordance with Clauses 4 (*Development of the Business Plans*) and 5 (*Implementation of the Business Plans*) of this Contract; and
 - (b) may require the Supplier to amend the Business Plans pursuant to agreement of a Change.

15 TRANSFER AND SUB-CONTRACTING

- 15.1 Subject to Clause 15.3, the Supplier shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without Approval. The Customer has

consented to the engagement of the Sub-contractors listed in Schedule 7 (*Approved Sub-contractors*).

- 15.2 The Supplier shall not substitute or remove a Sub-contractor or appoint an additional sub-contractor without the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed. Notwithstanding any permitted sub-contract in accordance with 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. An obligation on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that its employees, staff, agents and the Sub-contractors' employees, staff and agents also do, or refrain from doing, such act or thing.
- 15.3 Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract. The Supplier shall supply such information about proposed Sub-contractors as the Customer may reasonably require in order to enable the Customer to consider whether to grant Approval.
- 15.4 In the event that the Supplier assigns the right to receive the Monthly Contract Charges under Clause 15.3, the Supplier or the assignee shall notify the Customer in writing of the assignment and the date upon which the assignment becomes effective.
- 15.5 The Supplier shall ensure that the assignee notifies the Customer of the assignee's contact information and bank account details to which the Customer shall make payment.
- 15.6 The provisions of Clause 12.2 shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Customer.
- 15.7 The Supplier shall be responsible for the acts and omissions of its Sub-contractors as though they are its own.
- 15.8 Where the Customer has consented to the placing of Sub-contracts, copies of each Sub-contract shall, at the request of the Customer, be sent by the Supplier to the Customer as soon as reasonably practicable.
- 15.9 The Customer may, at its sole discretion, require the Supplier to:
 - (a) use all reasonable endeavours to ensure that existing Sub-contracts which it uses in relation to the NDA Archive Facility and/or the Harwell Southern Archive; and
 - (b) ensure that each Sub-contract entered into solely in relation to the NDA Archive Facility and/or the Harwell Southern Archive shall include:

- (i) a right under the Contracts (Rights of Third Parties) Act 1999 for the Customer to enforce the terms of that Sub-contract as if it were the Supplier;
- (ii) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-contract to the Customer;
- (iii) a provision requiring the Supplier to comply with any relevant obligations relating to governance as set out in Clause 14 (*Governance*);
- (iv) a provision requiring the Sub-contractor to enter into a direct confidentiality agreement with the Customer on the same terms as set out in Clause 31.6 (*Confidentiality*);
- (v) a provision requiring the Sub-contractor to comply with protection of data requirements pursuant to Clauses 31.4 (*NDA Data, HC Data, Customer Data*), 31.5 (*Protection of Personal Data*) and 31.8 (*Freedom of Information*);
- (vi) a provision requiring the Sub-contractor to comply with the restrictions on corrupt gifts and payments pursuant to Clause 39 (*Prevention of Bribery and Corruption*);
- (vii) a provision requiring the Sub-contractor to comply with records and audit requirements contained in Clause 40 (*Records and Audit Access*).
- (viii) a provision requiring the Supplier to pay any undisputed sum due to the relevant sub-contractor within a specified period that does not exceed thirty (30) days from the date the Supplier receives the sub-contractor's invoice; and
- (ix) a provision restricting the ability of the Sub-contractor to further sub-contract elements of the service provided to the Supplier without first seeking the prior written consent of the Customer.

15.10 If the Customer is able to obtain from any Sub-contractor or any other third party more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier in the supply of the Services, then the Customer may require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Customer in respect of the relevant item.

15.11 If the Customer exercises the option pursuant to Clause 15.10, then the Monthly Contract Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.

15.12 Subject to Clause 15.13, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- (a) any Contracting Authority; or
- (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
- (c) any private sector body which substantially performs the functions of the Customer

provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Contract.

15.13 Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not, subject to Clause 15.13, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Customer.

15.14 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 15.11 to a body which is not a Contracting Authority or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):

- (a) the rights of termination of the Customer in Clauses 34.1 (*Termination on Insolvency*) 34.2 (*Termination on Change of Control*) and 34.3 (*Termination on Default*) shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Supplier.

15.15 The Customer may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under the Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under the Contract and for no other purposes and shall ensure

that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

- 15.16 For the purposes of Clause 15.13 each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

16 ASSISTANCE ON EXPIRY OR TERMINATION

- 16.1 The Supplier shall, within three months after the Commencement Date, deliver to the Customer a plan (the “**Exit Plan**”) which sets out the Supplier’s proposed methodology for achieving orderly transition of the Services from the Supplier to the Customer and/or the Replacement Supplier on the expiry or termination of this Contract. Within thirty (30) Working Days after submission of the draft Exit Plan (or any revised Exit Plan) the Parties will use their reasonable endeavours to agree its content and if they are unable to reach agreement then the dispute shall be referred to the Dispute Resolution Procedure. The Supplier will review and update the Exit Plan within one month of each anniversary of the Commencement Date and shall comply with the exit planning provisions as set out in Schedule 16 (*Exit Planning and Service Transfer Arrangements*) and Schedule 17 (*Employees*).
- 16.2 In the event that this Contract expires or is terminated the Supplier shall, where so requested by the Customer, provide assistance to the Customer to migrate the provision of the Services to a Replacement Supplier including as set out in the Exit Plan in Schedule 16 (*Exit Planning and Service Transfer Arrangements*).
- 16.3 The provisions of paragraph 3 (*Redundancy Payments*) of Schedule 17 (*Employees*) will apply on termination or expiry of the Contract.

17 PLACE OF DEPOSIT AND ARCHIVE SERVICE ACCREDITATION

- 17.1 The Customer shall work with The National Archive to gain Place of Deposit status in respect of the NDA Archive Facility.
- 17.2 The Supplier shall provide all reasonable assistance to the Customer to gain and maintain Place of Deposit status in respect of the NDA Archive Facility and shall not knowingly or recklessly perform any act, or omit to do anything which might compromise the Customer’s ability to achieve or maintain Place of Deposit status.
- 17.3 The Supplier shall provide all reasonable assistance to the Customer to gain and maintain Archive Service Accreditation in respect of the NDA Archive Facility and shall

not knowingly or recklessly perform any act, or omit to do anything which might compromise the Customer's ability to achieve or maintain Archive Service Accreditation.

- 17.4 Notwithstanding the above, the Supplier shall not be liable to the Customer for any losses caused by a breach of this Clause 17 to the extent that such losses result from the Supplier complying with the Customer's instructions or otherwise carrying out the performance of the Services in accordance with its obligations under this Contract.

18 DISASTER RECOVERY AND BUSINESS CONTINUITY

- 18.1 The Supplier shall ensure that it is able to implement the provisions of the BCDR Plan at any time and in accordance with its terms.
- 18.2 The Parties shall comply with the provisions of Schedule 13 (*Disaster Recovery and Business Continuity*). The BCDR Plan shall take precedence over any business continuity and/or disaster recovery plans or procedures of the Supplier.

19 MONITORING OF CONTRACT PERFORMANCE

- 19.1 The Supplier shall provide such data and information as the Customer reasonably requires in accordance with the Contract for the purposes of monitoring.
- 19.2 Where requested by the Customer, the Supplier shall supply the Management Information to the Customer in the form and frequency set out in Schedule 10 (*Management Information and Reporting*).

20 DISRUPTION

- 20.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 20.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Supplier's own employees or others, which affects or might affect the Supplier's ability at any time to perform its obligations under the Contract.
- 20.3 In the event of industrial action by the Staff, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- 20.4 If the Supplier's proposals referred to in Clause 20.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Contract may be terminated with immediate effect by the Customer by notice in writing.

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

21 REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES

21.1 Without prejudice to any other right or remedy which the Customer may have, if any Services are not supplied in accordance with, or the Supplier fails to comply with any of the terms of the Contract then the Customer may (whether or not any part of the Services have been delivered) do any of the following:

- (a) at the Customer's option, give the Supplier the opportunity at the Supplier's expense to either remedy any failure in the performance of the Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) or to supply replacement Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled, in accordance with the Customer's instructions;
- (b) refuse to accept any further Services to be delivered but without any liability to the Customer;
- (c) carry out at the Supplier's expense any work necessary to make the Services comply with the Contract;
- (d) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Services in accordance with the Contract;
- (e) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Monthly Contract Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- (f) charge the Supplier, for any costs reasonably incurred by the Customer in respect of the supply of any part of the Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services, and the Supplier shall:

- (i) notify the Customer promptly if it disputes the costs, in which case the Customer shall review its costs incurred and determine the amount payable; and
- (ii) pay such costs, within the timescales set out in Clause 12.2(a) (*Payment and Monthly Contract Charges*)

provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

21.2 In the event that the Supplier:

- (a) fails to comply with Clause 21.1 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or
- (b) persistently fails to comply with Clause 21.1 above

the Customer may terminate the Contract with immediate effect by giving the Supplier notice in writing.

22 PREMISES

22.1 Licence to occupy Premises

- (a) The NDA Archive Facility shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under the Contract. The Supplier shall have the use of the NDA Archive Facility as licensee and shall vacate the same as soon as reasonably practicable upon completion, termination, expiry or abandonment of the Contract.
- (b) The Supplier shall limit access to the NDA Archive Facility to such Staff as is necessary to enable it to perform its obligations under the Contract and the Supplier shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently at the NDA Archive Facility as the Customer may reasonably request.
- (c) Save in relation to such actions identified by the Supplier in accordance Clause 22.1(a) and any activities which the Supplier is required to perform to fulfil its obligations under Schedule 2 (*FM Specification*), should the Supplier require modifications to the NDA Archive Facility, such modifications shall be subject to Approval and shall be carried out by the Customer at the Supplier's expense. The Customer shall undertake any modification work which it approves

pursuant to this Clause 22.1(c) without undue delay. Ownership of such modifications shall rest with the Customer.

- (d) The Supplier shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of the NDA Archive Facility and conduct of personnel at the NDA Archive Facility as determined by the Customer, and the Supplier shall pay for the cost of making good any damage caused by the Supplier or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- (e) The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Supplier or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Customer retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

22.2 Property

- (a) Where the Customer issues Customer Equipment free of charge to the Supplier such Customer Equipment shall be and remain the property of the Customer and the Supplier irrevocably licences the Customer and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Customer Equipment. The Supplier shall not in any circumstances have a lien or any other interest on the Customer Equipment and at all times the Supplier shall possess the Customer Equipment as fiduciary agent and bailee of the Customer. The Supplier shall take all reasonable steps to ensure that the title of the Customer to the Customer Equipment and the exclusion of any such lien or other interest are brought to the notice of all Sub-contractors and other appropriate persons and shall, at the Customer's request, store the Customer Equipment separately and ensure that it is clearly identifiable as belonging to the Customer.
- (b) The Customer Equipment shall be deemed to be in satisfactory condition when received by or on behalf of the Supplier unless the Supplier notifies the Customer otherwise within five (5) Working Days of receipt.
- (c) The Supplier shall maintain the Customer Equipment in satisfactory order and condition (excluding fair wear and tear) and shall use the Customer Equipment solely in connection with the Contract and for no other purpose without Approval.

- (d) The Supplier shall ensure the security of all the Customer Equipment whilst in its possession, either on the Customer's Premises or elsewhere during the supply of the Services, in accordance with the Customer's reasonable security requirements as required from time to time.
- (e) The Supplier shall be liable for all loss of, or damage to, the Customer Equipment, (excluding fair wear and tear), unless such loss or damage was caused by the Customer's Default. The Supplier shall inform the Customer within two (2) Working Days of becoming aware of any defects appearing in or losses or damage occurring to the Customer Equipment.

23 KEY PERSONNEL

- 23.1 The Parties have agreed to the appointment of the Key Personnel. The Supplier shall and shall procure that any Sub-contractor shall obtain Approval before removing or replacing any Key Personnel during the Term, save in the event of resignation, dismissal, death or sickness of a member of the Key Personnel.
- 23.2 The Supplier shall provide the Customer with at least one (1) Month's written notice of its intention to replace any member of Key Personnel.
- 23.3 The Customer shall not unreasonably delay or withhold its Approval to the removal or appointment of a replacement for any relevant Key Personnel by the Supplier or Sub-contractor.
- 23.4 The Supplier acknowledges that the persons designated as Key Personnel from time to time are essential to the proper provision of the Services to the Customer. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days (unless such vacancy is caused by death, illness or any other unforeseen occurrence of a similar nature) and that any replacement shall be as qualified and experienced or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 23.5 The Customer may also require the Supplier to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.

24 SUPPLIER'S STAFF

- 24.1 The Customer may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Customer's Premises or an End User's premises:
 - (a) any member of the Staff; or

(b) any person employed or engaged by any member of the Staff

whose admission or continued presence would, in the reasonable opinion of the Customer or relevant End User, be undesirable.

24.2 At the Customer's written request (whether on its own behalf or on behalf of an End User), the Supplier shall provide a list of the names and addresses of all persons (excluding Public Users) who may require admission to the Customer's Premises or an End User's premises (as applicable) in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.

24.3 Staff engaged within the boundaries of the Customer's Premises or an End User's premises (as applicable) shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Customer's Premises or an End User's premises (as applicable).

24.4 If the Supplier fails to comply with Clause 24.2 within three (3) weeks of the date of the request, the Customer may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

24.5 The decision of the Customer as to whether any person is to be refused access to the Customer's Premises or an End User's premises (as applicable) and as to whether the Supplier has failed to comply with Clause 24.2 shall be final and conclusive.

Relevant Convictions

24.6 The Supplier shall ensure that no person who discloses that he has a Relevant Conviction, or who is found by the Supplier to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service procedures or otherwise) is employed or engaged in any part of the provision of the Services without Approval.

24.7 For each member of Staff who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Customer owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-contractor shall):

(a) carry out a policy check with the records held by DfES;

(b) conduct thorough questioning regarding any Relevant Convictions; and

- (c) ensure a police check is completed and an “enhanced check” is carried out through the Disclosure and Barring Service

and the Supplier shall not (and shall ensure that any Sub-contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or an inappropriate record.

25 TUPE

- 25.1 The Customer and the Supplier have agreed the terms and conditions which shall apply in relation to Employees and Transferring Employees in Schedule 17 (*Employees*) and both parties shall comply with the provisions of that Schedule 17 (*Employees*).
- 25.2 The Customer and the Supplier have, in addition to the matters referred to in Clause 25.1, agreed the terms and conditions which shall apply in relation to the pensions of Employees and Transferring Employees in Schedule 18 (*Pensions*) and both parties shall comply with the provisions of that Schedule 18 (*Pensions*).

26 NON-SOLICITATION

- 26.1 Except in respect of any transfer of staff pursuant to Schedule 17 (*Employees*), neither party shall (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed or engaged by such other party in the provision of the Services or (in the case of the Customer) in the receipt of the Services at any time during the Term or for a further period of twelve (12) months after the termination of this Contract other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.
- 26.2 If either the Supplier or the Customer commits any breach of Clause 26.1, the breaching party shall, on demand, pay to the claiming party a sum equal to one year’s basic salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor plus the recruitment costs incurred by the claiming party in replacing such person.

27 TRAINING

- 27.1 The Supplier shall provide training to:
 - (a) the End User personnel in accordance with the Business Plan in respect of the use of the Equipment;
 - (b) the Public Users in respect of use of the Public Access Equipment; and

(c) the Staff in respect of use of the Equipment and the Archive Management System.

27.2 The Monthly Contract Charges shall include the cost of any training and instruction of an End User's personnel in the use of the Equipment.

27.3 The Customer shall procure that NDA will provide training to the Supplier in respect of use of the hardware and software required to use the ERDMS.

28 STAFFING SECURITY

28.1 The Supplier shall comply with the Staff Vetting Procedures in respect of all Supplier Staff employed or engaged in the provision of the Services. The Supplier confirms that all Staff employed or engaged by the Supplier were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

28.2 The Supplier shall provide training on a continuing basis for all Staff employed or engaged in the provision of the Services in compliance with the Security Policy and Security Management Plan.

28.3 The Supplier will ensure that anyone, including subcontractors, who require access or have access to:

- (a) information in any form or media at official-sensitive or above; and/or
- (b) the accredited IT network; and/or
- (c) unescorted access to the non-public areas of the NDA Archive Facility (excluding the high security areas)

must have at least BPSS clearance. If personnel or subcontractors require access to information above official-sensitive, then the higher levels of national security vetting will be required as detailed in Schedule 4 (*Security Management Plan*).

28.4 Save in respect of the circumstances set out in Clause 28.3 above in the event that it will take longer for the Supplier to carry out the work than to secure Clearance, the Customer's existing practices for escorting and supervising un-cleared Sub-contractors will be followed until such time as the Sub-contractor's Clearance is confirmed.

28.5 Where the persons engaged by a Sub-contractor have previously held Clearance, the Customer will confirm that Clearance and the individual will not have access to information, IT network or unescorted access to the non-public areas of the NDA Archive Facility until such confirmation has been received.

28.6 As a minimum, any individual given unescorted access to the NDA Archive Facility (excluding the high security storage area) must hold BPSS.

29 SECURITY MEASURES

29.1 In this Clause 29.1:

- (a) “secret matter” means any matter connected with or arising out of the performance of this Contract which has been, or may hereafter be, by a notice in writing given by the Customer or NDA to the Supplier be designated ‘top secret’, ‘secret’, or ‘official-sensitive’;
- (b) “sensitive information” means any personal data, commercially sensitive information and/or SNI;
- (c) “document” includes any information in any format;
- (d) references to a person employed by the Supplier shall be construed as references to any person employed or engaged by the Supplier to do anything in connection with this Contract, whether under a contract of service with the Supplier or under any other contract or arrangement whatsoever; and
- (e) “servant” where the Supplier is a body corporate shall include a director of that body and any person occupying in relation to that body the position of director by whatever name called.

29.2 The Supplier shall not, either before or after the completion or termination of this Contract, do or permit to be done anything which it knows or ought reasonably to know may result in information about a secret matter and/or sensitive information being disclosed to or acquired by a person who is an employee of the Supplier except in a case where it is necessary for the proper performance of this Contract that such person shall have the information.

29.3 The Supplier shall, for the duration of the Term, take all reasonable steps to ensure that in respect of ‘official-sensitive’ information and sensitive information each End User may:

- (a) access any information which it deposited at the NDA Archive Facility, without the Customer’s or NDA’s prior written consent being required; and
- (b) only access information which it did not deposit it at the NDA Archive Facility if the Customer and/or NDA give their prior written consent to such access.

29.4 Without prejudice to the provisions of Clauses 29.2 and 29.3 and paragraph 7 (*Security Clearance and Access Control*) of Schedule 4 (*Security Management Plan*), the Supplier shall, both before and after the completion or termination of this Contract, take all reasonable steps to ensure:

- (a) that no such person shall have access to any item or document under the control of the Supplier containing information about a secret matter or sensitive information except with the prior consent in writing of the Customer and/or NDA;
- (b) that no visitor to any premises in which there is any item to be supplied under this Contract or where Services are being supplied shall see or discuss with the Supplier or any person employed by him any secret matter or sensitive information unless the visitor is authorised in writing by the Customer and/or NDA so to do;
- (c) that photography is only permitted in the public areas of the NDA Archive Facility. Any photography outside of those areas shall only take place with the prior written consent of the Customer and/or NDA. No photograph of any secret matter or sensitive information is permitted without the prior written consent of the Customer and/or NDA;
- (d) that all information about any secret matter or sensitive information and every document model or other item which contains or may reveal any such information is at all times strictly safeguarded, and that, except insofar as may be necessary for the proper performance of this Contract or with the prior consent in writing of the relevant End User (if the relevant End User remains in existence) or the Customer and/or NDA (if the relevant End User no longer exists), no copies of or extracts from any such document, model or item shall be made or used and no designation of description which may reveal information about the nature or contents of any such document, model or item shall be placed thereon; and
- (e) that if the Customer gives notice in writing to the Supplier at any time requiring the delivery to the Customer or any End User of any such document, model or item as is mentioned in Clause 29.4(d) that document, model or item (including all copies of or extracts therefrom) shall forthwith be delivered to the Customer or the End User (as applicable) who shall be deemed to be the owner thereof and accordingly entitled to retain the same.

29.5 The decision of the Customer on the question whether the Supplier has taken or is taking all reasonable steps as required by the foregoing provisions of Clause 29.4 shall be final and conclusive.

29.6 If and when directed by the Customer, the Supplier shall furnish full particulars of all people with access to information relating to this Contract who are at any time concerned with any secret matter and/or sensitive information.

- 29.7 If and when directed by the Customer, the Supplier shall secure that any person employed by it who is specified in the direction, or is one of a class of people who may be so specified, shall sign a statement that he understands that the Official Secrets Act, 1911 to 1989 and, where applicable, the Atomic Energy Act 1946, Nuclear Industrial Security Regulations 2003 (as amended) and Section 79 of the Anti-terrorism, Crime and Security Act 2001 apply to the person signing the statement both during the carrying out and after expiry or termination of a Contract.
- 29.8 If at any time either before or after the expiry or termination of this Contract it comes to the notice of the Supplier that any person acting without lawful authority is seeking or has sought to obtain information concerning this Contract or anything done or to be done in pursuance thereof, the matter shall be forthwith reported by the Supplier to the Customer and the report shall, in each case, be accompanied by a statement of the facts, including, if possible, the name, address and occupation of that person, and the Supplier shall be responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by it, that person shall forthwith report the matter to the Supplier with a statement of the facts as aforesaid.
- 29.9 The Supplier shall place every person employed by it, other than a Sub-contractor, who in its opinion has or will have such knowledge of any secret matter as to appreciate its significance, under a duty to the Supplier to observe the same obligations in relation to that matter as are imposed on the Supplier by Clauses 29.2 and 29.4, and shall, if directed by the Customer, place every person who is specified in the direction or is one of a class of people so specified, under the like duty in relation to any secret matter which may be specified in the direction, and shall at all times use its best endeavours to ensure that every person upon whom obligations are imposed by virtue of this Clause 29.9 observes the said obligations, and the Supplier shall give such instructions and information to every such person as may be necessary for that purpose, and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to the Supplier with all necessary particulars.
- 29.10 The Supplier shall, if directed by the Customer, include in the Sub-contract provisions in such terms as the Customer may consider appropriate for placing the Sub-contractor under obligations in relation to secrecy and security corresponding to those placed on the Supplier by this Clause 29, but with such variations (if any) as the Customer may consider necessary. Further the Supplier shall:
- (a) give such notices, directions, requirements and decisions to its Sub-contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-contracts under this Clause 29.10 into operation in such cases and to such extent as the Customer may direct;

- (b) if there comes to its notice any breach by the Sub-contractor of the obligations of secrecy and security included in their Sub-contracts in pursuance of this Clause 29, notify such breach forthwith to the Customer; and
- (c) if and when so required by the Customer, exercise its power to determine the Sub-contract under the provision in that Sub-contract which corresponds to Clause 29.13.

29.11 The Supplier shall give the Customer such information and particulars as the Customer may from time to time require for the purposes of satisfying the Customer that the obligations imposed by or under the foregoing provisions of this Clause 29 have been and are being observed and as to what the Supplier has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof, and the Supplier shall secure that a representative of the Customer duly authorised in writing shall be entitled to enter and inspect any premises in which anything is being done or is to be done under this Contract or in which there is or will be any item to be supplied under this Contract, and also to inspect any document or item in any such premises or which is being made or used for the purposes of this Contract and that any such representative shall be given all such information as he may require on the occasion of, or arising out of, any such inspection.

29.12 Nothing in this Clause 29 shall prevent any person from giving any information or doing anything on any occasion when it is, by virtue of any enactment, the duty of that person to give that information or do that thing.

29.13 If the Customer shall consider that any of the following events has occurred:

- (a) that the Supplier has committed a breach of, or failed to comply with any of, the foregoing provisions of this Clause 29; or
- (b) that the Supplier has committed a breach of any obligations in relation to secrecy or security imposed upon it by any other contract with the Customer, or with any department or person acting on behalf of the Crown; or
- (c) that by reason of an act or omission on the part of the Supplier, or of a person employed by the Supplier information about a secret matter or sensitive information has been or is likely to be acquired by a person who, in the opinion of the Customer and/or NDA, ought not to have such information

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

29.14 A decision of the Customer to terminate this Contract in accordance with the provisions of Clause 29.13 shall be final and conclusive and it shall not be necessary for any

notice of such termination to specify or refer in any way to the event or considerations upon which the Customer's decision is based.

29.15 The Supplier may within five (5) Working Days of the termination of this Contract in accordance with the provisions of Clause 29.13, give the Customer notice in writing requesting the Customer to state whether the event upon which the Customer's decision to terminate was based is an event mentioned in Clauses 29.13(a), 29.13(b) or 29.13(c) and to give particulars of that event and the Customer shall within ten (10) Working Days of the receipt of such a request give notice in writing to the Supplier containing such a statement and particulars as are required by the request.

29.16 The termination of this Contract pursuant to Clause 29.13 shall be without prejudice to any rights of either party which shall have accrued before the date of such termination:

(a) the Supplier shall be entitled to be paid for any work or thing done under this Contract and accepted but not paid for by the Customer at the date of such termination either at the price which would have been payable under this Contract if the Contract had not been terminated, or at a reasonable price;

(b) the Customer may take over any work or thing done or made under this Contract (whether completed or not) and not accepted at the date of such termination which the Customer may by notice in writing to the Supplier given within thirty (30) Days from the time when the provisions of this Clause 29 shall have effect, elect to take over, and the Supplier shall be entitled to be paid for any work or thing so taken over a price which, having regard to the stage which that work or thing has reached and its condition at the time it is taken over, is reasonable. The Supplier shall in accordance with directions given by the Customer, deliver any work or thing taken over under this Clause 29.16(b) and take all such other steps as may be reasonably necessary to enable the Customer to have the full benefit of any work or thing taken over under this Clause 29.16(b); and

(c) save as aforesaid, the Supplier shall not be entitled to any payment from the Customer after the termination of this Contract.

29.17 If, after notice of termination of this Contract pursuant to the provisions of Clause 29.13:

(a) the Customer shall not within ten (10) Working Days of the receipt of a request from the Supplier, furnish such a statement and particulars as are detailed in Clause 29.15; or

(b) the Customer shall state in the statement and particulars detailed in Clause 29.15 that the event upon which the Customer's decision to terminate this Contract was based is an event mentioned in Clause 29.13(c).

the respective rights and obligations of the Supplier and the Customer shall be terminated in accordance with the following provisions:

- (c) the Customer shall take over from the Supplier at a fair and reasonable price all unused and undamaged materials, bought-out parts and components and articles in course of manufacture in the possession of the Supplier upon the termination of this Contract under the provisions of Clause 29.13 and properly provided by or supplied to the Supplier for the performance of this Contract, except such materials, bought-out parts and components and articles in course of manufacture as the Supplier shall, with the concurrence of the Customer, elect to retain;
- (d) the Supplier shall prepare and deliver to the Customer within an agreed period or in default of agreement within such period as the Customer may specify, a list of all such unused and undamaged materials, bought-out parts and components and articles in course of manufacture liable to be taken over by or previously belonging to the Customer and shall deliver such materials and items in accordance with the directions of the Customer who shall pay to the Supplier fair and reasonable handling and delivery charges incurred in complying with such directions;
- (e) the Customer shall reimburse the Supplier in respect of any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Supplier in connection with this Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Contract;
- (f) if hardship to the Supplier should arise from the operation of this Clause 29.17 it shall be open to the Supplier to refer the circumstances to the Customer who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the Customer on any matter arising out of this Clause 29.17 shall be final and conclusive; and
- (g) subject to the operation of Clauses 29.17(c), 29.17(d), 29.17(e) and 29.17(f), termination of this Contract shall be without prejudice to any rights of either party that may have accrued before the date of such termination.

30 INTELLECTUAL PROPERTY RIGHTS

30.1 Save as expressly granted elsewhere under the Contract:

- (a) the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including those in relation to:

- (i) the Supplier Software;
- (ii) the Documentation; or
- (iii) the Supplier Pre-Existing IPR

and

- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including those in relation to:
 - (i) the Customer Software;
 - (ii) the Customer Pre-Existing IPR;
 - (iii) the Customer Data;
 - (iv) the Project Specific IPR;
 - (v) the Records; or
 - (vi) information related to the Records (whether pre-existing or created).

30.2 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 30.1, 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).

30.3 The Supplier shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Contract) without Approval, use or disclose any of the Customer's Software, Customer's Pre-Existing IPR, Customer Data or the Project Specific IPRs to any third party.

30.4 In relation to the Archive Management Software:

- (a) the Silver Software shall be licensed to the Customer on the Silver Licence Terms; and
- (b) the COTS Software shall be licensed to the Customer on the COTS Licence Terms.

30.5 The Supplier hereby grants, or shall procure the direct grant, to the Customer (and the Replacement Supplier) of a perpetual, transferrable, irrevocable, sub-licensable, non-exclusive, royalty free licence to use the Supplier Pre-Existing IPR and the Documentation so far as is necessary for the Customer to receive the Services and make use of any services provided by the Replacement Supplier.

- 30.6 The Supplier hereby grants to the Customer a perpetual, transferrable, irrevocable, sub-licensable, non-exclusive, royalty free licence to copy the Documentation for any purpose connected with the receipt of the Services or that is incidental to the exercise of the rights granted to the Customer under this Contract.
- 30.7 The Supplier hereby assigns to the Customer, with full title guarantee, any and all title to and all rights and interest that it may generate or otherwise acquire in the Project Specific IPRs or shall procure that the owner of the Project Specific IPRs assigns them to the Customer on the same basis. Such assignment shall either take effect on the Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Project Specific IPRs, as appropriate. The Supplier shall waive or procure a waiver of any moral rights in the Project Specific IPRs assigned to the Customer under this Contract.
- 30.8 If requested to do so by the Customer, the Supplier shall, and shall procure that the owner shall, without charge to the Customer execute all documents and do all such further acts as the Customer may require to perfect the assignment under Clause 30.7.
- 30.9 If any improvements to the Archive Management Software are implemented pursuant to Clause 13.6 then the Intellectual Property Rights in that improvement shall, if made to the:
- (a) COTS Software, be licensed to the Customer on the COTS Licence Terms; or
 - (b) Silver Software, be licensed to the Customer on the Silver Licence Terms
- unless the parties agree in writing that such improvement(s) are to be licensed pursuant to any of the terms under Schedule 15 (*Software Terms*).
- 30.10 The Customer hereby grants to the Supplier a non-exclusive, non-assignable royalty free licence to use the Customer Software, Customer Pre-Existing IPR, Customer Data and the Project Specific IPRs during the Term for the sole purpose of enabling the Supplier to provide the Services. Such licence:
- (a) includes the right to grant sub-licences to Sub-contractors provided that any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 31.6; and
 - (b) is granted solely to the extent necessary for performing the Services and in accordance with this Contract. The Supplier shall not, and shall procure that the Sub-contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Customer.
- 30.11 In the event of the termination or expiry of this Contract, the licence referred to in Clause 30.10 and any sub-licence granted in accordance with Clause 30.10(a) shall

terminate automatically and the Supplier shall deliver to the Customer all material licensed to the Customer pursuant to Clause 30.10 in the Supplier's possession or control.

- 30.12 Subject to Clause 30.13 and Clause 30.14 the Supplier shall ensure that no unlicensed software or open source software (other than such Software in relation to which the Supplier has deposited the Source Code into escrow) is interfaced with or embedded within any Customer Software.
- 30.13 Prior to using any third party IPRs in connection with the supply of the Services, the Supplier shall submit all details of such third party IPRs as the Customer may request to the Customer for Approval ("**Request for Approval**"). The Supplier shall provide the Customer with details of any third party licence required by the Supplier and/or the Customer in order for the Supplier to carry out its obligations under the Contract using the third party IPRs in the Request for Approval. The Customer reserves the right to withhold Approval in the event that it does not agree to the terms of the third party licence or where any additional charges will be incurred.
- 30.14 Where the Supplier is granted Approval to use the third party IPRs set out in a Request for Approval, the Supplier shall procure that the owner of such third party IPRs grants to the Customer a licence upon the terms informed to the Customer in the Request for Approval.
- 30.15 The Supplier shall on demand, during and after the Term, fully indemnify and keep fully indemnified and hold the Customer and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer or the Crown may suffer or incur as a result of any claim that the rights granted to the Customer pursuant to this Contract and/or the performance by the Supplier of the Services infringes or allegedly infringes a third party's Intellectual Property Rights ("Claim") except where the Claim arises from:
- (a) items or materials based upon designs supplied by the Customer;
 - (b) the use of data supplied by the Customer or an End User which is not required to be verified by the Supplier under any provision of the Contract; and
 - (c) the use of Customer Software and/or Customer Pre-Existing IPR except where the Claim is in connection with any Customer Software and/or Customer Pre-Existing IPR which has been modified, adapted or misused by the Supplier.
- 30.16 The Customer shall notify the Supplier in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Supplier:

- (a) shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
- (b) shall take due and proper account of the interests of the Customer;
- (c) shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute; and
- (d) shall not settle or compromise the Claim without Approval (not to be unreasonably withheld or delayed).

30.17 If a Claim is made in connection with the Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall immediately notify the Customer and, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), use its best endeavours to:

- (a) modify the relevant part of the Services without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that:
 - (i) the provisions herein shall apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or
 - (ii) such substitution shall not increase the burden on the Customer; or
 - (iii) the replaced or modified item does not have an adverse effect on any other Services or the ICT Environment;
 - (iv) there is no additional cost to the Customer; and
 - (v) such modified or substituted goods and/or services items shall be acceptable to the Customer (such acceptance not to be unreasonably withheld); or
- (b) procure a licence to use and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Customer;
- (c) in relation to the performance of the Supplier's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations

and in the event that the Supplier is unable to comply with Clauses 30.17(a) or 30.17(b) within twenty (20) Working Days of receipt of the Supplier's notification the Customer may terminate the Contract with immediate effect by notice in writing and the Supplier

shall, upon demand, refund the Customer with all monies paid in respect of the Services that is subject to the Claim.

- 30.18 The Supplier's compliance with Clause 30.17 shall be at its own expense and the Supplier shall be liable for all costs and expenses that the Customer may incur resulting from the Customer's compliance with Clause 30.17.
- 30.19 In the event that a modification or substitution in accordance with Clause 30.17(a) is not possible so as to avoid the infringement, or the Supplier has been unable to procure a licence in accordance with Clause 30.17(b) the Customer shall be entitled to delete the relevant Service from the Contract.
- 30.20 If the Supplier elects to modify or replace an item pursuant to Clause 30.17(a) or to procure a licence in accordance with Clause 30.17(b) but this has not avoided or resolved the Claim, then the Customer may terminate this Contract by written notice with immediate effect and, without prejudice to the indemnity set out in Clause 30.15, the Supplier shall, be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring and implementing and the substitute items.
- 30.21 The Supplier shall have no rights to use any of the Customer's and/or End Users' names, logos or trademarks without prior Approval.
- 30.22 This Clause 30 sets out the entire financial liability of the Supplier with regard to the infringement of any IPRs as a result of the provision of the Services hereunder. This shall not affect the Supplier's financial liability for other Defaults or causes of action that may arise.

31 PROTECTION OF INFORMATION

31.1 Security Requirements

- (a) The Supplier shall comply, and shall procure the compliance of the Staff, with the Security Policy and the Security Management Plan and the Supplier shall ensure that the Security Policy produced by the Supplier fully complies with Schedule 4 (*Security Management Plan*) and Schedule 1 (*Services*).
- (b) The Supplier shall notify the Customer of any changes or proposed changes to the Security Policy.
- (c) If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Services it may notify the Customer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Monthly

Contract Charges shall then be agreed in accordance with the procedure set out in Clause 47.

- (d) Until and/or unless a change to the Monthly Contract Charges is agreed by the Customer pursuant to Clause 47 (*Variation*) the Supplier shall continue to perform the Services in accordance with its existing obligations.

31.2 Malicious Software

- (a) If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other (or, if the loss relates to HC Data, the Customer will use reasonable endeavours to procure that HC assists) to mitigate any losses and to restore the Services to their desired operating efficiency.
- (b) Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 31.2(a) shall be borne by the Parties as follows:
 - (i) by the Supplier, where the Malicious Software originates from the Supplier Software or the Customer Data (whilst the Customer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Supplier; and
 - (ii) by the Customer if the Malicious Software originates from the Customer Software or the Customer Data (whilst the Customer Data was under the control of the Customer).

31.3 Security of Premises

- (a) The Supplier shall be responsible for maintaining the security of the NDA Archive Facility in accordance with Schedule 4 (*Security Management Plan*) and Schedule 1 (*Services*). The Supplier shall comply with all reasonable security requirements of the Customer while at the NDA Archive Facility and shall ensure that all Staff, and use all reasonable endeavours to ensure that visitors and members of the public comply with such requirements while at the NDA Archive Facility.
- (b) The Supplier shall provide the Customer upon request copies of its written security procedures relating to the security of the NDA Archive Facility and shall afford the Customer the opportunity to inspect its physical security

arrangements in place at the NDA Archive Facility at any time (and such other facilities where the Services are provided, if the Customer so requests).

31.4 NDA Data, HC Data, Customer Data

- (a) The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- (b) The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly Approved by the Customer (on behalf of itself in respect of the NDA Data or on behalf of HC in respect of the HC Data).
- (c) Subject to Clause 29 (*Security Measures*) to the extent that Customer Data is held and/or processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer and/or End Users and in the format specified in this Contract (if any) and in any event as specified by the Customer and/or End Users from time to time in writing.
- (d) To the extent that Customer Data is held and/or processed by the Supplier, the Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- (e) NDA Data shall only be processed on the NDA's secure IT infrastructure.
- (f) HC Data shall only be processed on HC's secure IT infrastructure.
- (g) If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Customer may:
 - (i) require the Supplier (at the Supplier's expense) to co-operate with the Customer to restore or procure the restoration of Customer Data to the extent and in accordance with the BCDR Plan and the Supplier shall do so as soon as practicable but in accordance with the time period notified by the Customer; and/or
 - (ii) itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the BCDR Plan.
- (h) If at any time the Supplier suspects or has reason to believe that Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.

31.5 Protection of Personal Data

- (a) With respect to the Parties' rights and obligations under this Contract, the Parties agree that the Customer is the Data Controller and that the Supplier is the Data Processor.
- (b) The Supplier shall:
 - (i) Process the Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Customer to the Supplier during the Term);
 - (ii) Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
 - (iii) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - (iv) take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;
 - (v) obtain Approval in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services (and the Customer hereby acknowledges its Approval of the transfer of Personal Data to those Sub-contractors listed in Schedule 7 (*Approved Sub-contractors*) as necessary to enable the Supplier to perform the Services);
 - (vi) ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 31.5;
 - (vii) ensure that none of the Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer;
 - (viii) notify the Customer (within five (5) Working Days) if it receives:

- (A) a request from a Data Subject to have access to that person's Personal Data; or
 - (B) a complaint or request relating to the Customer's obligations under the Data Protection Legislation;
- (ix) provide the Customer with full cooperation and assistance in relation to any complaint or request made, including by:
 - (A) providing the Customer with full details of the complaint or request;
 - (B) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;
 - (C) providing the Customer with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and
 - (D) providing the Customer with any information requested by the Customer;
- (x) permit the Customer or the Customer Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Supplier's data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Supplier is in full compliance with its obligations under this Contract;
- (xi) provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within the timescales required by the Customer); and
- (xii) not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Commencement Date, the Supplier (or any Sub-contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area, the following provisions shall apply:
 - (A) the Supplier shall submit a Change Control Form to the Customer which shall be dealt with in accordance with the Change Control Procedure and Clauses 31.5(b)(xii)(B) to 31.5(b)(xii)(D) below;

(B) the Supplier shall set out in its Change Control Form details of the following:

- 1) the Personal Data which will be Processed and/or transferred outside the European Economic Area;
- 2) the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the European Economic Area;
- 3) any Sub-contractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; and
- 4) how the Supplier will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the Customer's compliance with the Data Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the European Economic Area;

(C) in providing and evaluating the Change Control Form, the Parties shall ensure that they have regard to and comply with then-current Customer, Government and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the European Economic Area and/or overseas generally but, for the avoidance of doubt, the Customer may, in its absolute discretion, refuse to grant Approval of such Process and/or transfer any Personal Data outside the European Economic Area; and

(D) the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:

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

- 2) procuring that any Sub-contractor or other third party who will be Processing and/or transferring the Personal Data outside the European Economic Area enters into a direct data processing agreement with the Customer on such terms as may be required by the Customer, which the Supplier acknowledges may include the incorporation of standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation).
- (c) The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.
 - (d) The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to Personal Data that the Customer may be irreparably harmed (including harm to its reputation). In such circumstances, the Customer may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).
 - (e) The Supplier shall, at all times during and after the Term, indemnify the Customer and keep the Customer indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer arising from any breach of the Supplier's obligations under this Clause 31 except and to the extent that such liabilities have resulted directly from the Customer's instructions.

31.6 Confidentiality

- (a) Except to the extent set out in this Clause 31.6 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
 - (i) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - (ii) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- (b) Clause 31.6(a) shall not apply to the extent that:

- (i) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 31.8 (*Freedom of Information*);
 - (ii) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - (iii) such information was obtained from a third party without obligation of confidentiality;
 - (iv) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - (v) it is independently developed without access to the other Party's Confidential Information.
- (c) The Supplier may only disclose the Customer's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- (d) The Supplier shall not, and shall procure that the Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Contract.
- (e) At the written request of the Customer, the Supplier shall procure that those members of Staff identified in the Customer's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- (f) In the event that any default, act or omission of any Staff causes or contributes (or could cause or contribute) to the Supplier breaching its obligations as to confidentiality under or in connection with this Contract, the Supplier shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Staff, the Supplier shall provide such evidence to the Customer as the Customer may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings to demonstrate that the Supplier is taking appropriate steps to comply with this Clause 31, including copies of any written communications to and/or from Staff, and any minutes of meeting and any other records or reports which provide an

audit trail of any discussions or exchanges with Staff in connection with obligations as to confidentiality.

- (g) Nothing in this Contract shall prevent the Customer from disclosing the Supplier's Confidential Information (including the Management Information obtained under Clause 19.2):
 - (i) to any Crown body. All Crown bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body;
 - (ii) to any consultant, contractor or other person engaged by the Customer or any person conducting a Crown Commercial Contracts gateway review;
 - (iii) for the purpose of the examination and certification of the Customer's accounts; or
 - (iv) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.
- (h) The Customer shall use all reasonable endeavours to ensure that any government department, employee, third party or Sub-contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 31.6(g) is made aware of the Customer's obligations of confidentiality.
- (i) Nothing in this Clause 31.6 shall prevent either party from using any techniques, ideas or Know-How gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.
- (j) In the event that the Supplier fails to comply with Clause 31.6(a) to Clause 31.6(f) the Customer reserves the right to terminate this Contract with immediate effect by notice in writing.
- (k) In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this Contract, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice, Schedule 4 (*Security Management Plan*) and Schedule 1 (*Services*).

31.7 Official Secrets Acts 1911 to 1989, section 182 of the Finance Act 1989

- (a) The Supplier shall comply with and shall ensure that its Staff comply with, the provisions of:
 - (i) the Official Secrets Acts 1911 to 1989;
 - (ii) section 182 of the Finance Act 1989;
 - (iii) section 79 of the Anti-Terrorism, Crime and Security Act 2001; and
 - (iv) the Nuclear Industry Security Regulations 2003 (as amended).
- (b) In the event that the Supplier or its Staff fail to comply with this Clause 31, the Customer reserves the right to terminate the Contract by giving notice in writing to the Supplier.

31.8 Freedom of Information

- (a) The Supplier acknowledges that the Customer and End Users are subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer and End Users to enable the Customer to comply with their respective Information disclosure obligations.
- (b) The Supplier shall and shall procure that its Sub-contractors shall:
 - (i) transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - (ii) provide the Customer with a copy of all Information in its possession, or control in the form that the Customer and/or End Users require within five (5) Working Days (or such other period as the Customer and/or an End User may specify) of the Customer's and/or an End User's request; and
 - (iii) provide all necessary assistance as reasonably requested by the Customer and/or an End User to enable the Customer and/or an End User to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- (c) The Customer and/or an End User shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other Contract whether the Commercially Sensitive Information and/or any

other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

- (d) In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Customer and/or the relevant End User (as applicable).
- (e) The Supplier acknowledges that (notwithstanding the provisions of Clause 31.6) the Customer and/or an End User may, acting in accordance with the Governments' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:
 - (i) in certain circumstances without consulting the Supplier; or
 - (ii) following consultation with the Supplier and having taken their views into account

provided always that where Clause 31.8(d) applies the Customer and/or an End User shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

- (f) The Supplier shall ensure that all Information is retained for disclosure in accordance with the provisions of this Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Customer and/or an End User to inspect such records as requested from time to time.
- (g) The Supplier acknowledges that the Commercially Sensitive Information is of indicative value only and that the Customer and/or an End User may be obliged to disclose it in accordance with Clause 31.8(e).

31.9 Transparency

- (a) The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Customer and End Users shall be responsible for determining in their absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- (b) Notwithstanding any other term of this Contract and/or any End User Agreement, the Supplier hereby gives its consent for the Customer to publish

the Contract and/or any End User Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Agreement, to the general public.

- (c) The Customer may consult with the Supplier to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.
- (d) The Supplier shall assist and cooperate with the Customer to enable the Customer to publish this Contract and/or any End User Agreement.

32 WARRANTIES AND REPRESENTATIONS

32.1 The Supplier warrants, represents and undertakes to the Customer that:

- (a) it has full capacity and authority and all necessary consents licences, permissions (statutory, regulatory, contractual or otherwise) (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
- (b) the Contract is executed by a duly authorised representative of the Supplier;
- (c) in entering the Contract it has not committed any Fraud;
- (d) it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
- (e) this Contract shall be performed in compliance with all Laws (as amended from time to time) and all applicable Standards;
- (f) as at the Commencement Date, all information, statements and representations contained in the Tender and the PQQ Response for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Customer prior to execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- (g) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;

- (h) it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- (i) 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;
- (j) it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract and shall maintain the same in full force and effect;

32.2 The Supplier warrants represents and undertakes to the Customer that:

- (a) the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- (b) it shall discharge its obligations hereunder (including the provision of the Services) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures;
- (c) the Services are and will continue to be during the Term:
 - (i) of satisfactory quality; and
 - (ii) in conformance with the relevant specifications set out in this Contract and (if applicable) the manufacturer's specifications and documentation;
- (d) in the three (3) Years prior to the Commencement Date:
 - (i) it has conducted all financial accounting and reporting activities in all material respects in compliance with the generally accepted accounting principles that apply to it in any country where it files accounts; and
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
 - (iii) it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract; and

- (iv) for the Term that all Staff will be vetted in accordance with Good Industry Practice, the Security Policy and the Quality Standards.

32.3 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Supplier.

32.4 The Customer warrants, represents and undertakes to the Supplier that:

- (a) it has full capacity and authority and all necessary consents licences, permissions (statutory, regulatory, contractual or otherwise) (including where its procedures so require, the consent of NDA) to enter into and perform its obligations under the Contract;
- (b) the Contract is executed by a duly authorised representative of the Customer; and
- (c) it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract and shall maintain the same in full force and effect.

32.5 The Supplier acknowledges and agrees that:

- (a) the warranties, representations and undertakings contained in this Contract are material and are designed to induce the Customer into entering into this contract; and
- (b) the Customer has been induced into entering into this Contract and in doing so has relied upon the warranties, representations and undertakings contained herein.

33 LIABILITIES

33.1 Subject to Clauses 33.3 and 33.4, the Supplier's total aggregate liability in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise in connection with this Contract, shall in no event exceed:

- (a) [REDACTED] in the first year of the Initial Term;
- (b) [REDACTED] in the second year of the Initial Term;
- (c) [REDACTED] in the third year of the Initial Term;
- (d) [REDACTED] in the fourth year of the Initial Term;
- (e) [REDACTED] in the fifth year of the Initial Term;

- (f) subject to extension of the Term in accordance with Clause 1.2, in each subsequent year of the Term.

33.2 Where the Supplier is entitled to recover insurance proceeds as an insured party under one of the insurance policies listed in this Clause 33, the Supplier shall take all reasonable steps to pursue such claim, and any insurance proceeds recovered under such claim shall be excluded from the liability caps set out in Clause 33.1.

33.3 Subject to Clause 33.4(a) and notwithstanding the amounts set out in Clause 33.1(a) to 33.1(f) (inclusive) and excluding any indemnity liability as set out in Clause 33.4(c), the Supplier's total liability in respect of any claims, actions, costs or proceedings arising under Schedule 16 (*Exit Planning and Service Transfer Arrangements*) and/or Schedule 17 (*Employees*) (the "**Employment Liabilities**") shall in no event exceed

33.4 Liability

- (a) Nothing in the Contract shall be construed to limit or exclude either Party's liability for:
- (i) death or personal injury caused by its negligence or that of its employees, agents or subcontractors;
 - (ii) Fraud or fraudulent misrepresentation by it or that of its employees; or
 - (iii) any other act or omission liability for which may not be excluded or limited by law.
- (b) Nothing in the Contract shall be construed to limit or exclude the Supplier's liability in respect of any claim in respect of the indemnity given by the Supplier in Clause 12.2(f) (*Payment and VAT*).
- (c) Subject to Clause 33.4(a) and notwithstanding the amounts set out in Clause 33.1(a) to 33.1(f) (inclusive), the Supplier's total aggregate liability in respect of any claim relating to:
- (i) the indemnity in Clause 30.15 (*Intellectual Property Rights*);
 - (ii) the indemnity in Clause 31.5 (*Protection of Personal Data*);
 - (iii) the indemnity in paragraph 4.8(a) (*Employment Exit Provisions*) of Schedule 17 (*Employees*);
 - (iv) the indemnity in paragraph 4.10 (*Employment Exit Provisions*) of Schedule 17 (*Employees*);

- (v) the indemnity in paragraph 3.3 (*Admission Body*) of Part C (*LGPS Protected Employees*) of Schedule 18 (*Pensions*);
- (vi) the indemnity in paragraph 7.1 (*Claims from LGPS Protected Employees or Trade Unions*) of Part C (*LGPS Protected Employees*) of Schedule 18 (*Pensions*); and
- (vii) in respect of any other breach by the Supplier of its obligations under Schedule 18 (*Pensions*)

shall in no event exceed ten million pounds sterling (£10,000,000) during the Term and for a period of twelve (12) months after the Expiry Date.

- (d) Subject to Clauses 33.4(a) and 33.4(e), in no event shall either Party be liable to the other for any:
 - (A) loss of profits;
 - (B) loss of business;
 - (C) loss of revenue;
 - (D) loss of or damage to goodwill;
 - (E) loss of savings (whether anticipated or otherwise); and/or
 - (F) any indirect, special or consequential loss or damage.
- (e) Subject always to the provisions of Clauses 33.4(a) the provisions of 33.4(f), shall not be taken as limiting the right of the Customer to recover as a direct loss any losses, costs, damages, expenses or other liabilities suffered or incurred by the Customer which arise out of or in connection with the loss of, corruption or damage to or failure to deliver Customer Data by the Supplier.
- (f) Subject to Clauses 33.4(a) and 33.4(d), nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Supplier that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.

33.5 Insurance

- (a) The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's

performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss (including the insurance policies specified in Clauses 33.5(c), 33.5(g) and 33.5(h)). Such policies shall include cover in respect of any direct financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the Term and for the Minimum Insurance Period.

- (b) The Customer shall effect and maintain adequate buildings and contents insurance. The Supplier shall promptly pay to the Customer the deductible in respect of any claim made under such policy by a person other than the Supplier, such deductible not to exceed twenty-five thousand pounds (£25,000) per claim.
- (c) The Supplier shall hold employer's liability insurance in respect of its employees with a minimum limit of indemnity of such amount as may reasonably be required by Law from time to time.
- (d) The Supplier shall give the Customer on each anniversary of the Commencement Date, during the Term and, on request (such request not to be made more than once in any calendar year), evidence of all insurance policies referred to in this Clause 33 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- (e) If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of the Contract (save for employer's liability insurance) the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- (f) The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability referred to in Clause 33.5(c).
- (g) The Supplier shall effect and maintain a professional indemnity insurance policy during the Term:
 - (i) with a minimum limit of indemnity of five million pounds sterling (£5,000,000) for each individual claim or such higher limit as the Customer may reasonably require (and/or as required by Law from time to time); and
 - (ii) shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services effect and maintain

appropriate professional indemnity insurance during the Term with the same minimum limit of indemnity.

- (h) The Supplier shall maintain in force a public liability insurance policy with a limit of at least five million pounds sterling (£5,000,000) per claim.
- (i) The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as avoided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any insurance, or any cover or claim under any insurance in whole or in part.

33.6 Taxation, National Insurance and Employment Liability

The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. Subject always to either party's obligations under the provisions of Schedule 17 (*Employees*), the Supplier shall at all times indemnify the Customer and keep the Customer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Customer is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Term or arising from termination or expiry of the Contract (except as provided for in Schedule 17 (*Employees*) of this Contract).

34 TERMINATION

34.1 Termination on Insolvency

The Customer may terminate the Contract with immediate effect by giving notice in writing to the Supplier where in respect of the Supplier:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as

part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A 1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in Clause 34.1(a) to 34.1(g) occurs under the law of any other jurisdiction.

34.2 Termination on Change of Control

- (a) The Supplier shall notify the Customer immediately if the Supplier undergoes a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 ("**Change of Control**") and provided this does not contravene any Law shall notify the Customer immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. The Customer may terminate the Contract by notice in writing with immediate effect within six months of:
 - (i) being notified that a Change of Control has occurred or is planned or in contemplation; or
 - (ii) where no notification has been made, the date that the Customer becomes aware of the Change of Control

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

34.3 Termination on Default

- (a) The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a Default and if:
 - (i) the Supplier has not remedied the Default to the satisfaction of the Customer within ten (10) Working Days or such other longer period as may be specified by the Customer, after issue of a written notice specifying the Default and requesting it to be remedied; or
 - (ii) the Default is not, in the opinion of the Customer, capable of remedy; or
 - (iii) the Default is a Material Breach of the Contract.
- (b) In the event that through any Default of the Supplier, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded so as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such Default of the Supplier.
- (c) If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within the Undisputed Sums Time Period, the Supplier may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under Clause 12.4 (*Recovery of Sums Due*).

34.4 Termination on Reasonable Notice

The Customer shall have the right to terminate the Contract at any time by giving 6 (six) months' notice in writing.

34.5 Termination on Financial Standing

The Customer may terminate this Contract by serving notice on the Supplier in writing with effect from the date specified in such notice where (in the reasonable opinion of the Customer), there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:

- (a) adversely impacts on the Supplier's ability to supply the Services under this Contract; or

- (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Services under this Contract.

34.6 Termination on Audit

The Customer may terminate this Contract by serving notice in writing with effect from the date specified in such notice if the Supplier commits a Default of Clauses 40.1 (*Records and Audit Access*) to 40.5 (*Records and Audit Access*) and Clause 40.6 (*Records and Audit Access*).

34.7 Partial Termination

If the Customer is entitled to terminate this Contract pursuant to this Clause 34, it may (at its sole discretion) terminate all or part of this Contract.

34.8 Termination for breach of Security Measures

The Customer may terminate this Contract by serving notice in writing with effect from the date specified in such notice if the Supplier commits a breach of the security provisions, as set out in Clause 29.13 (*Security Measures*) and Clause 29.17 (*Security Measures*).

34.9 Termination on Default - Place of Deposit Status and Archive Service Accreditation

- (a) The Customer may terminate this Contract by serving notice in writing with effect from the date specified in such notice if, due to a breach (in whole or in part) by the Supplier of its obligations:
 - (i) under Clause 17.2 (*Place of Deposit and Archive Service Accreditation*), The National Archive determines that the NDA Archive Facility no longer has Place of Deposit status; or
 - (ii) under Clause 17.3 (*Place of Deposit and Archive Service Accreditation*), The National Archive determines that the NDA Archive Facility no longer has Archive Service Accreditation.
- (b) Subject to Clause 33.1 (*Liabilities*), if the Customer incurs any unmitigable loss or expense as a direct result of a breach by the Supplier of its obligations under Clause 17.2 which leads to termination in accordance with Clause 34.9(a) (*Place of Deposit and Archive Service Accreditation*) above, the Supplier shall indemnify the Customer in respect of such losses.

34.10 Termination for Breach of Anti-Bribery and Corruption Provisions

(a) If the Supplier, its Staff, consultants, agents or Sub-contractors or any person acting on the Supplier's behalf, in all cases whether or not acting with the Supplier's knowledge breaches:

- (i) Clause 39 (*Prevention of Bribery and Corruption*); or
- (ii) the Bribery Act 2010 in relation to this Contract or any other contract with the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Contract

the Customer shall be entitled to terminate this Contract by written notice with immediate effect.

(b) Without prejudice to its other rights and remedies under Clause 39 (*Prevention of Bribery and Corruption*), the Customer shall be entitled to recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full from and against:

- (i) the amount of value of any such gift, consideration or commission; and
- (ii) any other loss sustained by the Customer in consequence of any breach of Clause 39 (*Prevention of Bribery and Corruption*).

34.11 Termination for Fraud

(a) If the Supplier or its Staff commits any Fraud in relation to this or any other contract with NDA or the Customer, the Customer may:

- (i) terminate the Contract with immediate effect by giving the Supplier notice in writing; and/or
- (ii) recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full from any loss sustained by the Customer in consequence of any breach of Clause 42 (*Prevention of Fraud*) including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Term.

34.12 Termination for Force Majeure

If a Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of three (3) Months, either Party may terminate the Contract with immediate effect by notice in writing to the other Party.

35 CONSEQUENCES OF EXPIRY OR TERMINATION

35.1 Where the Customer terminates the Contract under Clauses 34.3 (*Termination on Default*), 34.5 (*Termination on Financial Standing*), 34.6 (*Termination on Audit*) and then makes other arrangements for the supply of the Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Term. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clauses 34.3 (*Termination on Default*), 34.5 (*Termination on Financial Standing*) or 34.6 (*Termination on Audit*), no further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.

35.2 Subject to Clause 33 (*Liabilities*), where the Customer terminates the Contract under Clause 34.4 (*Termination on Reasonable Notice*), the Supplier may recover from the Customer any reasonable and proven commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of the Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under Clause 34.4 (*Termination on Reasonable Notice*).

35.3 The Customer shall not be liable under Clause 35.2 to pay any sum which:

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

35.4 On the termination of the Contract for any reason, the Supplier shall:

- (a) immediately return to the Customer all Confidential Information, Personal Data and Customer's Pre-Existing IPRs and the Project Specific IPRs in its possession or in the possession or under the control of any permitted suppliers

or sub-contractors, which was obtained or produced in the course of providing the Services;

- (b) cease to use the Customer Data and, at the direction of the Customer provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form in the formats and on media agreed with the Customer and/or the Replacement Supplier;
- (c) except where the retention of Customer Data is required by Law, on the earlier of the receipt of the Customer's written instructions or twelve (12) months after the date of expiry or termination, destroy all copies of the Customer Data and promptly provide written confirmation to the Customer that the data has been destroyed.
- (d) immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Supplier under Clauses 2.10 (*Services*) and 2.15 (*Services*). Such property shall be handed back to the Customer in good working order (allowance shall be made for reasonable wear and tear);
- (e) transfer to the Customer and/or the Replacement Supplier (as notified by the Customer) such of the Licensed Goods and/or contracts listed in the Exit Plan as are notified to it by the Supplier and/or the Customer in return for payment of the costs (if any) set out in the Exit Plan in respect of such Licensed Goods and/or contracts;
- (f) assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Supplier and/or the completion of any work in progress in accordance with the Exit Plan, or if no Exit Plan has been agreed, provide such assistance and co-operation as the Customer may reasonably require;
- (g) return to the Customer any sums prepaid in respect of the Services not provided by the date of expiry or termination (howsoever arising); and
- (h) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence.

35.5 If the Supplier fails to comply with Clause 35.4(a) and 35.4(h), the Customer may recover possession thereof and the Supplier grants a licence to the Customer or its

appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted agents or Sub-contractors where any such items may be held.

35.6 Where the end of the Term arises due to the Supplier's Default, the Supplier shall provide all assistance under Clause 35.4 free of charge. Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.

35.7 At the end of the Term (howsoever arising) the licence granted pursuant to Clause 22.1(a) (*Premises*) shall automatically terminate without the need to serve notice.

35.8 Save as otherwise expressly provided in the Contract:

(a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and

(b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 12.2 (*Payment and VAT*), 12.4 (*Recovery of Sums Due*), 30 (*Intellectual Property Rights*), 31.5 (*Protection of Personal Data*), 31.6 (*Confidentiality*), 31.7 (*Official Secrets Acts 1911 to 1989*), 31.8 (*Freedom of Information*), 33 (*Liabilities*), 35 (*Consequences of Expiry or Termination*), 39 (*Prevention of Bribery and Corruption*), 40 (*Records and Audit Access*), 42 (*Prevention of Fraud*), 45 (*Cumulative Remedies*), 51 (*Conflicts of Interest*), 53 (*The Contracts (Rights of Third Parties Act 1999)*), 56.1 (*Governing Law and Jurisdiction*), Schedule 16 (*Exit Planning and Service Transfer Arrangements*), Schedule 17 (*Employees*) and Schedule 18 (*Pensions*).

36 PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

36.1 The Supplier shall not make any press announcements or publicise the Contract in any way without Approval and shall take reasonable steps to ensure that its servants, agents, employees, sub-contractors, suppliers, professional advisors and consultants comply with this Clause 36. Any such press announcements or publicity proposed under this Clause 36.1 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information.

36.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Customer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Customer, including any examination of the Contract by the Auditor.

36.3 Neither party shall do anything or permit to cause anything to be done, which may damage the reputation of the other party or bring the other party into disrepute.

37 HEALTH AND SAFETY

37.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract, The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the NDA Archive Facility and which may affect the Supplier in the performance of its obligations under the Contract

37.2 While at the NDA Archive Facility, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.

37.3 The Supplier shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Contract at the NDA Archive Facility where that incident causes any personal injury or damage to property which could give rise to personal injury.

37.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working at the NDA Archive Facility in the supply of the Services under the Contract

37.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Customer on request

38 ENVIRONMENTAL REQUIREMENTS

The Supplier shall, when working on the Customer's Premises, perform its obligations under the Contract in accordance with the Customer's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

39 PREVENTION OF BRIBERY AND CORRUPTION

39.1 The Supplier shall not:

- (a) offer or give, or agree to give, to any employee, agent, servant or representative of the Customer, or any other public body or person employed by or on behalf of the Customer, any gift or other consideration of any kind

which could act as an inducement or a reward for any act or failure to act in relation to this Contract;

- (b) engage in and shall procure that all Supplier's Staff, consultants, agents or Sub-contractors or any person acting on the Supplier's behalf shall not commit, in connection with this Contract, a Prohibited Act under the Bribery Act 2010, or any other relevant laws, statutes, regulations or codes in relation to bribery and anticorruption; and
- (c) commit any offences under the Prevention of Corruption Acts 1889 to 1916.

39.2 The Supplier warrants, represents and undertakes that it has not:

- (a) paid commission or agreed to pay commission to the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Contract; and
- (b) entered into this Contract with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Customer or any other public body or any person employed by or on behalf of the Customer in connection with the Contract, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Customer and NDA before execution of this Contract;

39.3 The Supplier shall:

- (a) in relation to this Contract, act in accordance with the Ministry of Justice Guidance pursuant to Section 9 of the Bribery Act 2010;
- (b) immediately notify the Customer and NDA if it suspects or becomes aware of any breach of this Clause 39;
- (c) respond promptly to any of the Customer's enquiries regarding any breach, potential breach or suspected breach of this Clause 39 and the Supplier shall co-operate with any investigation and allow the Customer to audit Supplier's books, records and any other relevant documentation in connection with the breach;
- (d) if so required by the Customer, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing of the Supplier and all persons associated with it or other persons who are supplying the Services in connection with this Contract compliance with this Clause 39. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request;

- (e) have and maintain an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it any of its Staff, consultants, agents or Sub-contractors, or any person acting on the Supplier's behalf from committing a Prohibited Act and shall enforce it where appropriate.

40 RECORDS AND AUDIT ACCESS

40.1 The Supplier shall keep and maintain for seven (7) Years after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties). full and accurate records and accounts of the operation of the Contract including the Services provided under it, and the amounts paid by the Customer.

40.2 The Supplier shall keep the records and accounts referred to in Clause 40.1 above in accordance with Good Industry Practice and generally accepted accounting principles.

40.3 The Supplier shall afford the Customer and the Auditors access during business hours to the records and accounts referred to in Clause 40.2 at the Supplier's premises and/or provide copies of such records and accounts, as may be required by the Customer and/or the Auditors from time to time, in order that the Customer and/or the Auditors may carry out an inspection including for the following purposes:

- (a) to verify the accuracy of the Monthly Contract Charges (and proposed or actual variations to them in accordance with this Contract). and/or the costs of the Supplier (including Sub-contractors) of the Services;
- (b) to review the integrity, confidentiality and security of the Customer Data held or used by the Supplier;
- (c) to review the Supplier's compliance with the DPA in accordance with this Contract and any other Laws;
- (d) to review the Supplier's compliance with its continuous improvement and benchmarking obligations set out in Clause 13 (*Continuous Improvement*) of the Contract;
- (e) to review the Supplier's compliance with its security obligations set out in Clause 28 (*Staffing Security*);
- (f) to review any books of account kept by the Supplier in connection with the provision of the Service;
- (g) to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;

- (h) to inspect the Customer's assets, including the Intellectual Property Rights, equipment, facilities and maintenance, for the purposes of ensuring that the Customer's assets are secure and that any register of assets is up to date; and/or
 - (i) to ensure that the Supplier is complying with its obligations under this Contract.
- 40.4 The Supplier shall on request afford the Customer, the Customer's representatives and/or the Auditor access to such records and accounts as may be required by the Customer from time to time.
- 40.5 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) on request during the Term and for a period of seven (7) Years after the date of termination or expiry of the Contract to the Customer and/or the Auditors.
- 40.6 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.
- 40.7 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditors with all reasonable cooperation and assistance in relation to each audit, including:
 - (a) all reasonable information requested by the Customer within the scope of the audit;
 - (b) reasonable access during business hours (subject to security rules) to sites controlled by the Supplier and to Equipment used in the provision of the Services; and
 - (c) access to the Staff.
- 40.8 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 40 (save that the Customer shall not undertake more than four (4) audits per annum except in relation to security) unless the audit reveals a material Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

41 DISCRIMINATION

- 41.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any Law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).
- 41.2 The Supplier shall take all reasonable steps to secure the observance of Clause 41.1 by all servants, employees or agents of the Supplier and all suppliers and sub-contractors employed in the execution of the Contract.

42 PREVENTION OF FRAUD

- 42.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 42.2 The Supplier shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur save where complying with this provision would cause the Supplier or its Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

43 FORCE MAJEURE

- 43.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure.
- 43.2 Any failure or delay by the Supplier in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.
- 43.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in Clause 43.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.
- 43.4 If an event of Force Majeure affects the Services, the Customer may direct the Supplier to procure those Services from a third party service provider in which case the Supplier will be liable for payment for the provision of those Services for as long as the delay in performance continues.

43.5 The Supplier will not have the right to any payment from the Customer under this Contract where the Supplier is unable to provide the Services because of an event of Force Majeure and the Monthly Contract Charges shall be adjusted accordingly in accordance with the Change Control Procedure. However if the Customer directs the Supplier to use a replacement supplier pursuant to sub-Clause 43.4, then the Customer will pay the Supplier an amount which is equal to the costs reasonably and properly incurred by the third party service provider in respect of delivery of the Services that are subject to Force Majeure.

44 WAIVER

44.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

44.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 54 (*Notices*).

44.3 A waiver by either Party of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

45 CUMULATIVE REMEDIES

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

46 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 necessary to give effect to the meaning of this Contract.

47 VARIATION

47.1 No variation to this Contract shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

47.2 Any variation of the Contract shall be made in accordance with the Change Control Procedure.

48 SEVERABILITY

- 48.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
- 48.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

49 MISTAKES IN INFORMATION

The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Supplier in connection with the supply of the Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein, except where such mistakes are the fault of the Customer.

50 SUPPLIER'S STATUS

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

51 CONFLICTS OF INTEREST

- 51.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Customer under the provisions of the Contract.
- 51.2 The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 51.1 above arises or is reasonably foreseeable.
- 51.3 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of the Contract. The actions of the

Customer pursuant to this Clause 51 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

52 ENTIRE AGREEMENT

52.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

52.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract.

52.3 The Supplier acknowledges that it has:

- (a) entered into the Contract in reliance on its own due diligence alone; and
- (b) received sufficient information required by it in order to determine whether it is able to provide the Services in accordance with the terms of the Contract.

52.4 Nothing in Clauses 52.1 and 52.2 shall operate to exclude Fraud or fraudulent misrepresentation.

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

53 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

53.1 NDA shall have the benefit of and may exercise any of the rights granted to the Customer under this Contract. Magnox Limited shall be entitled to enforce and take the benefit of the provisions of Clauses 7.1 to 7.12 (Harwell Southern Archive) only of this Contract as though Magnox Limited were a party to this Contract. Otherwise, a person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. This Clause 53 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

53.2 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to Schedule 16 (*Exit Planning and Service Transfer Arrangements*) to the extent necessary that any Replacement Supplier shall have the right to enforce the obligations

owed to, and indemnities given to the Replacement Supplier by the Supplier in accordance with that Schedule 16 (*Exit Planning and Service Transfer Arrangements*).

53.3 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of this Contract or any one or more Clauses of it.

54 NOTICES

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

54.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause 54.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

54.3 For the purposes of Clause 54.2, the address, email address or fax number of the Customer shall be the address, email address and fax number set out below:

(a) Customer's Address: FAO the Managing Director of NDA Archives Limited

Herdus House
Westlakes Science & Technology Park Moor Row
Cumbria
CA24 3HU

(b) Customer's Email Address: admin.archive@nda.gov.uk

(c) Customer's Fax Number: 01925 802003

54.4 For the purposes of Clause 54.2, the address, email address or fax number of the Supplier shall be the address, email address and fax number set out below:

(a) Supplier's Address:

Pennington House
Unit 10
Commonwealth Close

Leigh Business Park
Leigh
Lancashire
WN7 3BD

(b) Supplier's Email Address:

(c) Supplier's Fax Number:

54.5 Either Party may change its address for service by serving a notice in accordance with this Clause 54.

55 LEGISLATIVE CHANGE

The Supplier shall neither be relieved of its obligations under this Contract nor be entitled to an increase in the Monthly Contract Charges as the result of a General Change in Law.

56 DISPUTES AND LAW

56.1 Governing Law and Jurisdiction

This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Law of England and Wales.

56.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

56.3 Dispute Resolution

(a) The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the level of representative of each Party specified below:

(i) Managing Director of NDA Archives Limited

(ii) Managing Director of Crimson UK Limited

(b) Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

- (c) If the dispute cannot be resolved by the Parties pursuant to Clause 56.3(a) the Parties shall refer it to mediation pursuant to the procedure set out in Clause 56.3(e) unless:
 - (i) the Customer considers that the dispute is not suitable for resolution by mediation; or
 - (ii) the Supplier does not agree to mediation.
- (d) The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Supplier and the Staff shall comply fully with the requirements of the Contract at all times.
- (e) The procedure for mediation is as follows:
 - (i) a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“**CEDR**”) to appoint a Mediator;
 - (ii) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held.
 - (iii) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
 - (iv) if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
 - (v) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and

- (vi) if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

This Contract has been entered into on the date stated at the beginning of it.

Signed for and on behalf of
NDA Archives Limited

Signed for and on behalf of
Crimson UK Limited

Schedule 4

Security Management Plan

In this Schedule 4, the following provisions shall have the meanings given to them below:

- “Breach of Security”** in accordance with the security requirements in the Security Policy, the occurrence of:
- (a) any unauthorised access to or use of the Services, the NDA Archive Facility, the Sites, the Supplier System and/or any ICT, information or data (including the Confidential Information and the Customer Data) used by the Customer and/or the Supplier in connection with this Contract; and/or
 - (b) the loss and/or unauthorised disclosure of any sensitive information or data used by the Customer and/or the Supplier in connection with this Contract;
- “ISMS”** the information Security Management System as defined by ISO/IEC 27001. The scope of the ISMS will be as agreed by the parties and will directly reflect the scope of the Services;
- “Protectively Marked Framework”** shall have the meaning as set out in the Security Policy Framework;
- “Security Policy Framework”** means the HMG Security Policy Framework (available at <https://www.gov.uk/government/publications/security-policy-framework/hmg-security-policy-framework>);
- “Security Tests”** shall have the meaning set out in paragraph 4.1 of this Schedule 4; and
- “Statement of Applicability”** shall have the meaning set out in ISO/IEC 27001 and as agreed by the Parties.

1 INTRODUCTION

1.1 This Schedule covers:

- (a) principles of protective security to be applied in delivering the Services;
- (b) wider aspects of security relating to vetting or personnel and access to areas within the NDA Archive Facility to the Services;

- (c) the development, implementation, operation, maintenance and continual improvement of an ISMS;
- (d) the creation and maintenance of the Security Management Plan;
- (e) audit and testing of ISMS compliance with the security requirements;
- (f) conformance to ISO/IEC 27001 (Information Security Requirements Specification) and ISO/IEC 27002 (Information Security Code of Practice); and
- (g) obligations in the event of actual, potential or attempted breaches of security.

2 PRINCIPLES OF SECURITY

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

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

- (a) is in accordance with Good Industry Practice, Law and this Contract;
- (b) complies with the approved Security Policy;
- (c) complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) available from the Cabinet Office Security Policy Division (COSPD);
- (d) meets any specific security threats to the ISMS;
- (e) complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph 5 of this Schedule;
- (f) complies with standards at least as rigorous as the Customer's ICT standards;
and
- (g) complies with paragraph 5.1 (*Physical Security*) of Part 3 (*Core Services*) of the Specification.

2.3 The references to standards, guidance and policies set out in paragraph 2.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.

2.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Customer's Representative of such

inconsistency immediately upon becoming aware of the same, and the Customer's Representative shall, as soon as practicable, advise the Supplier which provision shall be required to comply with.

3 ISMS AND SECURITY MANAGEMENT PLAN

3.1 Introduction

- (a) The Supplier shall develop, implement, operate, maintain and continuously improve and maintain an ISMS which will, without prejudice to paragraph 2.2, be approved, by the Customer, tested in accordance with Schedule 11 (*Testing*), periodically updated and audited in accordance with ISO/IEC 27001.
- (b) The Supplier shall develop and maintain a Security Management Plan in accordance with this Schedule to apply during the Term.
- (c) The Supplier shall comply with its obligations set out in the Security Management Plan.
- (d) Both the ISMS and the Security Management Plan shall, unless otherwise specified by the Customer, aim to protect all aspects of the Services and the NDA Archive Facility, the Sites, the Supplier System and any ICT, information and data (including the Customer Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Contract.

3.2 Development of the Security Management Plan

- (a) Within twenty (20) Working Days after the Commencement Date and in accordance with paragraph 3.4 (*Amendment and Revision of the ISMS and Security Management Plan*), the Supplier will prepare and deliver to the Customer for approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.
- (b) If the Security Management Plan, or any subsequent revision to it in accordance with paragraph 3.4 (*Amendment and Revision of the ISMS and Security Management Plan*), is approved by the Customer it will be adopted immediately and will replace the previous version of the Security Management Plan. If the Security Management Plan is not approved by the Customer the Supplier shall amend it within 10 Working Days or such other period as the parties may agree in writing of a notice of non-approval from the Customer and re-submit to the Customer for approval. The parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period

as the parties may agree in writing) from the date of its first submission to the Customer. If the Customer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Customer pursuant to this paragraph 3.2(b) of this Schedule 4 (*Security Management Plan*) may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 3.3 shall be deemed to be reasonable.

3.3 Content of the Security Management Plan

- (a) The Security Management Plan will 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 shall 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 principles set out in paragraph 2.2).
- (b) The Security Management Plan (including the draft version) should also set out the plans for transiting all security arrangements and responsibilities from those in place at the Commencement Date to those incorporated in the Supplier's ISMS at the date set out in the Implementation Plan for the Supplier to meet the full obligations of the security requirements.
- (c) The Security Management Plan will be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other schedules of this Contract which cover specific areas included within that standard.
- (d) The Security Management Plan shall be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the Services and shall only reference documents which are in the possession of the Customer or whose location is otherwise specified in this Schedule.

3.4 Amendment and Revision of the ISMS and Security Management Plan

- (a) The ISMS and Security Management Plan will be fully reviewed and updated by the Supplier annually, or from time to time to reflect:
 - (i) emerging changes in Good Industry Practice;

- (ii) any change or proposed change to the Supplier System, the Services and/or associated processes;
 - (iii) any new perceived or changed security threats;
 - (iv) any reasonable request by the Customer.
- (b) The Supplier will provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Customer. The results of the review should include, without limitation:
 - (i) suggested improvements to the effectiveness of the ISMS;
 - (ii) updates to the risk assessments;
 - (iii) proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS;
and
 - (iv) suggested improvements in measuring the effectiveness of controls.
- (c) On receipt of the results of such reviews, the Customer will approve any amendments or revisions to the ISMS or Security Management Plan in accordance with the process set out at paragraph 3.3(a).
- (d) Any change or amendment which the Supplier proposes to make to the ISMS or Security Management Plan shall be subject to the Change Control Procedure and shall not be implemented until approved in writing by the Customer.

4 TESTING

- 4.1 The Supplier shall conduct tests of the ISMS ("**Security Tests**") on a six monthly basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Customer.
- 4.2 The Customer shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Customer with the results of such tests (in a form approved by the Customer in advance) as soon as practicable after completion of each Security Test.
- 4.3 Without prejudice to any other right of audit or access granted to the Customer pursuant to this Contract, the Customer and/or its authorised representatives shall be entitled, at any time and without giving notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Customer may

notify the Supplier of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Services. If such tests adversely affect the Supplier's ability to deliver the Services to the agreed Service Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the tests.

- 4.4 Where any Security Test carried out pursuant to paragraphs 4.2 and 4.3 above reveals any actual or potential Breach of Security, the Supplier shall promptly notify the Customer 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 Customer's approval in accordance with paragraph 3.4(d) the Supplier shall implement such changes to the ISMS and the Security Management Plan in accordance with the timetable agreed with the Customer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or security requirements, the change to the ISMS or Security Management Plan shall be at no cost to the Customer.

5 COMPLIANCE WITH ISO/IEC 27001

- 5.1 The Supplier shall obtain independent certification of the ISMS to ISO/IEC 27001 within six (6) months of the commencement of operation of the facility and shall maintain such certification for the Term.
- 5.2 The Customer shall be entitled to carry out such regular security audits as may be required, and in accordance with Good Industry Practice, in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001.
- 5.3 If, on the basis of evidence provided by such audits, it is the Customer's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the Supplier, then the Customer 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 become compliant with the principles and practices of ISO/IEC 27001. If the Supplier does not become compliant within the required time then the Customer has the right to obtain an independent audit against these standards in whole or part.
- 5.4 If, as a result of such independent audit as described in paragraph 5.3 the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 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 Customer in obtaining such audit.

6 BREACH OF SECURITY

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

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

- (a) immediately take all reasonable steps necessary to:
 - (i) remedy such breach and protect the integrity of the ISMS against any such potential or attempted breach or threat; and
 - (ii) prevent an equivalent breach in the future.

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

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

7 SECURITY CLEARANCE AND ACCESS CONTROL

7.1 For the purpose of this paragraph 7, the following terms shall have the following meanings:

“**public access area**” means the area where any person may access and use the facility without any requirement for vetting;

“**secure reading area**” means the area within the facility which may be accessed for the purpose of viewing and reading information up to and including ‘o-s’ information for which BPSS clearance is required as a minimum;

“**secure staff area**” means the area within the facility for which SC clearance if required as a minimum;

“**secure storage area**” means the area within the facility where the Customer Data is stored; and

“**high security storage area**” means the area within the facility where material above ‘official-sensitive’ is stored for which DV clearance is required as a minimum.

- 7.2 Where the Customer has agreed in writing, the Supplier may permit access to areas (excluding the high security storage area) to persons who do not have the requisite clearance provided that such persons are escorted at all times.
- 7.3 Where paragraph 8.1 (*Personnel Security*) of Part 3 (*Core Services*) of the Specification applies, the Supplier shall provide the Customer with all such information or sensitive information that is required by the Customer to confirm the clearance prior to the individual being given access to the facilities.
- 7.4 Where paragraph 8.2 (*Personnel Security*) of Part 3 (*Core Services*) of the Specification applies, the Customer will approve, in writing, individuals' access to the non-public areas of the NDA Archive Facility or sensitive information. Until such approval is received, individuals must not be given access to sensitive information or the non-public areas of the NDA Archive Facility.
- 7.5 All information which is requested by the Customer for the purpose of providing individuals' access to the NDA Archive Facility and sensitive information must be provided promptly by the Supplier. The Supplier acknowledges that failure to do so may result in a delay in the Customer being able to provide the relevant approval or clearance under either paragraph 7.3 or 7.4 of this Schedule 4 (*Security Management Plan*).

Schedule 5

Method Statements

Method Statement 01 – Design Construction and Fit-out.pdf

Method Statement 02 – FM.pdf

Method Statement 03 – Harwell.pdf

Method Statement 04 – Security.pdf

Method Statement 05 – Creation & Control – Identification and Tracking System(s).pdf

Method Statement 06 – Creation & Control – Receipt of Physical Records.pdf

Method Statement 07 – Creation & Control – Quarantine.pdf

Method Statement 08 – Secure Destruction SME Disposition Review Second Review.pdf

Method Statement 09 – Liaison with TNA – Place of Deposit Archive Accreditation.pdf

Method Statement 10 – Liaison with TNA – PRA Second Review.pdf

Method Statement 11 – End User Access – General.pdf

Method Statement 12 – End User Access – Search Retrieval Delivery.pdf

Method Statement 13 – Public Access Arrangements.pdf

Method Statement 14 – Processes (Other) Complaints.pdf

Method Statement 15 - Socio-Economic Development- Working with SMEÆs and CCoC.pdf

Method Statement 16 – Socio-Economic Development – Positive Learning Benefit for Wick.pdf

Method Statement 17 – Socio-Economic Development – NDA Archive Advisory Panel.pdf

Method Statement 18 – Socio-Economic Development – Visitor Attraction Networks.pdf

Method Statement 19 – Additional Services – Project Work.pdf

Method Statement 20 – Additional Services – Sifting.pdf

Method Statement 21 – Additional Services – Offsite Storage.pdf

Method Statement 22 – Additional Services – Transport.pdf

Template Method Statement

TEMPLATE METHOD STATEMENT

Crimson UK Ltd

Date: 27th April 2015

Method Statement Ref: 3

Specification Subject Matter:

Harwell

Specification References: Part 3, para 4, Schedule 3

Bidder response:

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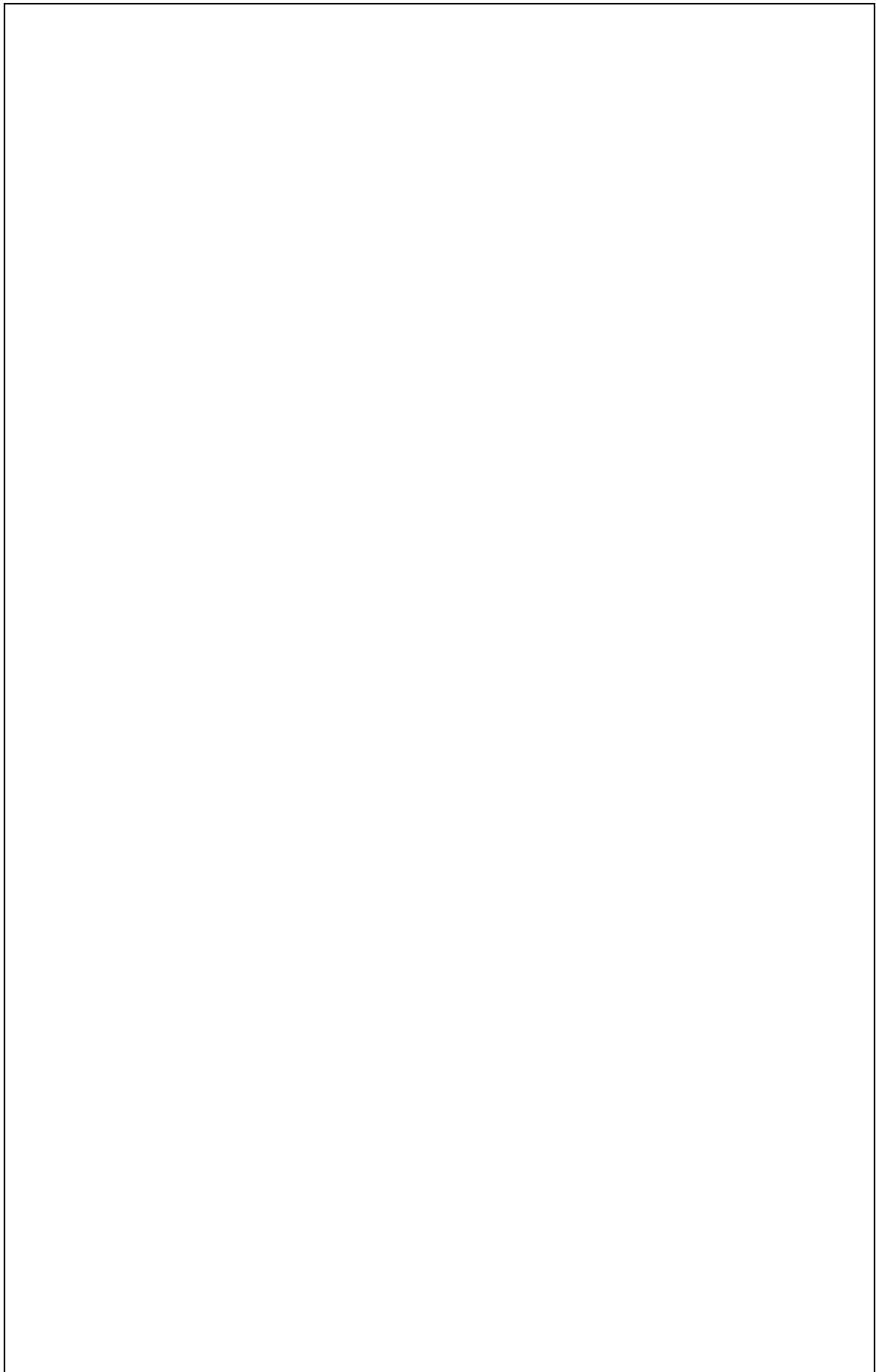
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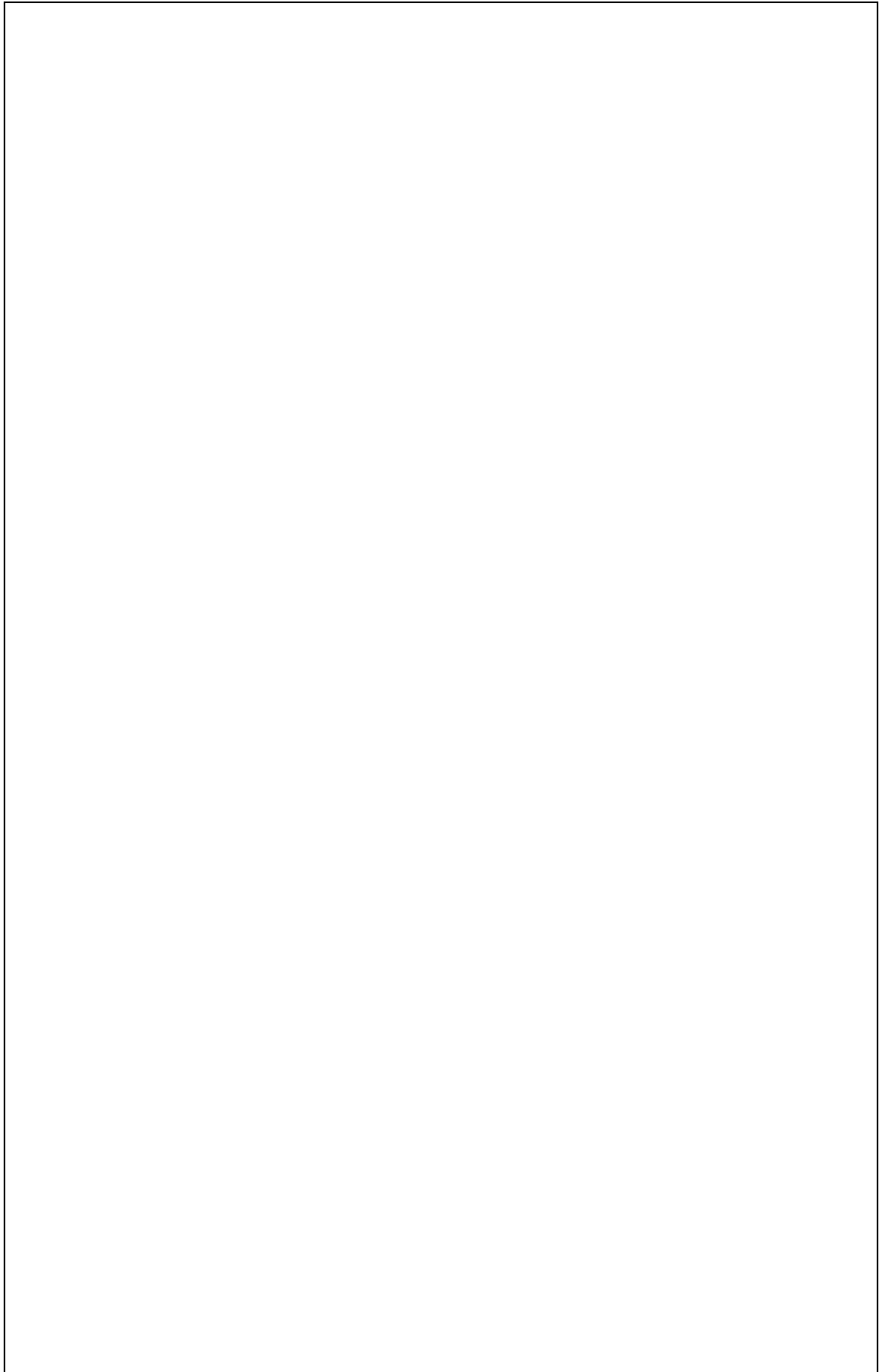
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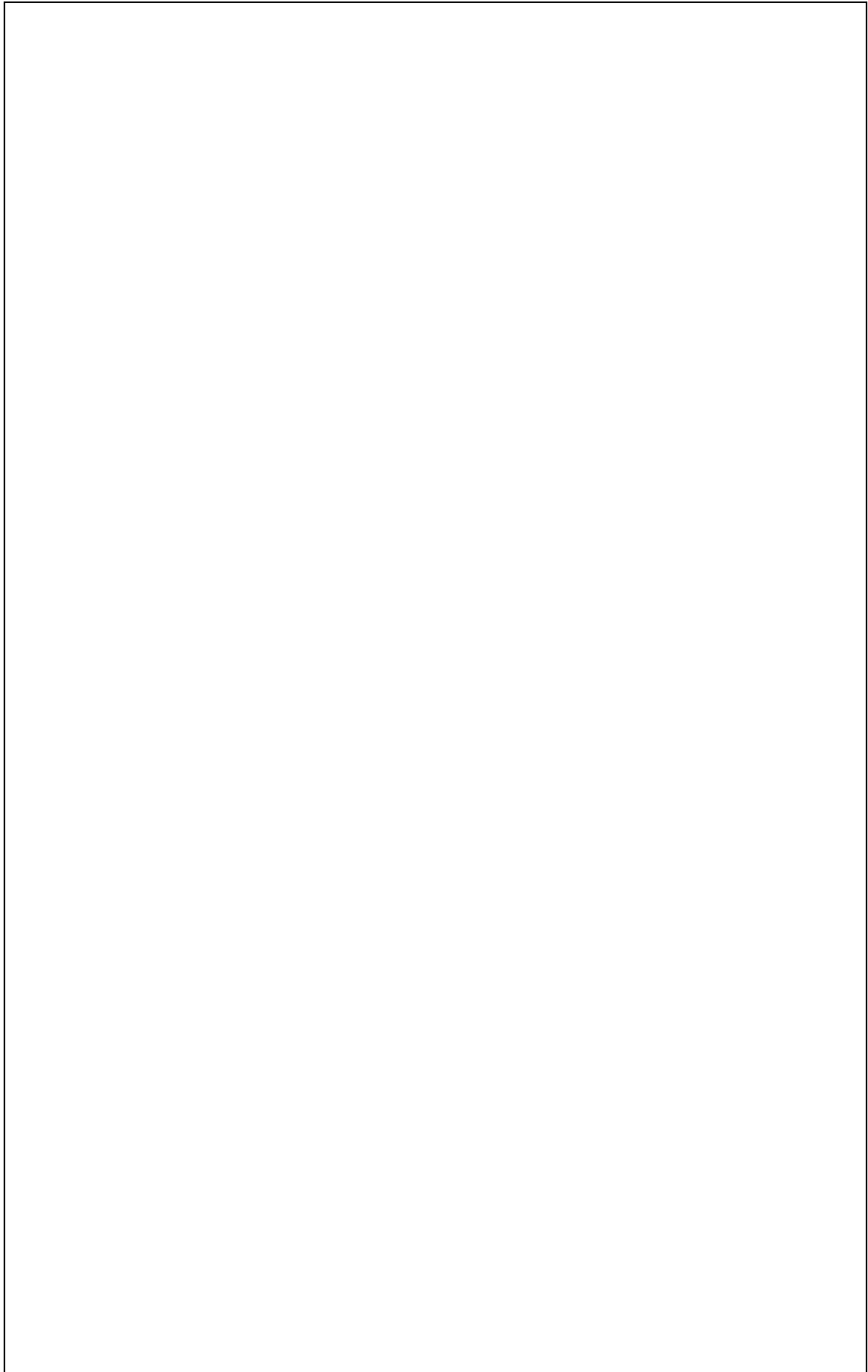
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Template Method Statement

TEMPLATE METHOD STATEMENT

Crimson UK Ltd

Date: 27th April 2015

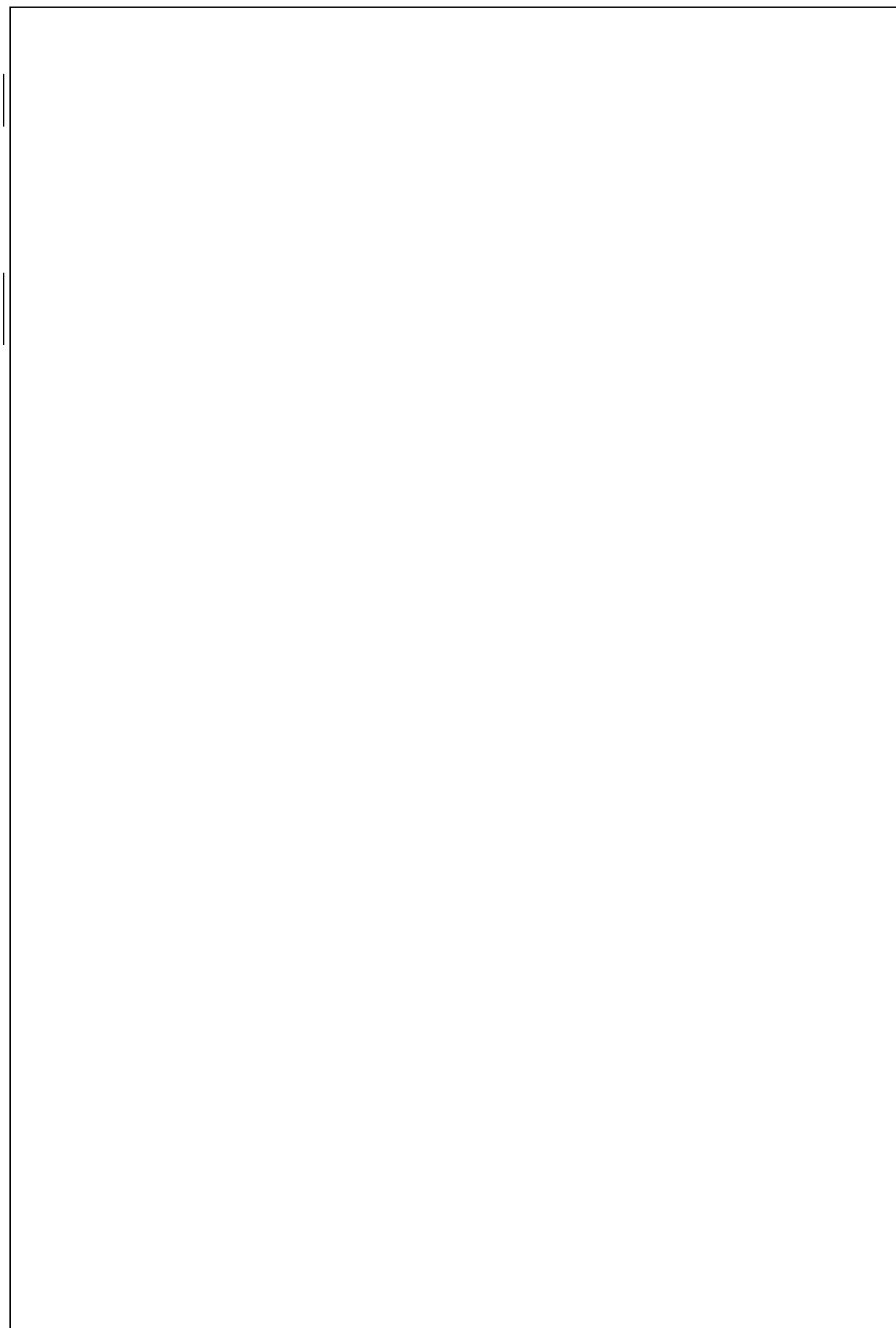
Method Statement Ref: 4

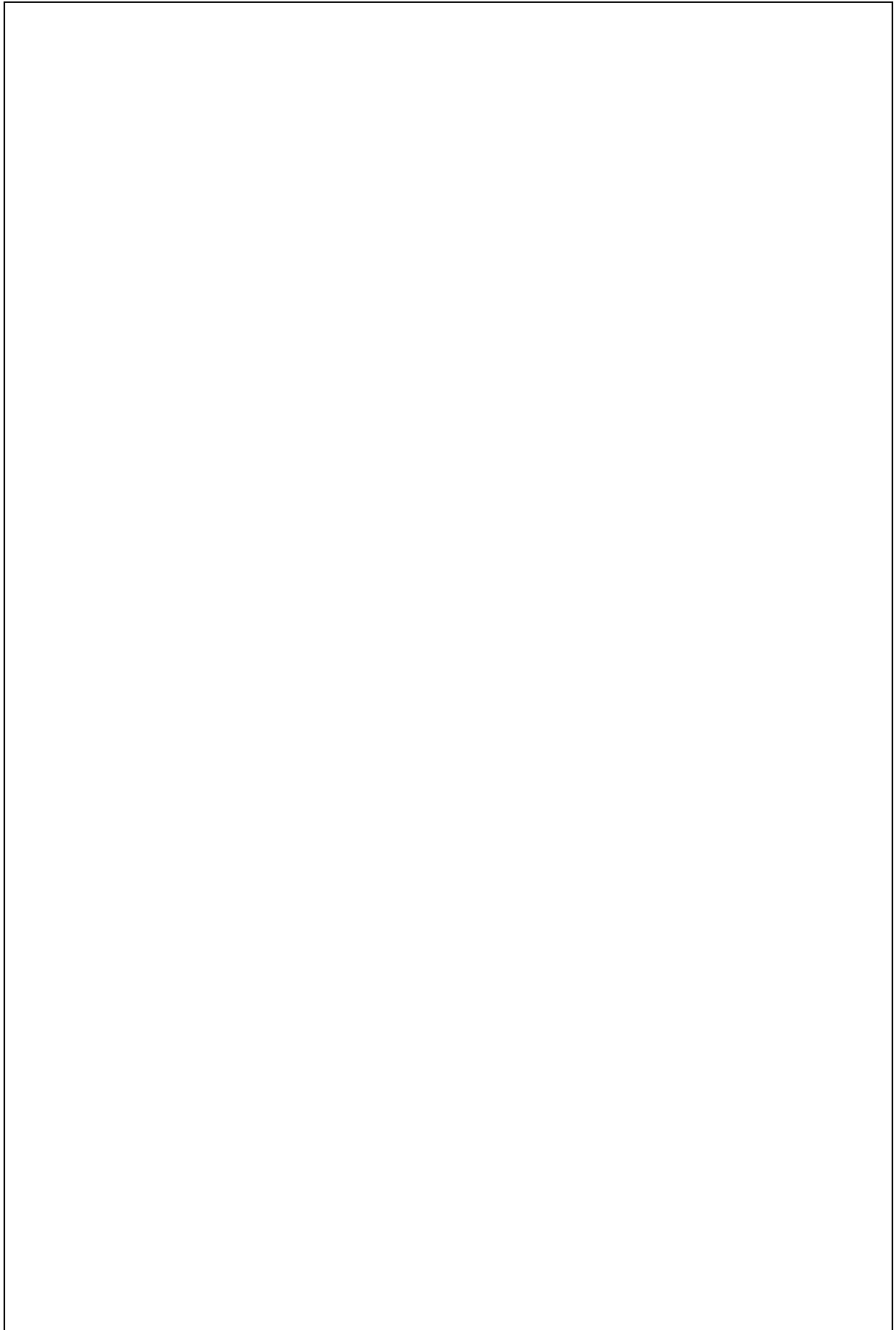
Specification Subject Matter:

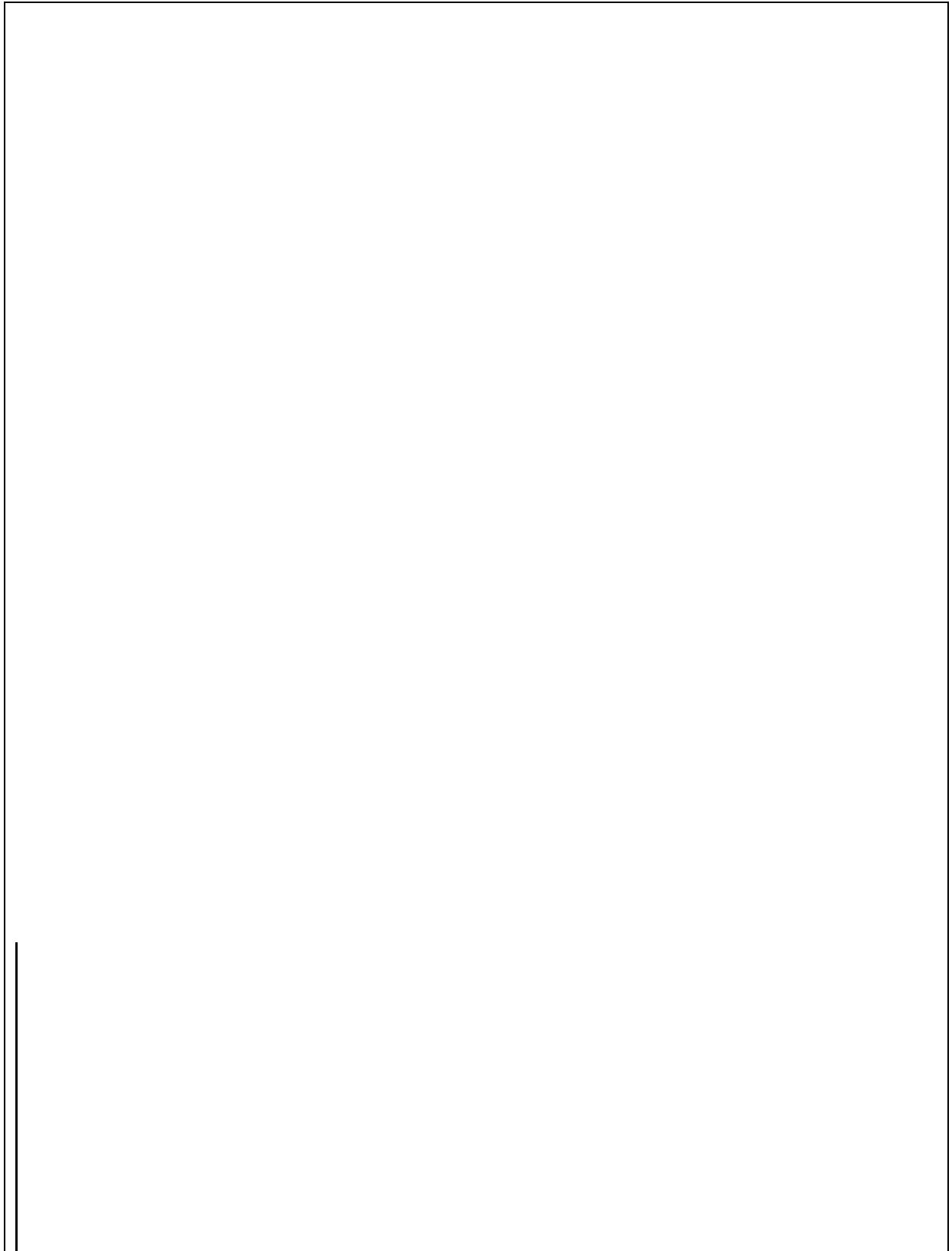
Security

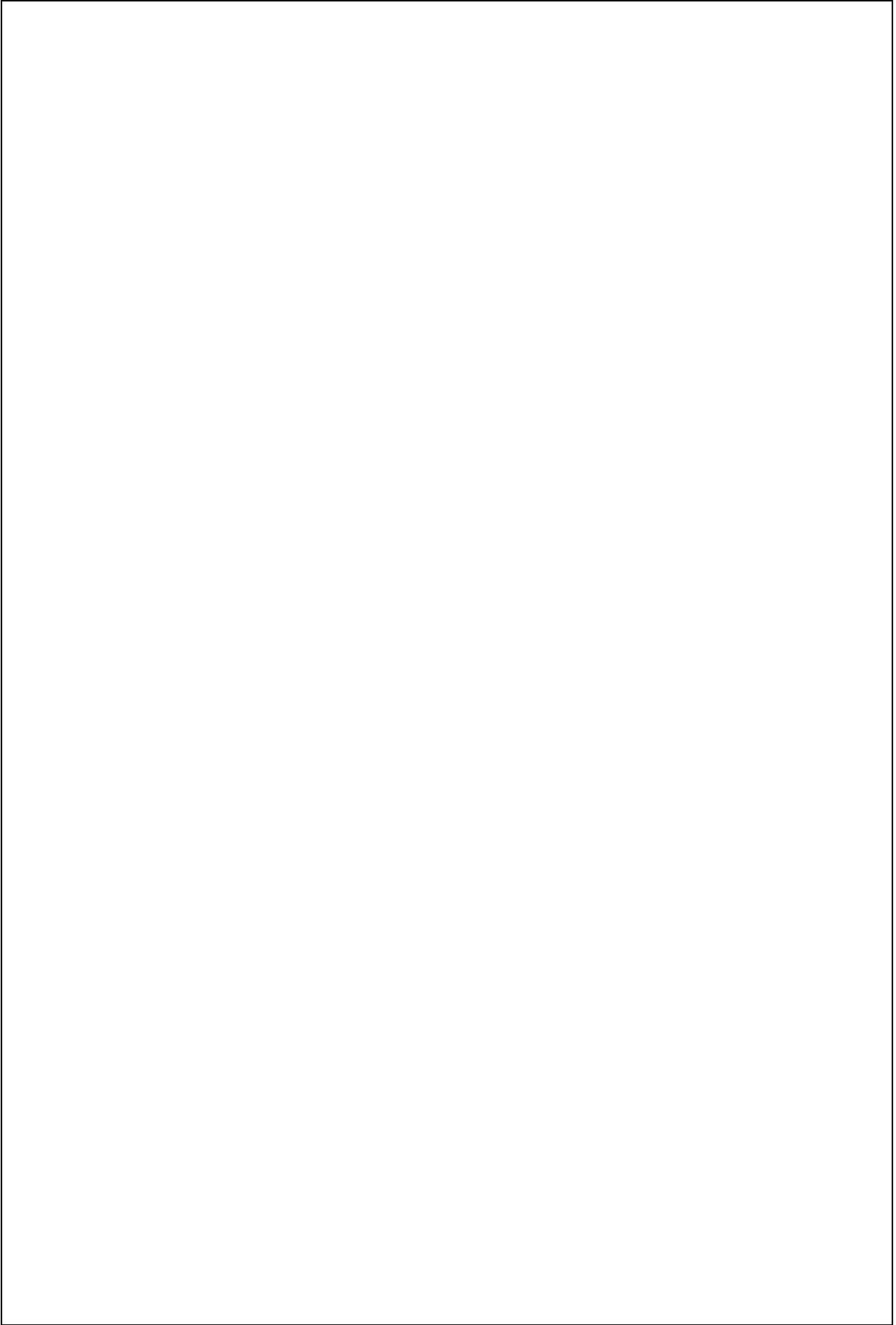
Specification References:

6.1 – 6.2, 7.1 – 7.2, 8.1 – 8.5









Template Method Statement

TEMPLATE METHOD STATEMENT

Crimson UK Ltd.

Date: 27th April 2015

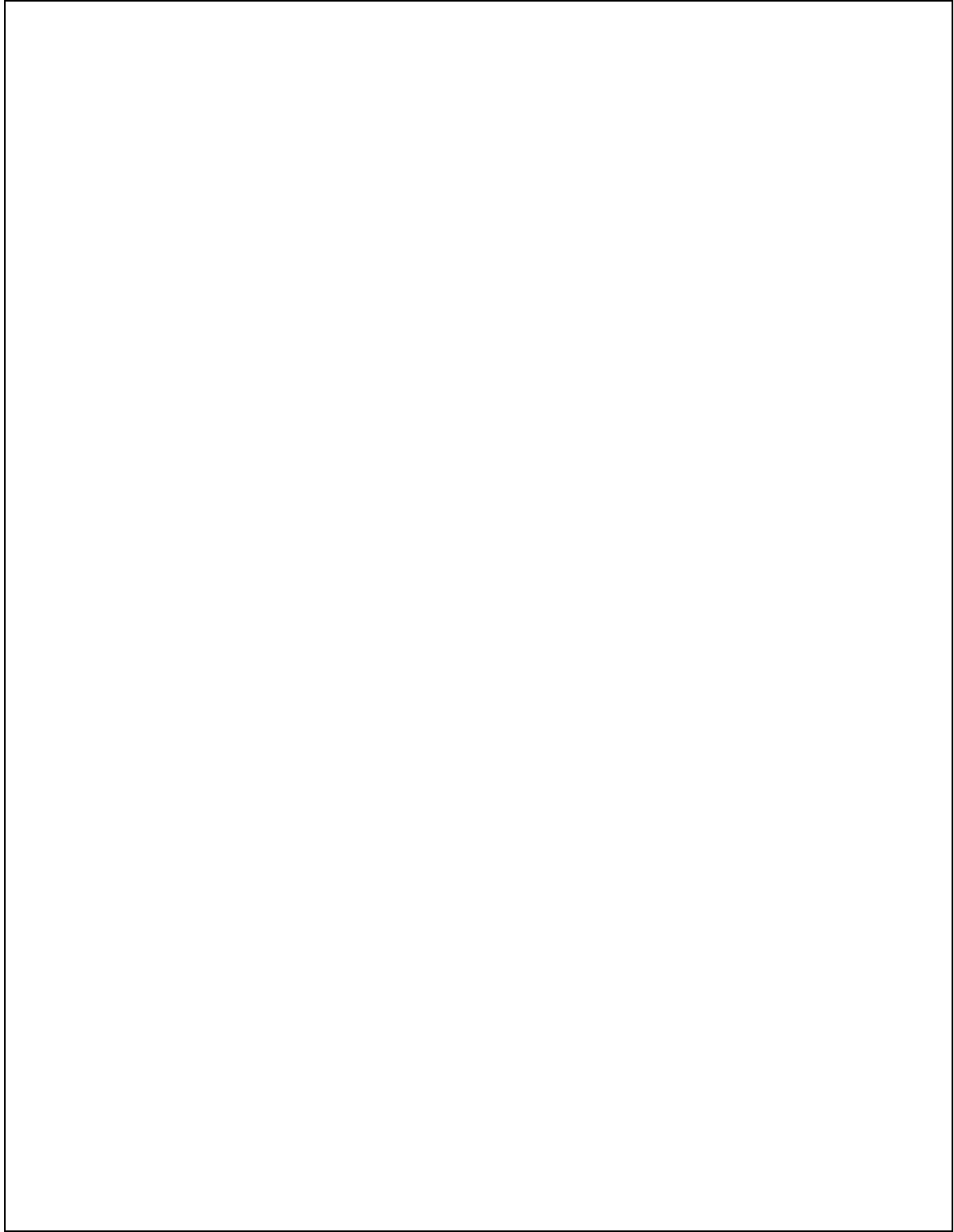
Method Statement Ref: 5

Specification Subject Matter:

Identification and Tracking System(s)

Specification References:

Schedule 1: Section 9.3



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Template Method Statement

TEMPLATE METHOD STATEMENT

Crimson UK Ltd

Date: 27th April 2015

Method Statement Ref: 6

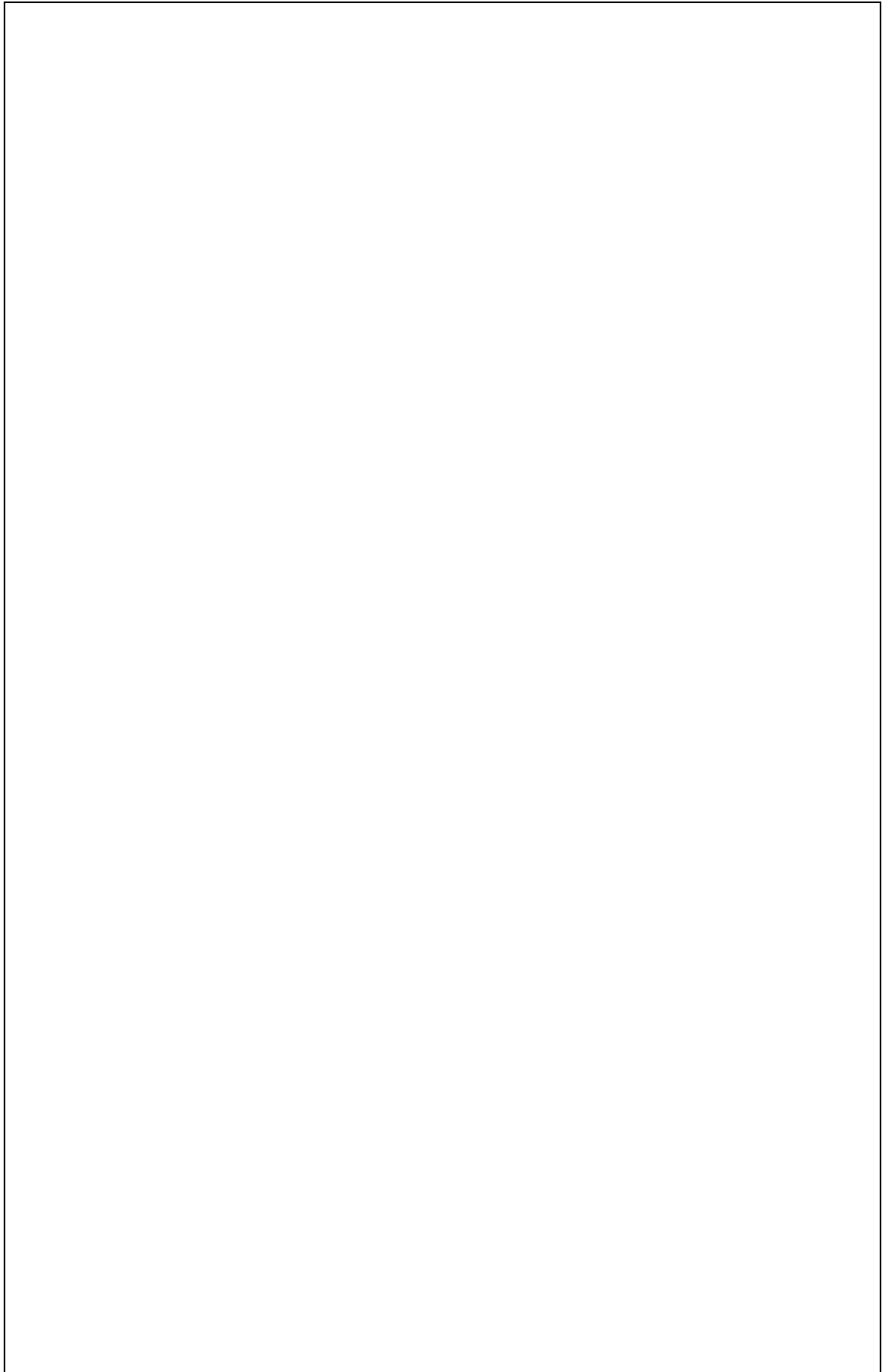
Specification Subject Matter:

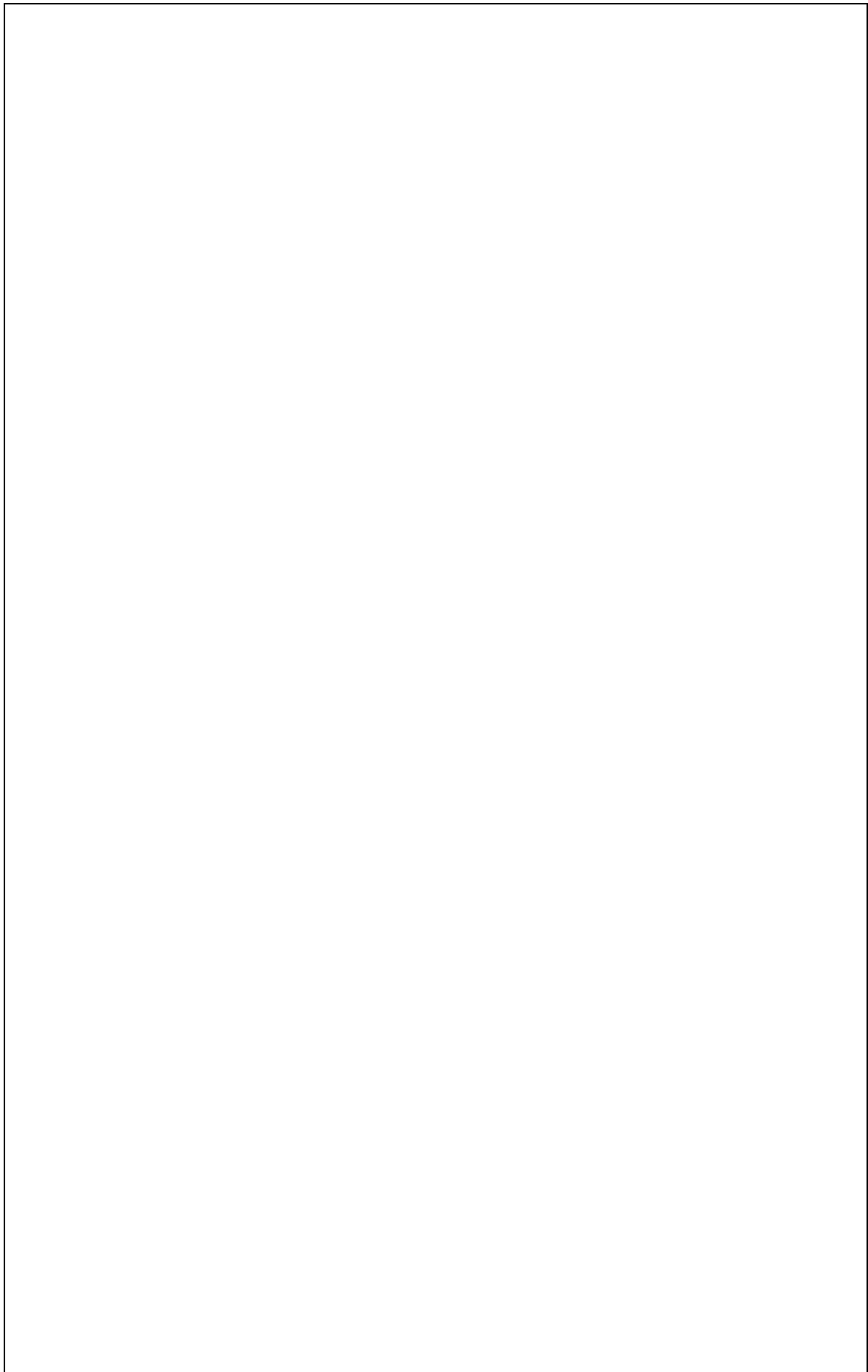
Creation and Control: Receipt of Physical Records and Receipt of Electronic Records

Specification References:

10.1

Bidder response:





these attributes for review.

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Template Method Statement

TEMPLATE METHOD STATEMENT

Crimson UK Ltd

Date: 27th April 2015

Method Statement Ref: 7

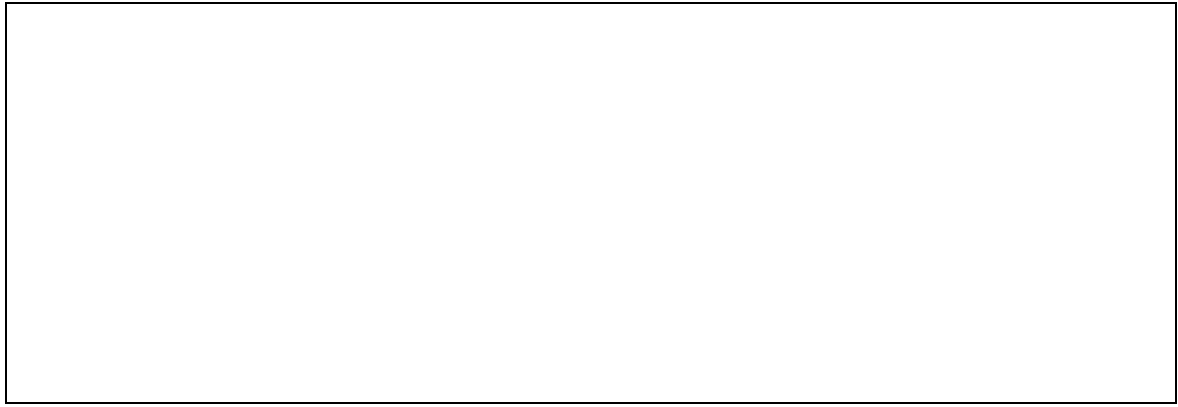
Specification Subject Matter:

Creation & Control

Specification References:

11.1 – 11.4

Bidder response:



Template Method Statement

TEMPLATE METHOD STATEMENT

Crimson UK Ltd

Date: 27th April 2015

Method Statement Ref: 8

Specification Subject Matter:

Disposition, SME Expert Disposition Review & Second Review

Specification References: 15.1 -15.2, 16.1

Bidder response:

Template Method Statement

TEMPLATE METHOD STATEMENT

Crimson UK Ltd

Date: 27th April 2015

Method Statement Ref: 9

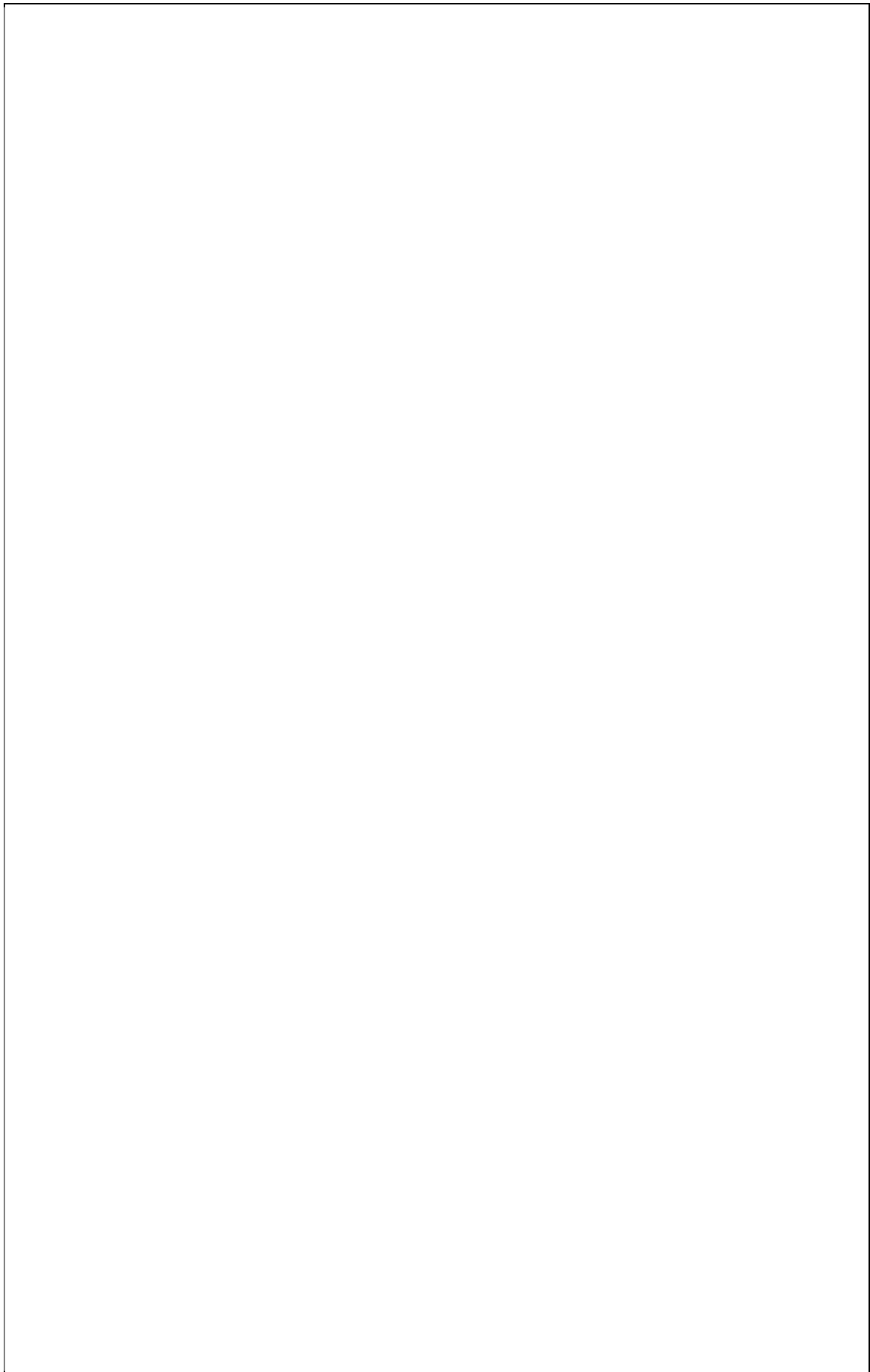
Specification Subject Matter:

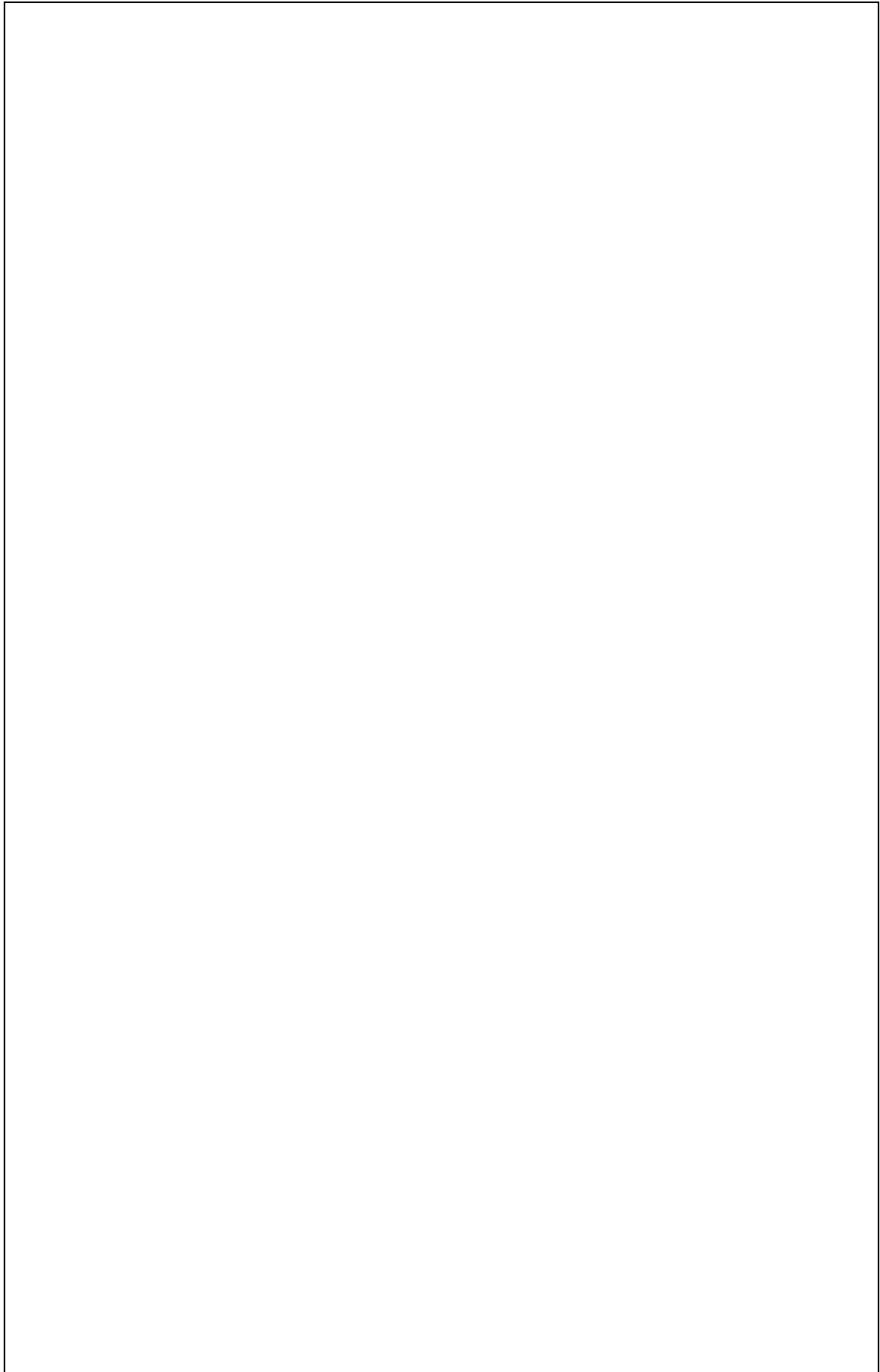
Liaison with TNA – Place of Deposit Accreditation

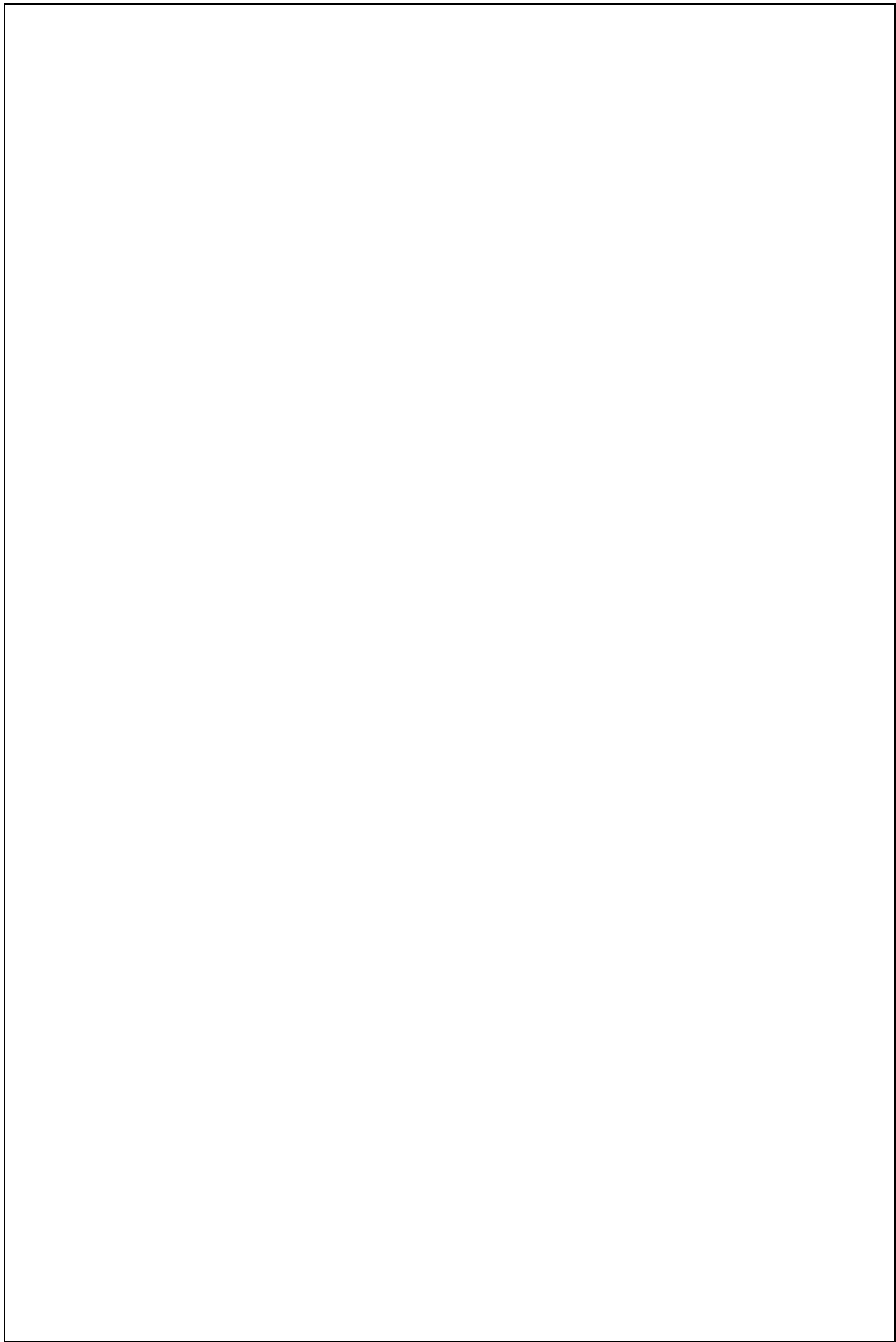
Specification References:

20.1 & 21.1

Bidder response:







Template Method Statement

TEMPLATE METHOD STATEMENT

Crimson UK Ltd

Date: 27th April 2015

Method Statement Ref: 10

Specification Subject Matter:

PRA Second Review – Selection of Public Records

Specification References: 22.1

Bidder response:



Template Method Statement

TEMPLATE METHOD STATEMENT

Crimson UK Ltd

Date: 27th April 2015

Method Statement Ref: 11

Specification Subject Matter:

End User Access – General

Specification References: 23.2

Bidder response:

Template Method Statement

TEMPLATE METHOD STATEMENT

Crimson UK Ltd

Date: 27th April 2015

Method Statement Ref: 12

Specification Subject Matter:

End User Access – Search, Retrieval and Delivery

Specification References:

24.1-24.9

Bidder response:

Appendix 11

Template Method Statement

METHOD STATEMENT
Crimson UK Ltd
Date: 27 th April 2015
Method Statement Ref: 13
Specification Subject Matter: Public Access Arrangements
Specification References: 29.2-29.3, 29.10
Bidder response:

Template Method Statement

TEMPLATE METHOD STATEMENT

Crimson UK Ltd

Date: 27th April 2015

Method Statement Ref: 14

Specification Subject Matter:
Complaints

Specification References: 31.1

Bidder response:

Template Method Statement

TEMPLATE METHOD STATEMENT

Crimson UK Ltd

Date: 27th April 2015

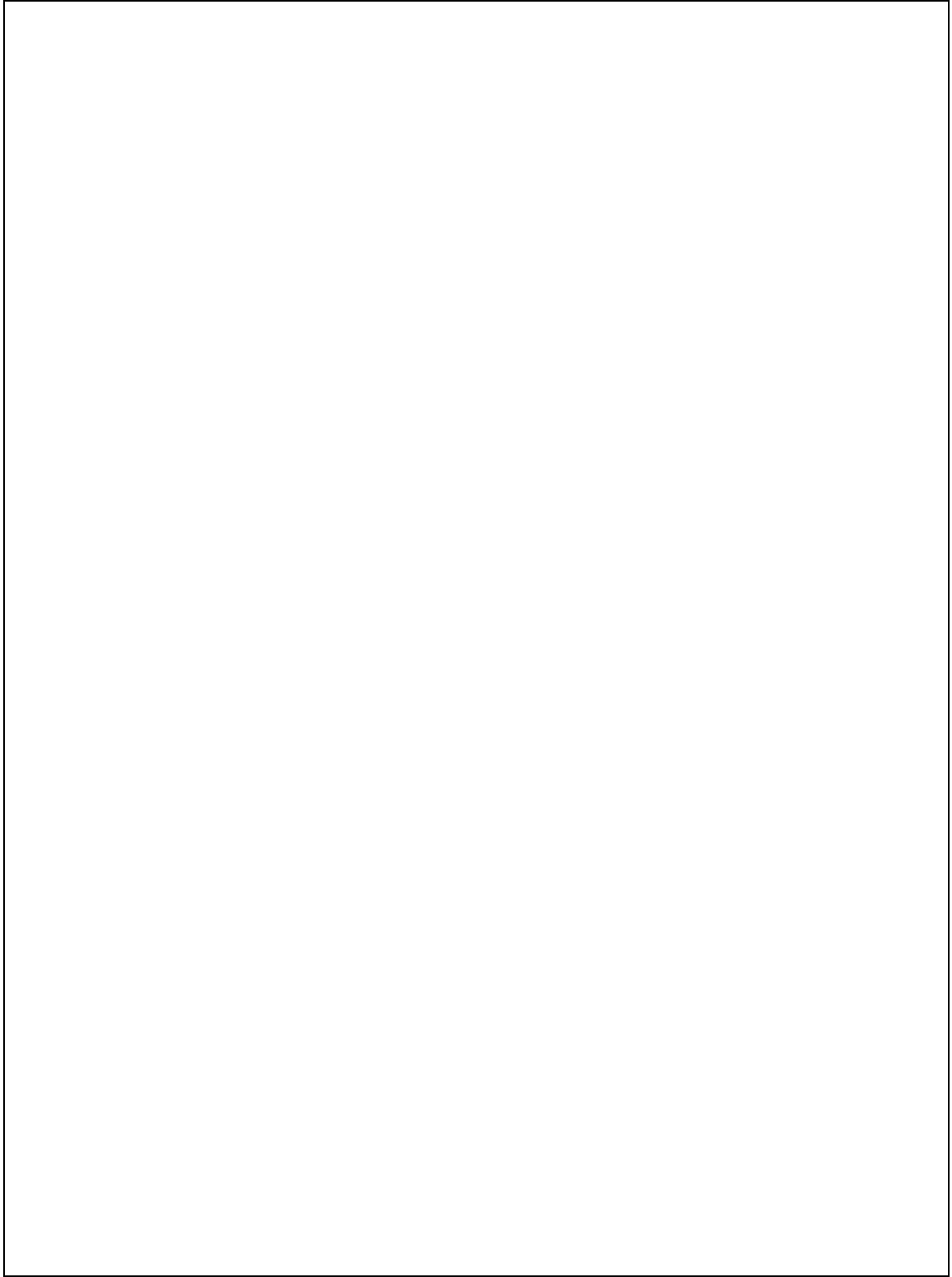
Method Statement Ref: 15

Specification Subject Matter: Socio-Economic Development: Working with SME's and Caithness Chamber of Commerce (CCoC)

Specification References: 32.3

Bidder response:

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Template Method Statement

TEMPLATE METHOD STATEMENT

Crimson UK Ltd

Date: 27th April 2015

Method Statement Ref: 16

Specification Subject Matter: Socio- Economic Development- Positive Learning Benefit for Wick

Specification References: 32.4

Bidder response:

Template Method Statement

TEMPLATE METHOD STATEMENT

Crimson UK Ltd

Date: 27th April 2015

Method Statement Ref: 17

Specification Subject Matter: Socio- Economic Development- NDA Archive Advisory Panel

Specification References: 32.5

Bidder response:

Appendix 11

Template Method Statement

TEMPLATE METHOD STATEMENT

Crimson UK Ltd

Date: 27th April 2015

Method Statement Ref: 18

Specification Subject Matter: Socio- Economic development- Visitor Attraction Networks

Specification References: 32.7

Bidder response:

Template Method Statement

TEMPLATE METHOD STATEMENT

Crimson UK Ltd

Date: 27th April 2015

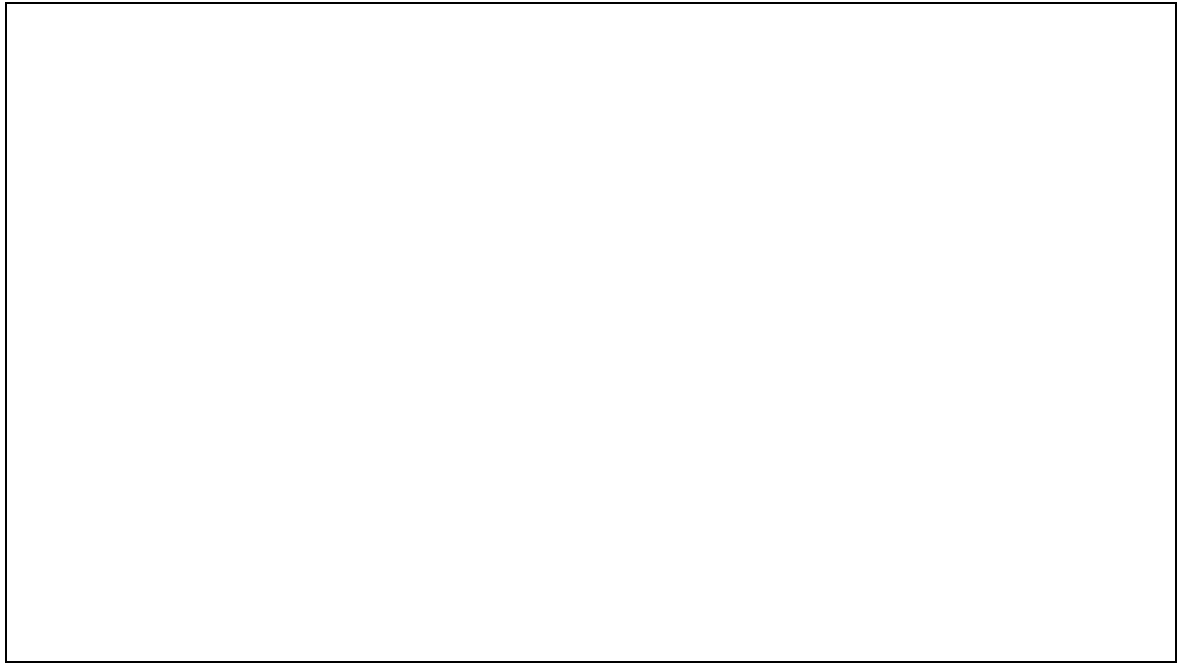
Method Statement Ref: 19

Specification Subject Matter:

Additional Services – Project Work

Specification References: 33.1 – 33.2

Bidder response:



Template Method Statement

TEMPLATE METHOD STATEMENT

Crimson UK Ltd

Date: 27th April 2015

Method Statement Ref: 20

Specification Subject Matter:

Additional Services: Sifting

Specification References: 34.2

Bidder response:

Template Method Statement

TEMPLATE METHOD STATEMENT

Crimson UK Ltd

Date: 27th April 2015

Method Statement Ref: 21

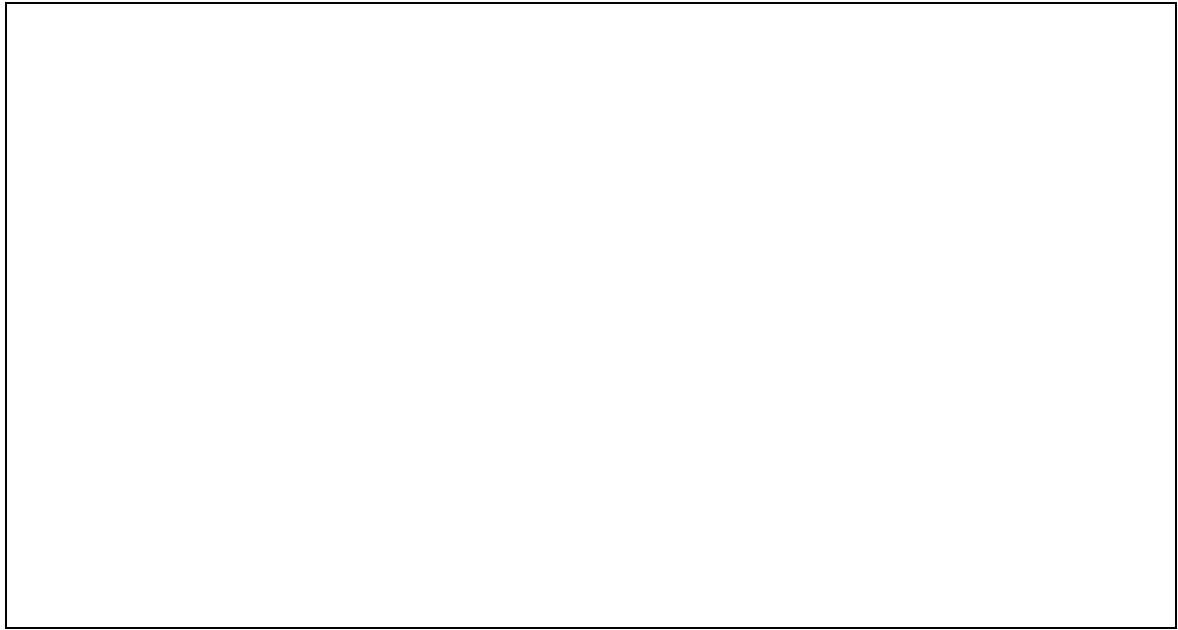
Specification Subject Matter:

Additional Services: Offsite Storage

Specification References:

35.1

Bidder response:



Template Method Statement

TEMPLATE METHOD STATEMENT

Crimson UK Ltd

Date: 27th April 2015

Method Statement Ref: 22

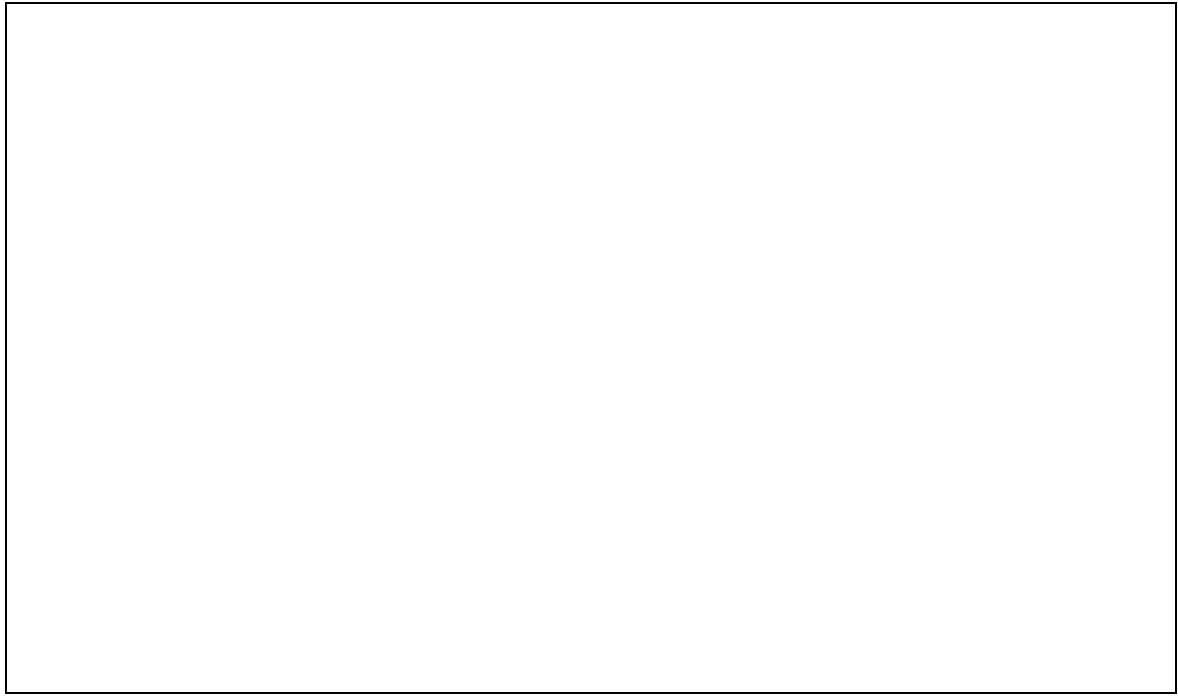
Specification Subject Matter:

Additional Services: Transport

Specification References:

36.1

Bidder response:



Schedule 6

Change Control Procedure

1 PRINCIPLES

- 1.1 Where the Supplier or the Customer sees a need to change this Contract, the Customer may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 6.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Supplier and the Customer shall, unless otherwise agreed in writing, continue to perform this Contract in compliance with its terms prior to such Change.
- 1.3 Any discussions which may take place between the Supplier and the Customer in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either Party.
- 1.4 Any work undertaken by the Supplier and the Supplier's personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 6, shall be undertaken entirely at the expense and liability of the Supplier.

2 PROCEDURES

- 2.1 Discussion between the Supplier and the Customer concerning a Change shall result in any one of the following:
- (a) no further action being taken; or
 - (b) a request to change this Contract by the Customer; or
 - (c) a recommendation to change this Contract by the Supplier.
- 2.2 Where a written request for an amendment is received by the Supplier from the Customer, the Supplier shall, unless otherwise agreed, submit a Change Control Form (using the template version contained in Appendix 1 (*Template Change Control Form*) of Schedule 6) to the Customer within three weeks, or such other period as agreed between the parties.
- 2.3 A recommendation to amend this Contract by the Supplier shall be submitted directly to the Customer in the form of a Change Control Form (using the template version contained in Appendix 1 (*Template Change Control Form*) of Schedule 6) at the time of such recommendation.

- 2.4 For each Change Control Form submitted by the Supplier, the Customer shall within 3 weeks evaluate the Change Control Form and, as appropriate:
- (a) request further information; or
 - (b) arrange for the Change Control Form to be signed on behalf of the Customer and return a signed copy to the Supplier; or
 - (c) notify the Supplier of the rejection of the Change Control Form.
- 2.5 A Change Control Form signed on behalf of the Supplier and by the Customer shall constitute an amendment to this Contract.
- 2.6 If a Change Control Form is rejected by either party, the reason/s for that rejection shall be provided and representatives of the parties shall meet to discuss the proposed Change and the reasons for rejection in order to resolve the matter and agree a Change which can be accepted by both parties and the terms of a Change Control Form to reflect the same.

Appendix 1

Template Change Control Form

Date of Change Control Form	<i>[insert date]</i>
Change Control Number	<i>[insert number]</i>
Description of change proposed	<i>[please insert high level description of change proposed]</i>
Party proposing change	<i>[Supplier / Customer]</i>
Reason for the Change	<i>[Please insert brief explanation of the reason the change has been proposed e.g. Project Work/Other]</i>
Full details of the Change	<i>[Please insert full details of the change proposed and identify supporting documents]</i>
Timetable for implementation/completion	<i>[Please insert details of the timetable for implementation of the change including any proposals relating to acceptance of it]</i>
Price, if any, of the Change	<i>[Please insert details of any proposed pricing impact which might result from the change]</i>
Revised schedule of payments	<i>[To be attached if applicable]</i>
Details of likely impact of the Change on other aspects of this Contract	<i>[Please insert details (if applicable) of impact in terms of:</i> <ul style="list-style-type: none">• Personnel to be provided• Monthly Contract Charges• Documents to be provided• Training to be provided• Working arrangements• Any other issues/impacts <i>]</i>
Signed for and on behalf of the Customer by <i>[insert name of signatory]</i> on <i>[insert date of signature]</i>	

Signed for and on behalf of the Supplier by <i>[insert name of signatory]</i> on <i>[insert date of signature]</i>	
--	--

Schedule 7

Approved Sub-contractors

Subcontractor Name: High Life Highland, 13 Ardross Street, Inverness, Highland IV3 5NS

Services Provided: Archive consulting & outreach

Contractual Relationship: Sub-contractor to Crimson

Subcontractor Name: Restore plc (including Harrow Green division), Unit 5, Redhill Distribution Centre, Salbrook Road, Redhill, Surrey, RH1 5DY

Services Provided: Transport & offsite storage

Contractual Relationship: Sub-contractor to Crimson

Subcontractor Name: Key Facilities Management International Ltd, The Pistol Factory', 37 Main Street, Doune FK1 6 6BJ

Services Provided: Facilities Management

Contractual Relationship: Sub-contractor to Crimson

Subcontractor Name: Colin Armstrong Associates, Pavilion 1, Fairways Business Park, Inverness, IV2 6AA

Services Provided: Architectural Consulting

Contractual Relationship: Sub-contractor to Crimson

Subcontractor Name: Glaisyers Solicitors, 1 Saint James's Square, Manchester, M2 6DN

Services Provided: Legal Support

Contractual Relationship: Sub-contractor to Crimson

Schedule 8

Service Levels and Service Credits

1 SCOPE

This Schedule 8 sets out the Service Levels which the Supplier is required to achieve when delivering the Services, the mechanism by which Service Failures will be managed and the method by which the Supplier's performance of the Services by the Supplier will be monitored. This Schedule comprises:

- (a) Part A: Service Levels;
- (b) Appendix 1 - Service Levels and Severity Levels; and
- (c) Part B: Performance Monitoring.

Part A

Service Levels

1 PRINCIPAL POINTS

- 1.1 The objectives of the Service Levels and Service Credits are to:
- (a) ensure that the Services are of a consistently high quality and meet the requirements of the Customer;
 - (b) provide a mechanism whereby the Customer can attain meaningful recognition of inconvenience and/or loss resulting from the Supplier's failure to deliver the level of Service for which it has contracted to deliver; and
 - (c) incentivise the Supplier to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.

2 SERVICE LEVELS

- 2.1 Appendix 1 (*Service Levels and Severity Levels*) of this Schedule 8 sets out Service Levels, the performance of which the parties have agreed to measure.
- 2.2 The Supplier shall monitor its performance of each of the Services referred to in Appendix 1 (*Service Levels and Severity Levels*) by reference to the Service Level(s) for that part of the Service and shall send the Customer a report detailing the level of service which was achieved in accordance with the provisions of Part B (*Performance Monitoring*) this Schedule 8.
- 2.3 Subject to paragraph 2.4 below, if the level of performance of the Supplier of any element of the Services during Term:
- (a) fails to achieve a Service Level in respect of each element of the Service, then the Customer shall make a deduction from the Monthly Contract Charges in accordance with paragraph 3 and Appendix 1 (*Service Levels and Severity Levels*) of this Schedule 8 and paragraph 5 of Part B of Schedule 9 (*Payment and Deductions*); or
 - (b) constitutes a Critical Service Failure, the Customer shall be entitled to terminate this Contract pursuant to Clause 34.3 (*Termination*).
- 2.4 If the Supplier becomes aware that it will be unable to achieve a Service Level within the timescales set out in such Service Level and the Customer agrees (acting reasonably) that such failure is due to an act or omission of the Customer, the Supplier

shall be entitled to relief, proportionate in time to the delay caused by the Customer's act or omission, from its obligation to meet the timescales within the relevant Service Level.

- 2.5 The parties acknowledge and agree that the Quarterly Service Credit Amount is a genuine pre-estimate of the loss likely to be suffered by the Customer and not a penalty.
- 2.6 The Quarterly Service Credit Amount shall be shown as a deduction from the amount due from the Customer to the Supplier in the next invoice then due to be issued under the Contract. The Supplier shall not in any circumstances be obliged to pay any money or make any refund to the Customer.

3 CALCULATION OF QUARTERLY SERVICE CREDIT AMOUNT

3.1 Each Service Level is allocated a % of the Monthly Supplier Management Fee which is "at risk" depending on the Supplier's performance against the Service Levels and no more than thirty per cent (30%) of the Supplier Management Fee shall be at risk in respect of Service Levels.

3.2 The assessment of Service Levels will take place quarterly in retrospect.

3.3 For each Service Level the result awarded will be allocated a score as follows:

Poor = 10, Adequate = 5, Good = 3 and Excellent = 0

3.4 The total is then tallied and the following formulas applied to calculate the Quarterly Service Credit Amount applicable for the relevant assessment period:

$$\text{Total score assessed} / \text{Total score available} * 100\% = X\%$$

$$X\% \text{ of MFR} = \text{Quarterly Service Credit Amount}$$

Where

MFR = Quarterly Supplier Management Fee at risk for the relevant assessment period, which shall be an amount no greater in value than thirty per cent (30%) of the available Quarterly Supplier Management Fee for the relevant assessment period

Worked example:

$$120 / 180 * 100\% = 66\%$$

Therefore, assuming an MFR of £25,000, meaning that the Quarterly Service Credit Amount to be deducted from the next invoice payable by the Customer in accordance with Schedule 9 (*Payment and Deduction*) would be:

66% of £25,000 = £16,500

Appendix 1

Service Levels and Severity Levels

Harwell Southern Archive Service Levels

Service Level		Level achieved			
1	Routine retrieval and transfer of data required by End Users within the timescales set out in paragraph 19.1 (<i>Retrieval Response Timescales</i>) of Schedule 3 (Harwell Specification)				
2	Scan and email Urgent Requests within the timescales set out in paragraph 19.1 (<i>Retrieval Response Timescales</i>) of Schedule 3 (Harwell Specification)				
3	Respond to FOI Requests in accordance with paragraph 22.1 (<i>FOI/ EIR/ EISR Responses</i>) of Schedule 3 (Harwell Specification)				
4	Registration, identification and availability for retrieval of all Records received within five (5) Working Days for routine receipts				
5	Registration, identification and availability for retrieval of all Records received within ten (10) Working Days for bulk receipts				
6	Destruction of any file/Box within four (4) weeks of request for Disposal				

Mobilisation Service Levels

Service Level		Level achieved			

		(poor)	(adequate)	(good)	(excellent)
1	Attend site in accordance with paragraphs 1.1(b) and (d) (<i>Design and Construction of the NDA Archive Facility</i>) of Part 2 (<i>Design and Construction Services</i>) of Schedule 1 (Services).				

Operation Service Levels

		Level achieved			
	Service Level				
1	Uplift of Records from the End User site, transportation to the NDA Archive Facility and acceptance into the NDA Archive Facility within the timescales set out in Schedule 1 Part 4 para 36				
Creation and control					
2	Registration, identification and availability for retrieval of all Records received within five (5) Working Days for routine receipts				
3	Registration, identification and availability for retrieval of all Records received within ten (10) Working Days for bulk receipts				
4	Destruction of any file/Box within four (4) weeks of request for Disposal				
End User Access, Data Protection and Freedom of Information					
5	Routine retrieval and transfer of data required by End Users within one (1) Working Day in accordance with paragraph 25.1 (<i>Retrieval Response Timescales</i>) of Part 3 (<i>Core Services</i>) of Schedule 1				

	(Services)				
6	Scan and email Urgent Requests which relate to Records which are two hundred and fifty (250) pages (A4 or equivalent) or fewer in length within two (2) Working Hours in accordance with paragraph 25.3 (<i>Retrieval Response Timescales</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (Services)				
7	Respond to FOI Requests in accordance with paragraph 28.1 (<i>FOI / FOISA / EIR / EISR Responses</i>) of Schedule 1 (Services)				
Place of Deposit and Archive Service Accreditation					
8	<p>Review of an archived Record at the PRA second review date.</p> <p>For the purpose of this service level the following meanings shall be ascribed to the 'level achieved' boxes and shall be assessed in relation to all Records subject to PRA second review in the relevant assessment period:</p> <ul style="list-style-type: none"> • Excellent: on or before the relevant PRA second review date • Good: within 5 Working Days of the PRA relevant second review date • Acceptable: within 1 month of the relevant PRA second review date • Poor: outside 1 month of the relevant second review date 				
9	LCI applications (for all Records meriting such an application in the relevant assessment period) to be submitted for consideration by the advisory council in sufficient time for them to be considered at the next quarterly meeting of the LCI advisory council (as advised by the LCI				

	advisory council meeting timetable)				
Archive Management System					
10	Archive Management Software availability is not less than 99.5% between 09:00 and 17:00 Monday to Friday (inclusive) excluding Bank Holidays, Privilege Days and from 27 December to 31 December (inclusive)				
Security					
11	Report regulatory non-compliance to the Customer within 24 hours and ONR within statutory time limits				
12	Investigate and correct any security non-conformance within the timescales agreed pursuant to paragraphs 5 (Compliance with ISO/IEC 27001) and 6 (Breach of Security) of Schedule 4 (<i>Security Management Plan</i>)				
Facility Related Services (Schedule 2)					
13	<p>Statutory maintenance provided in compliance with the agreed PPM Schedule. This is a pass / fail requirement.</p> <p>For the purpose of this service level the following meanings shall be ascribed to the 'level achieved' boxes in the relevant assessment period:</p> <ul style="list-style-type: none"> • Excellent: on or before the relevant PPM Schedule date • Good: not applicable • Acceptable: not applicable • Poor: after the PPM Schedule date 				
14	Planned maintenance provided in compliance with the agreed 'PPM				

	<p>schedule’.</p> <p>For the purpose of this service level the following meanings shall be ascribed to the ‘level achieved’ boxes in the relevant assessment period:</p> <ul style="list-style-type: none"> • Excellent: on or before the relevant PPM Schedule date • Good: within 5 Working Days of the relevant PPM Schedule date • Acceptable: within 1 month of the relevant PPM Schedule date • Poor: outside 1 month of the relevant PPM Schedule date 				
15	<p>Acceptable cleaning standards are maintained at all times for the internal areas set out in Appendix 3, Part 1, Schedule 2 against the cleaning standard set out in Appendix 3, part 2, Schedule 2. All external areas shall be maintained as per the standard set out in Appendix 3, Part 2, Schedule 2. Application of the standard shall be undertaken in conjunction with Appendix 3, Part 3 and the cleaning matrix and reactive cleaning regimes defined in Clause 3.2 (Cleaning Services), Schedule 2.</p> <p>For the purpose of this service level the following meanings shall be ascribed to the ‘level achieved’ boxes in the relevant assessment period:</p> <ul style="list-style-type: none"> • Excellent: Appendix 3, Part 2, Schedule 2 maintained for all areas between 96 and 100% of the time • Good: Appendix 3, Part 2, Schedule 2 maintained for all areas between 86 and 				

	<p>95% of the time</p> <ul style="list-style-type: none"> • Acceptable: Appendix 3, Part 2, Schedule 2 maintained for all areas between 71 and 85% of the time • Poor: Appendix 3, Part 2, Schedule 2 maintained for all areas less than 70% of the time 				
16	<p>The energy consumption of the NDA Archive Facility shall not exceed [●] kWh per quarter (energy consumption target).¹</p> <p>For the purpose of this service level the following meanings shall be ascribed to the 'level achieved' boxes in the relevant assessment period:</p> <ul style="list-style-type: none"> • Excellent: energy consumption target exceeded and -1% or greater than the target • Good: energy consumption target achieved • Acceptable: energy consumption target exceeded, but within +5% of the target • Poor: energy consumption target exceeded and greater than +5% of the target 				
17	<p>PD5454 compliance - Temperature and Relative Humidity for Archive Repository, except for the photographic archive.</p> <p>This is a pass / fail requirement.</p> <p>Relative Humidity to be maintained at 60% (+/- 5%).</p> <p>Temperature to be maintained at 16° C (+/-</p>				

¹ Note: the Energy consumption target will be set once facility is built. It will be reassessed on the 1st anniversary of practical completion and the figure reset to reflect actual consumption with an adjustment to reflect energy saving measures to be implemented in that year. It will be reviewed thereafter annually.

	<p>1° C).</p> <p>For the purpose of this service level the following meanings shall be ascribed to the 'level achieved' boxes in the relevant assessment period:</p> <ul style="list-style-type: none"> • Excellent: within the tolerances stated • Good: not applicable • Acceptable: not applicable • Poor: outside the tolerances stated 				
18	<p>PD5454 compliance - Temperature and Relative Humidity for the photographic archive.</p> <p>This is a pass / fail requirement.</p> <p>Relative Humidity to be maintained at 50% (+/- 5%).</p> <p>Temperature shall be maintained at 14° C (+/-1° C).</p> <p>For the purpose of this service level the following meanings shall be ascribed to the 'level achieved' boxes in the relevant assessment period:</p> <ul style="list-style-type: none"> • Excellent: within the tolerances stated • Good: not applicable • Acceptable: not applicable • Poor: outside the tolerances stated 				
19	<p>Response times in compliance with Appendix 4 (<i>Response Times</i>) of Schedule 2 (<i>FM Specification</i>).</p> <p>For the purposes of this Service level the following meanings shall be ascribed to the 'Level achieved' boxes in the relevant assessment period:</p>				

	<ul style="list-style-type: none">• Excellent: within the tolerances stated• Good: not applicable• Acceptable: not applicable• Poor: outside the tolerances stated				
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Part B

Performance Monitoring

1 PRINCIPAL POINTS

- 1.1 This Part B provides the methodology for monitoring the Services:
- (a) to ensure that the Supplier is complying with the Service Levels; and
 - (b) for identifying any failures to achieve Service Levels in the performance of the Supplier and/or delivery of the Services ("**Performance Monitoring System**").
- 1.2 Within twenty (20) Working Days of the Commencement Date the Supplier shall provide the Customer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.

2 REPORTING OF SERVICE FAILURES

The Customer shall report all Service Failures and any Critical Service Failure to the Customer in accordance with the processes agreed in paragraph 1.2 above.

3 PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 3.1 The Supplier shall provide the Customer with reports in accordance with the process and timescales agreed pursuant to paragraph 1.2 above which shall contain, as a minimum, the following information in respect of the relevant period just ended:
- (a) for each Service Level, the actual performance achieved over the Service Level for the relevant period;
 - (b) a summary of all Service Failures that occurred during that period;
 - (c) any Critical Service Failures and details in relation thereto;
 - (d) for any repeat Services Failures, actions taken to resolve the underlying cause and prevent recurrence;
 - (e) the Quarterly Service Credit Amount to be applied in respect of the relevant period indicating the Service Failures to which the Quarterly Service Credit Amount relates; and
 - (f) such other details as the Customer may reasonably require from time to time.
- 3.2 The parties shall attend meetings to discuss Service Level reports ("**Performance Review Meetings**") on a quarterly basis (unless otherwise agreed). The Performance

Review Meetings will be the forum for the review by the Supplier and the Customer of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):

- (a) take place within one (1) week of the reports being issued by the Supplier;
- (b) take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance;
- (c) be attended by the Supplier's Representative and the Customer's Representative; and
- (d) be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Customer's representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's representative and the Customer's Representative at each meeting.

3.3 The Customer shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.

3.4 The Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified period.

4 SATISFACTION SURVEYS

4.1 In order to assess the level of performance of the Supplier, the Customer may undertake satisfaction surveys in respect of the Supplier's provision of the Services.

4.2 The Customer shall be entitled to notify the Supplier of any aspects of their performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with the Contract.

4.3 All other suggestions for improvements to the Services shall be dealt with as part of the continuous improvement programme pursuant to Clause 13 (*Continuous Improvement*).

Schedule 9

Payment and Deductions

Part A

Scope

1 SCOPE

- 1.1 Subject to the terms of the Contract, the Customer shall pay the Supplier in accordance with the terms of this Schedule 9.
- 1.2 This Schedule 9 is structured as follows:
- (a) Part A sets out the scope and structure of this Schedule 9.
 - (b) Part B sets out the calculations for the Monthly Contract Charges, comprising:
 - (i) Monthly Fixed Fee;
 - (ii) Monthly Variable Fee;
 - (iii) Monthly Supplier Management Fee; and
 - (iv) Service Credits.
 - (c) Part C contains general obligations.
 - (d) Appendix 1 sets out the payments in respect of the Monthly Fixed Fee.
 - (e) Appendix 2 sets out the Services covered by the Monthly Fixed Fee.
 - (f) Appendix 3 sets out details relating to the Assumptions applicable to the Monthly Fixed Fee.
 - (g) Appendix 4 sets out the Services covered by the Monthly Variable Fee.
 - (h) Appendix 5 sets out the rates to be applied to price Project Work; and
 - (i) Appendix 6 sets out the FM Pricing Schedule, being the rates to be applied for performance of the Facilities Management Services.

Part B

Monthly Contract Charges

1 MONTHLY CONTRACT CHARGES

- 1.1 In each invoice, the Supplier shall set out the Monthly Contract Charges payable in respect of such invoice, broken down as follows:

$$MCC = (MFF + MVF + MSMF) - QSCA$$

Where

MCC = Monthly Contract Charges

MFF = Monthly Fixed Fee, calculated in accordance with paragraph 2 (*Monthly Fixed Fee*) of Part B (*Monthly Contract Charges*) of this Schedule 9

MVF = Monthly Variable Fee, calculated in accordance with paragraph 3 (*Monthly Variable Fee*) of Part B (*Monthly Contract Charges*) of this Schedule 9;

MSMF = Monthly Supplier Management Fee, calculated in accordance with paragraph 4 (*Monthly Supplier Management Fee*) of Part B (*Monthly Contract Charges*) of this Schedule 9;

QSCA = Quarterly Service Credit Amount, calculated in accordance with paragraph 3 (*Calculation of Service Credit*) of Part A of Schedule 8 (*Service Levels and Service Credits*);

2 MONTHLY FIXED FEE

- 2.1 Subject to paragraph 2.5 below, the Monthly Fixed Fee shall be payable in respect of each calendar month, in the relevant amounts set out in paragraph 1 of Appendix 1 (*Monthly Fixed Fee*).

- 2.2 The Monthly Fixed Fee shall represent full payment for:

(a) the Services set out in Table 1 (*Monthly Fixed Fee Services - Mobilisation*) of Appendix 1 (*Monthly Fixed Fee - Services*) during Mobilisation; and

(b) the Services set out in each of:

(i) Table 2 (*Monthly Fixed Fee Services - Operation*) of Appendix 2 (*Monthly Fixed Fee - Services*); and

- (ii) Table 3 (*Monthly Fixed Fee Services - Operation (Known Collections)*) of Appendix 2 (*Monthly Fixed Fee - Services*)

during Operation,

together, the “**Fixed Fee Work**”.

- 2.3 The Supplier shall complete delivery of the Services set out in Table 3 (*Monthly Fixed Fee Services - Operation (Known Collections)*) of Appendix 2 (*Monthly Fixed Fee - Services*) in respect of the Known Collections, on or before the fifth anniversary of the Commencement Date.
 - 2.4 The Supplier shall accept Boxes into the NDA Archive Facility during Operation at the rate specified in paragraph 2 of Appendix 1 (*Monthly Fixed Fee*) (the “**Acceptance Rate**”).
 - 2.5 The Customer and Supplier may agree a Change to the Monthly Fixed Fee if:
 - (a) the Customer no longer requires the Supplier to provide a Service listed in Appendix 2 (*Monthly Fixed Fee - Services*);
 - (b) the Customer requires a Service which is not provided for in the Specification; or
 - (c) any of the following assumptions proves incorrect:
 - (i) Practical Completion of the NDA Archive Facility occurs on or before 1 September 2016;
 - (ii) the assumptions and other information as set out in Schedule 2 (FM Specification), which the Supplier used to price Facilities Management as part of its Final Tender, prove to be incorrect and the Supplier demonstrates to the reasonable satisfaction of the Customer that such discrepancy will have a material impact on the cost to the Supplier of the delivery of Facilities Management;
 - (iii) the volume of Records to be transferred to the NDA Archive Facility from each of the Known Collections is five per cent (5%) less or five per cent (5%) greater than the relevant volume specified in Appendix 3 (Assumptions)
- each an “**Assumption**”.
- 2.6 If the Customer or Supplier wishes to initiate a Change in accordance with paragraph 2.5 above, Schedule 6 (*Change Control Procedure*) will apply.

2.7 Where, following the Relevant Transfer Date, the Customer and/or the Supplier provides reasonable evidence to the other that any of the assumptions concerning: (i) the number of Employees who are to transfer to the Supplier from any Previous Employer; and/or (ii) their terms and conditions of employment; and/or (iii) the Staffing Information provided to the Supplier prior to the Relevant Transfer Date; each as set out in Schedule 17 or provided separately to the Supplier, proves to be incorrect as at the Relevant Transfer Date and that as a result there will be a corresponding increase or reduction in the costs of employing the Employees and/or (for the Supplier) complying with its obligations under the Employment Regulations, the Monthly Fixed Fee shall be adjusted to reflect such increase or reduction in such costs in accordance with the following provisions:

- (a) prior to any such adjustment being made, the Customer or the Supplier (as the case may be) shall provide such reasonable evidence of the basis on which the relevant assumptions are said to be incorrect and the proposed increase or reduction in the Monthly Fixed Fee as the other may reasonably request as soon as is reasonably practicable and, in any event, no later than 28 days following the receipt of such request;
- (b) where the Supplier or the Customer fails to produce such evidence within the timescale set out above (or within such other period as the Parties have agreed shall apply to this paragraph), no adjustment to the Monthly Fixed Fee shall be made;
- (c) the Supplier shall use all reasonable endeavours to mitigate any increase in costs which might result in an increase to the Monthly Fixed Fee under this paragraph;
- (d) in order to prevent double recovery, the Supplier shall not recover any costs pursuant to this paragraph where such costs are recoverable by the Supplier under any other provision in this Contract; and
- (e) the Supplier shall provide such information and cooperation as the Customer may reasonably require in order to assess whether or not any assumptions concerning the Employees and/or Staffing Information have proved to be incorrect such that it may lead to a reduction in the costs of employing the Employees during the Term.

3 MONTHLY VARIABLE FEE

3.1 The Monthly Variable Fee shall be payable, where applicable, each calendar month, on a call-off basis.

- 3.2 The Monthly Variable Fee shall be calculated in accordance with the rates set out in Appendix 5 (*Rate Card*) and, at the reasonable request of the Customer, the Supplier shall offer volume and/or project discounts against those rates.
- 3.3 The Customer shall pay the Supplier the Monthly Variable Fee in respect of orders, which it shall call-off using the Template Change Control Form set out in Appendix 1 (*Template Change Control Form*) of Schedule 6 (*Change Control Procedure*).
- 3.4 The Monthly Variable Fee shall represent full payment for the Services set out in Table 1 (*Monthly Variable Fee Services*) of Appendix 4 (*Monthly Variable Fee - Services*) in respect of any collections other than the Known Collections (save for service numbers 33, 34 and 35 which, shall be priced under the Monthly Variable Fee for the Known Collections) during Mobilisation and/or Operation ("**Project Work**"), if the Customer chooses to call-off Project Work.
- 3.5 If the Customer chooses to call-off any Project Work, the following details shall be included in the Change Control Form, if relevant:
- (a) details of any Fixed Fee Work set out in Table 3 (*Monthly Fixed Fee Services- Operation (Known Collections)*) of Appendix 2 (*Monthly Fixed Fee - Services*), which the Supplier will need to re-schedule in order to undertake the Project Work (including the Known Collection(s) which the Fixed Fee Work relates to, Services affected and duration of impact);
 - (b) to the extent the Project Work would be performed in place of Fixed Fee Work, the cost to the Supplier (if any) of performing Project Work in place of the relevant Fixed Fee Work in that month; and
 - (c) the level of increase the Supplier will offer, if applicable, to the Acceptance Rate.
- 3.6 The Supplier may undertake facilities management work in respect of Unscheduled Activities and emergencies up to the value of one thousand five hundred pounds (£1,500) without the Customer's prior consent in accordance with paragraphs 2.4.3 and 2.5.5 of Schedule 2 (*FM Specification*). If the Supplier undertakes any such work, it shall provide the Customer with an invoice clearly setting out how it calculated its costs (based on the applicable rate contained in the Rate Card in Appendix 5 (*Rate Card*) of this Schedule 9 (*Payment and Deductions*)) and once approved by the Customer, the relevant sum shall be paid as Monthly Variable Fee.
- 3.7 The Supplier shall seek Customer Approval before undertaking facilities management work in respect of Unscheduled Activities and emergencies which it estimates will cost in excess of one thousand five hundred pounds (£1,500) in accordance with paragraphs 2.4.3 and 2.5.5 of Schedule 2 (*FM Specification*). Any such work will be treated as

Project Work and the Customer shall call-off such work, if it so wishes, in accordance with the Change Control Procedure.

4 MONTHLY SUPPLIER MANAGEMENT FEE

4.1 The Monthly Supplier Management Fee shall be calculated as follows:

$MSMF = A + B$, where:

$A = 6\% \times \text{Monthly Fixed Fee for the relevant Contract Month}$

$B = 6\% \times \text{Monthly Variable Fee for the relevant Contract Month}$

5 QUARTERLY SERVICE CREDIT AMOUNT

5.1 The value of any Quarterly Service Credit Amount shall be calculated in accordance with paragraph 3 (*Calculation of Quarterly Service Credit Amount*) of Schedule 8 (*Service Levels and Service Credits*) and shall be deducted quarterly from the Monthly Contract Charges.

Part C

General Obligations

1 GENERAL OBLIGATIONS

Records and Open Book Accounting

1.1 The Supplier shall (and shall procure that each Sub-contractor shall) at all times:

- (a) maintain a full record of particulars of the costs of performing the Services;
- (b) upon request by the Customer, provide a written summary of any of the costs referred to in paragraph 1.1(a) including details of any funds held by the Supplier specifically to cover such costs, in such form and detail as the Customer may reasonably require to enable the Customer to monitor the performance by the Supplier of its obligations under this Contract; and
- (c) provide such facilities as the Customer may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this paragraph.

Books of Account

1.2 Compliance with paragraph 1.1 (*Records and Open Book Accounting*) shall require the Supplier to keep (and where appropriate to procure that each Sub-contractor shall keep) books of account in accordance with best accountancy practices with respect to this Contract, showing in detail:

- (a) administrative overheads;
- (b) payments to Sub-contractors;
- (c) capital and revenue expenditure; and
- (d) such other items as the Customer may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of this Contract

and the Supplier shall have (and procure that its Sub-contractors shall have) the books of account evidencing the items listed in paragraphs 1.1(a) to 1.1(c) inclusive, available for inspection by the Customer (and its advisers) upon reasonable notice, and shall promptly present a written report of these to the Customer as and when requested from time to time.

Appendix 2

Monthly Fixed Fee - Services

1 MONTHLY FIXED FEE SERVICES - MOBILISATION

1.1 Table 1 (*Monthly Fixed Fee Services - Mobilisation*) below sets out the Services covered by the Monthly Fixed Fee during Mobilisation.

Table 1: Monthly Fixed Fee Services - Mobilisation

Service Number	Service Description	Contract Reference
1	Design and Construction Services	Paragraph 1 (<i>Design and Construction Services</i>) of Part 2 (<i>Design and Construction Services</i>) of Schedule 1 (<i>Specification</i>)
2	Specialist Fit Out and Commissioning of the NDA Archive Facility	Paragraph 2 (<i>Specialist Fit Out and Commissioning of the NDA Archive Facility</i>) of Part 2 (<i>Design and Construction Services</i>) of Schedule 1 (<i>Specification</i>)
4	Harwell Southern Archive Services	Paragraph 4 (<i>Harwell Southern Archive Services</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>) Schedule 3 (<i>Harwell Southern Archive Services</i>)
5	Overarching Security Requirements	Paragraph 5 (<i>Overarching Security Requirements</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
6	Physical Security	Paragraph 6 (<i>Physical Security</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
7	Information Security	Paragraph 7 (<i>Information Security</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
8	Personnel Security	Paragraph 8 (<i>Personnel Security</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
19	Reporting	Paragraph 19 (<i>Reporting</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
N/A	Miscellaneous Supplier Costs	N/A

2 MONTHLY FIXED FEE SERVICES - OPERATION

2.1 Table 2 (*Monthly Fixed Fee Services - Operation*) below sets out the Services covered by the Monthly Fixed Fee during Operation.

Table 2: Monthly Fixed Fee Services – Operation

Service Number	Service Description	Contract Reference
3	Facilities Management	Paragraph 3 (<i>Facilities Management</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>) Schedule 2 (<i>FM Specification</i>) (excluding paragraphs 2.5 (<i>Reactive Repairs and Maintenance</i>) and 2.6 (<i>Emergency Breakdown Service</i>)).
4	Harwell Southern Archive Services	Paragraph 4 (<i>Harwell Southern Archive Services</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>) Schedule 3 (<i>Harwell Southern Archive Services</i>)
5	Overarching Security Requirements	Paragraph 5 (<i>Overarching Security Requirements</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
6	Physical Security	Paragraph 6 (<i>Physical Security</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
7	Information Security	Paragraph 7 (<i>Information Security</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
8	Personnel Security	Paragraph 8 (<i>Personnel Security</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
19	Reporting	Paragraph 19 (<i>Reporting</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
20	Liaison with TNA - Place of Deposit	Paragraph 20 (<i>Liaison with TNA - Place of Deposit</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
21	Liaison with TNA – Archive Service Accreditation	Paragraph 21 (<i>Liaison with TNA – Archive Service Accreditation</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
22	PRA Second Review	Paragraph 22 (<i>PRA Second Review</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
23	End User Access – General	Paragraph 23 (<i>End User Access – General</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)

Service Number	Service Description	Contract Reference
24	Search, Retrieval and Delivery	Paragraph 24 (<i>Search, Retrieval and Delivery</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
25	Retrieval Response Timescales	Paragraph 25 (<i>Retrieval Response Timescales</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
26	End User Access - Processes	Paragraph 26 (<i>End User Access - Processes</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
27	Data Protection Responses	Paragraph 27 (<i>Data Protection Responses</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
28	FOI / FOISA / EIR / EISR Responses	Paragraph 28 (<i>FOI / FOISA / EIR / EISR Responses</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
29	Public Access Arrangements - General	Paragraph 29 (<i>Public Access Arrangements - General</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
30	Public User Processes	Paragraph 30 (<i>Public User Processes</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
31	Other Processes	Paragraph 31 (<i>Other Processes</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
32	Socio-Economic Development	Paragraph 32 (<i>Socio-Economic Development</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
N/A	Miscellaneous Supplier Costs	N/A

2.2 Table 3 (*Monthly Fixed Fee Services - Operation (Known Collections)*) below sets out Services covered by the Monthly Fixed Fee during Operation, which relate to the Known Collections only.

Table 3: Monthly Fixed Fee Services - Operation (Known Collections)

Service Number	Service Description	Contract Reference
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Service Number	Service Description	Contract Reference
9	Identification and Tracking System(s)	Paragraph 9 (<i>Identification and Tracking System(s)</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
10	Receipt of Records	Paragraph 10 (<i>Receipt of Records</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
11	Quarantine	Paragraph 11 (<i>Quarantine</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
12	Storage of Physical Records	Paragraph 12 (<i>Storage of Physical Records</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
13	Storage of Electronic Records	Paragraph 13 (<i>Storage of Electronic Records</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
14	Disposition - General	Paragraph 14 (<i>Disposition - General</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
15	Subject Matter Expert Disposition Reviews	Paragraph 15 (<i>Subject Matter Expert Disposition Reviews</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
16	Second Review	Paragraph 16 (<i>Second Review</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
17	Notification Prior to Disposition of Records not cited in the Record Retention Schedules	Paragraph 17 (<i>Notification Prior to Disposition of Records not cited in the Record Retention Schedules</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
18	Authority to Destroy – General	Paragraph 18 (<i>Authority to Destroy – General</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
19	Transport	Paragraph 36 (<i>Transport</i>) of Part 4 (<i>Additional Services</i>) of Schedule 1 (<i>Specification</i>)

Appendix 4

Monthly Variable Fee - Services

1 MONTHLY VARIABLE FEE SERVICES

1.1 Table 1 (*Monthly Variable Fee Services*) below sets out the Services covered by the Monthly Variable Fee during Mobilisation and Operation.

Table 1: Monthly Variable Fee Services

Service Number	Service Description	Contract Reference
3	Facilities Management	Paragraph 3 (<i>Facilities Management</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>) Paragraphs 2.5 (<i>Reactive Repairs and Maintenance</i>) and 2.6 (<i>Emergency Breakdown Service</i>) of Schedule 2 (<i>the Specification</i>)
9	Identification and Tracking System(s)	Paragraph 9 (<i>Identification and Tracking System(s)</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
10	Receipt of Records	Paragraph 10 (<i>Receipt of Records</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
11	Quarantine	Paragraph 11 (<i>Quarantine</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
12	Storage of Physical Records	Paragraph 12 (<i>Storage of Physical Records</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
13	Storage of Electronic Records	Paragraph 13 (<i>Storage of Electronic Records</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
14	Disposition - General	Paragraph 14 (<i>Disposition - General</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
15	Subject Matter Expert Disposition Reviews	Paragraph 15 (<i>Subject Matter Expert Disposition Reviews</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
16	Second Review	Paragraph 16 (<i>Second Review</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
17	Notification Prior to Disposition of Records not cited in the Record	Paragraph 17 (<i>Notification Prior to Disposition of Records not cited in the Record Retention Schedules</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)

	Retention Schedules	
18	Authority to Destroy – General	Paragraph 18 (<i>Authority to Destroy – General</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)
33	Project Work	Paragraph 33 (<i>Project Work</i>) of Part 4 (<i>Additional Services</i>) of Schedule 1 (<i>Specification</i>)
34	Sifting	Paragraph 34 (<i>Sifting</i>) of Part 4 (<i>Additional Services</i>) of Schedule 1 (<i>Specification</i>)
35	Off-site Storage	Paragraph 35 (<i>Off-site Storage</i>) of Part 4 (<i>Additional Services</i>) of Schedule 1 (<i>Specification</i>)
36	Transport	Paragraph 36 (<i>Transport</i>) of Part 4 (<i>Additional Services</i>) of Schedule 1 (<i>Specification</i>)

Appendix 5

Rate Card

1 MONTHLY VARIABLE FEE SERVICES - RATE CARD

1.1 Table 1 (*Monthly Variable Fee Services - Rate Card*) below sets out the Services covered by the Monthly Variable Fee and the rates to be used in pricing those Services.

Table 1: Monthly Variable Fee Services - Rate Card

Service Number	Service Description	Contract Reference(s)	Unit	Rate (£)
3	Facilities Management: Carillion (PSA) Schedule of Rates	Paragraph 2.5 (<i>Reactive Repairs and Maintenance</i>) of Schedule 2 (<i>FM Specification</i>) Paragraph 2.6 (<i>Emergency Breakdown Service</i>) of Schedule 2 (<i>FM Specification</i>)	Rates set out at Schedule 2 Facilities Management Specification	
	Facilities Management: Reactive Repairs and Maintenance	Paragraph 2.5 (<i>Reactive Repairs and Maintenance</i>) of Schedule 2 (<i>FM Specification</i>)	Rates set out at Schedule 2 Dayworks	
	Facilities Management: Emergency Breakdown Services and Emergency Response	Paragraph 2.6 (<i>Emergency Breakdown Service</i>) of Schedule 2 (<i>FM Specification</i>)	Rates set out at Schedule 2 Call Outs	
9	Identification and Tracking System(s)	Paragraph 9 (<i>Identification and Tracking System(s)</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)	Per annum	
10	Receipt of Records	Paragraph 10 (<i>Receipt of Records</i>) of Part 3 (<i>Core Services</i>) of Schedule 1	Physical Records - per Box	

Service Number	Service Description	Contract Reference(s)	Unit	Rate (£)
		<i>(Specification)</i>	Electronic Records – per Record	
11	Quarantine	Paragraph 11 (<i>Quarantine</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)	Per box	
12	Storage of Physical Records	Paragraph 12 (<i>Storage of Physical Records</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)	Per Box	
13	Storage of Electronic Records	Paragraph 13 (<i>Storage of Electronic Records</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)	Per GB	
14	Disposition - General	Paragraph 14 (<i>Disposition - General</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)	Per Box	
15	Subject Matter Expert Disposition Reviews	Paragraph 15 (<i>Subject Matter Expert Disposition Reviews</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)	Per Day	
16	Second Review	Paragraph 16 (<i>Second Review</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)	Per Day	
17	Notification Prior to Disposition of Records not cited in the Record Retention Schedules	Paragraph 17 (<i>Notification Prior to Disposition of Records not cited in the Record Retention Schedules</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)	Per Box	

Service Number	Service Description	Contract Reference(s)	Unit	Rate (£)
18	Authority to Destroy – General	Paragraph 18 (<i>Authority to Destroy – General</i>) of Part 3 (<i>Core Services</i>) of Schedule 1 (<i>Specification</i>)	Per Box	
33	Project Work	Paragraph 33 (<i>Project Work</i>) of Part 4 (<i>Additional Services</i>) of Schedule 1 (<i>Specification</i>)	Procurement of Boxes – Per 100 Boxes	
			Processing Donations – per Donation	
34	Sifting	Paragraph 34 (<i>Sifting</i>) of Part 4 (<i>Additional Services</i>) of Schedule 1 (<i>Specification</i>)	Per day	
35	Off-site Storage	Paragraph 35 (<i>Off-site Storage</i>) of Part 4 (<i>Additional Services</i>) of Schedule 1 (<i>Specification</i>)	Per day / week / month	
36	Transport	Paragraph 36 (<i>Transport</i>) of Part 4 (<i>Additional Services</i>) of Schedule 1 (<i>Specification</i>)	399 of few miles - per mile	
			400 or more miles - per mile	

Appendix 6

FM Pricing Schedule

Schedule 10

Management Information and Reporting

1 GENERAL REQUIREMENTS

- 1.1 The Supplier shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver timely and accurate management information to the Customer in accordance with the provisions of this Schedule 10.
- 1.2 Under this Schedule 10 the Supplier shall provide two sets of MI Reports featuring such information as is set out in paragraph 2 below at such times and frequencies as is required by paragraph 3 below.
- 1.3 The Customer reserves the right to revise the management information reporting requirements (and subsequent reporting templates and frequencies) at any stage during the Term.
- 1.4 The Supplier will be provided with one month's written notice of any significant changes to management information reporting requirements (including changes to MI Templates and reporting frequencies).

2 MANAGEMENT INFORMATION REPORTS

- 2.1 The Supplier agrees to provide full, accurate and complete MI Reports to the Customer which incorporate the data, in the correct format, required by the MI Reporting Requirements. The initial MI Reporting Requirements are set out in Appendix 1 (*Quarterly MI Reporting Requirements*) to this Schedule 10. The Customer may from time to time make changes to the requirements in Appendix 1 (*Quarterly MI Reporting Requirements*) including to the data required or format of the report and issue a replacement version of the MI Reporting Requirements to the Supplier. The Customer shall give notice in writing of any such change to the MI Reporting Requirements and shall specify the date from which the replacement MI Reporting Requirements must be used for future MI Reports which date shall be at least 30 clear Calendar Days following the date of the notice.
- 2.2 If the MI Reporting Requirements are amended by the Customer at any time, then the Supplier agrees to provide all future MI Reports in accordance with the most recent MI Reporting Requirements issued by the Customer.
- 2.3 The Customer may provide the Supplier with supplemental guidance for satisfying the MI Reporting Requirements or submitting MI Reports from time to time which may for example indicate which fields are mandatory and which are optional. The Supplier agrees to produce the MI Reports in accordance with any such guidance.

- 2.4 The Supplier may not make any amendment to the MI Reporting Requirements without the prior written agreement of the Customer.
- 2.5 The Customer shall work with the Supplier within the first three months of this Contract to develop a report for monitoring the overall performance and development of this Contract (the “**Contract Management Report**”). The Contract Management Report shall be in addition to the MI Report.
- 2.6 The Contract Management Report will comprise a series of ‘performance dashboards’ or ‘summary reports’ that will monitor and review the performance of this Contract and form a key part of the contract management process outlined in this Schedule 10.
- 2.7 The Contract Management Report shall include, but is not limited to:
- (a) on a monthly basis or quarterly basis (as required by NDA). performance against all Service Levels and Milestones as required;
 - (b) On a bi-annual basis Supplier’s supply chain performance, including an assessment of the number of Small to Medium Enterprises being used to supply and/or deliver Services provided under the Contract.
- 2.8 The list in paragraph 2.7 is not exhaustive and will be developed in good faith between the Customer and the Supplier throughout this Contract.
- 2.9 The Supplier shall submit each Contract Management Report to the Customer no later than ten (10) Working Days after each Quarter End Date.
- 2.10 In addition, the Supplier shall maintain a public relations sensitive process with the Customer (on behalf of NDA) by identifying and supplying an annual report to NDA Head of Information Governance (no later than the last Working Day in February in each Contract Year) on Records to be made open at TNA and/or NDA Archive Facility on 1 April every year and by supplying ad hoc reports on Records released to TNA during the normal disposition process.

3 FREQUENCY AND COVERAGE

- 3.1 All MI Reports must cover MI Reporting Requirements (as set out in Appendix 1 (*Quarterly MI Reporting Requirements*)) and the Supplier must submit each MI Report no later than ten (10) Working Days after each Quarter End Date during the Term.
- 3.2 The MI Report should be used (among other things) to report Services provided during the quarterly period to which the MI Report relates, regardless of when the work was actually completed.

3.3 The Supplier must return the MI Report for each Month. If there is no data to report in respect of a particular performance element in any Month, the Supplier should indicate this position in the MI Report by stating “Nil Return” in respect of the relevant performance element.

3.4 The Supplier must inform the Customer of any errors or corrections to any MI Report:

(a) in the next MI Report due immediately following discovery of the error by the Supplier; or

(b) as a result of the Customer querying any data contained in a MI Report.

4 SUBMISSION OF THE MI REPORT

4.1 The completed MI Report under paragraph 3 above shall be completed in a Microsoft Office compatible format and must be readable and reusable and shall be submitted to the Customer electronically.

4.2 The Customer reserves the right (acting reasonably) to specify from that the MI Report be submitted by the Supplier using an alternative communication to that specified in paragraph 4.1 above such as email. The Supplier agrees to comply with any such instructions provided they do not materially increase the burden on the Supplier.

5 DEFECTIVE MANAGEMENT INFORMATION

5.1 The Supplier acknowledges that it is essential that the Customer receives timely and accurate management information pursuant to this Contract because management information is used by the Customer to inform strategic decision making.

5.2 MI Failures

5.3 If a MI Report:

(a) contains any material errors or material omissions or a missing mandatory field;
or

(b) is submitted using an incorrect MI Reporting Requirement; or

(c) is not submitted by the Reporting Date (including where a Nil Return should have been filed)

then the Customer may deem the failure to submit a MI Report correctly an “**MI Failure**”.

5.4 Following an MI Failure the Customer may issue reminders to the Supplier or require the Supplier to rectify defects in the MI Report provided to the Customer. The Supplier

shall rectify any MI Failure as soon as possible and not more than five (5) Working Days following receipt of any such reminder.

6 MEETINGS

The Supplier agrees to attend meetings between the parties in person to discuss the circumstances of any MI Failure(s) at the request of the Customer (without prejudice to any other rights the Customer may have). If the Customer requests such a meeting the Supplier shall propose measures to ensure that the MI Failures are rectified and do not occur in the future. The parties shall document these measures and continue to monitor the Supplier's performance.

Appendix 1

Quarterly MI Reporting Requirements

Performance Elements	Measure of Performance to be Reported
New Intakes	Spend & Volume
Amendments to System Date	Spend & Volume
Accession – File	Spend & Volume
Accession – Box	Spend & Volume
Retrieval - File	Spend & Volume
Retrieval – Box	Spend & Volume
Electronic Retrieval	Spend & Volume
Permanent Retrieval – File	Spend & Volume
Permanent Retrieval – Box	Spend & Volume
Linking and Filing	Spend & Volume
Insertion	Spend & Volume
Searches (e.g. date of birth)	Spend & Volume
Transfer of Records	Spend & Volume
Destruction of File	Spend & Volume
Destruction of Box	Spend & Volume
Closed Loop Collection	Spend & Tonnage
Transportation 24 hours	Spend, Trips & Mileage
Transportation 48 hours	Spend, Trips & Mileage
File Scan	Spend & Volume
Supply of Boxes	Spend & Volume
Digital – Scanning New Intake	Spend & Volume
Other Digital Activity	Spend & Volume

Performance Elements	Measure of Performance to be Reported
Non Standard Storage	Type, Spend & Volume
Duplicate Deletion	Volume
Missing Records	Type and Volume
Vital Records	Volume
Percentage Utilisation of NDA Archive Facility	Volume – popular Volume – Public User Volume – NDA Estate
Response time to SLAs (2 hours – Urgent Request)	Number of requests Time taken to respond to each request Size of each request (number of pages (A4 or equivalent)) Number of requests responded to within one (1) Working Hour Number of requests of two hundred and fifty (250) pages (A4 or equivalent) or fewer, responded to within two (2) Working Hours
Response time to SLAs (24 hours – Routine Request)	Number or requests Time taken to respond to each request
Archive Management System availability	Instances of unavailability Time (minutes and hours) unavailable per instance
Electricity, gas and water usage readings	Volume (including meter readings)
Waste Removed from Site	Volume of general waste and recycled waste with both categories broken down into individual elements e.g. paper and cardboard
Public User Surveys	Volume
End User Surveys	Volume

Performance Elements	Measure of Performance to be Reported
Proposed destructions	Volume and list
Proposed Public Records	Volume and list
Public Records selected for transfer to TNA, Kew	Volume
Facilities Management - Health and Safety Incidents	Number of incidents and severity
Facilities Management - Statutory Inspections	Number of inspections – with short description
Facilities Management - PPM tasks and Unscheduled Activities	Number of tasks and corresponding spend in form of a list
Facilities Management - PPM tasks and Unscheduled Activities completed	Number of tasks with a brief description and whether complete or outstanding
Facilities Management – audit activities completed	Number and brief description with outcome
Facilities Management – energy consumption	Volume and spend (per energy source)
Facilities Management - environmental information (including waste disposals)	Volume and Type
Facilities Management - complaints received by the Supplier	Volume and Description
LCI Applications	Volume and list

Schedule 11

Testing

1 INTRODUCTION

This Schedule sets out the approach to Testing and the different Testing activities to be undertaken, including the preparation and agreement of the Test Strategy and Test Plans.

2 TESTING OVERVIEW

2.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy and the Test Plans.

2.2 Any disputes between the Supplier and the Customer regarding this Testing shall be referred to the Dispute Resolution Procedure.

3 TEST STRATEGY

3.1 The Supplier shall develop the final Test Strategy as soon as practicable but in any case no later than 60 Working Days (or such other period as the parties may agree) after the Commencement Date.

3.2 The final Test Strategy shall include:

- (a) an overview of how Testing will be conducted in relation to the Implementation Plan;
- (b) the process to be used to capture and record Test results and the categorisation of Test Issues;
- (c) the procedure to be followed should a Deliverable fail a Test or where a Deliverable produces unexpected results, including a procedure for the resolution of Test Issues;
- (d) the procedure to be followed to sign off each Test; and
- (e) the process for the production and maintenance of reports relating to Tests.

4 TEST PLANS

4.1 The Supplier shall develop Test Plans for the approval of the Customer as soon as practicable but in any case no later than 60 Working Days (or such other period as the parties may agree in the Test Strategy or otherwise) prior to the start date for the relevant Testing as specified in the Implementation Plan.

4.2 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;
- (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 Customer can inspect Test results;
 - (iv) the mechanism for ensuring the quality, completeness and relevance of the Tests;
 - (v) the process with which the Customer will review Test Issues and progress on a timely basis; and
 - (vi) the re-Test procedure, the timetable and the resources which would be required for re- Testing.

4.3 The Customer shall not unreasonably withhold or delay its approval of the Test Plans and the Supplier shall implement any reasonable requirements of the Customer in the Test Plans.

5 TESTING

5.1 Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved, the Customer shall be entitled to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re- Testing of a Milestone.

5.2 If the Supplier successfully completes the requisite Tests, the Customer shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that the Services are implemented in accordance with this Contract.

6 TEST ISSUES

6.1 Where a Test Issue is identified by either Party, the parties shall agree how such Test Issue shall be dealt with and:

- (a) if the Test Issue is attributable to an act or omission of the Customer, the Customer shall bear the cost of such Test;

- (b) if the Test Issue is attributable to an act or omission of the Supplier, the Supplier shall rectify the Test Issue at its own costs; and
- (c) any failure to agree how to address a Test Issue by the Parties shall be resolved in accordance with the Dispute Resolution Procedure.

7 TEST QUALITY AUDIT

- 7.1 Without prejudice to its rights pursuant to Clause 37, the Customer or an agent or contractor appointed by the Customer may perform on-going quality audits in respect of any part of the Testing.
- 7.2 If the Customer has any concerns following an audit in accordance with paragraph 7.1 above the Customer will discuss such concerns with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities, and subsequently prepare a written report for the Supplier detailing the same to which the Supplier shall, within a reasonable timeframe, respond in writing.
- 7.3 In the event of an inadequate response to the written report from the Supplier, the Customer (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Customer.

8 OUTCOME OF TESTING

- 8.1 The Customer will issue a Satisfaction Certificate when it is satisfied that a Milestone has been Achieved.
- 8.2 If any Milestones (or any relevant part thereof) do not pass the Test in respect thereof then:
 - (a) the Supplier shall rectify the cause of the failure and re-submit the relevant part to Testing, provided that the Parties agree that there is sufficient time for that action prior to the relevant Milestone Date; or
 - (b) the parties shall treat the failure as a Supplier Default.
- 8.3 All Milestones and Deliverables relating to the Archive Management Software (including improvements pursuant to Clause 13 (*Continuous Improvement*)) shall be subject to this Schedule 10 (*Testing*) save that paragraph 8.2 above shall be replaced with the following:
 - (a) If any element of the Archive Management Software including any improvement to the same fails to pass any Testing or repeat Testing, the Customer may by notice to the Supplier:

- (i) require the Supplier to conduct or procure that there is conducted free of charge all such re-performance, re-work, alterations or modifications to the failing element as is reasonably necessary to enable repeat Testing to be passed and the Contractor shall subject the Archive Management Software to repeat Testing as soon as possible and in any event no later than fifteen (15) days after receipt of such notice from the Customer; or
 - (ii) accept the Archive Management Software or the relevant improvement (as the context requires) "as is" subject to a reduction in the Charges which accurately reflects both the reduced functionality and performance of, and the reduced costs of developing the Archive Management Software or the improvement (as the context requires); or
 - (iii) reject the Archive Management Software or the improvement (as the context requires) if any repeat Testing is failed or the Supplier fails to subject the Archive Management Software or the improvement (as the context requires) to repeat Testing within fifteen (15) days after receipt of the notice provided by the Customer to the Supplier requiring such repeat Testing, in which case the Supplier shall immediately refund all Charges (if applicable) in respect of the Archive Management Software or the improvement (as the context requires).
- (b) The satisfactory completion of all applicable Testing shall not relieve the Supplier of liability should the Archive Management Software subsequently cease to continue to (or it otherwise becomes known that it does not) fulfil the Testing criteria set out in this Contract.

Appendix 1

Satisfaction Certificate

To: [Supplier]

FROM: [Customer]

[Date]

Dear Sirs

SATISFACTION CERTIFICATE

Milestones: ***[Guidance: insert description of the relevant Milestones]***

We refer to the agreement (“**Contract**”) relating to the provision of the [] Services between NDA Archives Limited (company number 09109416) (“**Customer**”) and ***[Guidance: insert Supplier’s details]*** (“**Supplier**”) dated ***[Guidance: insert date of the Contract]***.

The definitions for terms capitalised in this certificate are set out in the Contract.

[We confirm that all of the Milestones have been successfully Achieved by the Supplier in accordance with the Test relevant to those Milestones.]

Yours faithfully

[Name]

[Position]

acting on behalf of [Customer]

Schedule 12

Standards

The Supplier shall comply with the following standards at all times during the Term:

1 INTRODUCTION

1.1 This Schedule 12 sets out the Standards and Regulations with which the Supplier shall comply in its provision of Services.

2 GENERAL STANDARDS

2.1 Quality Management System

(a) the Supplier shall undertake its obligations arising hereunder and in all Contracts in accordance with the BS EN ISO 9001 Quality Management System standard or equivalent;

(b) the Supplier shall ensure that its Sub-contractors undertake their obligations arising under Contracts in accordance with the BS EN ISO 9001 Quality Management System standard or equivalent.

2.2 Environmental Management System

(a) the Supplier shall undertake its obligations arising hereunder and in all Contracts in accordance with the BS EN ISO 14001 Environmental Management System standard or equivalent;

(b) the Supplier shall ensure that its Sub-contractors undertake their obligations arising under Contracts in accordance with the BS EN ISO 14001 Environmental Management System standard or equivalent.

3 PROJECT MANAGEMENT

For Project Management responsibilities, the Supplier shall ensure that PRINCE2 or an equivalent methodology is used.

4 INFORMATION SECURITY

4.1 The Supplier shall undertake its obligations arising hereunder and in all Contracts in accordance with the ISO 27001 Information Security Management standard or equivalent.

4.2 The Supplier shall ensure that all Services intended for the transmission of protectively marked material or for the protection of systems accredited to store or process

protectively marked material shall be protected and delivered to the standards set out in the Security Policy Framework or equivalent.

- 4.3 The Supplier shall comply with the Risk Management Accreditation Document Set (RMADS) (as defined in HMG Infosec Standard 2) prepared on behalf of the Customer and provided to the Supplier covering the scope of the Services available and shall maintain said RMADS throughout the term of this Contract. The RMADS shall be subject to the approval of the pan-Government Accreditor.

5 SERVICE MANAGEMENT

The Supplier shall use the ITL Service Management document set for the purposes of structured and documented Service Management or equivalent.

6 HEALTH AND SAFETY AT WORK

- 6.1 The Supplier shall undertake its obligations arising hereunder and in all Contracts in accordance with the OHSAS 18001 Occupational Health and Safety Management System or equivalent.
- 6.2 Both parties shall take all necessary measures to ensure the health and safety of the other party's employees and agents visiting their premises.
- 6.3 The Supplier shall notify the Authority of any use of substances listed under COSHH regulations or the Montreal Protocol in the provision of the Services.

Schedule 13

Disaster Recovery and Business Continuity

1 PURPOSE OF THIS SCHEDULE

- 1.1 This Schedule sets out the Customer's requirements for ensuring continuity of the business processes and operations supported by the Services in circumstances of Service disruption or failure and for restoring the Services through business continuity and as necessary disaster recovery procedures. It also includes the requirement on the Supplier to develop, review, test, change and maintain a BCDR Plan in respect of the Services.
- 1.2 The BCDR Plan shall be divided into three parts:
- (a) Part A which shall set out general principles applicable to the BCDR Plan ("**General Principles**");
 - (b) Part B which shall relate to business continuity ("**Business Continuity Plan**"); and
 - (c) Part C which shall relate to disaster recovery ("**Disaster Recovery Plan**").
- 1.3 The BCDR Plan shall detail the processes and arrangements which the Supplier shall follow to ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services and the recovery of the Services in the event of a Disaster.

2 DEVELOPMENT OF BCDR PLAN

- 2.1 The BCDR Plan shall, unless otherwise required by the Customer in writing, be based upon and be consistent with the provisions of paragraphs 3, 4 and 5 of this Schedule 13 (*Disaster Recovery and Business Continuity*).
- 2.2 The Supplier shall ensure that its Sub-contractors' disaster recovery and business continuity plans are integrated with the BCDR Plan.

3 PART A - GENERAL PRINCIPLES AND REQUIREMENTS

- 3.1 The BCDR Plan shall:
- (a) set out how its business continuity and disaster recovery elements 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;

- (c) contain an obligation upon the Supplier to liaise with the Customer and (at the Customer's request) any Related Supplier 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 Customer and any of its other Related Suppliers as notified to the Supplier by the Customer 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 Customer;
- (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 Supplier; 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 Customer;
- (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 no data loss and to preserve data integrity;
- (k) identify the responsibilities (if any) that the Customer 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 Customer as notified by the Customer from time to time to inform decisions in support of the Customer's business continuity plans.

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

- (a) the Services are provided in accordance with the Contract 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 Customer is minimal as far as reasonably possible;
- (c) it aligns with the relevant provisions of ISO/EIC 27000, ISO/EIC 27001:2013, ISO/EIC 27002:2013, ISO/EIC 20000 (as amended), ISO 22301:2012 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 must 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 Service Levels or to any increase in the Monthly Contract Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

4 PART B - BUSINESS CONTINUITY ELEMENT - PRINCIPLES AND CONTENTS

4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including but not limited to and unless the Customer 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;
- (b) the processes to be followed if an incident occurs affecting the Archive Management Software including but not limited to incident resolution processes; and

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

5 PART C - DISASTER RECOVERY ELEMENT - PRINCIPLES AND CONTENTS

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

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

5.3 The Disaster Recovery Plan shall include the following:

- (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 and any Sub-contractor in relation to the Disaster Recovery System and the provision of the Services pursuant to the Disaster Recovery Plan and any testing of the same including but not limited to the following:
 - (i) details of the Supplier's approach to complying with NDA's IT and Disaster Recovery Plan in relation to data back-up and data verification;
 - (ii) identification of all potential disaster scenarios;
 - (iii) risk analysis;
 - (iv) documentation of processes and procedures;
 - (v) invocation rules;
 - (vi) Service recovery procedures;
 - (vii) a set of rehearsed actions designed to minimise the effect of a Disaster on the NDA Archive Facility, which will assist in restoring the NDA Archive Facility to an operational condition as quickly as reasonably practicable;

- (viii) steps to be taken upon Service resumption to address any prevailing effect of the Service failure or disruption; and
- (ix) specific salvage and treatment plans for archival collection damage by water, fire, smoke or other accidents;
- (c) any applicable Service Levels with respect to the provision of the Services pursuant to the Disaster Recovery Plan and details of any agreed relaxation upon the Service Levels during any period of invocation of the Disaster Recovery Plan;
- (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 or any Sub-contractor in relation to its obligations pursuant to this Schedule 13); and
- (f) testing and management arrangements.

6 PROVISION, REVIEW AND AMENDMENT OF THE BCDR PLAN

- 6.1 The Supplier shall provide a draft of the BCDR Plan within twenty (20) Working Days following the Commencement Date.
- 6.2 The Supplier shall review part or all of the BCDR Plan (and the risk analysis on which it is based):
- (a) on a regular basis and as a minimum once every six (6) calendar months;
 - (b) within three (3) calendar months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 8 of this Schedule 13; and
 - (c) where the Customer requests any additional reviews (over and above those provided for in paragraphs 6.2(a) and 6.2(b) of this Schedule) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Customer's written requirements. The costs of both parties for any such additional reviews will be met by the Customer.
- 6.3 Each review pursuant to paragraph 6.1 of the BCDR Plan 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 the occurrence of any event since that date

(or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or if no such period is required within such period as the Customer shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Customer a report ("**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 ("**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.

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

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 year during the Term). Subject to paragraph 7.2, the Customer may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Customer considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.

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

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

- 7.4 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Customer and shall liaise with the Customer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Customer in this regard. Each test shall be carried out under the supervision of the Customer or its nominee.
- 7.5 The Supplier shall ensure that any use by it or any Sub-contractor of “live” data in such testing is first approved with the Customer. Copies of live test data used in any such testing shall be (if so required by the Customer) destroyed or returned to the Customer on completion of the test.
- 7.6 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Customer 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.
- 7.7 Following each test, the Supplier shall take all measures requested by the Customer (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Customer, by the date reasonably required by the Customer and set out in such notice.
- 7.8 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan’s procedures) shall not relieve the Supplier of any of its obligations under this Schedule 13 or otherwise.
- 7.9 The Supplier shall also perform a test of the BCDR Plan as part of the commissioning of the Services.

8 INVOCATION OF THE BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN

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

Schedule 14

Key Personnel

Project Board

Schedule 15

Software Terms

Part A

Software

1 SILVER SOFTWARE

1.1 Not used

2 COTS SOFTWARE

2.1 O'Neil Software Ltd. 6 Joplin Court, Crownhill, Milton Keynes, MK8 0JP, United Kingdom

RSSQL 500K SYSTEM TIER 1

63710 RSWEB.NET USR LICENSES (BLOCK OF 20)

KIT, MC67-NA W/ RSMOBILE LICENSE (7)

KIT, MC67 SINGLE SLOT CRADLE WITH PSU (7)

2.2 Whirl-i-gig 109 South Fifth Street, Unit 608 Brooklyn, NY USA 11245

Collective Access version 1.4

Providence 1.4

Pawtucket 1.4

GNU Public License version 3 (GPLv3)

Part B

Software Terms

1 SILVER LICENCE TERMS

- 1.1 Each licence granted under the Silver Licence Terms pursuant to Clause 30.9(b) shall be on a perpetual, royalty free and non-exclusive basis and shall allow the Customer to Use the software. The licence shall survive the termination or expiry of this Contract.
- 1.2 The Customer may sub-license the rights granted to it pursuant to paragraph 1.1 to a third party including but not limited to a Replacement Supplier, provided that:
- (a) the sub-licence only authorises the third party to Use the software for the benefit of the Customer; and
 - (b) the third party has entered into a confidentiality undertaking with the Customer.
- 1.3 The Customer may copy the software licensed pursuant to paragraph 1.1 above in order to create an archival copy and a back-up copy of it. When copying such software, the Customer shall include the original machine readable copyright notice, and a label affixed to the media identifying the software and stating: "This medium contains an authorised copy of copyrighted software which is the property of *[name of owner]*."
- 1.4 The Customer may:
- (a) assign, novate or otherwise dispose of its rights and obligations licensed under the Silver Licence Terms to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Customer; or
 - (b) transfer the licences granted pursuant to this Contract to other machines or users within the Customer.
- 1.5 Any change in the legal status of the Customer which means that it ceases to be a Contracting Authority shall not affect the validity of any licence granted under the Silver Licence Terms. If the Customer ceases to be a Contracting Authority, the Silver Licence Terms shall be binding on any successor body to the Customer.
- 1.6 At any time during the Term, the Supplier or third party licensor (as the case may be) may terminate a licence granted under the Silver Licence Terms with thirty (30) days' notice in writing (or such other period as agreed by the parties) if:

- (a) the Customer uses the software for any purpose not expressly permitted by the Silver Licence Terms or the Contract; or
- (b) the Customer commits any material breach of the Silver Licence Terms which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier or third party licensor (as the case may be) giving the Customer written notice specifying the breach and requiring its remedy.

2 COTS LICENCE TERMS

- 2.1 Each licence granted under the COTS Licence Terms pursuant to paragraph 30.9(a) shall be on the same terms as paragraph 1 (*Silver Licence Terms*) above (with the appropriate changes) as supplemented and amended by the following provisions:

if so requested by the Customer, the Supplier shall procure that the third party licensor in respect of the COTS Software directly grants to the Customer and each Replacement Supplier a direct licence of the COTS software on the same terms as Silver Licence Terms.

- 2.2 The Customer may assign, novate or otherwise dispose of its rights and obligations licensed under the COTS Licence Terms to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Customer.

3 ASSIGNMENT OF LICENCES

- 3.1 If the Customer so requests at any time during the Term, the Supplier shall assign the licences granted under this Schedule 15 (*Software Terms*) to NDA or any successor body to NDA, pursuant to the rights granted under paragraphs 1.4(a) and 2.2 above.

Schedule 16

Exit Planning and Service Transfer Arrangements

1 INTRODUCTION

- 1.1 This Schedule describes provisions that should be included in the Exit Plan, the duties and responsibilities of the Supplier to the Customer leading up to and covering the expiry or termination (howsoever arising) (including partial termination) of this Contract and the transfer of service provision to a Replacement Supplier.
- 1.2 The objectives of the Exit Planning and Service Transfer Arrangements are to ensure a smooth transition of the availability of the Services from the Supplier to a Replacement Supplier at the termination (howsoever arising) (including partial termination) or expiry of this Contract.

2 EXIT PLANNING AND SERVICE TRANSFER ARRANGEMENTS

The Supplier agrees to indemnify and keep the Customer fully indemnified for itself and on behalf of any Replacement Supplier in respect of any claims, costs (including reasonable legal costs), demands, and liabilities arising from the provision of incorrect information provided to the Customer by the Supplier, to the extent that any such claim, cost, demand or liability directly and unavoidably arises from the use of the incorrect information in a manner that can reasonably be assumed to be proper in bidding for or providing services similar to the Services.

3 EXIT PLAN

- 3.1 Further to Clause 16.1, the Customer shall review the Exit Plan within twenty (20) Working Days of receipt from the Supplier and shall notify the Supplier of any suggested revisions to the Exit Plan. In this respect, the Customer will act neither unreasonably, capriciously nor vexatiously. Such suggested revisions shall be discussed and resolved within ten (10) Working Days. The agreed Exit Plan shall be signed as approved by each party.
- 3.2 The Exit Plan shall provide comprehensive proposals for the activities and the associated liaison and assistance that will be required for the successful transfer of the Services. The Supplier shall ensure that the Exit Plan shall include as a minimum:
- (a) a detailed description of how the Services will be ceased and transferred to the Customer and/or the Replacement Supplier as the case may be;
 - (b) details of the management structure to be employed by the Supplier to effectively transfer the Services to the Customer and/or Replacement Supplier as the case may be;

- (c) details of how relevant knowledge will be transferred to the Customer and/or the Replacement Supplier;
- (d) details of Licensed Goods and contracts (if any) which will be available for transfer to the Customer and/or the Replacement Supplier upon expiry or termination of the Contract together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Services will be available for such transfer);
- (e) proposals for the training of key members of the Replacement Supplier's personnel in connection with the continuation of the provision of the Services following the expiry or termination (howsoever arising) of this Contract charged at rates agreed between the parties at that time;
- (f) proposals for providing the Customer or a Replacement Supplier copies of all documentation:
 - (i) used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and
 - (ii) relating to the use and operation of the Services;
- (g) proposals for the methods of transfer of the Services to the Customer or a Replacement Supplier;
- (h) proposals for the assignment or novation of all Services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the Services;
- (i) proposals for the identification and return of all Property in the possession of and/or control of the Supplier or any third party (including any Sub-contractor);
- (j) proposals for the disposal of any redundant Services and materials;
- (k) proposals for the supply of any other information or assistance reasonably required by the Customer or a Replacement Supplier in order to effect an orderly hand over of the provision of the Services; and
- (l) a proposal for transition of the Supplier's relationship with TNA to a Replacement Supplier.

3.3 In the event that any Licensed Goods are to be transferred to the Replacement Supplier, the Supplier shall ensure that such transfer occurs seamlessly and in an

orderly manner without causing any disruption to the provision of the Services to the Customer and that any such transfer is effected by the Supplier and Replacement Supplier in accordance with Law (together with any applicable regulations);

3.4 Where a Replacement Supplier determines that any Licensed Goods must be replaced to enable it to perform the Services, the Supplier shall liaise with the Replacement Supplier to co-ordinate the removal of the Licensed Goods with the Replacement Supplier's installation of replacement goods and in such circumstances the Supplier shall ensure that the removal and replacement of the Licensed Goods:

- (a) does not cause any damage to the Customer's Premises or any of the Customer's Equipment or other property of the Customer to the fullest extent that the Supplier is able;
- (b) occurs seamlessly and in an orderly manner without causing any disruption to the provision of the Services to the Customer; and
- (c) is effected by the Supplier and Replacement Supplier in accordance with Law and any applicable regulations.

3.5 The Exit Plan shall be reviewed and updated by the Supplier. In this regard, the Supplier shall provide a revised version of the Exit Plan to the Customer on or before 31 July and 31 January each year (or more frequently as may be agreed between the Parties). The revised Exit Plan shall be reviewed and agreed in accordance with the provisions of paragraph 3.1 of this Schedule 16.

4 ASSISTANCE ON EXPIRY OR TERMINATION

In the event that this Contract expires or is terminated the Supplier shall, where so requested by the Customer, provide reasonable assistance to the Customer to migrate the provision of the Services to a Replacement Supplier including as set out in the Exit Plan.

Schedule 17

Employees

1 INTERPRETATION

The definitions and rules of interpretation in this paragraph apply in this Schedule 17:

“Harwell Transferring Personnel” means those Employees assigned to the Harwell Southern Archive at the Relevant Transfer Date and who transfer to the Supplier pursuant to the Employment Regulations (but not including any employee who was not employed immediately prior to the Relevant Transfer Date);

“Previous Employer” means the employer of any Employee immediately prior to the Relevant Transfer Date;

“Redundancy Payments” means statutory redundancy pay and any payments made under contractual redundancy terms, including redundancy terms in a pension scheme;

“Service Transfer Date” means the date on which the Services (or any part of the Services) or services which are the same or similar to the Services (or any part thereof) for whatever reason transfer from the Supplier to the Customer or any Replacement Supplier;

“Staffing Information” means:

- (a) identity, ages, dates of commencement of employment (and continuous employment if different) or engagement and gender;
- (b) details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise;
- (c) the identity of their employer or relevant contracting party;
- (d) relevant notice periods and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual redundancy payment schemes;
- (e) terms and conditions of employment (including without limitation job title and job description, current wages, overtime, salaries (including salary review arrangements), profit sharing, incentive and bonus arrangements applicable to them and details of other employment-related benefits including (without limitation) holiday entitlement, sickness pay entitlement, maternity or paternity pay entitlement, medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and car schemes applicable to them);

- (f) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (g) details of any such individuals on long-term sickness absence, maternity or other statutory leave or otherwise absent from work;
- (h) copies of all relevant documents and materials relating to such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals); and
- (i) proportion of time spent in the provision of the Services;

“Supplier’s Final Staff List” means the list of all Staff engaged in or wholly or mainly assigned to the provision of the Services or any part of the Services at the Service Transfer Date; and

“Supplier’s Provisional Staff List” means a list prepared and updated by the Supplier of all Staff engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of preparation of the list.

2 TRANSFER OF EMPLOYEES TO THE SUPPLIER

- 2.1 No later than three months prior to any Relevant Transfer Date the Customer shall provide to the Supplier the Staffing Information in respect of the Employees, to the extent that such information has been provided to the Customer by the Previous Employer. The Customer shall provide the Supplier with any updated Staffing Information when reasonably requested by the Supplier, to the extent that such information has been provided to the Customer by the Previous Employer.
- 2.2 Paragraph 2.1 is subject to the Customer and any Previous Employer’s obligations in respect of the Data Protection Legislation and any data provided by the Customer in accordance with paragraph 2.1 and more than 28 days before a Relevant Transfer shall be provided in anonymous form. To the extent anonymous data has been provided by the Customer pursuant to its obligations under paragraph 2.1 above, the Customer shall provide any outstanding personal data no later than 28 days prior to any Relevant Transfer Date, to the extent that such information has been provided to the Customer by the Previous Employer.
- 2.3 The Customer does not warrant the accuracy of the information provided under paragraphs 2.1 or 2.2.
- 2.4 The Customer and the Supplier acknowledge that the transfer of responsibility for the provision of the Services to the Supplier under this Contract will result in a number “relevant transfers” within the meaning of the Employment Regulations which will occur

during the period of Operation. The parties agree that in respect of the transfer of responsibility for Services in relation to the North Highland Archive, the archive at Dounreay and the Harwell Southern Archive respectively, the Supplier's proposed Relevant Transfer Dates shall be identified in the Business Plan and agreed by the Customer. The Supplier's proposed Relevant Transfer Dates may be varied with the prior written agreement of the Customer. In the event of any dispute as to the Relevant Transfer Dates for the purposes of this Schedule, the Customer (acting reasonably) shall determine that date.

- 2.5 The Supplier agrees that from any Relevant Transfer Date the contracts of employment of the Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme) will take effect as if originally made between the Supplier (or any Sub-contractor) and the Employees (or the relevant trade union, as the case may be).
- 2.6 The Customer shall use reasonable endeavours to procure that the Previous Employer shall be responsible for all emoluments and outgoings in respect of any Employee (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken up to the Relevant Transfer Date, PAYE, national insurance contributions and contributions to retirement benefit schemes) in respect of the period prior to the Relevant Transfer Date.
- 2.7 Save for any liabilities in respect of the Employees which relate to benefits for old age, invalidity or survivors under any occupational pension scheme, the Supplier shall, and shall procure that any Sub-contractor shall, have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken after the Relevant Transfer Date, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Employees with effect from and including the Relevant Transfer Date.
- 2.8 As soon as reasonably practicable after the Relevant Transfer Date, the Supplier shall, or shall procure that any Sub-contractor shall, send to each Employee a letter informing each Employee of the consequences of the transfer in a form agreed with the Customer (or, in the absence of such agreement, as reasonably determined by the Customer).
- 2.9 Subject to paragraph 3 and 4.11 below, the Supplier shall indemnify the Customer (for itself and on behalf of any member of the Customer's Group and the Previous Employer) against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Customer, any member of the Customer's Group or the Previous Employer including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

- (a) all and any claims in respect of all emoluments and outgoings in relation to the Employees (including without limitation all wages, bonuses, PAYE, national insurance contributions, and contributions to retirement benefit schemes) accrued and payable in respect of any period on or after the Relevant Transfer Date;
- (b) any act or omission by the Supplier or any Sub-contractor relating to Employees occurring on or after the Relevant Transfer Date;
- (c) any failure or alleged failure of the Supplier or any Sub-contractor to comply with its or their obligations under Regulation 13 of the Employment Regulations (save as a result of the Previous Employer's failure to provide accurate Staffing Information); or
- (d) any substantial change made or proposed by the Supplier or any Sub-contractor in the working conditions of any of the Employees or as a result of a significant change in the identity of the employer of any of the Employees, in either case where that change is to the detriment of all or any of the Employees. For the purposes of this clause the expressions "substantial change" and material detriment shall have the same meaning as for the purposes of Regulation 4(9) of the Employment Regulations

and, if required by the Customer, the Supplier will enter into a deed of indemnity in order to provide any member of the Customer's Group or the Previous Employer with the same protection given to the Customer in this paragraph 2.9.

3 REDUNDANCY PAYMENTS

3.1 The Customer shall reimburse the Supplier for any Redundancy Payments which the Supplier reasonably and properly incurs in relation to the Harwell Transferring Personnel, subject to the condition set out at paragraph 3.2 below.

3.2 The conditions for reimbursement are:

- (a) the Supplier giving notice of termination of employment by reason of redundancy to any Harwell Transferring Personnel by no later than 30 days after the transit of the Harwell Southern Archive to the NDA Archive Facility is completed or the expiry of the Initial Term, whichever is the earlier. In the event of any dispute as to the date on which the transfer of the Harwell Southern Archive is completed, the Customer (acting reasonably) shall determine that date for the purposes of this paragraph 3;

- (b) the Supplier giving evidence reasonably satisfactory to the Customer that the Redundancy Payments have been reasonably and properly incurred and that reimbursement is due; and
 - (c) submitting an invoice to the Customer for the amount due.
- 3.3 The reimbursement referred to at paragraph 3.1 shall not apply to:
- (a) any Redundancy Payments incurred by the Supplier which arise as a result of dismissals made after the timeframe set out at paragraph 3.2(a) (subject to paragraph 3.4 below);
 - (b) payments (including payments in lieu of notice) claims, penalties, expenses or other liabilities other than Redundancy Payments; or
 - (c) any additional Redundancy Payments which accrue as a result of any delay in the transit of the Harwell Southern Archive beyond the date set out in the relevant Business Plan which arise as a result of the default of the Supplier.
- 3.4 In the event that transit of the Harwell Southern Archive is delayed as a result of the Customer's default, then the Customer and the Supplier shall (acting reasonably) agree to extend the timetable for reimbursement.

4 EMPLOYMENT EXIT PROVISIONS

- 4.1 The parties envisage that subsequent to the commencement of this Contract, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Contract, or part, or otherwise) resulting in a transfer of the Services in whole or in part ("**Service Transfer**"). If a Service Transfer is a relevant transfer for the purposes of the Employment Regulations then the provisions in paragraphs 4.8 to 4.11 of this Schedule 17 shall apply. Paragraph 4.14 of this Schedule 17 shall apply to a Service Transfer which is not a relevant transfer for the purposes of the Employment Regulations. For the avoidance of doubt, all other paragraphs in this paragraph 3 of this Schedule 17 shall apply to all Service Transfers, whether or not the Employment Regulations apply.
- 4.2 The Supplier agrees that, subject to compliance with the Data Protection Legislation by the Supplier and the Customer and the Customer procuring compliance by any Replacement Supplier:
- (a) within 20 days of the earliest of:
 - (i) receipt of a notification from the Customer of a Service Transfer or intended Service Transfer; or

- (ii) receipt or the giving of notice of early termination of this Contract or any part thereof; or
- (iii) the date which is 12 months before the expiry of the Initial Term or any renewal term

and, in any event, on receipt of a written request of the Customer at any time, it shall provide the Supplier's Provisional Staff List, the Staffing Information and such other information as the Customer may reasonably request in relation to those employees listed on the Supplier's Provisional Staff List to the Customer or, at the direction of the Customer, to a Replacement Supplier and it shall provide an updated Supplier's Provisional Staff List and the Staffing Information when reasonably requested by the Customer or any Replacement Supplier and if required by the Data Protection Legislation any data provided by the Supplier in accordance with this paragraph 4.2(a) shall be provided in anonymous form;

- (b) at least 28 days prior to the Service Transfer Date, the Supplier shall prepare and provide to the Customer and/or, at the direction of the Customer, to the Replacement Supplier, the Supplier's Final Staff List, which shall be complete and accurate in all material respects. The Supplier's Final Staff List shall identify which Staff named are Transferring Employees;
- (c) the Customer shall be permitted to use and disclose the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Supplier for any services which are substantially the same type of services (or any part thereof) as the Services; and
- (d) upon reasonable request by the Customer the Supplier shall provide the Customer or at the request of the Customer, the Replacement Supplier, with access (on reasonable notice and during normal working hours) to such employment records (and provide copies) as the Customer reasonably requests regarding the Transferring Employees.

4.3 The Supplier shall and the Customer shall (and shall procure that any Replacement Supplier shall) comply with the Data Protection Legislation in relation to the transmission and receipt of any Staffing Information from the Supplier pursuant to paragraph 4.2.

4.4 Save insofar as the Staffing Information includes or is prepared in reliance on information provided to the Supplier by the Customer, the Supplier warrants that the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information will be true and accurate in all material respects and the Customer shall be

entitled to rely upon and warrant the accuracy of any such information to any Replacement Supplier.

4.5 From the date of the earliest event referred to in paragraph 4.2 of this Schedule 17, the Supplier agrees that it shall not, and shall procure that any sub-contractor shall not, without the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed):

- (a) assign any additional person to the provision of the Services (or the relevant part) which is the subject of a Service Transfer save for fulfilling assignments and projects previously scheduled and agreed with the Customer;
- (b) make, propose or permit any changes to the terms and conditions of employment of any employees assigned to the provision of the Services (or the relevant part);
- (c) increase the proportion of working time spent on the Services (or the relevant part) by any Staff save for fulfilling assignments and projects previously scheduled and agreed with the Customer;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees assigned to the provision of the Services (or the relevant part); and
- (e) replace any Staff assigned to the provision of the Services (or the relevant part) or deploy any other person to perform the Services (or the relevant part) or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons assigned to the provision of the Services (or the relevant part) save to replace any Staff who have resigned, died, who are absent on sick leave, who have been dismissed for gross misconduct or whose security clearance is withdrawn (in which case any replacement personnel assigned shall be employed on similar terms and conditions of employment).

4.6 The Supplier shall promptly notify the Customer or, at the direction of the Customer, the Replacement Supplier of any notice to terminate employment received from any Staff assigned to the provision of the Services (or the relevant part) regardless of when such notice takes effect.

4.7 At least 28 days before the expected Service Transfer Date, the Supplier shall provide to the Customer or any Replacement Supplier, in respect of each person on the Supplier's Final Staff List who is a Transferring Employee, their:

- (a) payslip data for the most recent month;

- (b) cumulative pay for tax and pension purposes;
- (c) cumulative tax paid;
- (d) tax code;
- (e) voluntary deductions from pay; and
- (f) bank or building society account details for payroll purposes.

4.8 In connection with a Service Transfer to which the Employment Regulations apply, the parties agree that:

- (a) the Supplier shall, and shall procure that any Sub-contractor shall, perform and discharge all its obligations in respect of all the Transferring Employees and their representatives for its own account from the applicable Relevant Transfer Date up to the Service Transfer Date. The Supplier shall indemnify the Customer (for itself and on behalf of any member of the Customer's Group and any Replacement Supplier) in full for and against all claims costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Customer, any member of the Customer's Group or any Replacement Supplier including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
 - (i) the Supplier's failure or any Sub-contractor's failure to perform and discharge any such obligation;
 - (ii) any act or omission by the Supplier or any Sub-contractor on or after the Relevant Transfer Date up to (but not including) the Service Transfer Date or any other matter, event or circumstance occurring on or after the Relevant Transfer Date and before the Service Transfer Date;
 - (iii) a failure or alleged failure by the Supplier or any Sub-contractor to comply with its obligations under Regulation 13 of the Employment Regulations;
 - (iv) all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, national insurance contributions, contributions to retirement benefit schemes and otherwise) payable in respect of any period from and including the Relevant Transfer Date up to but not including the Service Transfer Date;

- (v) any claim arising out of the provision of, or proposal by the Supplier or any Sub-contractor to offer any change to any benefit, term or condition or working condition of any Transferring Employee arising in respect of the period on or after the Relevant Transfer Date and before the Service Transfer Date;
- (vi) 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 Employee or any representative of such person for which it is alleged the Customer or any Replacement Supplier may be liable by virtue of this Contract and/or the Employment Regulations;
- (vii) any act or omission of the Supplier or any Sub-contractor in relation to its obligations under Regulation 11 of the Employment Regulations, or in respect of an award of compensation under Regulation 12 of the Employment Regulations; and
- (viii) any statement communicated to or action done by the Supplier or any Sub-contractor or in respect of, any Transferring Employee during the period before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the Customer in writing.

- 4.9 The Supplier shall, and shall procure that any Sub-contractor shall, co-operate in the orderly transfer of employment of any Transferring Employees if and to the extent reasonably requested by the Customer. The Supplier shall, and shall procure that any Sub-contractor shall, comply with all reasonable instructions from the Customer with regard to arrangements connected with the termination of this Contract, or the termination of part of the provision of the Services, and will take all reasonable steps to mitigate any costs relating to any Transferring Employees which the Customer, any member of the Customer's Group or any Replacement Supplier may incur as a result of the termination of this Contract or the provision of part of the Services.
- 4.10 The Supplier shall indemnify the Customer and any Replacement Supplier in respect of any claims by any member of Staff who is not a Transferring Employee or any representative of any member of Staff in relation to Staff who are not Transferring Employees during any period whether before, on or after the Service Transfer Date.
- 4.11 The Customer shall indemnify the Supplier in full for and against all claims costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Supplier or any Sub-contractor including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

- (a) any failure or alleged failure by the Customer or the Replacement Supplier to comply with its or their obligations under the Employment Regulations;
- (b) any act or omission by the Customer or the Replacement Supplier relating to a Transferring Employee occurring on or after the Service Transfer Date;
- (c) all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, national insurance contributions, contributions to retirement benefit schemes and otherwise) accrued and payable in respect of any period on or after the Service Transfer Date; and
- (d) any substantial change made or proposed by the Customer or the Replacement Supplier in the working conditions of any of the Transferring Employees or as a result of a significant change in the identity of the employer of any of the Transferring Employees, in either case where that change is to the detriment of all or an of the Transferring Employees. For the purposes of this clause the expressions “substantial change” and material detriment shall have the same meaning as for the purposes of Regulation 4(9) of the Employment Regulations.

4.12 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraphs 4.2 to 4.11 of this Schedule 17 to the extent necessary to ensure that any Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by the Supplier or the Customer to the Supplier under paragraphs 4.2 to 4.11 in its own right pursuant to section 1 (1) of the Contracts (Rights of Third Parties) Act 1999 and if required by the Customer, the Supplier will enter into a deed of indemnity in order to provide any Replacement Supplier with the same protection given to the Customer in this paragraph 4.12.

4.13 Notwithstanding paragraph 4.12, it is expressly agreed that the parties may by agreement rescind or vary this Schedule 17 or any term of this Schedule 17 without the consent of any other person who has the right to enforce the terms of this Schedule 17 or the term in question notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.

4.14 If, in the event of a Service Transfer to which the Employment Regulations do not apply the following provisions shall apply:

- (a) the Customer or the Replacement Supplier can, at its discretion, make to any of the employees listed on the Supplier's Provisional Staff List or any Staff assigned to the Services an offer, in writing, to employ that employee under a

new contract of employment to take effect at the earliest reasonable opportunity;

- (b) when the offer has been made by the Customer or Replacement Supplier and accepted by any employee or worker, the Supplier shall permit the employee or worker to leave his or her employment, as soon as practicable depending on the business needs of the Supplier which could be without the employee or worker having worked his full notice period, if the employee so requests and where operational obligations allow;
- (c) if the employee does not accept an offer of employment made by the Customer or Replacement Supplier, the employee shall remain employed by the Supplier and all claims in relation to the employee shall remain with the Supplier; and
- (d) if the Customer or the Replacement Supplier does not make an offer to any employee on the Supplier's Provisional Staff List or any Staff assigned to the Services, then that employee and all claims in relation to that employee remains with the Supplier.

Schedule 18

Pensions

Part A

SLC Protected Employees

1 PART A INTERPRETATION AND DEFINITIONS

1.1 In Part A of this Schedule, unless the context otherwise requires, the following terms shall have the meanings given to them below:

“Actuarial Assumptions” means the assumptions and methods set out at Appendix A to this Schedule;

“Due Date” means the date 30 business days after the last of the conditions in paragraph 4.7 of Part A of this Schedule has been satisfied;

“SLC Initial Transfer Date” The date when the SLC was first admitted to the Combined Nuclear Pension Plan;

“Money Purchase Transfer Value” means the amount available as a transfer payment under the UKAEA Combined Pension Scheme and/or the Combined Nuclear Pension Plan (as appropriate) money purchase arrangements (including money purchase additional voluntary contribution arrangements, Shift Pay Pension Plan arrangements and the New Joiners Benefit Structure arrangements) in respect of the invested contributions made by SLC Transferring Members or Transferring Money Purchase Members to such arrangements towards securing money purchase benefits;

“New Employer” has the meaning set out in paragraph 2.4 of Part A of this Schedule;

“Pension Liabilities” means the relevant SLC Transferring Members’ benefits accrued before the Relevant Transfer Date in either or both the UKAEA Combined Pension Scheme and/or the Combined Nuclear Pension Plan;

“SLC” means a site licence company;

“SLC Protected Employee” means an Employee who is transferring from a SLC to the Supplier and is entitled to protection under Part 4 of the Schedule 8 to the Energy Act 2004 or who has been treated as being so entitled whilst a member of the Combined Nuclear Pension Plan;

“SLC Transferring Member” means a SLC Protected Employee who agrees to a transfer of benefits being made for him or her from the UKAEA Combined Pension

Scheme and/or the Combined Nuclear Pension Plan (as appropriate) under paragraph 3.2 of Part A to this Schedule;

“Supplier’s Scheme” means the pension scheme provided by the Supplier in accordance with paragraph 2.1 of Part A of this Schedule and, where the context so requires, the Supplier’s Scheme shall include the trustee of the scheme;

“Transfer Amounts” means the amounts referred to in paragraph 4.1 of Part A of this Schedule, determined in accordance with either paragraphs 4.4 or 4.6 of Part A of this Schedule; and

“Transferring Money Purchase Member” means an Employee who is not a SLC Protected Employee who agrees to a transfer of money purchase funds being made for him or her from the Combined Nuclear Pension Plan (as appropriate) under paragraph 8.3 of Part A of this Schedule.

2 SUPPLIER’S SCHEME

- 2.1 On and from the Relevant Transfer Date, the Supplier shall provide each of those of its employees who are SLC Protected Employees with membership of a pension scheme (unless the SLC Protected Employee actively opts out of such membership) which, to the satisfaction of the Customer and as certified by the Government Actuary’s Department, both acting reasonably in their interpretation of the Customer’s duty under Schedule 8 of the Energy Act 2004, provides benefits which, when taking into account the other benefits available to such employees, are no less favourable than the benefits under the provisions (taken as whole) of the UKAEA Combined Pension Scheme of which each were members or eligible to be members immediately before the SLC Initial Transfer Date or have been treated as having been so eligible. The Supplier shall provide the Customer with copies of its Government Actuary’s Department certificate and undertakings in advance of the Relevant Transfer Date (and to provide copies of any future renewals) and undertakes to the Customer to comply with the terms of the certificate and undertakings.
- 2.2 In satisfaction of the obligations set out under paragraph 2.1, of this Part A the Supplier shall provide those of its employees who are SLC Protected Employees with pension benefits in the Supplier’s Scheme. The Supplier may submit a written request to the Customer that pension benefits for all or any SLC Protected Employees should be provided in a pension arrangement other than the Supplier’s Scheme. The Customer’s consent to such a request shall not be unreasonably withheld.
- 2.3 The Supplier shall do and shall not omit to do anything which the Customer reasonably determines to be necessary to enable the Customer to satisfy itself that its duties and obligations in respect of SLC Protected Employees under Schedule 8 of the Energy Act

2004 are met. In the event of any breach of this undertaking, the Supplier shall do all things necessary, as reasonably directed by the Customer, to restore the rights and benefits of such SLC Protected Employees so as to enable the Customer to satisfy itself that its duties and obligations under Schedule 8 of the Energy Act 2004 are met.

- 2.4 The Supplier undertakes to the Customer (for the benefit of itself and as agent and trustee for the benefit of the SLC Protected Employees) that, save on the expiry or termination of this Contract, on the employment of any SLC Protected Employee transferring to a new employer (including a Sub-contractor) (the “**New Employer**”) in accordance with the Employment Regulations (or otherwise) or because of sub-contracting which is integral to service delivery, or otherwise, the Supplier shall procure that the New Employer shall comply with the requirements of this paragraph 2 of Part A as though references to the Supplier were references to the New Employer. The Supplier shall do and shall not omit to do anything which the Customer reasonably determines to be necessary to enable the Customer to satisfy itself that its duties and obligations in respect of the SLC Protected Employees under Schedule 8 to the Energy Act 2004 are met.

3 INVITATION TO TRANSFER BENEFITS TO THE SUPPLIER’S SCHEME

- 3.1 The Supplier shall invite or shall procure an invitation for each SLC Protected Employee who joins the Supplier’s Scheme to consent to a transfer value in respect of his benefits being made for him from the UKAEA Combined Pension Scheme and/or the Combined Nuclear Pension Plan to the Supplier’s Scheme.
- 3.2 The Supplier must ensure that this invitation is issued no later than six weeks after the Relevant Transfer Date. The invitation must be in a form acceptable to the Customer (such acceptance not to be unreasonably withheld or delayed). Any SLC Protected Employee wishing to consent to a transfer of benefits must notify the Supplier of this consent in writing no later than three months after the date of the invitation. The Supplier shall provide the Customer with the names of the SLC Transferring Members no later than five months after the Relevant Transfer Date.

4 TRANSFER PAYMENT FROM THE UKAEA COMBINED PENSION SCHEME AND THE COMBINED NUCLEAR PENSION PLAN

- 4.1 The Customer shall use its best endeavours to procure that the trustees or managers, as the case may be, of the UKAEA Combined Pension Scheme and the Combined Nuclear Pension Plan transfer to the Supplier’s Scheme on the Due Date the Transfer Amounts. The Transfer Amounts shall be the amounts in respect of the Pension Liabilities, calculated in accordance with the Actuarial Assumptions.

- 4.2 As soon as reasonably practicable following the Relevant Transfer Date, the Supplier shall promptly provide all data within its possession or under its control which the Supplier's actuary may reasonably require for the calculation of the Transfer Amounts and shall warrant that this data is in all material respects true, complete and accurate.
- 4.3 The Customer shall and shall procure that, as soon as reasonably practicable following the Relevant Transfer Date, it shall promptly provide all data within its possession or under its control which the Customer's actuary or the Supplier's actuary may require for the calculation of the Transfer Amounts and it shall warrant to both the Supplier and the Supplier's actuary that this data is in all material respects true, complete and accurate.
- 4.4 The Supplier shall use its best endeavours to procure that:
- (a) as soon as reasonably practicable after the Supplier's actuary has been provided with the necessary data and information, the Supplier's actuary shall calculate the Transfer Amounts in accordance with the Actuarial Assumptions; and
 - (b) within one week of completing this calculation, the Supplier's actuary shall notify the Customer's actuary in writing of the particulars of the calculation and the data on which the calculation is based. The Supplier undertakes to provide (and procure that the Supplier's actuary shall provide) promptly all such information to the Customer's actuary as the Customer's Actuary may reasonably request for the purposes of reviewing the calculation, and shall warrant that such information is in all material respects true, complete and accurate.
- 4.5 The Customer's actuary will then have two months (or such longer period as the Customer's actuary may agree with the Supplier's actuary, such agreement not to be unreasonably withheld) from the date on which those particulars and data have been supplied to him in which to object in writing on the basis that the calculation is incorrect. The calculation shall be final and binding on the parties if the Customer's actuary raises no objection within this stated period.
- 4.6 If the Customer's actuary objects in writing under paragraph 4.4 of Part A of this Schedule and the Supplier's actuary cannot subsequently agree the Transfer Amounts with the Customer's actuary within one month (or such longer period as the Customer's actuary may agree with the Supplier's actuary) of the objection, either Party may give notice that a dispute has arisen (a "**Transfer Dispute**") which shall be referred to an expert for determination in accordance with Clause 56.3 (*Dispute Resolution*).
- 4.7 Payment to the Supplier's Scheme of the Transfer Amounts shall only be made on the following conditions:

- (a) the Transfer Amounts have been agreed or determined under paragraphs 4.4 or 4.6 of Part A of this Schedule;
- (b) the Supplier has complied with all its material obligations under Part A of this Schedule; and
- (c) the trustees of the Supplier's Scheme have confirmed in writing (and the Supplier shall use all reasonable endeavours to procure that they so confirm) that, subject to full payment of amounts equal to the Transfer Amounts:
 - (i) they shall credit the Past Service Transferring Members with benefits as set out in paragraph 5 of Part A of this Schedule (including that they shall accept liability for each SLC Transferring Member's accrued contracted out rights under the UKAEA Combined Pension Scheme and/or the Combined Nuclear Pension Plan (as appropriate)); and
 - (ii) they shall accept the Transfer Amounts in full and final settlement of all claims by the trustee of the Supplier's Scheme against the UKAEA Combined Pension Scheme and/or the Combined Nuclear Pension Plan (as appropriate) which relate to the benefits payable in respect of the Transfer Amounts for each transferring member as disclosed to the Supplier's actuary under paragraph 4.3 of Part A of this Schedule.

5 PAST SERVICE BENEFITS

- 5.1 The Supplier shall ensure that (subject to receipt of full payment of amounts equal to the Transfer Amounts) the Supplier's Scheme credits to each SLC Transferring Member in respect of his Pension Liabilities as disclosed to the Supplier's actuary under paragraph 4.3 of Part A of this Schedule, benefits (in the form of transfer credits) which are a day for day service credit on identical terms to those in the transferring scheme(s) or, where there is a difference in scheme benefit structure, benefits which the Supplier's actuary certifies (in accordance with the Actuarial Assumptions) to be of actuarially equivalent value to, and broadly no less favourable than, the benefits which would have been payable under the UKAEA Combined Pension Scheme and/or the Combined Nuclear Pension Plan (as appropriate).

6 NO ASSISTANCE

- 6.1 The Supplier shall not encourage or initiate or assist or facilitate any action or provide any financial assistance for the purpose of requiring either the UKAEA Combined Pension Scheme and/or the Combined Nuclear Pension Plan to pay an amount larger than the Transfer Amounts.

7 TRANSFERS TO A NEW EMPLOYER

7.1 The Supplier undertakes to the Customer (for the benefit of itself and as agent and trustee for the benefit of the SLC Protected Employees) that, save on the expiry or termination of this Contract, on the employment of any SLC Protected Employee transferring to a New Employer in accordance with paragraph 2.4 of Part A of this Schedule, the Supplier:

- (a) shall use its best endeavours to ensure that each relevant New Employer shall promise the Customer (such promise to be in a form legally enforceable by the Customer) that it shall invite or shall procure an invitation for any SLC Protected Employee who joins its scheme to consent to a transfer of benefits being made from the Supplier's Scheme to any New Employer's scheme, such invitation to be made and responded to in accordance with paragraph 3.2 of Part A of this Schedule substituting Relevant Transfer Date for the relevant transfer date to the New Employer (as applicable).
- (b) shall procure (and shall use its best endeavours to ensure that each relevant New Employer shall promise the Customer (such promise to be in a form legally enforceable by the Customer)) that the trustees of the Supplier's Scheme (or trustees of the New Employer's scheme, as appropriate) offer bulk transfer terms in respect of the relevant SLC Protected Employees' service in the Supplier's Scheme (or New Employer's Scheme, as appropriate) to the pension scheme of any New Employer (or other assuming employer, as appropriate) on a Past Service Reserve Basis;
- (c) shall, in relation to the calculation, verification and payment of the relevant transfer amount in connection with the bulk transfer referred to in paragraph 7.1(b) above, comply with, and shall use its best endeavours to ensure that each relevant New Employer shall promise (such promise to be in a form legally enforceable by the Customer) the Customer that it will comply with, the provisions of paragraph 4 of Part A of this Schedule (substituting Effective Date for the relevant transfer date (as applicable) and by incorporating reference to the relevant transfer amount). If and to the extent that the Supplier's Scheme does not pay the bulk transfer on a Past Service Reserve Basis in full, the Supplier shall pay (or shall procure that the Supplier's Scheme shall pay) to the new pension scheme an amount equal to the difference between the amount paid and the amount that should have been paid on this basis; and
- (d) shall use its best endeavours to ensure that each relevant New Employer shall promise (such promise to be in a form legally enforceable by the Customer) the Customer that it shall ensure that the New Employer's scheme provides in

respect of each SLC Protected Employee who transfers to its scheme benefits calculated on the same terms as set out in paragraph 5 of Part A of this Schedule.

8 MONEY PURCHASE BENEFITS

- 8.1 Subject to paragraphs 8.2 and 8.3 below, nothing in Part A of this Schedule shall apply to any contributions paid to secure money purchase entitlements (which shall include money purchase additional voluntary contribution arrangements, shift pay pension plan arrangements and new joiners benefit structure arrangements).
- 8.2 In respect of SLC Transferring Members, the Customer shall use reasonable endeavours to ensure that the trustees or managers, as the case may be, of the UKAEA Combined Pension Scheme and the Combined Nuclear Pension Plan transfer to the Supplier's Scheme on the Due Date the Money Purchase Transfer Value (if any). The Supplier shall ensure, subject to receipt by the Supplier's Scheme of the Money Purchase Transfer Value, that the Supplier's Scheme credits for each relevant SLC Transferring Member an amount which is equivalent to the relevant proportion of the Money Purchase Transfer Value transferred.
- 8.3 The Supplier shall invite or shall procure an invitation for each Employee who is not a SLC Transferring Member who joins the Supplier's Scheme to consent to a transfer of money purchase benefits being made for him from the Combined Nuclear Pension Plan to the Supplier's Scheme, such invitation to be made and responded to in accordance with paragraph 3.2 of Part A of this Schedule. In respect of Transferring Money Purchase Members, the Customer shall use reasonable endeavours to ensure that the trustees or managers, as the case may be, of the Combined Nuclear Pension Plan transfer to the Supplier's Scheme on the Due Date the Money Purchase Transfer Value (if any). The Supplier shall ensure, subject to receipt by the Supplier's Scheme of the Money Purchase Transfer Value, that the Supplier's Scheme credits for each relevant Transferring Money Purchase Member an amount which is equivalent to the relevant proportion of the Money Purchase Transfer Value transferred.

Part B

UKAEA Protected Employees

1 PART B INTERPRETATION AND DEFINITIONS

1.1 In Part B of this Schedule, unless the context otherwise requires, the following terms shall have the meanings given to them below:

“Due Date” means the date 30 business days after the last of the conditions in paragraph 4.4 of Part B of this Schedule has been satisfied;

“Money Purchase Transfer Value” means the amount available as a transfer payment under the Prudential Platinum Scheme money purchase arrangements in respect of money purchase benefits transferred from the UKAEA Combined Pension Scheme and any invested contributions made by UKAEA Transferring Members to such arrangements towards securing money purchase benefits;

“New Employer” has the meaning set out in paragraph 2.4 of Part B of this Schedule;

“Pension Liabilities” means the relevant UKAEA Transferring Members’ benefits transferred from the UKAEA Combined Pension Scheme into or accrued before the Relevant Transfer Date in the Prudential Platinum Scheme;

“Prudential Actuarial Assumptions” means the assumptions and methods set out in the Statement of Funding Principles dated 12 December 2014 contained at Appendix B of this Schedule;

“Prudential Platinum Scheme” means the occupational pension scheme known as the Prudential Platinum Pension Scheme operated by Prudential pic and, where the context so requires, the Prudential Platinum Scheme shall include the trustee of the scheme;

“Supplier’s Scheme” means the pension scheme provided by the Supplier in accordance with paragraph 2.1 of Part A of this Schedule and, where the context so requires, the Supplier’s Scheme shall include the trustee of the scheme;

“Transfer Amounts” means the amounts referred to in paragraph 4.1 of Part B of this Schedule, determined in accordance with either paragraphs 4.3 or 4.4 of Part B of this Schedule;

“UKAEA Initial Transfer Date” 1 April 2012;

“UKAEA Protected Employee” means a former employee of UKAEA who transferred from UKAEA to Iron Mountain on 1 April 2012 in connection with a contract for the management and operation of the NDA Southern Archive and who is transferring from

Iron Mountain to the Supplier and is entitled to protection under Part 4 of the Schedule 8 to the Energy Act 2004 or who has been treated as being so entitled; and

“**UKAEA Transferring Member**” means a UKAEA Protected Employee who agrees to a transfer of benefits being made for him or her from the Prudential Platinum Scheme under paragraph 3.2 of Part B to this Schedule.

2 SUPPLIER’S SCHEME

- 2.1 On and from the Relevant Transfer Date, the Supplier shall provide each of those of its employees who are UKAEA Protected Employees with membership of a pension scheme (unless the UKAEA Protected Employee actively opts out of such membership) which, to the satisfaction of the Customer and as certified by the Government Actuary’s Department, both acting reasonably in their interpretation of the Customer’s duty under Schedule 8 of the Energy Act 2004, provides benefits which, when taking into account the other benefits available to such employees, are no less favourable than the benefits under the provisions (taken as whole) of the UKAEA Combined Pension Scheme of which each were members or eligible to be members immediately before the UKAEA Initial Transfer Date or have been treated as having been so eligible. The Supplier shall provide the Customer with copies of its Government Actuary’s Department certificate and undertakings in advance of the Relevant Transfer Date (and to provide copies of any future renewals) and undertakes to the Customer to comply with the terms of the certificate and undertakings.
- 2.2 In satisfaction of the obligations set out under paragraph 2.1, of this Part B the Supplier shall provide those of its employees who are UKAEA Protected Employees with pension benefits in the Supplier’s Scheme. The Supplier may submit a written request to the Customer that pension benefits for all or any UKAEA Protected Employees should be provided in a pension arrangement other than the Supplier’s Scheme. The Customer’s consent to such a request shall not be unreasonably withheld.
- 2.3 The Supplier shall do and shall not omit to do anything which the Customer reasonably determines to be necessary to enable the Customer to satisfy itself that its duties and obligations in respect of the UKAEA Protected Employees under Schedule 8 of the Energy Act 2004 are met. In the event of any breach of this undertaking, the Supplier shall do all things necessary, as reasonably directed by the Customer, to restore the rights and benefits of such UKAEA Protected Employees so as to enable the Customer to satisfy itself that its duties and obligations under Schedule 8 of the Energy Act 2004 are met.
- 2.4 The Supplier undertakes to the Customer (for the benefit of itself and as agent and trustee for the benefit of the UKAEA Protected Employees) that, save on the expiry or termination of this Contract, on the employment of any UKAEA Protected Employee

transferring to a new employer (including a Sub-contractor) (the “New Employer”) in accordance with the Employment Regulations (or otherwise) or because of sub-contracting which is integral to service delivery, or otherwise, the Supplier shall procure that the New Employer shall comply with the requirements of this paragraph 2 of Part B as though references to the Supplier were references to the New Employer. The Supplier shall do and shall not omit to do anything which the Customer reasonably determines to be necessary to enable the Customer to satisfy itself that its duties and obligations in respect of the UKAEA Protected Employees under Schedule 8 to the Energy Act 2004 are met.

3 INVITATION TO TRANSFER BENEFITS TO THE SUPPLIER’S SCHEME

3.1 The Supplier shall invite or shall procure an invitation for each UKAEA Protected Employee who joins the Supplier’s Scheme to consent to a transfer value in respect of his benefits being made for him from the Prudential Platinum Scheme to the Supplier’s Scheme.

3.2 The Supplier must ensure that this invitation is issued no later than six weeks after the Relevant Transfer Date. The invitation must be in a form acceptable to the Customer (such acceptance not to be unreasonably withheld or delayed). Any UKAEA Protected Employee wishing to consent to a transfer of benefits must notify the Supplier of this consent in writing no later than three months after the date of the invitation. The Supplier shall provide the Customer and Prudential Platinum Scheme with the names of the UKAEA Transferring Members no later than five months after the Relevant Transfer Date.

4 TRANSFER PAYMENT FROM THE PRUDENTIAL PLATINUM SCHEME

4.1 The Customer shall request that the Prudential Platinum Scheme transfers to the Supplier’s Scheme on the Due Date the Transfer Amounts. The Transfer Amounts shall be the amounts in respect of the Pension Liabilities, calculated in accordance with the actuarial assumptions set out in the Prudential Actuarial Assumptions.

4.2 As soon as reasonably practicable following the Relevant Transfer Date, the Supplier shall promptly provide all data within its possession or under its control which the Prudential Platinum Scheme’s actuary may reasonably require for the calculation of the Transfer Amounts and shall warrant that this data is in all material respects true, complete and accurate.

(a) The Supplier shall use its best endeavours to procure that as soon as reasonably practicable after the Supplier’s actuary has been provided with the necessary data and information, the Supplier’s actuary shall calculate the

Transfer Amounts in accordance with the terms of the Prudential Actuarial Assumptions; and

- (b) within one week of completing this calculation, the Supplier's actuary shall notify the Prudential Platinum Scheme's actuary in writing of the particulars of the calculation and the data on which the calculation is based. The Supplier undertakes to provide (and procure that the Supplier's actuary shall provide) promptly all such information to the Prudential Platinum Scheme's actuary as the Prudential Platinum Scheme's actuary may reasonably request for the purposes of reviewing the calculation, and shall warrant that such information is in all material respects true, complete and accurate.

The Prudential Platinum Scheme's actuary will then have two months (or such longer period as the Prudential Platinum Scheme's actuary may agree with the Supplier's actuary, such agreement not to be unreasonably withheld) from the date on which those particulars and data have been supplied to him in which to object in writing on the basis that the calculation is incorrect. The calculation shall be final and binding on the parties if the Prudential Platinum Scheme's actuary raises no objection within this stated period.

- 4.3 If the Prudential Platinum Scheme's actuary objects in writing under paragraph 4.2 of Part B of this Schedule and the Supplier's actuary cannot subsequently agree the Transfer Amounts with the Prudential Platinum Scheme's actuary within one month (or such longer period as the Prudential Platinum Scheme's actuary may agree with the Supplier's actuary) of the objection, either Party may give notice that a dispute has arisen (a "Transfer Dispute") which shall be referred to an expert for determination in accordance with Clause 56.3 (*Dispute Resolution*).
- 4.4 Payment to the Supplier's Scheme of the Transfer Amounts shall only be made on the following conditions:
 - (a) the Transfer Amounts have been agreed or determined under paragraphs 4.2 or 4.3 of Part B of this Schedule;
 - (b) the Supplier has complied with all its material obligations under Part B of this Schedule; and
 - (c) the trustees of the Supplier's Scheme have confirmed in writing (and the Supplier shall use all reasonable endeavours to procure that they so confirm) that, subject to full payment of amounts equal to the Transfer Amounts:
 - (i) they shall credit the UKAEA Transferring Members with benefits as set out in paragraph 5 of Part B of this Schedule (including that they shall

accept liability for each UKAEA Transferring Member's contracted out rights under the Prudential Platinum Scheme; and

- (ii) they shall accept the Transfer Amounts in full and final settlement of all claims by the trustee of the Supplier's Scheme against the Prudential Platinum Scheme which relate to the benefits payable in respect of the Transfer Amounts for each transferring member.

5 PAST SERVICE BENEFITS

- 5.1 The Supplier shall ensure that (subject to receipt of full payment of amounts equal to the Transfer Amounts) the Supplier's Scheme credits to each UKAEA Transferring Employee in respect of his Pension Liabilities, benefits (in the form of transfer credits) which are a day for day service credit on identical terms to those in the Prudential Platinum Scheme or, where there is a difference in scheme benefit structure, benefits which the Supplier's actuary certifies (in accordance with the Prudential Actuarial Assumptions) to be of actuarially equivalent value to, and broadly no less favourable than, the benefits which would have been payable under the Prudential Platinum Scheme.

6 NO ASSISTANCE

- 6.1 The Supplier shall not encourage or initiate or assist or facilitate any action or provide any financial assistance for the purpose of requiring the Prudential Platinum Scheme to pay an amount larger than the Transfer Amounts.

7 TRANSFERS TO A NEW EMPLOYER

- 7.1 The Supplier undertakes to the Customer (for the benefit of itself and as agent and trustee for the benefit of the UKAEA Protected Employees) that, save on the expiry or termination of this Contract, on the employment of any UKAEA Protected Employee transferring to a New Employer in accordance with paragraph 2.4 of Part B of this Schedule, the Supplier:
 - (a) shall use its best endeavours to ensure that each relevant New Employer shall promise the Customer (such promise to be in a form legally enforceable by the Customer) that it shall invite or shall procure an invitation for any UKAEA Protected Employee who joins its scheme to consent to a transfer of benefits being made from the Supplier's Scheme to any New Employer's scheme, such invitation to be made and responded to in accordance with paragraph 3.2 of Part B of this Schedule substituting Relevant Transfer Date for the relevant transfer date to the New Employer (as applicable).

- (b) shall procure (and shall use its best endeavours to ensure that each relevant New Employer shall promise the Customer (such promise to be in a form legally enforceable by the Customer)) that the trustees of the Supplier's Scheme (or trustees of the New Employer's scheme, as appropriate) offer bulk transfer terms in respect of the relevant UKAEA Protected Employees' service in the Supplier's Scheme (or New Employer's Scheme, as appropriate) to the pension scheme of any New Employer (or other assuming employer, as appropriate) on a Past Service Reserve Basis;
- (c) shall, in relation to the calculation, verification and payment of the relevant transfer amount in connection with the bulk transfer referred to in paragraph 7.1(b) above, comply with, and shall use its best endeavours to ensure that each relevant New Employer shall promise (such promise to be in a form legally enforceable by the Customer) the Customer that it will comply with, the provisions of paragraph 4 of Part B of this Schedule (substituting Effective Date for the relevant transfer date (as applicable) and by incorporating reference to the relevant transfer amount). If and to the extent that the Supplier's Scheme does not pay the bulk transfer on a Past Service Reserve Basis in full, the Supplier shall pay (or shall procure that the Supplier's Scheme shall pay) to the new pension scheme an amount equal to the difference between the amount paid and the amount that should have been paid on this basis; and
- (d) shall use its best endeavours to ensure that each relevant New Employer shall promise (such promise to be in a form legally enforceable by the Customer) the Customer that it shall ensure that the New Employer's scheme provides in respect of each UKAEA Protected Employee who transfers to its scheme benefits calculated on the same terms as set out in paragraph 5 of Part B of this Schedule.

8 MONEY PURCHASE BENEFITS

- 8.1 Subject to paragraph 8.2 below, nothing in Part B of this Schedule shall apply to any contributions paid to secure money purchase entitlements (which shall include money purchase additional voluntary contribution arrangements, shift pay pension plan arrangements and new joiners benefit structure arrangements).
- 8.2 In respect of UKAEA Transferring Members, the Customer shall request that the Prudential Platinum Scheme transfers to the Supplier's Scheme on the Due Date the Money Purchase Transfer Value (if any). The Supplier shall ensure, subject to receipt by the Supplier's Scheme of the Money Purchase Transfer Value, that the Supplier's Scheme credits for each relevant UKAEA Transferring Member an amount which is equivalent to the relevant proportion of the Money Purchase Transfer Value transferred.

9 EMPLOYER OBLIGATION

- 9.1 The Supplier will procure that with effect from the Relevant Transfer Date, any employees of Iron Mountain who transfer to the Supplier who are not UKAEA Protected Employees will be provided with pension benefits in accordance with Part 1 of the Pensions Act 2008, sections 257 and 258 of the Pensions Act 2004, the Transfer of Employment (Pension Protection) Regulations 2005 and/or the Employment Regulations (as applicable).

Part C

LGPS Protected Employees

1 PART C INTERPRETATION AND DEFINITIONS

1.1 In Part C of this Schedule, unless the context otherwise requires, the following terms shall have the meanings given to them below:

“Administering Authority” The Highland Council;

“Admission Agreement” the agreement entered into by High Life Highland to participate in the LGPS;

“Admission Body” an admission body for the purposes of paragraph 1(d)(i) of Part 3 of Schedule 2 of the LGPS Regulations;

“Cessation Date” any date on which the relevant Admission Body ceases to be an Admission Body other than as a result of the termination or expiry of this Contract or because it ceases to employ any LGPS Protected Employees;

“LGPS” Local Government Pension Scheme (Scotland) established pursuant to regulations made by the Secretary of State in exercise of powers under section 1 of the Public Service Pensions Act 2013;

“LGPS Protected Employee” means a former employee of the Highland Council who transferred from the Highland Council to High Life Highland and remains employed by Highlife Highland as a Sub-contractor and is entitled to protection in accordance with statutory guidance issued by the Scottish Ministers;

“LGPS Regulations” the Local Government Pension Scheme (Scotland) Regulations 2014;

2 PENSION PROTECTION

2.1 The Supplier shall procure that High Life Highland as its Sub-contractor shall continue to employ the LGPS Protected Employees and where it does so shall procure that High Life Highland shall continue to offer the LGPS Protected Employees with continued membership of the LGPS under the Admission Agreement.

2.2 Where the Supplier or any other Sub-contractor employs any LGPS Protected Employees from a Relevant Transfer Date, the Supplier shall (and shall procure that any Sub-contractor shall) (at its own choice) either:

(a) become an Admission Body in the LGPS; or

- (b) offer the LGPS Protected Employees membership of a Supplier's Scheme in accordance with paragraph 4 of Part C of this Schedule.

3 ADMISSION BODY

- 3.1 Where the Supplier or a Sub-contractor decides to become an Admission Body in accordance with paragraph 2.2 of this Schedule it shall execute an admission agreement on or before the Relevant Transfer Date.
- 3.2 The Customer shall before the Relevant Transfer Date request that the Administering Authority executes the admission agreement referred to in paragraph 3.1.
- 3.3 The Supplier hereby indemnifies the Customer and/or any Replacement Supplier and, in each case, their sub-contractors on demand from and against all losses suffered or incurred by it or them which arise from any breach (i) High Life Highland of the terms of the Admission Agreement or (ii) by the Supplier or a Sub-contractor of the terms of any admission agreement required in accordance with paragraph 3.1 to the extent that in both cases such liability arises before or as a result of the termination or expiry of this Contract (howsoever caused).
- 3.4 The Supplier shall (and shall procure that any Sub-contractor shall) as soon as reasonably practicable obtain any indemnity, bond or guarantee required by the Administering Authority in connection with any admission agreement required in accordance with paragraph 3.1.
- 3.5 The Customer shall have a right to set off against any payments due to the Supplier under this Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due High Life Highland under the Admission Agreement or from the Supplier or a Sub-contractor under any other admission agreement and pay such amount to the Administering Authority.
- 3.6 If having become an Admission Body in accordance with this paragraph 3:
 - (a) the Administering Authority and the Supplier or Sub-contractor (including High Life Highland) are of the opinion after the Relevant Transfer Date that it is no longer possible for the Supplier or Sub-contractor to remain an Admission Body; or
 - (b) for any other reason after the Relevant Transfer Date the Supplier or Sub-contractor (including High Life Highland) ceases to be an Admission Body (other than on the date of termination or expiry of this Contract or because it ceases to employ any LGPS Protected Employees)

then the provisions of paragraph 2.1 or this paragraph 3 (as appropriate) shall not apply (without prejudice to any rights of the Customer under these paragraphs) and the provisions of paragraph 4 of this Part C shall apply.

4 SUPPLIER'S SCHEME

4.1 Where:

- (a) the Supplier or a Sub-contractor decides to offer the LGPS Protected Employees membership of a Supplier's Scheme instead of becoming an Admission Body; or
- (b) paragraph 3.6 of this Part C applies

then the Supplier shall (and shall procure that any Sub-contractor shall), not later than the Relevant Transfer Date or Cessation Date (as appropriate) nominate to the Customer in writing the occupational pension scheme or schemes which it proposes shall be "the Supplier's Scheme" for the purposes of this paragraph 4.

4.2 The Supplier's Scheme must be:

- (a) established by the Relevant Transfer Date or by or within three (3) months of the Cessation Date (as appropriate) and maintained until any bulk transfer payment is made in accordance with paragraph 4.3;
- (b) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004; and
- (c) certified by the Government Actuary's Department (or an actuary nominated by the Customer) in accordance with relevant guidance produced by the Government's Actuary's Department as providing benefits on and from the Relevant Transfer Date or Cessation Date (as appropriate) which are the same as, broadly comparable to or better than those benefits provided by the LGPS immediately before that date.

4.3 The Supplier shall (and shall procure that any Sub-contractor shall) comply with the requirements in relation to the terms for bulk transfers from the LGPS to the Supplier's Scheme following the Relevant Transfer Date or Cessation Date (as appropriate) in accordance with such requirements of the HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004 as the Customer or Administering Authority may require and with the provisions on termination set out in Part B of this Schedule.

5 UNDERTAKING FROM THE SUPPLIER

5.1 The Supplier undertakes to the Customer (for the benefit of the Customer itself and for the Customer as agent and trustee for the benefit of the LGPS Protected Employees) that:

- (a) all information which the Customer or the Administering Authority (or their respective professional advisers) may reasonably request from the Supplier or a Sub-contractor for the administration of the LGPS or concerning any other matters raised in Part C of this Schedule shall be supplied to them as expeditiously as possible;
- (b) it shall not (and shall procure that any Sub-contractor shall not), without the consent in writing of the Customer (which shall only be given subject to the payment by the Supplier or Sub-contractor of such reasonable costs as the Administering Authority may require) consent to instigate, encourage or assist any event which could impose on the LGPS or on the Customer a cost in respect of any LGPS Protected Employee greater than the cost which would have been payable in respect of that LGPS Protected Employee had that consent, instigation, encouragement or assistance not been given;
- (c) it shall not (and shall procure that any Sub- contractor shall not) issue any announcements (whether in writing or not) to the LGPS Protected Employees concerning the matters stated in Part C of this Schedule without the consent in writing of the Customer (such consent not to be unreasonably withheld or delayed);
- (d) it shall not (and shall procure that any Sub-contractor shall not) take or omit to take any action which would materially affect the benefits under the LGPS or under the Supplier's Scheme of any LGPS Protected Employees without the prior written agreement of the Customer (such consent not to be unreasonably withheld or delayed) provided that the Supplier or Sub-contractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any LGPS Protected Employees; and
- (e) it shall (and shall procure that any Sub-contractor shall) offer any LGPS Protected Employees who cease to be engaged in the provision of the Services on a non-voluntary basis and thereby cease to be eligible for membership of the LGPS under an admission agreement with membership of the Supplier's Scheme as soon as reasonably practicable after ceasing to be so engaged.

6 DISCRETIONARY BENEFITS

- 6.1 The Supplier shall and shall procure that any Sub-contractor (including High Life Highland) shall award benefits (where permitted) to the LGPS Protected Employees under the LGPS Regulations in circumstances where the LGPS Protected Employees would have received such benefits had they remained employed by the Administering Authority. Where such benefits are of a discretionary nature, they shall be awarded on the basis of the Administering Authority's written policy in relation to such benefits at the time of award.

7 CLAIMS FROM LGPS PROTECTED EMPLOYEES OR TRADE UNIONS

- 7.1 The Supplier hereby indemnifies the Customer and/or any Replacement Supplier and, in each case, their sub-contractors on demand from and against all losses suffered or incurred by it or them which arise from claims by LGPS Protected Employees (or by any trade unions, elected employee representatives or staff associations in respect of all or any such LGPS Protected Employees) which losses:
- (a) relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; or
 - (b) arise out of the failure of the Supplier or a Sub-contractor (including High Life Highland) to comply with the provisions of Part C of this Schedule before the date of termination or expiry of this Contract.

8 TRANSFER TO ANOTHER EMPLOYER

- 8.1 The Supplier undertakes to the Customer (for the benefit of itself and as agent and trustee for the benefit of the LGPS Protected Employees) that, save on the expiry or termination of this Contract, on the employment of any LGPS Protected Employee transferring to a new employer (the "**New Employer**") in accordance with the Employment Regulations (or otherwise) or because of sub-contracting which is integral to service delivery, or otherwise, the Supplier shall procure that the New Employer shall comply with the requirements of Part C of this Schedule as though references to the Supplier were references to the New Employer. The Supplier shall do and shall not omit to do anything which the Customer reasonably determines to be necessary to enable the Customer to satisfy itself that the requirements of this Part C are met.

Part D

Pension Issues on Expiry or Termination of the Contract

- 1 On expiry or termination of this Contract, the Supplier shall (and shall procure that any Sub-contractor (including High Life Highland) shall):
 - 1.1 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the SLC Protected Employees, the UKAEA Protected Employees and the LGPS Protected Employees (together "the Protected Employees");
 - 1.2 promptly provide to the Customer such documents and information mentioned in paragraph 1.1 which the Customer may reasonably request in advance of the expiry or termination of this Contract, and
 - 1.3 fully co-operate (and procure that the trustees of any Supplier's Scheme shall fully co-operate) with the reasonable requests of the Customer relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or Sub-contractor in the provision of the Services on the expiry of termination of this Contract.
- 2 On expiry or termination of this Contract, the Supplier shall (and shall procure that any Sub-contractor shall) procure that any Supplier's Scheme provided in accordance with Parts A, B or C of this Schedule shall offer an onward bulk transfer agreement to the Customer's or a Replacement Supplier's occupational pension scheme in the event that any Protected Employees are transferred compulsorily to other employment that is not pensionable under the Supplier's Scheme. The bulk transfer terms offered shall be offered on a Past Service Reserve Basis. If and to the extent that the Supplier's Scheme does not pay the bulk transfer on this basis in full, the Supplier shall pay (or shall procure that the Supplier's Scheme shall pay) to the new pension scheme an amount equal to the difference between the amount paid and the amount that should have been paid on this basis.
- 3 On termination of any admission agreement under Part C (including the Admission Agreement), the Supplier shall (and shall procure that any Sub-contractor, including High Life Highland, shall) pay any exit payment arising under the admission agreement or the LGPS Regulations.

**Appendix A: Bulk Transfer Terms for the UKAEA Combined Pension Scheme and the
Combined Nuclear Pension Plan**

Appendix B: Bulk Transfer Terms for the Prudential Platinum Pension Scheme

Schedule 19

Customer Responsibilities

In order to facilitate the provision of the Services by the Supplier, the Customer shall (in addition to those Customer responsibilities and obligations identified in this Contract), be responsible for the following:

1 END USERS

The Customer shall:

- (a) notify the Supplier as to the Additional Services required;
- (b) enter into the End User Agreements;
- (c) use reasonable endeavours to ensure that End Users provide specialist reviewers when required; and
- (d) use reasonable endeavours to ensure that the Supplier has timely access to the End User records to carry out essential archiving Services, including the lift and sift services.

2 CUSTOMER'S PREMISES

In relation to the NDA Archive Facility:

- (a) Construction Phase activities and delivering of building to Category B Standard including the provision of Office Furniture;
- (b) the Customer should provide an electronic document record management system and associated IT;
- (c) the Customer shall provide Office Furniture; and
- (d) the Customer shall procure and maintain adequate buildings and contents insurance.

3 REGARDING THE SERVICES

- (a) The Customer warrants and undertakes (for itself and on behalf of the End Users) that it (or the relevant End User) is the owner or legal custodian of the

Records and other items it deposits with or provides to the Supplier for storage and/or destruction, and it has all necessary authority to deposit the Records with the Supplier and request that they be disposed of in accordance with the terms of this Contract.

- (b) The Supplier shall not be held liable in respect of claims, demands, actions, costs, expenses, losses and damages incurred by the Supplier in relation to any claim (including those relating to rectifying any conflict) by a third party that the collection, storage, handling, destruction or shredding of any Records in accordance with the terms of this Contract is in breach of or infringes any of such third party's contractual, common law or other legal rights, if the Supplier can demonstrate, to the reasonable satisfaction of the Customer, that such claim, demand, action, cost, expense, loss or damage was the result of an act or omission of the Customer, NDA or an End User.
- (c) The Supplier shall not be held liable in respect of any liability to the Customer or any third party in relation to Disposal of Records where such Disposal was undertaken pursuant to instructions, in writing, by the Customer or an End User.
- (d) The Customer warrants and undertakes (for itself and on behalf of the End Users) that it (or the relevant End User) will not deposit with the Supplier any items or materials which are explosive, hazardous, illegal, toxic or otherwise dangerous or which are regulated under any applicable Law relating to hazardous materials;

4 MISCELLANEOUS

The Customer shall:

- (a) Implement an on-site records management process that fully complies with the IGS; and
- (b) direct SKC/WIS on Record Management including mandating the use of the NDA Archive Facility for archive storage;
- (c) engage with stakeholders;
- (d) appoint the Chair of the Strategic Board; and
- (e) approve the draft Details Business Plans (in accordance with Clause 4 of this Contract).

Schedule 20

Definitions

1 DEFINITIONS

1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

“Acceptance Rate” has the meaning given to such term in paragraph 2.4 of Part B (Monthly Contract Charges) of Schedule 9 (Payments and Deductions);

“Accessions” means the activity of logging each new archival acquisition into the NDA Archive Facility and recording data on the Archive Management System;

“Achieve” means in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone in accordance with the Business Plans and “Achieved” and “Achievement” shall be construed accordingly;

“Additional Services” means the services set out in paragraphs 33 (Project Work), 34 (Sifting), 35 (Off-site Storage) and 36 (Transport) inclusive, of Part 4 (Additional Services) in Schedule 1 (Services) and any other services (other than the Core Services) ordered by the Customer for or on behalf of itself or an End User;

“Affiliate” means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;

“Affected Party” means the party seeking to claim relief in respect of a Force Majeure;

“Aftercare Plan” has the meaning given to such document in Government Soft Landings;

“Ancillary Services” include, but are not limited to, photocopying, printing, research, postage and packing and reproduction of

	Records;
“Application to Retain”	means a request to obtain permission to retain a Record or set of Records for longer than twenty (20) years (in respect of Records subject to the PRA);
“Approval”	means the prior written consent of the Customer and “Approve” and “Approved” shall be construed accordingly;
“Archive Management Software”	means the COTS Software and Silver Software and any other software, applications, programmes and procedures and all updates, upgrades, new versions and releases to the foregoing created, developed, provided or used in connection to the managing and operating the NDA Archive Facility;
“Archive Management System”	has the meaning given to such term in paragraph 2.1 of Part 2 (Design and Construction Services) of Schedule 1 (Services);
“Archive Service Accreditation”	means accreditation of an archive by the Archive Service Accreditation Committee;
“Assumption”	means has the meaning given to such term in paragraph 2.5(c) of Part B (Monthly Contract Charges) of Schedule 9 (Payments and Deductions);
“Auditor”	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires;
“Bank Holiday”	means a weekday on which banks are legally closed and declared a Public Holiday in Scotland;
“BCDR Plan”	means any plan relating to business continuity and disaster recovery as referred to in Clause 18;
“Box”	means an acid free cardboard box, or inert, undamaged packaging which is of archival quality used to store and protect Physical Records, which shall comply with the Manual Handling Regulations in respect of weight in relation to an individual person;

“BPSS”	means the HMG Baseline Personnel Security Standard;
“BS11000 Framework”	means the following framework: <ul style="list-style-type: none"> (a) Awareness – integrating collaboration within the business; (b) Knowledge – developing collaborative strategies; (c) Internal Assessment – understanding your collaborative capability; (d) Partner Selection – evaluating collaborative potential; (e) Working Together – setting the governance and management; (f) Value Creation – joint continual improvement; (g) Staying Together – managing relationships over time; and (h) Exit Strategy – effective disengagement;
“Business Continuity Plan”	has the meaning given to such term in paragraph 1.2(b) of Schedule 13 (Disaster Recovery and Business Continuity);
“Business Plans”	means the Outline Business Plans unless and until they are superseded by the Detailed Business Plans;
“Calendar Day”	means a period of twenty-four (24) consecutive hours ending at 12:00 midnight;
“CALM”	means CALM Axiel Software version 9.1.1;
“CASVAG”	means Caithness & Sutherland Visitor Attraction Group;
“Change”	means any change to this Contract including to any of the Services;

“Change Control Form”	means the written record of a Change agreed or to be agreed by the Parties pursuant to the Change Control Procedure;
“Change Control Procedure”	means the procedure for changing this Contract, as set out in Schedule 6 (Change Control Procedure);
“Clearance”	means national security clearance and employment checks undertaken by and/or obtained from the Defence Business Services National Security Vetting;
“Combined Nuclear Pension Plan”	means the pension scheme set up by the NDA pursuant to Section 8 and Schedule 8 of the Energy Act;
“Commencement Date”	means the date of this Contract;
“Commercially Sensitive Information”	means any Confidential Information comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;
“Community Room”	means a room within the NDA Archive Facility, used for meetings and events, serving both Staff and the local community;
“Confidential Information”	means the Customer’s Confidential Information and/or the Supplier’s Confidential Information;
“Consents”	means all permissions, consents, approvals, certificates, permits, licences, agreements and authorities (whether statutory, regulatory, contractual or otherwise) necessary for the provision of the Services;
“Conservation”	means active protection of Physical Records by means including, but not limited to, physical and/or chemical treatments designed to prevent further deterioration which work shall generally be undertaken by specialist sub-contractors;

“Construction Contract”	means the contract to be entered into between NDA Properties Limited and its appointed contractor for the construction of the NDA Archive Facility;
“Construction Project Team”	has the meaning given to such term in the Construction Contract;
“Contract Month”	means a calendar month;
“Contract Year”	means a period of twelve (12) Months starting on 1 April and ending on 31 March first occurring thereafter, except for: <ul style="list-style-type: none"> (a) the first Contract Year of this Contract, which shall commence on the Commencement Date and end on 31 March first occurring thereafter; and (b) the final Contract Year of this Contract, which shall commence on 1 April and end at the expiry of this Contract;
“Contracting Authority”	has the meaning given to such term in regulation 3 of the Public Contracts Regulations 2006;
“Control”	means control as defined in sections 1124 and 450 Corporation Tax Act 2010 and “Controls” and “Controlled” shall be interpreted accordingly;
“Conviction”	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1 (1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006.);

“Core Services”	means the services set out in paragraphs 3 (Facilities Management) to 32 (Socio-Economic Considerations) inclusive of Part 3 (Core Services) of Schedule 1 (Services);
“Core Services Commencement Date”	means the date set out in the relevant Business Plan from which the Supplier shall provide the Core Services;
“COTS Licence Terms”	means the terms set out in paragraph 2 of Part B to Schedule 15 (Software Terms) that shall apply to all elements of COTS Software;
“COTS Software”	means the standard Archive Management Software excluding the Silver Software licensed pursuant to the COTS Licence Terms and as set out in Part A of Schedule 15 (Software Terms);
“CPNI”	means the Centre for the Protection of the National Infrastructure;
“Critical Service Failure”	means either: <ul style="list-style-type: none"> (a) in relation to Urgent Requests, a delay in producing scanned e-mails ordered by the Customer and/or End User in excess of 24 hours more than once in any three (3) Month period or more than 3 times in any rolling 12 month period (save where the Urgent Request relates to a Record which has not yet been acceded to the Archive Management System); or (b) in relation to public access, a loss of service during core hours (on Working Days between 09:00 and 17:00, (Monday to Friday) to the End Users and Public Users for more than one (1) Working Day accumulated in any three (3) Month period, or two (2) Working Days in any rolling 12 month

period; or

(c) loss of a Public Record.

“Crown”	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
“Customer Data”	means NDA Data and HC Data;
“Customer Pre-Existing IPR”	shall mean any Intellectual Property Rights vested in or licensed to the Customer prior to or independently of the performance by the Supplier of its obligations under the Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;
“Customer’s Premises”	means the NDA Archive Facility and the Harwell Southern Archive, which is to be made available for use by the Supplier for the provision of the Services on the terms set out in this Contract;
“Customer Responsibilities”	means the responsibilities of the Customer set out in 0 (<i>Customer Responsibilities</i>);
“Customer Representative”	means the representative appointed by the Customer from time to time in relation to the Contract;
“Customer Software”	means software which is owned by or licensed to the Customer, including software which is or will be used by the Supplier for the purposes of providing the Services but excluding the Supplier Software;
“Customer System”	means the Customer’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer or the Supplier in connection with this Contract which is owned by or licensed to the

Customer by a third party and which interfaces with the Supplier System or which is necessary for the Customer to receive the Services;

“Customer’s Confidential Information”

means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Customer, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked “confidential”) or which ought reasonably be considered to be confidential;

“Customer’s Equipment”

means racking, Office Furniture and any other equipment which does not form part of the building and IT system which the Customer may provide and install for use by the Supplier and the public at the Customer’s Premises as set out in the Customer Equipment lists in Schedule 1 (*Services*) and Schedule 3 (*Harwell Southern Archive*) from time to time;

“Customer’s Operating Environment”

means the Customer’s computing environment (consisting of hardware, software and telecommunications networks) that is to be used by the Customer in connection with its use of the Services and which interfaces with the Supplier System in order for the Customer to receive the Services, but excluding the Customer’s Equipment;

“D&B Supplier”

has the meaning given to such term in the Construction Contract;

”Damage”

means

- (a) in respect of Physical Records, damage evident from human inspection, including but not limited to damage of the following nature:
- (b) fire

- (c) water;
- (d) damp;
- (e) damage to a Box; or
- (f) infestation by vermin; and
- (g) in respect of Electronic Records, damage evident from an inability to open a document or the detection of a virus;

“Data Controller”	shall have the same meaning as set out in the Data Protection Act 1998;
“Data Processor”	shall have the same meaning as set out in the Data Protection Act 1998;
“Data Protection Legislation”	means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
“Data Subject”	shall have the same meaning as set out in the Data Protection Act 1998;
“Default”	means any default (which is not minor) of either Party in complying with its obligations under this Contract;
“Delay”	means a delay in the successful achievement of a Milestone;
“Delivery”	means the time at which the Services have been installed by the Supplier and the Customer has issued a Satisfaction Certificate in respect thereof and “Deliver” and “Delivered” shall be construed accordingly;
“Design and Construction Services”	means the services set out in paragraphs 1 (<i>Design and Construction of the NDA Archive Facility</i>) and 2 (<i>Specialist Fit Out and Commissioning of the NDA Archive Facility</i>) of Part 2 (<i>Design and Construction</i>

Services) of Schedule 1 (Services);

**“Destroy” or
“Destruction”**

means:

- (a) physical destruction of Physical Records; and
- (b) permanent deletion of Electronic Records;

**“Detailed Business
Plans”**

means the detailed plans for the delivery of the Services that are developed in accordance with Clause 4, as amended from time to time in accordance with the Change Control Procedure;

“Disaster”

means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part thereof will be unavailable for a period of twenty-four (24) hours (affecting at least one (1) Working Day) or which is reasonably anticipated will mean that the Services or a material part thereof will be unavailable for that period;

“Disaster Recovery”

means the process of restoration of the Services pursuant to the Disaster Recovery Plan;

**“Disaster Recovery
Plan”**

has the meaning given to such term in paragraph 1.2(c) of Schedule 13 (*Disaster Recovery and Business Continuity*);

**“Disaster Recovery
System”**

means the system identified and provided by the Customer in relation to the Customer System which shall be used for the purpose of delivering the Services pursuant to the Disaster Recovery Plan;

**“Dispose”,
“Disposal” or
“Disposition”**

means either:

- (a) Destruction of Records; or
- (b) transfer of Records to the custody of another organisation;

**“Dispute Resolution
Procedure”**

means the dispute resolution procedure set out in Clause 56.3;

"Disposition"	(a) Destruction of Records; or (b) transfer of Records to the custody of another organisation;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in Clause 56.3;
"Documentation"	means the technical specifications, user manuals, operating manuals, process definitions and procedures and other documentation including designs relating to the Supplier Software;
"Donations"	means Records donated to the NDA Archive Facility by individuals or organisations (other than End Users) and made available for public use;
"Dounreay TWA"	means the geographical area comprising all of Caithness and the parishes of Tongue, Farr and Helmsdale in Sutherland;
"DPA"	means the Data Protection Act 1998 as amended;
"Dublin Core Metadata Template"	means a set of vocabulary terms which can be used to describe resources for the purposes of discovery and to describe a full range of web resources (video, images, web pages, etc.) and physical resources such as books and documents;
"Effective Date"	means the <i>1 July 2015</i> ;
"EIR"	means the Environmental Information Regulations 2004 as may be amended from time to time;
"EISR"	means the Environmental Information (Scotland) Regulations 2004, as may be amended from time to time;
"EIR Request"	means a request for environmental information, from the public, to a public authority in accordance with the EIR or EISR (as applicable);
"Electronic Records"	means Records stored on analogue and digital media;
"Employer's Information Requirement"	means the document provided by the Customer to the Supplier as specified in paragraph 1.1 of Part 2 to Schedule 1 (Services);
"Employment Regulations"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
"Employees"	means those employees whose contracts of employment transfer to the Supplier as at the Relevant Transfer Date;
"End User"	means an end user of the Services which has entered into an End User Agreement;
"End User Agreement"	means an agreement between the Customer and an End User setting out the terms on which the Customer shall enable the End User to have the benefit of the

“Documentation”	means the technical specifications, user manuals, operating manuals, operating manuals, process definitions and procedures and other documentation including designs relating to the Supplier Software;
“Donations”	means Records donated to the NDA Archive Facility by individuals or organisations (other than End Users) and made available for public use;
“Dounreay TWA”	means the geographical area comprising all of Caithness and the parishes of Tongue, Farr and Helmsdale in Sutherland;
“DPA”	means the Data Protection Act 1998 as amended;
“Dublin Core Metadata Template”	means a set of vocabulary terms which can be used to describe resources for the purposes of discovery and to describe a full range of web resources (video, images, web pages, etc.) and physical resources such as books and documents;
“Effective Date”	means the ;
“EIR”	means the Environmental Information Regulations 2004 as may be amended from time to time;
“EISR”	means the Environmental Information (Scotland) Regulations 2004, as may be amended from time to time;
“EIR Request”	means a request for environmental information, from the public, to a public authority in accordance with the EIR or EISR (as applicable);
“Electronic Records”	means Records stored on analogue and digital media;
“Employer’s Information Requirement”	means the document provided by the Customer to the Supplier as specified in paragraph 1.1 of Part 2 to Schedule 1 (Services);
“Employment Regulations”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

“Employees”	means those employees whose contracts of employment transfer to the Supplier as at the Relevant Transfer Date;
“End User”	means an end user of the Services which has entered into an End User Agreement;
“End User Agreement”	means an agreement between the Customer and an End User setting out the terms on which the Customer shall enable the End User to have the benefit of the Services;
“Environmental Information Regulations”	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
“Environmental Plan”	means the environmental plan as agreed in accordance with and containing the information specified in paragraph 1.2(a)(iv) of Part 2 to Schedule 1 (Services);
“Equipment”	means the Supplier’s equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under the Contract;
“ERDMS”	means NDA’s electronic records and data management system;
“Exit Plan”	has the meaning set out in Clause 16.1;
“Expiry Date”	means either: <ul style="list-style-type: none"> (a) the end of the Initial Term; or (b) if the Customer opts to extend the Contract in accordance with Clause 1.2, the date to which the Contract is extended, which shall be no later than the seventh (7th) anniversary of the Commencement Date <p>unless terminated earlier in accordance with Clause</p>

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“Facilities Management Services”	means the services set out in Schedule 2 (FM Specification);
“Fixed Fee Work”	has the meaning given to such term in paragraph 2.2 of Part B (Monthly Contract Charges) of Schedule 9 (Payments and Deductions);
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
“FOI Request”	means a request for information, from the public, to a public authority in accordance with FOIA or FOISA (as applicable);
“FOISA”	means the Freedom of Information (Scotland) Act 2002, as may be amended from time to time;
“Force Majeure”	means any event, occurrence or cause affecting the performance by either the Customer or the Supplier of its obligations arising from: <ul style="list-style-type: none">(a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;(b) riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;(c) acts of government, local government or Regulatory Bodies;(d) fire, flood or any disaster acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;

- (e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
 - (i) any industrial dispute relating to the Supplier, the Supplier's Staff or any other failure in the Supplier or the Sub-contractor's supply chain; and
 - (ii) any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned;

“Fraud” means any offence under any Laws creating offences in respect of fraudulent acts or in relation to the Misrepresentation Act 1967 or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud NDA or either party to this Contract;

“Functional Requirements Specification” means a specification for the fit-out of the internal areas of the NDA Archive Facility;

“General Change in Law” means any change in Law where the change is of a general legislative nature, or which generally affects or relates to the supply of services which are the same as, or similar to, the Services;

“General Principles” has the meaning given to such term in paragraph 1.2(a) of Schedule 13 (Disaster Recovery and Business Continuity);

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected

from a skilled and experienced person or body engaged within the relevant industry or business sector;

“Government Soft Landings” means the Government Soft Landings Policy issued by the Cabinet Office in conjunction with Government Policy Unit, dated September 2012, including the published guidance documents (as may be amended from time to time);

“Group” means in relation to a company, any subsidiary or holding company of that company, or any subsidiary of such holding company, as such terms are defined in section 1159 of the Companies Act 2006;

“Harwell Collection” means the Records stored at the Harwell Southern Archive;

“Harwell Southern Archive” means Building B404, Research Sites Restoration Ltd, Harwell, Oxford, Didcot, OX11 0DF;

“Harwell Southern Archive Management System or HSMAS” means the existing archive management system for the Harwell Southern Archive;

“Harwell Southern Archive Services” means the services set out in Schedule 3 (Harwell Southern Archive Specification);

“HC” means the Highland Council;

“HC Data” means:

(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which:

(i) are supplied to the Supplier by or on behalf of the Customer; or

(ii) the Supplier is required to generate, process, store or

transmit pursuant to this
Contract; or

- (b) any Personal Data for which HC is the
Data Controller

which arises from HC;

“Highland Council Archive”	means the area within the NDA Archive Facility used exclusively to house Records belonging to the Highland Council;
“Holding Company”	shall have the meaning given to it in section 1159 and Schedule 7 of the Companies Act 2006;
“HC Operating Environment”	means the computing environment that is made available by HC which interfaces with the Supplier System in order for HC to receive the Services, but excludes the NDA Operating Environment;
“HC Record Retention Schedule”	means the document which sets out retention criteria for Highland Council Records;
“Herdus House”	means the office at Westlakes Science & Technology Park, Moor Row, Cumbria, CA24 3HU;
“Historical Interest Records”	means Records belonging to the Highland Council and NDA which are of public interest and are accessible to Public Users;
“HMG Security Policy Framework”	means the HMG Security Policy Framework issued by the Cabinet Office in April 2014, as may be revised from time to time, together with any requirements, directives, procedures or guidelines for implementation of the HMG Security Policy Framework that are issued from time to time by ONR-CNS;
“ICT”	means information and communications technology;
“ICT Environment”	means the Customer System and the Supplier System;

“IGS”	means the Information Governance Strategy, which is published on NDA’s website;
“Image Resource Archive”	means the area of the NDA Archive Facility used to store Visual Records only;
“Inbound”	means the process of recording the arrival of a Box at the NDA Archive Facility or e-transfer;
“Information”	has the meaning given under section 84 of the FOIA;
“Information Governance Programme”	means the methodology for implementing the Information Governance Strategy;
“Information Governance Strategy”	means the published document setting out the strategy adopted by NDA to manage its information, knowledge and records to the standard required of a responsible public body;
“Initial Term”	means the period commencing on the Commencement Date and ending on the fifth anniversary of the Commencement Date;
“Intellectual Property Rights” or “IPRs”	means: <ul style="list-style-type: none"> (a) patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, semi-conductor topography rights, rights in inventions, domain names and website addresses, trade or business names, rights in Know-How and moral rights and other similar rights or obligations whether registerable or not; (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any

country or jurisdiction; and

- (c) all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off;

“Key Milestone” means any Milestone which is identified as “key” in the Business Plans or by operation of the Change Control Procedure;

“Key Milestone Date” means the date for completion of any Key Milestone as set out in the Business Plans;

“Key Personnel” means those individuals who are identified by each Party as being key to the success of the implementation and/or operation of the Services and who are identified in Schedule 14 (Key Personnel);

“Know-How” means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the Supplier’s or the Customer’s possession before the Commencement Date;

“Known Collections” means the Records stored at the following archives:

- (a) Dounreay;
- (b) Harwell;
- (c) Highland Council; and
- (d) Mansfield;

“Law” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or statute, bye-law, regulation, order, regulatory policy,

guidance or industry code, rule of Court or directives or requirements of any Regulatory Body, delegated or subordinate legislation;

- “LCI”** means a Lord Chancellor’s Instrument, granted under the PRA;
- “Magnox Limited”** means Magnox Limited (company number 02264251) whose registered office is at Berkeley Centre, Berkeley, Gloucestershire GL13 9PB;
- “Malicious Software”** means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the software or code is introduced wilfully, negligently or without knowledge of its existence;
- “Management Information”** means the management information specified in Schedule 10 (Management Information and Reporting);
- “Manual Handling Regulations”** means the Manual Handling Operations Regulations 1992 (SI 1992 No.2793);
- “Material Breach”** means a material breach of this Contract and/or breach by the Supplier of any of the following clauses: Clause 32 (Warranties and Representations), Clause 31.5 (Protection of Personal Data), Clause 31.7 (Official Secrets Acts 1911 to 1989), Clause 19 (Monitoring of Contract Performance), Clause 40 (Records and Audits Access), Clause 15 (Transfer and Sub-contracting), Clause 39 (Prevention of Bribery and Corruption), Clause 42 (Prevention of Fraud), Clause 13 (Continuous Improvement);
- “Metadata Sheet”** means the Supplier’s sheet used to record information about Records using the Dublin Core Metadata Template;
- “Method** means the Supplier’s response to the Specification (as

Statements”	submitted as part of its Tender), as set out in Schedule 5 (Method Statements) and as reflected in the Business Plans;
“MI Reporting Requirement”	means the performance elements relating to the Contract, which the Supplier shall report on in the MI Reports;
“MI Reports”	means the management information reports to be provided by the Supplier in accordance with the provisions of Schedule 10 (Management Information and Reporting);
“Milestone”	means an event or task described in either of the Business Plans which must be completed by the corresponding date set out in such plan;
“Milestone Date”	means the date set against the relevant Milestone in either of the Business Plans;
“Minimum Insurance Period”	means from the Commencement Date until the date that is 6 (six) years following the expiration or earlier termination of the Contract.
“Miscellaneous Supplier Costs”	means all Supplier costs associated with fulfilling the objectives of the Business Plans, including but not limited to costs associated with staffing, overheads, change management and project scoping;
“Mobilisation”	means the phase of the Contract commencing on the Commencement Date and ending upon achievement of practical completion of the NDA Archive Facility;
“MoD Classification Guidance”	means guidance on the security classification of documents issued by the Ministry of Defence, as updated from time to time;
“Month”	means calendar month and “monthly” shall be interpreted accordingly;
“Monthly Contract Charges”	means the price (exclusive of any applicable VAT) payable to the Supplier by the Customer under the Contract, as set out in Schedule 9 (Payments and Deductions), for the full and proper performance by

the Supplier of its obligations under the Contract less any Service Credits;

“Monthly Fixed Fee” means the monthly fee payable in respect of the Services set out in Appendix 2 (Monthly Fixed Fee - Services) of Schedule 9 (Payments and Deductions) and calculated in accordance with paragraph 2 (Monthly Fixed Fee) of Part B (Monthly Contract Charges) of Schedule 9 (Payments and Deductions);

“Monthly Supplier Management Fee” means the monthly fee payable to the Supplier, calculated in accordance with paragraph 4 (Monthly Supplier Management Fee) of Part B (Monthly Contract Charges) of Schedule 9 (Payments and Deductions);

“Monthly Variable Fee” means the monthly fee payable in respect of the Services set out in Appendix 4 (Monthly Variable Fee - Services) of Schedule 9 (Payments and Deductions) and calculated in accordance with paragraph 3 (Monthly Variable Fee) of Part B (Monthly Contract Charges) of Schedule 9 (Payments and Deductions);

“NDA” means Nuclear Decommissioning Authority;

“NDA Acquisition Policy” means the NDA policy identifying which Records should be stored at the NDA Archive Facility;

“NDA Archive Advisory Panel” means a focus group formed of representatives of the Supplier, the Customer, NDA, Highland Council, Caithness Horizons, Caithness Family History Society, Dounreay Stakeholder Group, Venture North and Caithness Voluntary Groups);

“NDA Archive Facility” means the archive facility to be constructed pursuant to the Construction Contract;

“NDA Data” means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media,

and which:

- (i) are supplied to the Supplier by or on behalf of the Customer; or
- (ii) the Supplier is required to generate, process, store or transmit pursuant to this Contract; or

- (b) any Personal Data for which the Customer is the Data Controller;

which arises from NDA, SLCs and/or NDA subsidiaries;

“NDA’s Data Protection Policy”

means the policy produced by NDA setting out its approach to data protection and the Data Protection Act 1998, as updated from time to time;

“NDA LCI Applications Procedure”

means the procedure produced by NDA for applying the Lord Chancellor’s instrument to retain documents beyond the 20 year rule, as updated from time to time;

“NDA Operating Environment”

means the computing environment (consisting of hardware, software, cabling and telecommunications networks) that is to be supplied by the Customer for the use by the Supplier for the performance of the Services, but excluding the Supplier System and the HC Operating Environment;

“NDA’s IT and Disaster Recovery Plan”

means NDA’s plan, of the same name, which sets out its procedure for disaster recovery in respect of ICT;

“NDA Record Retention Schedule”

means the document which sets out retention criteria for NDA Records;

“NDA Second Reviewer’s Guide”

the guidance document produced by NDA to assist second reviewers in the review of documents including the declassification of information, as updated from time to time;

“NDA Transfer

means the guidance document produced by NDA

Procedures”	setting out the procedure for transferring documents to the NDA Archive Facility, as updated from time to time;
“NISR”	means the Nuclear Industries Security Regulations 2003 as may be amended from time to time;
“NRS”	means National Records Scotland;
“Office Furniture”	means shredding machines, microfiche equipment, secure disposal facilities and fixtures, fittings and equipment stated in the fixtures, fittings and equipment schedule attached to the Construction Contract;
“OFFICIAL”	has the meaning given to such term in the Cabinet Office document titled “Government Security Classifications April 2014” (Version 1.0 – October 2013), as may be amended and updated from time to time;
“OFFICIAL-SENSITIVE”	has the meaning given to such term in the Cabinet Office document titled “Government Security Classifications April 2014” (Version 1.0 – October 2013), as may be amended and updated from time to time;
“ONR”	means the Office for Nuclear Regulation;
“OSP57”	means the Operational Selection Policy agreed between TNA and the NDA for the selection of Records having research or historical value that should be preserved for defined periods. The Records may contain information on the history of the development and decommissioning of sites, or history of technical development of nuclear energy science and systems. It is a working tool for use in the selection process;
“Operation”	means the period from the end of Mobilisation until the Expiry Date;
“Outline Business	means the outline business plans set out in

Plans”	Schedule 5 (Method Statements) relating to: <ul style="list-style-type: none"> (a) Mobilisation; and (b) Operation as submitted by the Supplier as part of its Tender;
“Oversize Record”	means a Record which is too large to store in a regular Box;
“Parent Company”	means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term “Holding or Parent Company” shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
“Party”	means the Supplier or the Customer and “Parties” shall mean both of them;
“PAS 198”	means the BSI guide titled “PAS 198: 2012 relating to the specifications for managing environmental conditions for cultural collections”;
“Past Service Reserve Basis”	means bulk transfer terms calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits), or allowing for the active service revaluation rate to be applied up to the assumed date of retirement, leaving service or death (in the case of career average salary benefits). The actuarial basis for the past service reserve should be aligned to the funding requirements of the pension scheme paying the transfer at that time, subject to an underpin. The underpin shall operate in relation to any service credits awarded in the pension scheme paying the transfer as a consequence of the bulk transfer/shortfall agreements when the member first transferred their past service benefits from their previous pension scheme into the current pension scheme. The

underpin is such that the element of the past service reserve which relates to such service credits can be no lower than that required by the original bulk transfer terms used to determine any transfer into the current pension scheme (with the 'vesting date' used to determine the actuarial assumptions being the last day of employment of the member by the Supplier or a Sub-contractor);

“PD 5454”	means the BSI guide titled “PD 5454:2012” relating to the storage and exhibition of archived materials;
“Permanent Preservation”	means retention of a Record in perpetuity;
“Personal Data”	shall have the same meaning as set out in the Data Protection Act 1998;
“Physical Records”	means records which are not Electronic Records and can be in various physical formats, including but not limited to paper, microfilm, photographic negatives, films, cans, maps, models and charts;
“Place of Deposit”	means approval by TNA to hold certain classes of Public Records which are not held at TNA, granted pursuant to Section 4(1) of the Public Records Act 1958;
“Place of Deposit Application”	means a request to the Lord Chancellor to be granted Place of Deposit status in accordance with section 4(1) of the PRA;
“Post Occupancy Evaluation Studies”	has the meaning given to such term in Government Soft Landings;
“PQQ Response”	means the Supplier’s response to the NDA’s pre-qualification questionnaire issued in connection with the competition for the award of this Contract;
“PRA”	means the Public Records Acts 1958 and 1967 as amended;
“PRA Second Review”	means the review of an archived Record at the PRA second review date;

- “Preservation”** means passive protection of Physical Records which may involve BS5454 conditions, boxing, creation of surrogate copies and handling using gloves;
- “Privilege Day”** means a day of annual leave granted to employees of the Civil Service. These are in addition to bank holidays, but do still count as Working Days for the purpose of freedom of information requests;
- “Process”** has the meaning given to “processing” under the Data Protection Act 1998 (but shall include both manual and automatic processing), and “Process” and “Processed” shall be interpreted accordingly;
- “Prohibited Act”** means:
- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or NDA a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity; or
 - (b) committing any offence:
 - (i) under the Bribery Act 2010; or
 - (ii) under legislation creating offences concerning fraudulent acts; or
 - (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with NDA and/or Customer; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud NDA and/or the

Customer;

“Project Manager”	has the meaning given to such term in the Construction Contract;
“Project Specific IPRs”	means: <ul style="list-style-type: none">(a) IPRs in the Services provided by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Contract and all updates and amendments of these items created during the Term; and/or(b) IPRs arising as a result of the provision of the Services by the Supplier (or by a third party on behalf of the Supplier) under the Contract including the rights in or to any database developed and supplied by the Supplier to the Customer in accordance with the terms of this Contract;
“Project Work”	means has the meaning given to such term in paragraph 3.5 of Part B (Monthly Contract Charges) of Schedule 9 (Payments and Deductions);
“Property”	means the property, other than real property, Records and IPR, issued or made available to the Supplier by the Customer in connection with the Contract;
“PRSA”	means the Public Records (Scotland) Act 2011 as amended from time to time;
“Public Access Equipment”	means any Equipment which Public Users may use at the NDA Archive Facility and/or the Harwell Southern Archive, which shall include login and search facilities;
“Public Records”	means Records that are subject to the PRA, which include records of government departments and their executive agencies, some non-departmental public bodies, the courts, the NHS and the armed forces;
“Public Users”	means members of the public that use the facilities at

the NDA Archive Facility;

- “Public User Costs”** means costs incurred by the Supplier in providing photocopying and printing;
- “Quality Standards”** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with and any other applicable quality standards, Government codes of practice and guidance;
- “Quarter End Date”** means the following dates in any Contract Year:
- (a) 31 March;
 - (b) 30 June;
 - (c) 30 September; or
 - (d) 31 December;
- “Quarantine”** means isolation of Physical Records pending investigation for assessment of condition prior to accession into the NDA Archive Facility;
- “Quarterly Service Credit Amount”** means the amount deductible from the Monthly Contract Charges in respect of Service Failures, calculated quarterly in accordance with paragraph 3 (Calculation of Service Credit) of Schedule 8 (Service Levels and Service Credits);
- “Quarterly Supplier Management Fee”** means the aggregate of the Monthly Supplier Management Fee amounts payable in respect of the relevant three month quarter of a Contract Year;
- “Rate Card Rates”** means the rates used to price Project Work, as set out in Appendix 5 (Rate Card) of Schedule 9 (Payment and Deductions);

“Record”	means a Physical Record and/or an Electronic Record (which may include a Vital Record and/or a Public Record);
“Record Retention Schedules”	means the HC Record Retention Schedule and/or the NDA Record Retention Schedule, as appropriate;
“Records Agreement(s)”	means the records agreements referred to in Paragraphs 25.4(c)(iii)-25.4(c)(v), 25.5(c)(i), and 25.8(a)(i)-25.8(a)(ii) of Schedule 3 (Harwell Southern Archive Specification);
“Regulatory Bodies”	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Customer;
“Related Supplier”	means any person who provides services to the Customer, which are related to the Services, from time to time;
“Relevant Transfer Date”	means the date upon which the Relevant Transfer takes place;
“Relevant Transfer”	means a transfer of employment to which TUPE applies or is treated as applying;
“Relevant Conviction”	means a Conviction that is relevant to the nature of the Services to be provided;
“Replacement Supplier”	any third party service provider of Replacement Services appointed by the Customer from time to time;
“Replacement Service”	any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry or termination of this Contract, whether those services are provided by the Customer internally and/or by any third party;
“Request for	means a request for information or an apparent

Information”	request relating to this Contract or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
“Requirements Document”	means the document titled “Managing NDA Information Requirements” Rev 1.0, issued January 2015, as maybe amended and updated from time to time;
“Review Report”	has the meaning set out in paragraph 6.3 of Schedule 13(Disaster Recovery and Business Continuity);
“Routine Request”	means a request that can be handled in normal working hour timescales;
“RPSIR”	means the Re-use of Public Sector Information Regulations 2005 as amended;
“Satisfaction Certificate”	means the certificate materially in the form of the document contained in the Appendix 1 to Schedule 11 (Testing) granted by the Customer when the Supplier has achieved a Milestone;
“Second Review”	means the review of an archived Record at its designated second review date;
“Security Management Plan”	means the Supplier’s security management plan prepared pursuant to paragraph 3 of Schedule 4 (Security Management Pan) as updated from time to time;
“Security Policy”	means the Supplier’s security policy, as updated from time to time to reflect the requirements of the Specification and Schedule 4 (Security Management Plan);
“Security Services”	means the Services set out in paragraphs 5 to 8 (Security) (inclusive) of Schedule 1 (Services);
“Service Failure”	means a failure by the Supplier to deliver any part of the Services in accordance with the Service Levels;

“Service Levels”	means the service levels applicable to the provision of the Services set out in Appendix 1 (Service Levels and Severity Levels) of Schedule 8 (Service Levels and Service Credits);
“Service Transfer”	has the meaning given to such term in paragraph 4.1 of Schedule 17 (Employees);
“Services”	means the services to be delivered by or on behalf of the Supplier under this Contract, including the Design and Construction Services, the Core Services and any Additional Services;
“Sift ”	means the document sorting process which NDA Archive Facility requires each End User to undertake in relation to its Records prior to transfer of such Records to the NDA Archive Facility, which shall include: <ul style="list-style-type: none"> (a) Review of all documents against: <ul style="list-style-type: none"> (i) TNA Policy; (ii) OSP57; and (iii) the NDA Acquisition Policy; and (b) Review of all Records by subject matter experts in order to determine which Records should be transferred to the NDA Archive Facility and which should be discarded;
“Silver Licence Terms”	means the terms set out in paragraph 1 of Part B of Schedule 15 (Software Terms) that shall apply to all elements of Silver Software;
“Silver Software”	means software provided by the Supplier to the Customer and licensed pursuant to the Silver Licence Terms (and which is not COTS Software) and as set out in Part A of Schedule 15 (Software Terms);
“SLC”	means a site licence company which carries a licence, granted by the Office for Nuclear Regulation, to

manage a licensed nuclear site;

“Sites”	means any facility where Records which are to be transferred to the NDA Archive Facility are held prior to transfer to the NDA Archive Facility;
“SNI”	means sensitive nuclear information regulated by the Office for Nuclear Regulation under the ‘Nuclear Industries Security Regulations 2003 Classification Policy for the Civil Nuclear Industry – Information Concerning the Use, Storage and Transport of Nuclear and other Radioactive Material’ and which carried markings of “OFFICIAL SENSITIVE” and above;
“Software”	means the Supplier Software and Customer Software;
“Source Code”	means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all technical information and documentation necessary for the use, reproduction, modification and enhancement of such software;
“Specification”	means the Customer’s output specification contained in Schedule 1 (Services), Schedule 2 (FM Specification) and Schedule 3 (Harwell Southern Archive Specification);
“Staff”	means all persons employed by the Supplier and/or any Sub-contractor to perform its obligations under the Contract together with the Supplier’s and/or any Sub-contractor’s servants, consultants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract;
“Staffing Information”	shall have the meaning set out in paragraph 1 of Schedule 17;
“Staff Vetting Procedures”	means NDA’s procedures and policies for the vetting of personnel;
“Sub-contract”	means any contract or agreement or proposed contract or agreement between the Supplier and any

third party whereby that third party agrees to provide to the Supplier the Services or any part thereof or facilities, goods or services necessary 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” means the third party with whom the Supplier enters into a Sub-contract or its servants or agents and any other third party with whom that third party enters into a Sub-contract or its servants or agents;

“Supplier Management Fee” means the aggregate of the Monthly Supplier Management Fee amounts payable in a Contract Year;

“Supplier Pre-Existing IPR” shall mean any Intellectual Property Rights vested in or licensed to the Supplier prior to or independently of the performance by the Supplier of its obligations under the Contract and including, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;

“Supplier’s Proposals” has the meaning set out in paragraph 6.3(c) of Schedule 13 (Disaster Recovery and Business Continuity);

“Supplier Software” means the Silver Software and COTS Software and any new release or version of the same made available pursuant to Clause 13.3 of this Contract;

“Supplier System” means the information and communications technology system used by the Supplier to provide the Archive Management Software;

“Supplier’s Confidential Information” means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought

	reasonably to be considered to be confidential;
“Supplier’s Provisional Staff List”	shall have the meaning set out in paragraph 1 of Schedule 17;
“Tender”	means the tender submitted by the Supplier to the Customer in response to NDA’s invitation to submit final tenders issued on 27 April 2015;
“Term”	means the period of the Initial Term as may be varied by: <ul style="list-style-type: none"> (a) any extensions to this Contract which are agreed pursuant to Clause 1.2; or (b) the earlier termination of this Contract in accordance with Clause 34;
“Tests” and “Testing”	means any tests required to be carried out pursuant to this Contract;
“Test Issue”	means any variance or non-conformity of Services from their requirements as set out in the Contract;
“Test Plan”	means a plan for the Testing of the Services and other agreed criteria related to the achievement of Milestones as described further in paragraph 4 of Schedule 11 (Testing);
“Test Strategy”	means a strategy for the conduct of Testing as described further in paragraph 3 of Schedule 11 (Testing);
“Third Party Users”	means any third party that uses the NDA Archive Facility;
“TNA”	means The National Archives;
“TNA Transfer Procedures”	means the guidance document entitled "Preparation of Records: How to Prepare" produced by TNA setting out the procedure for the transfer of documents to TNA;
“Transferring	means those employees whose contracts of

Employees”	employment will be transferred to the Customer or a Replacement Supplier pursuant to the Employment Regulations on expiry or termination of this Contract;
“UKAEA Combined Pension Scheme”	means the an unfunded Government backed pension scheme restricted to members of the public sector which is maintained by UKAEA under paragraph 7(2)(b) of Schedule 1 of the Atomic Energy Authority Act 1954 (including the Additional Voluntary Contribution Scheme and the Shift Pay Pension Savings Plan);
“Undisputed Sums Time Period”	means at least thirty (30) Calendar Days of the date of the written notice specified in Clause 34.3(c)
“Urgent Request”	means a request for information from an End User that must be delivered within the timescales set out in paragraph 25.3 of Schedule 1 (Services) by scan and e-mail;
“Use”	means with respect to Silver Software and COTS Software, the right to load, execute, store, transmit, display and copy (for the purposes of loading, execution, storage, transmission or display) that software in accordance with the applicable software terms as set out in Schedule 15 (Software Terms);
“Valid Invoice”	means an invoice issued by the Supplier to the Customer that complies with Clause 12.2(c);
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
“Visual Records”	means Records that are composed of images rather than text, including but not limited to photographs, drawings and films;
“Vital Record”	means Records that are essential to an organisation in order to continue with its business critical functions during and after a disaster;
“Working Hour”	means a sixty minute period commencing after 9am and before 4.30pm on a Working Day; and

“Working Day” means any day other than a Saturday or Sunday and shall include any public holiday which is not a public holiday in both Scotland and England and Wales.

1.2 Interpretation

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

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) the words "include" , "includes" and "including" "for example" and "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;
- (d) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (e) the schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to this Contract includes the schedules;
- (f) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (g) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (h) references to "Clauses" and "Schedules" are, unless otherwise provided, references to the clauses of and schedules to this Contract. References to "paragraphs" are, unless otherwise provided, references to paragraphs of the schedule in which the references are made;
- (i) terms or expressions contained in this Contract which are capitalised but which do not have an interpretation in this paragraph 1.2 shall be interpreted in accordance with the common interpretation within the relevant market

sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning;

- (j) reference to a Clause is a reference to the whole of that clause unless stated otherwise; and
- (k) in the event of and only to the extent of any conflict between the clauses of the Contract and any document referred to in the clauses of the Contract, the clauses of the Contract shall take precedence.