

DATED 19 March 2019

MARITIME & COASTGUARD AGENCY (1)
ACTING ON BEHALF OF THE
SECRETARY OF STATE FOR
TRANSPORT

and

2 EXCEL AVIATION LIMITED (2)

AGREEMENT

relating to aerial surveillance

MILLS & REEVE

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THIS AGREEMENT is made on

2019

BETWEEN:

- (1) **MARITIME & COASTGUARD AGENCY** of 105 Commercial Road Southampton SO15 1EG acting on behalf of the Secretary of State for Transport (the "**Authority**"); and
- (2) **2 Excel Aviation Limited** a company registered in England and Wales under company number 05391365 whose registered office is at The Tiger House, Sywell Aerodrome, Sywell, Northants, NN6 0BN (the "**Supplier**")

(each a "Party" and together the "Parties").

INTRODUCTION

- (A) The Authority wishes to procure aerial surveillance services for itself and for other Central Government Bodies.
- (B) On 31 August 2018 the Authority advertised in the Official Journal of the European Union (reference 2018/S 169-384919), inviting prospective suppliers to submit proposals for the Services.
- (C) On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Authority selected the Supplier as its preferred supplier.
- (D) Following negotiations the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

IT IS AGREED as follows:

SECTION A - PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant clause or Schedule in which that capitalised expression appears.
- 1.2 In this Agreement, unless the context otherwise requires:
 - 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 reference to a gender includes the other gender and the neuter;
 - 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
 - 1.2.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 1.2.5 the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be

construed as if they were immediately followed by the words "without limitation";

- 1.2.6 references to "writing" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - 1.2.7 the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
 - 1.2.8 unless otherwise provided and save for references in Schedule 22 (*Guarantee*), references to Clauses and Schedules are references to the clauses and schedules of this Agreement and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and
 - 1.2.9 references to this Agreement are references to this Agreement as amended from time to time.
- 1.3 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Agreement with a reference to the replacement hyperlink.
- 1.4 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- 1.4.1 the Clauses and Schedule 1 (*Definitions*);
 - 1.4.2 Schedule 2 (*Services Description*) and Schedule 3 (*Service Points, Service Credits and Performance Monitoring*) and their Annexes;
 - 1.4.3 any other Schedules and their Annexes (other than Schedule 5 (*Supplier Solution*) and its Annexes); and
 - 1.4.4 Schedule 5 (*Supplier Solution*) and its Annexes (if any).
- 1.5 The Schedules and their Annexes form part of this Agreement.
- 1.6 In entering into this Agreement the Authority is acting as part of the Crown.
- 2 DUE DILIGENCE**
- 2.1 The Supplier acknowledges that:
- 2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;
 - 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;

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

- (i) the Authority Requirements;
- (ii) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;
- (iii) the operating processes and procedures and the working methods of the Authority;
- (iv) the ownership, functionality, capacity, condition and suitability for use in the Services of the Authority Assets; and
- (v) the existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Agreement and/or which the Supplier will require the benefit of for the provision of the Services; and

2.1.4 it has advised the Authority in writing of:

- (i) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
- (ii) the actions needed to remedy each such unsuitable aspect; and
- (iii) a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,

and such actions, timetable and costs are fully reflected in this Agreement, including the Services Description and/or Authority Responsibilities as applicable.

2.2 The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

2.2.1 any unsuitable aspects of the Operating Environment;

2.2.2 any misinterpretation of the Authority Requirements; and/or

2.2.3 any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

3 WARRANTIES

3.1 The Authority represents and warrants that:

3.1.1 it has full capacity and authority to enter into and to perform this Agreement;

3.1.2 this Agreement is executed by its duly authorised representative;

- 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and
 - 3.1.4 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).
- 3.2 The Supplier represents and warrants that:
- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
 - 3.2.2 it has full capacity and authority to enter into and to perform this Agreement;
 - 3.2.3 this Agreement is executed by its duly authorised representative;
 - 3.2.4 it has all necessary consents and regulatory approvals to enter into this Agreement;
 - 3.2.5 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
 - 3.2.6 its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
 - 3.2.7 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
 - 3.2.8 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the SQ and ITT (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;
 - 3.2.9 it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;

- 3.2.10 it has all necessary rights in and to the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;
- 3.2.11 the Financial Model is a true and accurate reflection of the costs and Supplier profit margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;
- 3.2.12 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement; and
- 3.2.13 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.
- 3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing.
- 3.4 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
- 3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.6 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.
- 3.7 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

SECTION B – THE SERVICES

4 TERM

- 4.1 This Agreement shall:
- 4.1.1 come into force on the Effective Date, save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 21 (*Confidentiality*), 22 (*Freedom of Information*), 24 (*Publicity and Branding*), 25 (*Limitations on Liability*), 35 (*Waiver and Cumulative Remedies*), 36 (*Relationship of the Parties*), 38 (*Severance*), 40 (*Entire Agreement*), 41 (*Third Party Rights*), 42 (*Notices*), 43 (*Disputes*) and 44 (*Governing Law and Jurisdiction*), which

shall be binding and enforceable as between the Parties from the date of signature; and

- 4.1.2 unless terminated at an earlier date by operation of Law or in accordance with Clause 31 (*Termination Rights*), terminate:
- (i) at the end of the Initial Term; or
 - (ii) if the Authority elects to extend the Initial Term by giving the Supplier at least six months' notice before the end of the Initial Term, at the end of the First Extension Period; or
 - (iii) if the Authority elects to extend the Initial Term by giving the Supplier at least six months' notice before the end of the First Extension Period, at the end of the Second Extension Period.

Condition Precedent

- 4.2 Save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 21 (*Confidentiality*), 22 (*Freedom of Information*), 24 (*Publicity and Branding*), 25 (*Limitations on Liability*), 35 (*Waiver and Cumulative Remedies*), 36 (*Relationship of the Parties*), 38 (*Severance*), 40 (*Entire Agreement*), 41 (*Third Party Rights*), 42 (*Notices*), 43 (*Disputes*) and 44 (*Governing Law and Jurisdiction*), this Agreement is conditional upon the valid execution and delivery to the Authority of the Guarantee (the "**Condition Precedent**"). The Authority may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Supplier notice in writing.
- 4.3 The Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. In the event that the Condition Precedent is not satisfied within 20 Working Days after the date of this Agreement then, unless the Condition Precedent is waived by the Authority in accordance with Clause 4.2:
- 4.3.1 this Agreement shall automatically cease and shall not come into effect; and
 - 4.3.2 neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.
- 4.4 The Supplier shall consult with the Authority in relation to the steps it takes to satisfy the condition set out in Clause 4.2 and shall keep the Authority fully informed of its progress in satisfying the condition and of any circumstances which are likely to result in the condition not being satisfied by the date set out in Clause 4.3.

5 SERVICES

Standard of Services

- 5.1 The Supplier shall provide the Services in each case from (and including) the relevant Service Commencement Date.
- 5.2 The Supplier shall ensure that the Services:
- 5.2.1 comply in all respects with the Services Description; and

- 5.2.2 are supplied in accordance with the Supplier Solution and the provisions of this Agreement.
- 5.3 The Supplier shall:
- 5.3.1 perform its obligations under this Agreement, including in relation to the supply of the Services in accordance with:
- (i) all applicable Law and any additional requirements arising from international treaties and protocols to which the UK is a signatory;
 - (ii) Good Industry Practice;
 - (iii) the Quality Plans;
 - (iv) the Authority's Information Security Policy; and
 - (v) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses (i) to (iv);
- 5.3.2 deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money;
- 5.3.3 support and reflect at all times the public service ethos of the Authority;
- 5.3.4 share best practice with and support the Authority to enhance environmental performance;
- 5.3.5 implement an appropriate environmental management system for the Services in accordance with ISO14001 or equivalent;
- 5.3.6 co-operate and work with the Authority and its stakeholders including the Ministry of Defence, the Royal National Lifeboat Institution, local authorities, the emergency services and the Environment Agency to facilitate the effective provision of the Services; and
- 5.3.7 ensure that its IT systems are compatible with those operated by the Authority and Central Government Bodies.
- 5.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.3.1(i) to 5.3.1(iv), the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

Supplier covenants

- 5.5 The Supplier shall:
- 5.5.1 at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Agreement;

- 5.5.2 save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 13 (*Change*), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- 5.5.3 ensure that:
- (i) it shall continue to have all necessary rights in and to the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;
 - (ii) any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Authority Requirements; and
 - (iii) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Authority) and will be Euro Compliant;
- 5.5.4 minimise any disruption to the Services and/or the Authority's operations when carrying out its obligations under this Agreement;
- 5.5.5 ensure that any Documentation and training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- 5.5.6 co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier;
- 5.5.7 to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
- 5.5.8 unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 5.5.7;
- 5.5.9 provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;

- 5.5.10 gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;
 - 5.5.11 notify the Authority in writing as soon as reasonably possible and in any event within 1 month of any change of Control taking place;
 - 5.5.12 notify the Authority in writing within 10 Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
 - 5.5.13 ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Agreement.
- 5.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 5.7 Without prejudice to any other rights and remedies of the Authority howsoever arising, the Supplier shall:
- 5.7.1 remedy any breach of its obligations in Clauses 5.5.2 to 5.5.4 inclusive within 3 Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);
 - 5.7.2 remedy any breach of its obligations in Clause 5.5.1 and Clauses 5.5.5 to 5.5.10 inclusive within 20 Working Days of becoming aware of the breach or being notified of the breach by the Authority; and
 - 5.7.3 meet all the costs of, and incidental to, the performance of such remedial work, and any failure of the Supplier to comply with its obligations under Clause 5.7.1 or Clause 5.7.2 within the specified or agreed timeframe shall constitute a Notifiable Default.

Continuing obligation to provide the Services

- 5.8 The Supplier shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Services, notwithstanding:
- 5.8.1 any withholding of the Charges by the Authority pursuant to Clause 7.2.1 (*Service Failures*);
 - 5.8.2 the existence of an unresolved Dispute; and/or
 - 5.8.3 any failure by the Authority to pay any Charges,
- unless the Supplier is entitled to terminate this Agreement under Clause 31.3 (*Termination by the Supplier*) for failure to pay undisputed Charges.

Power of attorney

- 5.9 By way of security for the performance of its obligations under Clauses 5.5.7 and 5.5.8 (Supplier covenants) the Supplier hereby irrevocably appoints the Authority as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to delegate one or more of the powers conferred on it by this Clause 5.9 (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time.

6 TRANSITION

The Quality Plans

- 6.1 The Supplier shall develop, within sixty Working Days of the Effective Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("Quality Plans").
- 6.2 The Supplier shall obtain the Authority Representative's written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the Authority's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Agreement.
- 6.3 Following the approval by the Authority of the Quality Plans:
- 6.3.1 the Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and
 - 6.3.2 any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

Transition Plan and Delays

- 6.4 The Supplier shall:
- 6.4.1 comply with the Transition Plan; and
 - 6.4.2 ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.5 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:
- 6.5.1 it shall:
 - (i) notify the Authority in accordance with Clause 27.1 (*Rectification Plan Process*);
 - (ii) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and

- (iii) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

Achievement of Milestones

- 6.6 The Parties shall comply with the provisions of Schedule 9 (*Transition*) in relation to the procedures to determine whether a Milestone has been Achieved.

7 SERVICE FAILURES

- 7.1 The Supplier shall:

- 7.1.1 provide the Services in such a manner so as to meet or exceed the Service Requirements; and

- 7.1.2 comply with the provisions of Schedule 3 (*Service Points, Service Credits and Performance Monitoring*) in relation to the monitoring and reporting on its performance against the Service Requirements.

- 7.2 If in any Service Period:

- 7.2.1 5 or more Service Points are awarded in a Service Period Service Credits shall be deducted from the Charges in accordance with Paragraph 5 of Schedule 3 (*Service Points, Service Credits and Performance Monitoring*);

- 7.2.2 15 or more Service Points are awarded in a Service Period, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with Clause 7.2.1).

- 7.3 Service Credits shall be the Authority's exclusive financial remedy for Service Failure except where:

- 7.3.1 the Supplier has over the previous 12 month period accrued Service Credits in excess of the Service Credit Cap;

- 7.3.2 the Service Failure:

- (i) has arisen due to the wilful default by the Supplier or any Supplier Personnel; or

- (ii) results in:

- (A) the corruption or loss of any Authority Data (in which case the remedies under Clause 20.7 (*Authority Data and Security Requirements*) shall also be available); and/or

- (B) the Authority being required to make a compensation payment to one or more third parties;

- 7.3.3 the Supplier has fraudulently misrepresented its performance against any Service Requirement; and/or

- 7.3.4 the Authority is otherwise entitled to or does terminate the relevant Services or this Agreement pursuant to Clause 31.1.2 (*Termination by the Authority*).

Critical Performance Failure

- 7.4 If a Critical Performance Failure occurs, the Authority may exercise its rights to terminate this Agreement in whole or in part pursuant to Clause 31.1 or 31.2 (*Termination by the Authority*).

Changes to Service Points and Service Credits

- 7.5 Not more than once in each Contract Year the Authority may, on giving the Supplier at least 3 months' notice change the Service Points that apply in respect of one or more specific Service Requirements.
- 7.6 The Supplier shall not be entitled to object to any changes made by the Authority under Clause 7.5, or increase the Charges as a result of such changes provided that:
- 7.6.1 the principal purpose of the change is to reflect changes in the Authority's business requirements and/or priorities or to reflect changing industry standards; and
- 7.6.2 there is no change to the Service Credit Cap.

8 SERVICES IMPROVEMENT

- 8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 8. As part of this obligation the Supplier shall identify and report to the Tactical Portfolio Management Board once every 12 months on:
- 8.1.1 the emergence of new and evolving relevant technologies which could improve the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
- 8.1.2 new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
- 8.1.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk;
- 8.1.4 changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority; and/or
- 8.1.5 changes to business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.
- 8.2 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.

- 8.3 If the Authority wishes to incorporate any improvement identified by the Supplier the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.

9 EQUIPMENT

Supplier Equipment

- 9.1 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Authority shall be liable for loss of or damage to any of the Supplier's property located on Authority Premises which is due to the negligent act or omission of the Authority.
- 9.2 The loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Agreement, including the Service Requirements.

SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

10 FINANCIAL AND TAXATION MATTERS

Charges and Invoicing

- 10.1 In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 10 (*Charges and Invoicing*).
- 10.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.6 (*Achievement of Milestones*), 12 (*Records, Report and Audits*), 22 (*Freedom of Information*), 23 (*Protection of Personal Data*) and, to the extent specified therein and Clause 28 (*Step-In Rights*).
- 10.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

VAT

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

Set-off and Withholding

- 10.6 The Authority may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority.
- 10.7 If the Authority wishes to:
- 10.7.1 set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier pursuant to Clause 10.6; or
 - 10.7.2 exercise its right pursuant to Clause 7.2.1 (*Service Failures*) to withhold payment of a proportion of the Charges, it shall give notice to the Supplier within 30 days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.

Promoting Tax Compliance

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

SECTION D - CONTRACT GOVERNANCE

11 GOVERNANCE

- 11.1 The Parties shall comply with the provisions of Schedule 13 (*Governance*) in relation to the management and governance of this Agreement.

Representatives

- 11.2 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.
- 11.3 The initial Supplier Representative shall be the person named as such in Schedule 21 (*Key Personnel*). Any change to the Supplier Representative shall be agreed in accordance with Clause 14 (*Supplier Personnel*).
- 11.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within 5 Working Days of the Effective Date. The Authority may, by

written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

12 RECORDS, REPORTS AND AUDITS

12.1 The Supplier shall comply with the provisions of Schedule 16 (*Reports and Records Provisions*) in relation to the maintenance and retention of Records.

12.2 The Parties shall comply with the provisions of:

12.2.1 Part B of Schedule 12 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and

12.2.2 Part C of Schedule 12 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

13 CHANGE

Change Control Procedure

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

Change in Law

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

13.2.1 a General Change in Law; or

13.2.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.

13.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 13.2.2), the Supplier shall:

13.3.1 notify the Authority as soon as reasonably practicable of the likely effects of that change, including:

(i) whether any Change is required to the Services, the Charges or this Agreement; and

(ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Requirements; and

13.3.2 provide the Authority with evidence:

(i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub- contractors;

(ii) as to how the Specific Change in Law has affected the cost of providing the Services; and

- (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (*Services Improvement*), has been taken into account in amending the Charges.

13.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 13.2.2) shall be implemented in accordance with the Change Control Procedure.

SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN

14 SUPPLIER PERSONNEL

14.1 The Supplier shall:

- 14.1.1 Provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
- 14.1.2 ensure that all Supplier Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2 (*Services Description*); and
 - (iii) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises;
- 14.1.3 subject to Schedule 20 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;
- 14.1.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier;
- 14.1.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- 14.1.6 replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- 14.1.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- 14.1.8 procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement.

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

14.2.1 refuse admission to the relevant person(s) to the Authority Premises; and/or

14.2.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

Key Personnel

14.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 21 (*Key Personnel*) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.

14.4 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.

14.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:

14.5.1 requested to do so by the Authority;

14.5.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;

14.5.3 the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or

14.5.4 the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

14.6 The Supplier shall:

14.6.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 2 weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);

14.6.2 ensure that any Key Role is not vacant for any longer than 10 Working Days;

14.6.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least 60 Working Days' notice;

14.6.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and

14.6.5 ensure that any replacement for a Key Role:

- (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
- (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

Employment Indemnity

14.7 The Parties agree that:

14.7.1 the Supplier shall both during and after the Term indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel; and

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

Income Tax and National Insurance Contributions

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

14.8.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and

14.8.2 indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

Staff Transfer

14.9 The provisions of Schedule 20 (*Staff Transfer*) shall apply.

15 SUPPLY CHAIN RIGHTS AND PROTECTIONS

Appointment of Sub-contractors

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

15.1.1 manage any Sub-contractors in accordance with Good Industry Practice;

15.1.2 comply with its obligations under this Agreement in the delivery of the Services; and

- 15.1.3 assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement.
- 15.2 Prior to sub-contracting any of its obligations under this Agreement, the Supplier shall notify the Authority in writing of:
 - 15.2.1 the proposed Sub-contractor's name, registered office and company registration number;
 - 15.2.2 the scope of any Services to be provided by the proposed Sub-contractor; and
 - 15.2.3 where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.
- 15.3 If requested by the Authority within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.2, the Supplier shall also provide:
 - 15.3.1 a copy of the proposed Sub-contract; and
 - 15.3.2 any further information reasonably requested by the Authority.
- 15.4 The Authority may, within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.2 (or, if later, receipt of any further information requested pursuant to Clause 15.3), object to the appointment of the relevant Sub-contractor if it considers that:
 - 15.4.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
 - 15.4.2 the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
 - 15.4.3 the proposed Sub-contractor employs unfit persons; and/or
 - 15.4.4 the proposed Sub-contractor should be excluded in accordance with Clause 15.18; in which case, the Supplier shall not proceed with the proposed appointment.
- 15.5 If:
 - 15.5.1 the Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of 10 Working Days of receipt of:
 - (i) the Supplier's notice issued pursuant to Clause 15.1; and
 - (ii) any further information requested by the Authority pursuant to Clause 15.3; and
 - 15.5.2 the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 15.6 (*Appointment of Key Sub-contractors*),

the Supplier may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services, may notify the Authority that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of Schedule 8 (*Third Party Contracts*).

Appointment of Key Sub-contractors

- 15.6 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:
- 15.6.1 the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
 - 15.6.2 the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
 - 15.6.3 the proposed Key Sub-contractor employs unfit persons; and/or
 - 15.6.4 the proposed Key Sub-contractor should be excluded in accordance with Clause 15.18.
- 15.7 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 7 (*Notified Key Sub-contractors*).
- 15.8 Except where the Authority has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:
- 15.8.1 provisions which will enable the Supplier to discharge its obligations under this Agreement;
 - 15.8.2 a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
 - 15.8.3 a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier;
 - 15.8.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
 - 15.8.5 obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
 - (i) data protection requirements set out in Clauses 20 (*Authority Data and Security Requirements*) and 23 (*Protection of Personal Data*);
 - (ii) FOIA requirements set out in Clause 22 (*Freedom of Information*);

- (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 5.5.13 (*Services*);
 - (iv) the keeping of records in respect of the services being provided under the Key Sub-contract; and
 - (v) the conduct of Audits set out in Part C of Schedule 12 (*Financial Reports and Audit Rights*);
- 15.8.6 provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 31.1.1 (*Termination by the Authority*) and 32.4 (*Payments by the Authority*) and Schedule 11 (*Payments on Termination*) of this Agreement;
- 15.8.7 a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;
- 15.8.8 a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 28 (*Step-in Rights*); and
- 15.8.9 a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure.
- 15.9 The Supplier shall not terminate or materially amend the terms of any Key Sub-contract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.

Supply chain protection

- 15.10 The Supplier shall ensure that all Sub-contracts (which in this sub-clause includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:
- 15.10.1 giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;
 - 15.10.2 requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
 - 15.10.3 that if the Supplier or other party fails to consider and verify an invoice in accordance with Paragraph 15.10.2 the invoice shall be regarded as valid and undisputed for the purpose of Paragraph 15.10.4 after a reasonable time has passed;
 - 15.10.4 requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding 30 days of verifying that the invoice is valid and undisputed;

- 15.10.5 giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- 15.10.6 requiring the Sub-contractor to include a clause to the same effect as this Clause 15.10 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.
- 15.11 The Supplier shall:
- 15.11.1 pay any undisputed sums which are due from it to a Sub-contractor within 30 days of verifying that the invoice is valid and undisputed; and
- 15.11.2 provide a monthly summary of its compliance with Clause 15.11.1, such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.
- 15.12 Notwithstanding any provision of Clauses 21 (*Confidentiality*) and 24 (*Publicity and Branding*), if the Supplier notifies the Authority that the Supplier has failed to pay a Sub-contractor's undisputed invoice within 30 days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Termination of Sub-contracts

- 15.13 The Authority may require the Supplier to terminate:
- 15.13.1 a Sub-contract where:
- (i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 31.1.2 (*Termination by the Authority*);
 - (ii) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
 - (iii) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or
 - (iv) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 15.18; and
- 15.13.2 a Key Sub-contract where there is a Change of Control of the relevant Key Sub-contractor, unless:
- (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or

- (ii) the Authority has not served its notice of objection within 6 months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.

Competitive Terms

- 15.14 If the Authority is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may:
 - 15.14.1 require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
 - 15.14.2 subject to Clause 15.13, enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.
- 15.15 If the Authority exercises either of its options pursuant to Clause 15.14, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.
- 15.16 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
 - 15.16.1 the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
 - 15.16.2 any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

Retention of Legal Obligations

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

Exclusion of Sub-contractors

- 15.18 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:
 - 15.18.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor; and
 - 15.18.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

16 INTELLECTUAL PROPERTY RIGHTS

16.1 Except as expressly set out in this Agreement:

16.1.1 the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely the Supplier Background IPRs;

16.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including the Authority Data.

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

17 TRANSFER AND LICENCES GRANTED BY THE SUPPLIER

Supplier Background IPRs

17.1 The Supplier hereby grants to the Authority perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) the Supplier Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function.

Authority's right to sub-license

17.2 The Authority may sub-license the rights granted under Clause 17.1 (*Supplier Background IPRs*) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:

17.2.1 the sub-licence is on terms no broader than those granted to the Authority; and

17.2.2 the sub-licence authorises the third party to use the rights licensed in Clause 17.1 (*Supplier Background IPRs*) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function.

Authority's right to assign/novate licences

17.3 The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 17.1 (*Supplier Background IPRs*) to:

17.3.1 a Central Government Body; or

17.3.2 to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.

- 17.4 Any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 17.1 (*Supplier Background IPRs*). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licence granted in Clause 17.1 (*Supplier Background IPRs*).
- 17.5 If a licence granted in Clause 17.1 (*Supplier Background IPRs*) is novated under Clause 17.3 (*Authority's right to assign/novate licences*) or there is a change of the Authority's status pursuant to Clause 17.4, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.

Termination and Replacement Suppliers

- 17.6 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier pursuant to or as contemplated by this Clause 17.

18 LICENCES GRANTED BY THE AUTHORITY

- 18.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Data solely to the extent necessary for performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:

18.1.1 any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 21 (*Confidentiality*); and

18.1.2 the Supplier shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.

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

18.2.1 immediately cease all use of the Authority Data;

18.2.2 at the discretion of the Authority, return or destroy documents and other tangible materials that contain any Authority Data, provided that if the Authority has not made an election within 6 months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Data; and

18.2.3 ensure, so far as reasonably practicable, that any Authority Data that is held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Authority Data.

19 IPRs INDEMNITY

- 19.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by,

awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.

20 AUTHORITY DATA AND SECURITY REQUIREMENTS

- 20.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 20.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.
- 20.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2 (*Services Description*).
- 20.4 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.
- 20.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the BCDR Plan. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than 6 monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 20.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Requirements.
- 20.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
- 20.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 18 (*Business Continuity and Disaster Recovery Plan*) and the Supplier shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of the Authority's notice; and/or
- 20.7.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 18 (*Business Continuity and Disaster Recovery Plan*).
- 20.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.
- 20.9 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has

taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.

- 20.10 Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 20.9 the Supplier shall continue to perform the Services in accordance with its existing obligations.

21 CONFIDENTIALITY

- 21.1 For the purposes of this Clause 21, the term "Disclosing Party" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "Recipient" shall mean the Party which receives or obtains directly or indirectly Confidential Information.

- 21.2 Except to the extent set out in this Clause 21 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:

21.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);

21.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;

21.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and

21.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

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

21.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that Clause 22 (*Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;

21.3.2 the need for such disclosure arises out of or in connection with:

(i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;

(ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Agreement; or

(iii) the conduct of a Central Government Body review in respect of this Agreement; or

- 21.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 21.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 21.5 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:
 - 21.5.1 Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;
 - 21.5.2 its auditors; and
 - 21.5.3 its professional advisers for the purposes of obtaining advice in relation to this Agreement.

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

- 21.6 The Authority may disclose the Confidential Information of the Supplier:
 - 21.6.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
 - 21.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 21.6.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 21.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 21.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
 - 21.6.5 on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to Clause 28 (*Step-In Rights*) and Exit Management rights; or
 - 21.6.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement, and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 21.

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

22 TRANSPARENCY AND FREEDOM OF INFORMATION

22.1 The Parties acknowledge that

22.1.1 the Transparency Reports; and

22.1.2 the content of this Agreement, including any changes to this Agreement agreed from time to time, except for:

(i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and

(ii) Commercially Sensitive Information;

(together the "Transparency Information") are not Confidential Information.

22.2 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

22.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 16 (*Reports and Records Provisions*).

22.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

22.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.

22.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The

Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 21.6.3)) publish such Information. The Supplier shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.

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

22.7.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;

22.7.2 transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

22.7.3 provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

22.7.4 not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.

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

23 PROTECTION OF PERSONAL DATA

23.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Data Controller and the Supplier is the Data Processor. The only processing that the Supplier is authorised to do is listed in Schedule 23 (*Data Processing*) by the Authority and may not be determined by the Supplier.

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

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

23.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;

- 23.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 23.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 23.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 23.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 23.4.1 process that Personal Data only in accordance with Schedule 23 (*Data Processing*), unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
 - 23.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - 23.4.3 ensure that :
 - (i) the Supplier Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 23 (*Data Processing*));
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Supplier's duties under this Clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

- 23.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
- (i) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
 - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- 23.4.5 at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.
- 23.5 Subject to Clause 23.6, the Supplier shall notify the Authority immediately if it:
- 23.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 23.5.2 receives a request to rectify, block or erase any Personal Data;
 - 23.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 23.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 23.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 23.5.6 becomes aware of a Data Loss Event.
- 23.6 The Supplier's obligation to notify under Clause 23.5 shall include the provision of further information to the Authority in phases, as details become available.
- 23.7 Taking into account the nature of the processing, the Supplier shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 23.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

- 23.7.1 the Authority with full details and copies of the complaint, communication or request;
 - 23.7.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 23.7.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 23.7.4 assistance as requested by the Authority following any Data Loss Event;
 - 23.7.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 23.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- 23.8.1 the Authority determines that the processing is not occasional;
 - 23.8.2 the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 23.8.3 the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 23.9 The Supplier shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor.
- 23.10 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 23.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
- 23.11.1 notify the Authority in writing of the intended Sub-processor and processing;
 - 23.11.2 obtain the written consent of the Authority;
 - 23.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 23 such that they apply to the Sub-processor; and
 - 23.11.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 23.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 23.13 The Authority may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or

similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

- 23.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

24 PUBLICITY AND BRANDING

- 24.1 The Supplier shall not:

24.1.1 make any press announcements or publicise this Agreement or its contents in any way; or

24.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders;

24.1.3 release any media captured during the performance of the Services,

without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

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

SECTION G - LIABILITY, INDEMNITIES AND INSURANCE

25 LIMITATIONS ON LIABILITY

Unlimited liability

- 25.1 Neither Party limits its liability for:

25.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);

25.1.2 fraud or fraudulent misrepresentation by it or its employees;

25.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

25.1.4 any liability to the extent it cannot be limited or excluded by Law.

- 25.2 The Supplier's liability in respect of the indemnities in Clause 10.5 (VAT), Clause 14.7 (*Employment Indemnity*), Clause 14.8 (*Income Tax and National Insurance Contributions*), Clause 19 (*IPRs Indemnity*), Schedule 20 (*Staff Transfer*) and the Annexes to Schedule 20 (*Staff Transfer*) shall be unlimited.

- 25.3 The Authority's liability in respect of the indemnities in Clause 14.7 (*Employment Indemnity*), Schedule 20 (*Staff Transfer*) and the Annexes to Schedule 20 (*Staff Transfer*) shall be unlimited.

Financial and other limits

- 25.4 Subject to Clauses 25.1 and 25.2 (*Unlimited Liability*) and Clauses 25.7 and 25.8 (*Consequential losses*):
- 25.4.1 the Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed £20 million;
 - 25.4.2 the Supplier's aggregate liability in respect of all Service Credits incurred in any rolling period of 12 months shall be subject to the Service Credit Cap; and
 - 25.4.3 the Supplier's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed £10 million in any Contract Year provided that where any such Losses have been incurred by the Authority as a result of the Supplier's abandonment of this Agreement or the Supplier's wilful default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement, the Supplier's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed £20 million.
- 25.5 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 25.4.3.
- 25.6 Subject to Clauses 25.1 and 25.3 (*Unlimited Liability*) and Clause 25.7 (*Consequential Losses*) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:
- 25.6.1 the Authority's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of early termination of this Agreement by the Authority pursuant to Clause 31.1.1 (*Termination by the Authority*) or by the Supplier pursuant to Clause 31.3 (*Termination by the Supplier*) shall in no event exceed the amount set out in Paragraph 3.2 of Schedule 11 (*Payments on Termination*); and
 - 25.6.2 the Authority's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of the Authority shall in no event exceed:
 - (i) in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Initial Charges;
 - (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Charges paid and/or due to be paid under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and

- (iii) in relation to Defaults occurring after the end of the Term, an amount equal to the total Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term.

Consequential Losses

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

25.7.1 any indirect, special or consequential Loss; or

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

25.8 Notwithstanding Clause 25.7 but subject to Clause 25.4, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

25.8.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

25.8.2 any wasted expenditure or charges;

25.8.3 the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Agreement;

25.8.4 any compensation or interest paid to a third party by the Authority; and/or

25.8.5 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

Conduct of indemnity claims

25.9 Where under this Agreement one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 19 (*Conduct of Claims*) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

Mitigation

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

26 INSURANCE

The Supplier shall comply with the provisions of Schedule 4 (*Insurance Requirements*) in relation to obtaining and maintaining insurance.

SECTION H – REMEDIES AND RELIEF

27 RECTIFICATION PLAN PROCESS

27.1 In the event that:

27.1.1 there is, or is reasonably likely to be, a Delay;

27.1.2 in any Service Period 25 or more Service Points are awarded; and/or

27.1.3 the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

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

Notification

27.2 If:

27.2.1 the Supplier notifies the Authority pursuant to Clause 27.1 that a Notifiable Default has occurred; or

27.2.2 the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, unless the Notifiable Default also constitutes a Supplier Termination Event and the Authority serves a Termination Notice, the Supplier shall comply with the Rectification Plan Process.

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

Submission of the draft Rectification Plan

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

27.5 The draft Rectification Plan shall set out:

- 27.5.1 full details of the Notifiable Default that has occurred, including a root cause analysis;
 - 27.5.2 the actual or anticipated effect of the Notifiable Default; and
 - 27.5.3 the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).
- 27.6 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 15 (*Dispute Resolution Procedure*).

Agreement of the Rectification Plan

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

28 STEP-IN RIGHTS

- 28.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a "Step-In Notice") that it will be taking action under this Clause 28 (*Step-in Rights*), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 21 (*Confidentiality*)). The Step-In Notice shall set out the following:

- 28.1.1 the action the Authority wishes to take and in particular the Services that it wishes to control (the "Required Action");
 - 28.1.2 the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier's Default;
 - 28.1.3 the date on which it wishes to commence the Required Action;
 - 28.1.4 the time period which it believes will be necessary for the Required Action;
 - 28.1.5 whether the Authority will require access to the Supplier's premises and/or the Sites; and
 - 28.1.6 to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.
- 28.2 Following service of a Step-In Notice, the Authority shall:
- 28.2.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
 - 28.2.2 keep records of the Required Action taken and provide information about the Required Action to the Supplier;
 - 28.2.3 co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and
 - 28.2.4 act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this Clause 28.
- 28.3 For so long as and to the extent that the Required Action is continuing, then:
- 28.3.1 the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
 - 28.3.2 no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 28.4 shall apply to Deductions from Charges in respect of other Services; and
 - 28.3.3 the Authority shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Authority's costs of taking the Required Action.
- 28.4 If the Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:
- 28.4.1 the degradation of any Services not subject to the Required Action; or
 - 28.4.2 the non-Achievement of a Milestone,

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

28.5 Before ceasing to exercise its step in rights under this Clause 28 the Authority shall deliver a written notice to the Supplier (a "Step-Out Notice"), specifying:

28.5.1 the Required Action it has actually taken; and

28.5.2 the date on which the Authority plans to end the Required Action (the "Step-Out Date") subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 28.6

28.6 The Supplier shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a "Step-Out Plan") relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.

28.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

28.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause 28, provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:

28.8.1 limbs (c) or (d) of the definition of a Step-In Trigger Event; or

28.8.2 limbs (e), (f) and (g) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Supplier's Default).

29 AUTHORITY CAUSE

29.1 Notwithstanding any other provision of this Agreement, if the Supplier has failed to:

29.1.1 Achieve a Milestone by its Milestone Date;

29.1.2 provide the Services in accordance with the Service Requirements; and/or

29.1.3 comply with its obligations under this Agreement,

(each a "Supplier Non-Performance"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause 29):

- (i) the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;
- (ii) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:
 - (A) to terminate this Agreement pursuant to Clause 31.1.2 (*Termination by the Authority*); or
 - (B) to take action pursuant to Clause 28 (*Step-In*);
- (iii) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (A) the Milestone Date shall be postponed by a period equal to the period of delay that the Supplier can demonstrate was caused by the Authority Cause;
 - (B) if the Authority, acting reasonably, considers it appropriate, the Transition Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause;
- (iv) where the Supplier Non-Performance constitutes a Service Failure:
 - (A) the Supplier shall not be liable to accrue Service Points or Service Credits;
 - (B) the Authority shall not be entitled to withhold any of the Charges pursuant to Clause 7.2.1 (*Service Failures*);
 - (C) the Supplier shall be entitled to invoice for the Charges for the relevant Services affected by the Authority Cause,

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

29.2 In order to claim any of the rights and/or relief referred to in Clause 29.1, the Supplier shall as soon as reasonably practicable (and in any event within 10 Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a "Relief Notice") setting out details of:

- 29.2.1 the Supplier Non-Performance;
- 29.2.2 the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Agreement;
- 29.2.3 any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
- 29.2.4 the relief and/or compensation claimed by the Supplier.

- 29.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary.
- 29.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any delay or anticipated delay.
- 29.5 Without prejudice to Clause 5.8 (*Continuing obligation to provide the Services*), if a Dispute arises as to:
- 29.5.1 whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or
- 29.5.2 the nature and/or extent of the relief and/or compensation claimed by the Supplier,
- either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.
- 29.6 Any Change that is required to the Transition Plan or to the Charges pursuant to this Clause 29 shall be implemented in accordance with the Change Control Procedure.

30 FORCE MAJEURE

- 30.1 Subject to the remaining provisions of this Clause 30 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 18 (*Business Continuity and Disaster Recovery Plan*)), a Party may claim relief under this Clause 30 for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 30.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 30.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 30 to the extent that consequences of the relevant Force Majeure Event:
- 30.3.1 are capable of being mitigated by any of the Services but the Supplier has failed to do so; and/or
- 30.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.

- 30.4 Subject to Clause 30.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 30.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 30.6 Where, as a result of a Force Majeure Event:
- 30.6.1 an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause 31.1.3 (*Termination by the Authority*); and
- 30.6.2 the Supplier fails to perform its obligations in accordance with this Agreement:
- (i) the Authority shall not be entitled during the continuance of the Force Majeure Event to exercise its rights under Clause 28 (*Step-in Rights*) as a result of such failure; and
- (ii) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.
- 30.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.
- 30.8 Relief for the Affected Party under this Clause 30 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 30.7.

SECTION I – TERMINATION AND EXIT MANAGEMENT

31 TERMINATION RIGHTS

Termination by the Authority

- 31.1 The Authority may terminate this Agreement by issuing a Termination Notice to the Supplier:
- 31.1.1 for convenience at any time, including where the Agreement should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU;

- 31.1.2 if a Supplier Termination Event occurs;
 - 31.1.3 if a Force Majeure Event endures for a continuous period of more than 90 days; or
 - 31.1.4 if the Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,
- and this Agreement shall terminate on the date specified in the Termination Notice.

31.2 Where the Authority:

- 31.2.1 is terminating this Agreement under Clause 31.1.2 due to the occurrence of either limb (b) and/or (g) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
- 31.2.2 has the right to terminate this Agreement under Clause 31.1.2 or Clause 31.1.3, it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

Termination by the Supplier

- 31.3 The Supplier may, by issuing a Termination Notice to the Authority, terminate this Agreement if:
- 31.3.1 the Authority fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds £450,000; and:
 - 31.3.2 such amount remains outstanding 60 Working Days after the receipt by the Authority of a notice of non-payment from the Supplier; and
 - 31.3.3 the Supplier has, between 40 and 50 Working Days after the receipt by the Authority of a notice of non-payment from the Supplier, notified the Authority in writing that non-payment by the Authority could result in the issue of a Termination Notice pursuant to this Clause 31.3,

and this Agreement shall then terminate on the date specified in the Termination Notice (which shall not be less than 20 Working Days from the date of the issue of the Termination Notice).

32 CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

- 32.1 The provisions of Clauses 10.4 and 10.5, 10.6 and 10.7 (*Set-off and Withholding*), 12 (*Records, Report and Audits*), 14.7 (*Employment Indemnity*), 14.8 (*Income Tax and National Insurance Contributions*), 16 (*Intellectual Property Rights*), 17 (*Licences Granted by the Supplier*), 19.1 (*IPRs Indemnity*), 21 (*Confidentiality*), 22 (*Freedom of Information*), 23 (*Protection of Personal Data*), 25 (*Limitations on Liability*), 32 (*Consequences of Expiry or Termination*), 38 (*Severance*), 40 (*Entire Agreement*), 41

(Third Party Rights), 43 (Disputes) and 44 (Governing Law and Jurisdiction), and the provisions of Schedule 1 (Definitions), Schedule 10 (Charges and Invoicing), Schedule 11 (Payments on Termination), Schedule 12 (Financial Reports and Audit Rights), Schedule 15 (Dispute Resolution Procedure), Schedule 16 (Reports and Records Provisions), Schedule 17 (Exit Management), and Schedule 20 (Staff Transfer), shall survive the termination or expiry of this Agreement.

Exit Management

- 32.2 The Parties shall comply with the provisions of Schedule 17 (Exit Management) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Supplier.

Payments by the Authority

- 32.3 If this Agreement is terminated by the Authority pursuant to Clause 31.1.1 (Termination by the Authority) or by the Supplier pursuant to Clause 31.3 (Termination by the Supplier), the Authority shall pay the Supplier the Termination Payment (which shall be the Supplier's sole remedy for the termination of this Agreement).
- 32.4 If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clauses 31.1.2, 31.1.3 and/or 31.2 (Termination by the Authority), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:
- 32.4.1 payments in respect of any Assets or apportionments in accordance with Schedule 17 (Exit Management); and
 - 32.4.2 payments in respect of unpaid Charges for Services received up until the Termination Date.
- 32.5 The costs of termination incurred by the Parties shall lie where they fall if:
- 32.5.1 the Authority terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clauses 31.1.3 or 31.2.2 (Termination by the Authority); or
 - 32.5.2 the Authority terminates this Agreement under Clause 31.1.4.

Payments by the Supplier

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

SECTION J - MISCELLANEOUS AND GOVERNING LAW

33 COMPLIANCE

Health and Safety

- 33.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

- 33.1.1 all applicable Law regarding health and safety; and

33.1.2 the Health and Safety Policy whilst at the Authority Premises.

33.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

Equality and Diversity

33.3 The Supplier shall:

33.3.1 perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

- (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
- (ii) the Authority's equality and diversity policy as provided to the Supplier from time to time; and
- (iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and

33.3.2 take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

Official Secrets Act and Finance Act

33.4 The Supplier shall comply with the provisions of:

33.4.1 the Official Secrets Acts 1911 to 1989; and

33.4.2 section 182 of the Finance Act 1989.

34 ASSIGNMENT AND NOVATION

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

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

34.2.1 any Central Government Body; or

34.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority,

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 34.2.

34.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 34.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

34.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a "Successor Body"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under limb (i) of the definition of Supplier Termination Event (as if references in that limb (i) to the Supplier and the Guarantor and references to a Party in the definition of Insolvency Event were references to the Successor Body).

35 WAIVER AND CUMULATIVE REMEDIES

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

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

36 RELATIONSHIP OF THE PARTIES

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

37 PREVENTION OF FRAUD AND BRIBERY

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

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

37.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

37.2 The Supplier shall not during the term of this Agreement:

- 37.2.1 commit a Prohibited Act; and/or
 - 37.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 37.3 The Supplier shall during the term of this Agreement:
- 37.3.1 establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
 - 37.3.2 keep appropriate records of its compliance with its obligations under Clause 37.3.1 and make such records available to the Authority on request.
- 37.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 37.1 and/or 37.2, or has reason to believe that it has or any of the Supplier Personnel have:
- 37.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 37.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 37.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 37.5 If the Supplier makes a notification to the Authority pursuant to Clause 37.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 12 (*Records, Report and Audits*).
- 37.6 If the Supplier is in Default under Clauses 37.1 and/or 37.2, the Authority may by notice:
- 37.6.1 require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
 - 37.6.2 immediately terminate this Agreement.
- 37.7 Any notice served by the Authority under Clause 37.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

38 SEVERANCE

- 38.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
- 38.2 In the event that any deemed deletion under Clause 38.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 38.3 If the Parties are unable to agree on the revisions to this Agreement within 5 Working Days of the date of the notice given pursuant to Clause 38.2, the matter shall be dealt with in accordance with Paragraph 4 (*Commercial Negotiation*) of Schedule 15 (*Dispute Resolution Procedure*) except that if the representatives are unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 38.3.

39 FURTHER ASSURANCES

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

40 ENTIRE AGREEMENT

- 40.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 40.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 40.3 Nothing in this Clause 40 shall exclude any liability in respect of misrepresentations made fraudulently.

41 THIRD PARTY RIGHTS

- 41.1 The provisions of Clause 19.1 (*IPRs Indemnity*), Paragraphs 2.1 and 2.3 of Part A and Paragraphs 1.4, 2.3 and 2.8 of Part B of Schedule 20 (*Staff Transfer*) and the provisions of Paragraph 6.9 of Schedule 17 (*Exit Management*) (together "Third Party Provisions") confer benefits on persons named in such provisions other than the Parties (each such person a "Third Party Beneficiary") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

41.2 This Agreement is made for the benefit of Central Government Bodies other than the Authority, and the terms of this Agreement are intended to be enforceable by each of them by virtue of the CRTPA.

41.3 Subject to Clause 41.1 and Clause 41.2, a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

41.4 No:

41.4.1 Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision; and

41.4.2 Central Government Bodies other than the Authority may enforce, or take any step to enforce any term of this Agreement,

without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.

41.5 Any amendments or modifications to this Agreement may be made, and any rights created under Clause 41.1 and/or Clause 41.2 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary or any Central Government Bodies other than the Authority.

42 **NOTICES**

42.1 Any notices sent under this Agreement must be in writing.

42.2 Subject to Clause 42.4, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

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

	next Working Day (if after 5.00pm).	
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42.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

	Supplier	Authority
Contact	Mr <input type="text" value="Name"/>	<input type="text" value="Name"/> Aviation Commercial Manager
Address	2 Excel Aviation td The Tiger House Sywell Aerodrome NN6 0BN	Spring Place, 105 Commercial Road, Southampton, SO15 1EG
Email	<input type="text" value="PD"/> @2Excel.uk	<input type="text" value="PD"/> @mcga.gov.uk

42.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 42.2:

42.4.1 Step-In Notices;

42.4.2 Force Majeure Notices;

42.4.3 notices issued by the Supplier pursuant to Clause 31.3 (*Termination by the Supplier*);

42.4.4 Termination Notices; and

42.4.5 Dispute Notices.

42.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 42.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 42.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

42.6 This Clause 42 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 15 (*Dispute Resolution Procedure*)).

43 DISPUTES

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

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

44 GOVERNING LAW AND JURISDICTION

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

44.2 Subject to Clause 43 (*Disputes*) and Schedule 15 (*Dispute Resolution Procedure*) (including the Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

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

Executed as a deed by 2 EXCEL AVIATION) LIMITED acting by a director in the presence of:

Personal Data

Director's signature

Personal Data

Director's name

Witness' signature:

Personal Data

Witness' name (BLOCK CAPITALS):

Name

Witness' address:

Personal Data

Witness' occupation:

Signed by)
for and on behalf of MARITIME &)
COASTGUARD AGENCY acting on behalf)
of the Secretary of State for Transport)

Personal Data

Signature

Personal Data

Name

Schedule 1

DEFINITIONS

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

"Achieve" means in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule 9 (*Transition*);

and **"Achieved"** and **"Achievement"** shall be construed accordingly;

"Acquired Rights Directive" means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;

"Affected Party" means the Party seeking to claim relief in respect of a Force Majeure Event;

"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 with, that body corporate from time to time;

"Annual Contract Report" has the meaning given in Schedule 12 (*Financial Reports and Audit Rights*);

"Assets" means all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Authority Assets;

"ATP Milestone" means the Milestone linked to Authority to Proceed for the relevant Services set out in the Transition Plan;

"Audit" means any exercise by the Authority of its Audit Rights pursuant to Clause 12 (*Records, Report and Audits*) and Schedule 12 (*Financial Reports and Audit Rights*);

"Audit Agents" means:

- (a) the Authority's internal and external auditors;
- (a) the Authority's statutory or regulatory auditors;
- (b) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (c) HM Treasury or the Cabinet Office;
- (d) any party formally appointed by the Authority to carry out audit or similar review functions; and
- (e) successors or assigns of any of the above;

"Audit Rights" means the audit and access rights referred to in Schedule 12 (*Financial Reports and Audit Rights*);

"Authority Assets" means the Authority Materials and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services;

"Authority Cause" means any material breach by the Authority of any of the Authority Responsibilities, except to the extent that such breach is:

- (a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or
- (b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;

"Authority Data" means

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
 - (i) supplied to the Supplier by or on behalf of the Authority; and/or
 - (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or
- (b) any Personal Data for which the Authority is the Data Controller;

"Authority Information Security Policy" means the Authority's information security policy in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Change Control Procedure;

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

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

"Authority Premises" means premises owned, controlled or occupied by the Authority and/or any Central Government Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);

"Authority Representative" means the representative appointed by the Authority pursuant to Clause 11.4 (*Representatives*);

"Authority Requirements" means the requirements of the Authority set out in Schedule 2 (*Services Description*), Schedule 3 (*Service Points, Service Credits and Performance Monitoring*), Schedule 4 (*Insurance Requirements*), and Schedule 16 (*Reports and Records Provisions*), Schedule 17 (*Exit Management*);

"Authority System" means the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Agreement which is owned by the Authority or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Services;

"Authority to Proceed" means or "ATP" the authorisation to the Supplier to commence the provision of the relevant Services to the Authority, provided by the Authority in the form of a Milestone Achievement Certificate in respect of the ATP Milestone;

"BCDR Plan" means the plan set out in Schedule 18 (*Business Continuity and Disaster Recovery Plan*), as may be amended from time to time;

"Breakage Costs Payment" has the meaning given in Schedule 11 (*Payments on Termination*);

"Central Government Body" means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

"Change" means any change to this Agreement;

"Change Authorisation Note" means a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2 of Schedule 14 (*Change Control Procedure*);

"Change Control Procedure" means the procedure for changing this Agreement set out in Schedule 14 (*Change Control Procedure*);

"Change in Law" means any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;

"Change Request" means a written request for a Contract Change substantially in the form of Annex 1 of Schedule 14 (*Change Control Procedure*);

"Charges" means the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 10 (*Charges and Invoicing*);

"Commercially Sensitive Information" means the information listed in Schedule 6 (*Commercially Sensitive Information*) comprising the information of a commercially sensitive nature relating to:

- (a) the pricing of the Services;
- (b) details of the Supplier's IPRs; and
- (c) the Supplier's business and investment plans;

which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;

"Comparable Supply" means the supply of services to another customer of the Supplier that are the same or similar to any of the Services;

"Condition Precedent" has the meaning given in Clause 4.2 (*Condition Precedent*);

"Confidential Information" means:

- (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:
 - (i) the Disclosing Party Group; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;
- (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;
- (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
- (d) Information derived from any of the above, but not including any Information which:
 - (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
 - (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
 - (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;
 - (iv) was independently developed without access to the Confidential Information; or
 - (v) relates to the Supplier's:
 - (A) performance under this Agreement; or
 - (B) failure to pay any Sub-contractor as required pursuant to Clause 15.11.1 (*Supply Chain Protection*);

"Contract Change" means any change to this Agreement other than an Operational Change;

"Contract Year" means:

- (a) a period of 12 months commencing on the Effective Date; or
- (b) thereafter a period of 12 months commencing on each anniversary of the Effective Date;

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

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

"Critical Performance Failure" means:

- (a) the Supplier accruing in aggregate 50 or more Service Points in any rolling period of three months; or
- (b) the Supplier accruing Service Credits which meet or exceed the Service Credit Cap;

"CRTPA" means the Contracts (Rights of Third Parties) Act 1999;

"Data Controller" has the meaning given in the GDPR;

"Data Loss Event" means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

"Data Processor" has the meaning given in the GDPR;

"Data Protection Impact Assessment" means an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data;

"Data Protection Legislation" means:

- (a) the GDPR, the LED and any applicable national implementing Laws as amended from time to time
- (b) the DPA 2018 to the extent that it relates to processing of personal data and privacy;
- (c) all applicable Law about the processing of personal data and privacy;

"Data Protection Officer" has the meaning given in the GDPR;

"Data Subject" has the meaning given in the GDPR;

"Data Subject Access Request" means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

"Deductions" means all Service Credits or any other deduction which is paid or payable to the Authority under this Agreement;

"Default" means any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:

- (a) in the case of the Authority, of its employees, servants, agents; or
- (b) in the case of the Supplier, of its Sub- contractors or any Supplier Personnel,

in connection with or in relation to the subject- matter of this Agreement and in respect of which such Party is liable to the other;

"Delay" means as delay in the Achievement of a Milestone Date;

"Deliverable" means an item or feature delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Agreement;

"Disclosing Party" has the meaning given in Clause 21.1 (*Confidentiality*);

"Disclosing Party Group" means:

- (a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and
- (b) where the Disclosing Party is the Authority, the Authority and any Central Government Body with which the Authority or the Supplier interacts in connection with this Agreement;

"Dispute" means any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

"Dispute Notice" means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;

"Dispute Resolution Procedure" means the dispute resolution procedure set out in Schedule 15 (*Dispute Resolution Procedure*);

"Documentation" means descriptions of the Services and Service Requirements, details of the Supplier System, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:

- (a) is required to be supplied by the Supplier to the Authority under this Agreement;
- (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build,

deploy, run, maintain, upgrade and test the individual systems that provide Services;

- (c) is required by the Supplier in order to provide the Services; and/or
- (d) has been or shall be generated for the purpose of providing the Services;

"DOTAS" means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

"DPA 2018" means Data Protection Act 2018;

"Due Diligence Information" any information supplied to the Supplier by or on behalf of the Authority prior to the Effective Date;

"Effective Date" means the later of:

- (a) the date on which this Agreement is signed by both Parties; and
- (b) the date on which the Condition Precedent has been satisfied or waived in accordance with Clause 4.2 (*Condition Precedent*);

"EIRs" means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;

"Employee Liabilities" means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;

- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

"Employment Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;

"Estimated Initial Charges" means the estimated Charges payable by the Authority during the period of 12 months from the first Service Commencement Date, as set out in the Financial Model;

"Euro Compliant" means that: (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Authority's business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):

- (a) be able to perform all such functions in any number of currencies and/or in euros;
- (b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations;
- (c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;
- (d) incorporate protocols for dealing with rounding and currency conversion;
- (e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and
- (f) permit the input of data in euro and display an outcome in euro where such data, supporting the Authority's normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK;

"Exit Management" means services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in Schedule 17 (*Exit Management*);

"Exit Plan" means the plan produced and updated by the Supplier during the Term in accordance with Paragraph 4 of Schedule 17 (*Exit Management*);

"Expedited Dispute Timetable" means the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 15 (*Dispute Resolution Procedure*);

"Expert" has the meaning given in Schedule 15 (*Dispute Resolution Procedure*);

"Expert Determination" means the process described in Paragraph 6 of Schedule 15 (*Dispute Resolution Procedure*);

"Extension Period" means the First Extension Period and/or the Second Extension Period;

"Financial Model" the financial model attached to this Agreement on disk as Attachment 1 as amended from time to time in accordance with this Agreement and approved by the Authority in accordance with Paragraph 2 of Part B of Schedule 12 (*Financial Reports and Audit Rights*);

"Financial Reports" has the meaning given in Schedule 12 (*Financial Reports and Audit Rights*);

"Financial Transparency Objectives" has the meaning given in Schedule 12 (*Financial Reports and Audit Rights*);

"First Extension Period" means a period of one year from the end of the Initial Term;

"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 any relevant Central Government Body in relation to such Act;

"Force Majeure Event" any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier's or a Sub-contractor's supply chain;

"Force Majeure Notice" means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;

"Former Supplier" has the meaning given in Schedule 20 (*Staff Transfer*);

"GDPR" means the General Data Protection Regulation (Regulation (EU) 2016/679)

"General Anti-Abuse Rule" means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

"General Change in Law" means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;

"Good Industry Practice" means at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services

to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;

"Guarantee" means the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of this Agreement (which is in the form set out in Schedule 22 (*Guarantee*), or any guarantee acceptable to the Authority that replaces it from time to time;

"Guarantor" means 2 Excel (Holdings) Ltd, a company registered in England and Wales with company number 10656583 and whose registered office is at 72 Fielding Road, London W4 1DB;

"Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others;

"Health and Safety Policy" means the health and safety policy of the Authority and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;

"HMRC" means HM Revenue & Customs;

"Impact Assessment" has the meaning given in Schedule 14 (*Change Control Procedure*);

"Indemnified Person" means the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Agreement;

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

"Initial Term" means the period commencing on the Effective Date and expiring five years after the Service Commencement Date;

"Insolvency Event" means:

- (a) the other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:
 - (i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or
 - (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;
- (b) the other Party commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of

that other Party with one or more other companies or the solvent reconstruction of that other Party;

- (c) a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;
- (d) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within 14 days;
- (e) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) where the other Party is a company, a LLP or a partnership:
 - (i) a petition is presented (which is not dismissed within 14 days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
 - (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over the other Party;
 - (iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver; or
 - (iv) (being a partnership) the holder of an agricultural floating charge over the assets of that other Party has become entitled to appoint or has appointed an agricultural receiver; or
- (g) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

"Intellectual Property Rights" or "IPRs" means:

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

"IPRs Claim" means any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, in combination with any item not supplied or recommended by the Supplier pursuant to this Agreement or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Agreement;

"IT" means information and communications technology;

"Key Personnel" means those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 21 (*Key Personnel*) against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 14.3 and 14.4 (*Key Personnel*);

"Key Roles" means a role described as a Key Role in Schedule 21 (*Key Personnel*) and any additional roles added from time to time in accordance with Clause 14.4 (*Key Personnel*);

"Key Sub-contract" means each Sub-contract with a Key Sub-contractor;

"Key Sub-contractor" means any Sub-contractor:

- (a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or
- (b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Agreement (as set out in the Financial Model);

"Know-How" means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party's possession before this Agreement;

"Law" means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;

"LED" means Law Enforcement Directive (Directive (EU) 2016/680);

"Losses" means losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;

"Management Information" means the management information specified in Schedule 3 (*Service Points, Service Credits and Performance Monitoring*), Schedule 10 (*Charges and Invoicing*) and Schedule 13 (*Governance*) to be provided by the Supplier to the Authority;

"Milestone" means an event or task described in the Transition Plan which, if applicable, shall be completed by the relevant Milestone Date;

"Milestone Achievement Certificate" means the certificate to be granted by the Authority when the Supplier has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 2 of Schedule 9 (*Transition*);

"Milestone Date" means the target date set out against the relevant Milestone in the Transition Plan by which the Milestone must be Achieved;

"month" means a calendar month and "monthly" shall be interpreted accordingly;

"Multi-Party Dispute Resolution Procedure" means has the meaning given in Paragraph 9.1 of Schedule 15 (*Dispute Resolution Procedure*);

"Multi-Party Procedure Initiation Notice" means has the meaning given in Paragraph 9.2 of Schedule 15 (*Dispute Resolution Procedure*);

"Notifiable Default" shall have the meaning given in Clause 27.1 (*Rectification Plan Process*);

"Occasion of Tax Non-Compliance" means:

- (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;

"Operating Environment" means the Authority System and the Sites;

"Operational Change" means any change in the Supplier's operational procedures which in all respects, when implemented:

- (a) will not affect the Charges and will not result in any other costs to the Authority;
- (b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services;
- (c) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and
- (d) will not require a change to this Agreement;

"Other Supplier" means any supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware including without limitation suppliers involved in aerial spray services, search and rescue services and counter pollution aerial services;

"Partial Termination" means the partial termination of this Agreement to the extent that it relates to the provision of any part of the Services as further provided for in Clause 31.2.2 (*Termination by the Authority*);

"Parties" and **"Party"** have the meanings respectively given on page 1 of this Agreement;

"Performance Monitoring Report" has the meaning given in Schedule 3 (*Service Points, Service Credits and Performance Monitoring*);

"Personal Data" has the meaning given in the GDPR;

"Personal Data Breach" has the meaning given in the GDPR;

"Prohibited Act" means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority 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;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts; or
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority; or
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

"Protective Measures" means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

"Quality Plans" has the meaning given in Clause 6.1 (*Quality Plans*);

"Quarter" means the first three Service Periods after the Service Commencement Date and each subsequent three Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement);

"Recipient" has the meaning given in Clause 21.1 (*Confidentiality*);

"Records" has the meaning given in Schedule 16 (*Records Provisions*);

"Rectification Plan" means a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;

"Rectification Plan Failure" means:

- (a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 27.4 (*Submission of the draft Rectification Plan*) or 27.8 (*Agreement of the Rectification Plan*);
- (b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 27.7 (*Agreement of the Rectification Plan*);
- (c) the Supplier failing to rectify a material Default within the later of:
 - (i) 30 Working Days of a notification made pursuant to Clause 27.2 (*Notification*); and
 - (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default;
- (d) a Service Failure re-occurring in respect of the same Service Requirement for the same (or substantially the same) root cause in any of the three Service Periods subsequent to the Service Period in which the initial Service Failure occurred; and/or
- (e) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of 6 months for the same (or substantially the same) root cause as that of the original Notifiable Default;

"Rectification Plan Process" means the process set out in Clauses 27.4 (*Submission of the Rectification Plan*) to 27.9 (*Agreement of the Rectification Plan*);

"Registers" has the meaning given in Schedule 17 (*Exit Management*);

"Relevant IPRs" means IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority or a third party in the fulfilment of the Supplier's obligations under this Agreement including IPRs in the Supplier Background IPRs;

"Relevant Requirements" means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

"Relevant Tax Authority" means HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;

"Relevant Transfer" means a transfer of employment to which the Employment Regulations applies;

"Relief Notice" has the meaning given in Clause 29.2 (*Authority Cause*);

"Replacement Services" means any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Agreement, whether those services are provided by the Authority internally and/or by any third party;

"Replacement Supplier" means any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);

"Request For Information" means a Request for Information under the FOIA or the EIRs;

"Required Action" has the meaning given in Clause 28.1.1 (*Step-In Rights*);

"Second Extension Period" means a period of one year from the end of the First Extension Period;

"Service Commencement Date" means in relation to an Service, the later of:

- (a) the date identified in the Transition Plan upon which the Service is to commence; and
- (b) where the Transition Plan states that the Supplier must have Achieved the relevant ATP Milestone before it can commence the provision of that Service, the date upon which the Supplier Achieves the relevant ATP Milestone;

"Service Credit Cap" means:

- (a) in the period of 12 months from the first Service Commencement Date to occur after the Effective Date, 20% of the Estimated Initial Charges; and
- (b) during the remainder of the Term, 20% of the Charges paid and/or due to be paid to the Supplier under this Agreement in the period of 12 months immediately preceding the Service Period in respect of which Service Credits are accrued;

"Service Credits" means credits payable by the Supplier due to the occurrence of one or more Service Failures, calculated in accordance with Paragraph 5 of Schedule 3 (*Service Points, Service Credits and Performance Monitoring*);

"Service Failure" means a failure to satisfy the Service Requirements;

"Service Period" means a calendar month, save that:

- (a) the first service period shall begin on the first Service Commencement Date and shall expire at the end of the calendar month in which the first Service Commencement Date falls; and

- (b) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term;

"Service Points" means in relation to a Service Failure, the points that are set out against the relevant Service Requirement in the third column of the table in Schedule 2 (*Services Description*);

"Service Requirements" means the requirements set out in the first column of the table in Schedule 2 (*Services Description*);

"Services" means any and all of the services to be provided by the Supplier under this Agreement, including those set out in Schedule 2 (*Services Description*);

"Service Transfer Date" has the meaning given in Schedule 20 (*Staff Transfer*);

"Services Description" means the services description set out in Schedule 2 (*Services Description*);

"Sites" means any premises (including the Authority Premises, the Supplier's premises or third party premises):

- (a) from, to or at which:
 - (i) the Services are (or are to be) provided; or
 - (ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or
- (b) where:
 - (i) any part of the Supplier System is situated; or
 - (ii) any physical interface with the Authority System takes place;

"Specific Change in Law" means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;

"Staffing Information" has the meaning given in Schedule 20 (*Staff Transfer*);

"Step-In Notice" has the meaning given in Clause 28.1 (*Step-In Rights*);

"Step-In Trigger Event" means:

- (a) any event falling within the definition of a Supplier Termination Event;
- (b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;
- (c) the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Agreement;
- (d) the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause 28 (*Step-In Rights*) is necessary;

- (e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or
- (f) a need by the Authority to take action to discharge a statutory duty;

"Step-Out Date" has the meaning given in Clause 28.5.2 (*Step-In Rights*);

"Step-Out Notice" has the meaning given in Clause 28.5 (*Step-In Rights*);

"Step-Out Plan" has the meaning given in Clause 28.6 (*Step-In Rights*);

"Sub-contract" means any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;

"Sub-contractor" means any third party with whom:

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

"Sub-processor" means any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement;

"Successor Body" has the meaning given in Clause 34.4 (*Assignment and Novation*);

"Supplier Background IPRs" means:

- (a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or
- (b) Intellectual Property Rights created by the Supplier independently of this Agreement, which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;

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

"Supplier Non-Performance" has the meaning given in Clause 29.1 (*Authority Cause*);

"Supplier Personnel" means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier's obligations under this Agreement;

"Supplier Representative" means the representative appointed by the Supplier pursuant to Clause 11.3 (*Representatives*);

"Supplier Software" means software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services;

"Supplier Solution" means the Supplier's solution for the Services set out in Schedule 5 (*Supplier Solution*) including any Annexes of that Schedule;

"Supplier System" means the information and communications technology system used by the Supplier in implementing and performing the Services including the Supplier Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);

"Supplier Termination Event" means:

- (a) the Supplier's level of performance constituting a Critical Performance Failure;
- (b) the Supplier committing a material Default which is irremediable;
- (c) as a result of the Supplier's Default, the Authority incurring Losses in any Contract Year which exceed 80% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 25.6.1 (*Financial Limits*);
- (d) a Rectification Plan Failure;
- (e) where a right of termination is expressly reserved in this Agreement, including pursuant to:
 - (i) Clause 19 (*IPRs Indemnity*); and/or
 - (ii) Clause 37.6.2 (*Prevention of Fraud and Bribery*);
- (f) the representation and warranty given by the Supplier pursuant to Clause 3.2.9 (*Warranties*) being materially untrue or misleading;
- (g) the Supplier committing a material Default under Clause 10.8 (*Promoting Tax Compliance*) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 10.8 (*Promoting Tax Compliance*) which in the reasonable opinion of the Authority are acceptable;
- (h) the Supplier committing a material Default under any of the following Clauses:
 - (i) Clause 5.5.10 (*Services*);
 - (ii) Clause 23 (*Protection of Personal Data*);
 - (iii) Clause 22 (*Transparency and Freedom of Information*);
 - (iv) Clause 21 (*Confidentiality*); and

- (v) Clause 33 (*Compliance*); and/or in respect of any security requirements set out in Schedule 2 (*Services Description*), and/or in respect of any requirements set out in Schedule 20 (*Staff Transfer*);
- (i) an Insolvency Event occurring in respect of the Supplier or the Guarantor;
- (j) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority with the Guarantor or with another guarantor which is acceptable to the Authority);
- (k) a change of Control of the Supplier or a Guarantor unless:
 - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within 6 months of the later of the date on which the Change of Control took place or the date on which the Authority was given notice of the Change of Control;
- (l) a change of Control of a Key Sub-contractor unless, within 6 months of being notified by the Authority that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Authority pursuant to Clause 15.6 (*Appointment of Key Sub- contractors*);
- (m) the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Agreement; or
- (n) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law.

"Supporting Documentation" means sufficient information in writing to enable the Authority reasonably to assess whether the Charges and other sums due from the Authority detailed in the information are properly payable;

"Tactical Portfolio Management Board" means the body described in Paragraph 5 of Schedule 13 (*Governance*);

"Term" means the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement;

"Termination Assistance Notice" has the meaning given in Paragraph 5.1 of Schedule 17 (*Exit Management*);

"Termination Assistance Period" means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 5.2 of Schedule 17 (*Exit Management*);

"Termination Date" means the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;

"Termination Notice" means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination;

"Termination Payment" means the payment determined in accordance with Schedule 11 (*Payments on Termination*);

"Termination Services" means the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 17 (*Exit Management*), and any other services required pursuant to the Termination Assistance Notice;

"Third Party Beneficiary" has the meaning given in Clause 41.1 (*Third Party Rights*);

"Third Party Provisions" has the meaning given in Clause 41.1 (*Third Party Rights*);

"Transferring Assets" has the meaning given in Paragraph 6.2.1 of Schedule 17 (*Exit Management*);

"Transferring Supplier Employees" has the meaning given in Schedule 20 (*Staff Transfer*);

"Transition Plan" means the plan set out in Schedule 9 (*Transition Plan*);

"Transparency Information" has the meaning given in Clause 22.1 (*Transparency and Freedom of Information*);

"Transparency Reports" has the meaning given in Schedule 16 (*Reports and Records Provisions*);

"UK" means the United Kingdom;

"VAT" value added tax as provided for in the Value Added Tax Act 1994; and

"Working Day" any day other than a Saturday, Sunday or public holiday in England and Wales.

Schedule 2

SERVICES DESCRIPTION

1 Definitions

1.1 In this Schedule the following initialisms, acronyms and definitions shall apply:

"Accepted" means the Supplier has accepted any Task which can only be refused by the Supplier on safety or meteorological grounds and **"Accept"** and **"Acceptance"** shall be construed accordingly;

"ACRO" means ACRO Criminal Records Office;

"AIS" means the automatic identification system used for shipping;

"AOC" means Air Operator's Certificate;

"ARCC" Aeronautical Rescue Coordination Centre;

"Available" means the System is fully serviceable, including all role equipment, capable of legal flight and ready to take off from the base with a full complement of crew;

"Baseline" means Baseline Security Clearance;

"BF" means Border Force;

"BLOS" means Beyond Line of Sight;

"Co-Ordinating Authority" means the ARCC, the relevant OGD or an emergency service as confirmed by the Tasking Authority;

"CTC" means Counter-Terrorism Clearance;

"Daylight" means sunrise to sunset;

"EPIRB" means Electronic Position Indicating Radio Beacon;

"Media" means data storage material including disks, tapes, CDs and DVDs;

"MMO" means Marine Management Organisation;

"Night Time Hours" means any hour or time which is not Daylight;

"OGD" means Central Government Bodies other than the Authority;

"Oil" means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products;

"Planned Tasks" means Tasks included in the Programme;

"PLB" means Personal Locator Beacon;

"Pollutant" means substances which are likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate users of the sea;

"**Programme**" means the programme of Tasks provided by the Authority to the Supplier each month as updated from time to time;

"**ROA**" or Radius of Action means the maximum distance of the airborne system at cruise speed in still air with 30 minutes on scene to include hover, searching and winching, followed by landing at the point of departure with VFR fuel minima; to be calculated at sea level in ISO conditions;

"**SAR**" means Search and Rescue;

"**SART**" means SAR transponders capable of being detected;

"**SP**" means Service Point;

"**System**" means the entire system including any assets, equipment, hardware, software and personnel that will deliver the capability;

"**Target**" means the subject of a Task including a beacon, casualty, survivor, vessel, vehicle, wreckage or any other object or person;

"**Task**" means an activity included in the Programme and/or instructed by the ARCC;

"**Tasking Authority**" has the meaning given to it in paragraph 2.1 of this Schedule 2.1 (*Service Requirements*);

"**UKEEZ**" means UK Exclusive Economic Zone as illustrated at <https://www.gov.uk/guidance/uk-maritime-limits-and-law-of-the-sea>;

"**UKSRR**" means UK Search and Rescue Region as set out in Annex A of the following link:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/593127/mca_uksar.pdf;

"**Unplanned Tasks**" means Tasks which are not included in the Programme;

"**VMS**" means Vessel Monitoring System which is a satellite-based monitoring system which at regular intervals provides data to the fisheries authorities on the location, course and speed of fishing vessels;

"**WGS84**" means World Geodetic System 1984 which is a standard that provides Latitude, Longitude and date/time stamp for position fix of the Target.

2 **Introduction**

- 2.1 The Authority requires the Supplier to provide a non-military aerial surveillance service in the UK to the Authority. The Authority requires an all-weather 24/7 capability to provide aerial surveillance, tracking, detection, observation, support to SAR and counter pollution operations within the UKEEZ and UKSRR. This service shall be interoperable with OGDs and neighbouring nations. The Authority, through the ARCC, will act as the sole tasking authority ("**Tasking Authority**") but the Task may be co-ordinated by any Co-ordinating Authority, as directed by the Tasking Authority, dependent upon the Task.

3 Services Description

UR No.	Service Requirement	Service Points
1.0	Availability	
	The Supplier shall provide a System which is available 95% of the time	<p>5 SPs where the System is available less than 95% of the time in the Service Period but equal to or greater than 94% of the time in the Service Period.</p> <p>7 SPs where the System is available less than 94% of the time in the Service Period but equal to or greater than 90% of the time in the Service Period.</p> <p>10 SPs where the System is available less than 90% of the time in the Service Period but equal to or greater than 70% of the time in the Service Period.</p> <p>15 SPs where the System is available less than 70% of the time in the Service Period.</p>
2.0	Tasking	
2.1	The Supplier shall only Accept Tasks from the ARCC which may be by any auditable means (including by telephone and email) or if the System is already tasked by the most appropriate means.	3 SPs for each failure
2.2	The Supplier shall liaise with the relevant Co-Ordinating Authority after issue of the Task and shall comply with the instructions of the Co-Ordinating Authority.	3 SPs for each failure
2.3	The Supplier shall complete (as determined by the ARCC or the Co-Ordinating Authority) all Planned Tasks in accordance with the Programme. The Programme will be provided to the Supplier by the Authority no later than ten (10) Working Days prior to start of the calendar month in which the Planned Task was programmed.	1 SP for each failure
2.4	The Supplier shall complete (as determined by the ARCC or the Co-Ordinating Authority) all Unplanned Tasks having confirmed Acceptance	2 SPs for each failure
2.5	The Supplier shall ensure that the System shall be airborne and in transit to each Accepted Unplanned Task within 60 minutes of notification by the Tasking Authority between 08:00 and 22:00 local time.	2 SPs for each failure

UR No.	Service Requirement	Service Points
2.6	The Supplier shall ensure that the System shall be airborne and in transit to each Accepted Unplanned Task within 120 minutes of notification by the Tasking Authority between 22:01 and 07:59 local time.	2 SPs for each failure
2.7	The Supplier shall comply with any requirement of the Authority to reschedule or re-task Planned Tasks to be commenced between 08:00 – 22:00 local time provided the Authority has given at least 6 hours' notice of such rescheduling or re-tasking.	1 SP for each failure
2.8	The Supplier shall comply with any requirement of the Authority to reschedule or re-task Planned Tasks to be commenced between 22:01 and 07:59 local time provided the Authority has given at least 10 hours' notice of such rescheduling or re-tasking.	1 SP for each failure
2.9	Whilst engaged upon non- routine Tasks, the Supplier shall utilise opportunities to conduct concurrent or subsequent routine activity	3 SPs for each failure
2.10	The Supplier shall ensure that the System produces plans to support the Task.	1 SP for each failure
2.11	The Supplier shall ensure that the System displays on the aircraft and shares in near real time off aircraft the plan to support the Task.	2 SPs for each failure
2.12	The Supplier shall ensure that the System calculates and promulgates the planned probability of detection and produces and displays on the aircraft and shares electronically in near real time off aircraft overlays of the area covered by all sensors to support the Task.	2 SPs for each failure
2.13	The Supplier shall ensure that the System responds to an incident that requires operations over an extended timeframe in a geographical area whilst minimizing the effect upon existing and Planned Tasks.	4 SPs for each failure
2.14	The Supplier shall where required conduct two concurrent Tasks (whether Planned Tasks or Accepted Unplanned Tasks or both).	2 SPs for each failure
3.0	Operations	
3.1	The Supplier shall ensure that the System operates throughout the UK EEZ.	5 SPs for each failure
3.2	The Supplier shall ensure that the System operates, upon request, in neighbouring states in compliance with all relevant laws and regulations of such states.	4 SPs for each failure

UR No.	Service Requirement	Service Points
3.3	The Supplier shall ensure that the System detects targets and areas of interest anywhere in the UK EEZ within 150 minutes of take-off.	5 SPs for each failure
3.4	The Supplier shall ensure that the System remains on scene once transit to area of interest is complete for a minimum of 120 minutes	5 SPs for each failure
3.5	The Supplier shall ensure that the System operates in all UK weather conditions.	5 SPs for each failure
3.6	The Supplier shall ensure that the System operates day or night in Visual Flight Rules (VFR) and Instrument Flight Rules (IFR) conditions with no restrictions.	5 SPs for each failure
3.7	The Supplier shall communicate any limitations on System performance including: <ul style="list-style-type: none"> • platform • sensors • personnel • support equipment • infrastructure • climatic conditions immediately to the Authority by: <ul style="list-style-type: none"> • telephone; • email; and • web based application 	5 SPs for each failure
3.8	The Supplier shall provide near real time asset position information to the Authority electronically in a format that is available on the Authority's system(s). Positional information shall comply with WGS84 standard and provide latitude, longitude and date/time stamp for position fix. Examples of the data sources the Authority's systems can accept include "SATCOM Direct" and "Skytrac" systems.	2 SPs for each failure over 15 minutes in duration
3.9	The Supplier shall ensure that the System overlays the area covered by all sensors upon the aircraft track.	2 SPs for each failure
3.10	The Supplier shall ensure that the System detects, categorises and tracks up to two target vessels in all light and weather conditions and makes available the information to the Authority in near real time.	3 SPs for each failure
3.11	The Supplier shall ensure that the System detects and categorises up to two static Targets; on land, on sea and in air, in all light and weather conditions and makes	3 SPs for each failure

UR No.	Service Requirement	Service Points
	available the information to the Authority in near real time.	
3.12	The Supplier shall ensure that the System detects, categorises and tracks up to two moving Targets; on land, on sea and in air, in all light and weather conditions and makes available the information to the Authority in near real time.	3 SPs for each failure
3.13	The Supplier shall ensure that the System detects and localises thermal variances and provides a report to the Authority, with imagery, identifying hot spots on board a casualty vessel or the extent of Oil / chemical product spills.	3 SPs for each failure
3.14	The Supplier shall ensure that the System identifies and homes on up to two transponders and emergency emitters (including AIS, Aircraft Transponders, PLB, SARTs, EPIRB, VMS) and makes available the information to the Authority in near real time.	3 SPs for each failure
3.15	The Supplier shall ensure that the System captures video and still high definition (HD) imagery in all light levels at all stages of flight. Images/videos shall be date time, and position stamped in accordance with PACE and disclosure principles for evidential purposes. Such imagery shall identify vessels via PLN (Port Letter Numbers) or name as displayed on the side (specified in EC Regulation 1381/1987 Annex 2). Data provided shall be fully compliant with EU Inspire directive. Positional information (of target and capture system) shall comply with WGS84 standard and provide Latitude, Longitude and date/time stamp for position fix of the target.	4 SPs for each failure
3.16	The Supplier shall ensure that imagery captured shall be viewable in flight on board the aircraft and viewable in near real time on the Authority's tasking/coordination system. Such imagery shall identify vessels via PLN (Port Letter Numbers) or name as displayed on the side (specified in EC Regulation 1381/1987 Annex 2). Data provided shall be fully compliant with EU Inspire directive. Positional information (of target and capture system) shall comply with WGS84 standard and provide Latitude, Longitude and date/time stamp for position fix of the target.	4 SPs for each failure
3.17	The Supplier shall ensure that the HD imagery captured shall be viewable on the Authority's tasking/coordination system within 45 minutes post flight. Such imagery shall identify vessels via PLN (Port Letter Numbers) or name as displayed on the side (specified in EC Regulation 1381/1987 Annex 2). Data	4 SPs for each failure

UR No.	Service Requirement	Service Points
	provided shall be fully compliant with EU Inspire directive. Positional information (of target and capture system) shall comply with WGS84 standard and provide Latitude, Longitude and date/time stamp for position fix of the target.	
3.18	The Supplier shall ensure that the System detects and classifies Oil in all light levels by day and night and provides a report to the Authority classifying: <ol style="list-style-type: none"> 1. by Daylight only, the Oil by type, thickness and coverage within an hour of finding the Oil; 2. by Night Time Hours, a report to the Authority of the location and coverage of the Oil within an hour of finding it. 	3 SPs for each failure
3.19	The Supplier shall ensure that the System detects and classifies any Pollutants (other than Oil) in all light levels, by Daylight and Night Time Hours, and provides a report to the Authority classifying the Pollutant(s) by physical nature and coverage within an hour of finding the Pollutant(s).	3 SPs for each failure
3.20	The Supplier shall ensure that the System detects the presence of Oil (beyond a sheen) and Pollutants within the search area at least at the sea surface coverage rate per hour specified in the Supplier's Solution.	3 SPs for each failure
3.21	The Supplier shall ensure that the System states and promulgates the actual probability of detection achieved to the Authority.	4 SPs for each failure
3.22	The Supplier shall ensure that the System produces a report of the areas covered by the sensors, overlaid onto the aircraft track, viewable on the aircraft and shared electronically in near real time with the Authority.	5 SPs for each failure
3.23	The Supplier shall ensure that all data captured by the System sensors is stored off aircraft post flight and made available in a web-based application to the Authority immediately upon request. On expiry or termination of this Agreement the Supplier shall ensure that all data is handed over to the Authority for continued storage.	5 SPs for each failure
3.24	The Supplier shall ensure that the System safely deploys items from the aircraft in flight, including: <ol style="list-style-type: none"> 1. a first aid kit; 2. a communication device; and 3. method of marking position from the aircraft to the surface in support of the mission 	5 SPs for each failure

UR No.	Service Requirement	Service Points
4.0	Equipment and Support	
4.1	The Supplier shall ensure that assets engaged in the delivery of this capability shall be immediately visibly identifiable and include HMCG branding as per Appendix A and OGD branding.	5 SPs for each failure
4.2	The Supplier shall ensure that the System complies with SD-2018/001.	5 SPs for each failure
5.0	Communications	
5.1	The Supplier shall ensure that the System shall communicate by voice LOS and BLOS allowing communications between: <ul style="list-style-type: none"> • the Tasking Authority; • the Co-Ordinating Authority; • other air vehicles; • Air Traffic Services; • surface vessels and installations; • emergency responders; • military assets; • ground assets; • persons in distress or potential distress equipped with mobile phones; • Linking communications between the Co-Ordinating Authority and vessels/aircraft/assets; and • any other third parties as required by the Authority. 	1 SP for each failure
5.2	The Supplier shall ensure that the System shall communicate LOS and BLOS securely by voice to facilitate safe operation and conduct of the Task allowing communications between: <ul style="list-style-type: none"> • the Co-Ordinating Authority; • other air vehicles; • Emergency responders; and • Equipped surface vessels 	1 SP for each failure
5.3	The Supplier shall ensure that the System sends and receives digital information including images, documents and video in near real time LOS and BLOS with: <ul style="list-style-type: none"> • the Tasking Authority and the Co-Ordinating Authority; • other air vehicles; 	2 SPs for each failure

UR No.	Service Requirement	Service Points
	<ul style="list-style-type: none"> • Air Traffic Services; • surface vessels and installations; • emergency responders; • military assets; • ground assets; • persons in distress or potential distress equipped with mobile phones; and • any other third parties as required by the Authority. 	
5.4	<p>The Supplier shall ensure that the System sends and receives secure digital information including images, documents and video in near real time LOS and BLOS with:</p> <ul style="list-style-type: none"> • the Co-Ordinating Authority; • other air vehicles; • emergency responders; and • Border Force cutters 	2 SPs for each failure
5.5	<p>The Supplier shall ensure that the System provides concurrent voice and data communications with one voice and one data channel.</p> <p>The Supplier shall ensure that safe aircraft operations shall remain unaffected by this requirement.</p>	3 SPs for each failure
6.0	Personnel	
6.1	<p>The Supplier shall ensure that all personnel handling sensitive information shall hold appropriate security clearance and that all foreign nationals must be cleared via ACRO in addition to Baseline or CTC checks.</p>	5 SPs for each failure
6.2	<p>The Supplier shall ensure that the System carries one supernumerary crew upon request.</p>	5 SPs for each failure
6.3	<p>The Supplier shall ensure that System operators shall be trained and warranted as Marine Enforcement Officers.</p>	5 SPs for each failure
7.0	Reporting	
7.1	<p>The Supplier shall ensure that the daily crew list is submitted to the ARCC through a web based application at the beginning of the shift, and notify the ARCC of any crew changes during a given shift.</p>	1 SP for each failure

UR No.	Service Requirement	Service Points
7.2	The Supplier shall ensure that pre-mission daily reports are submitted to the ARCC through a web based application for non- operational and planned flights including the following: <ul style="list-style-type: none"> • training flights; • all other flying (take-off and landing times and an outline purpose of the flight to be provided). 	1 SP for each failure
7.3	The Supplier shall ensure that, on the conclusion of any Task, a Post Task Report is submitted to the Authority through a web based application within one (1) Working Day.	2 SPs for each failure
7.4	The Supplier shall ensure that monthly Flying Activity Returns are submitted to the Authority through a web based application.	5 SPs for each failure
7.5	The Supplier shall ensure that training achievement records are readily available for audit purposes through a web based application.	2 SPs for each failure
7.6	The Supplier shall provide to the Authority through a web based application all Mandatory Occurrence Reports. This information will be a copy of that reported to the regulatory authority and the Supplier's head office.	5 SPs for each failure
7.7	The Supplier shall provide to the Authority through a web based application a report on all hazards and safety issues.	4 SPs for each failure
7.8	The Supplier shall provide details to the Authority through a web based application all quality issues directly related to the service and its delivery.	3 SPs for each failure

Appendix A

Her Majesty's Coast Guard Livery Example





Marine Management Organisation

To be placed either side of the cockpit. The size of the logo shall be appropriate to the size of the aircraft used.

Schedule 3

SERVICE POINTS, SERVICE CREDITS AND PERFORMANCE MONITORING

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Performance Monitoring Report" has the meaning given in Paragraph 6.1; and

"Performance Review Meeting" the regular meetings between the Supplier and the Authority to manage and review the Supplier's performance under this Agreement, as further described in Paragraph 6.4.

2 MONITORING

2.1 The Supplier shall monitor its performance against each Service Requirement and shall send the Authority a report detailing the level of service actually achieved in accordance with Paragraph 6.

2.2 The Supplier shall report in near real time full details of service usage and availability on a protected web-based application which shall be integrated into the Authority's system and which shall be accessible to the Authority at all times.

2.3 Service Points, and therefore Service Credits, shall be calculated in accordance with Paragraphs 3, 4 and 5.

3 SERVICE POINTS

3.1 If the level of performance of the Supplier during a Service Period meets a Service Requirement, no Service Points shall accrue to the Supplier in respect of that Service Requirement.

3.2 If the level of performance of the Supplier during a Service Period does not meet a Service Requirement, Service Points shall accrue to the Supplier in respect of that Service Requirement as set out in the column titled "Service Points" in Schedule 2.

4 REPEAT FAILURES

4.1 If Service Points are awarded in respect of the same Service Requirement in any two consecutive Service Periods, the second and any subsequent award of Service Points shall be doubled.

5 SERVICE CREDITS

5.1 Each Service Point shall be converted into a Service Credit of three thousand pounds sterling (£3000).

5.2 The Authority shall use the Performance Monitoring Reports provided pursuant to Paragraph 6, among other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each Service Period.

6 PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 6.1 Within 10 Working Days of the end of each Service Period, the Supplier shall provide a report to the Authority Representative which summarises the performance by the Supplier against each Service Requirement as more particularly described in Paragraph 6.2 (the "**Performance Monitoring Report**"). The Supplier shall ensure that the Performance Monitoring Report shall be available on the web-based application referred to in Paragraph 2.2.

Performance Monitoring Report

- 6.2 The Performance Monitoring Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information:

Information in respect of the Service Period just ended

- 6.2.1 for each Service Requirement, the actual performance achieved over the Service Period, and that achieved over the previous three Service Periods;
- 6.2.2 the number of Service Points awarded in respect of each Service Requirement;
- 6.2.3 the Service Credits to be applied;
- 6.2.4 the conduct and performance of any agreed periodic tests that have occurred;
- 6.2.5 such other details as the Authority may reasonably require from time to time; and

Information in respect of previous Service Periods

- 6.2.6 a rolling total of the number of Service Points awarded in respect of each Service Requirement;
- 6.2.7 the amount of Service Credits that have been incurred by the Supplier over the past six Service Periods.
- 6.3 The Performance Monitoring Report shall be reviewed and its contents agreed by the Parties at the next Performance Review Meeting held in accordance with Paragraph 6.4.
- 6.4 The Parties shall attend meetings on a monthly basis (unless otherwise agreed) to review the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
- 6.4.1 take place within 5 Working Days of the Performance Monitoring Report being issued by the Supplier;
- 6.4.2 take place at such location and time (within normal business hours) as the Authority shall reasonably require (unless otherwise agreed in advance);
- 6.4.3 be attended by the Supplier Representative and the Authority Representative; and

- 6.4.4 consider the reasons for failures by the Supplier to satisfy the Service Requirements.
- 6.5 The Authority shall be entitled to raise any additional questions and/or request any further information from the Supplier regarding any failure to meet a Service Requirement.
- 7 PERFORMANCE RECORDS**
- 7.1 The Supplier shall keep appropriate documents and records (including staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc.) in relation to the Services being delivered. Without prejudice to the generality of the foregoing, the Supplier shall maintain accurate records of call histories for a minimum of 12 months and provide prompt access to such records to the Authority upon the Authority's request. The records and documents of the Supplier shall be available for inspection by the Authority and/or its nominee at any time and the Authority and/or its nominee may make copies of any such records and documents.
- 7.2 In addition to the requirement in Paragraph 7.1 to maintain appropriate documents and records, the Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance of the Supplier both before and after each Service Commencement Date and the calculations of the amount of Service Credits for any specified period.
- 7.3 The Supplier shall ensure that the Performance Monitoring Report and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by the Authority are available to the Authority on-line and are capable of being printed.

8 PERFORMANCE VERIFICATION

The Authority reserves the right to verify the Supplier's performance under this Agreement.

Schedule 4

INSURANCE REQUIREMENTS

- 1.1 Without prejudice to its liability to indemnify or otherwise be liable to the Authority under this Agreement, the Supplier shall for the periods specified in Annex 1 (*Required Insurances*) to this Schedule 4 take out and maintain or procure the taking out and maintenance of the insurances as set out under this Schedule 4 and Annex 1 (*Required Insurances*) to this Schedule 4 and any other insurances as may be required by Law (together the "Insurances"). The Supplier shall ensure that each of these Insurances are effective in each case not later than the date on which the relevant risk commences.
- 1.2 The Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 1.3 Where specified in Annex 1 (*Required Insurances*) to this Schedule 4 the Supplier shall ensure that the relevant policy of insurance shall contain an indemnity to principals clause or additional insureds equivalent, under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third party property damage, and for which the Supplier is legally liable in respect of this Agreement.
- 1.4 The Supplier shall discharge in full all duties and obligations in respect of the Insurance Act 2015 when procuring, maintaining or amending any Insurance(s) required by this Agreement, including in circumstances where the Supplier is required to name the Authority on any such insurance policies to protect the Authority's separate interests.
- 1.5 Without limiting the other provisions of this Agreement, the Supplier shall:
 - 1.5.1 take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
 - 1.5.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
 - 1.5.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.
- 1.6 Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":
 - 1.6.1 if a claim or claims which do not relate to this Agreement are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Supplier shall immediately submit to the Authority:
 - (i) details of the policy concerned; and

- (ii) its proposed solution for maintaining the minimum limit of indemnity specified; and
- 1.6.2 if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Agreement are paid by insurers, the Supplier shall:
 - (i) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Agreement; or
 - (ii) if the Supplier is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Authority full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.
- 1.7 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 1.8 The Authority may elect (but shall not be obliged) where notice has been provided to the Supplier to purchase any insurance which the Supplier is required to maintain pursuant to this Agreement but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.
- 1.9 The Supplier shall, upon the date of this Agreement and within fifteen (15) days after the renewal of any of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet the requirements of this Schedule 4 and Annex 1 (*Required Insurances*) to this Schedule 4. The supply to the Authority of any evidence of insurance cover in compliance with the requirements of this Schedule 4 shall not imply acceptance by the Authority that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory, in either case, for the purposes of this Agreement nor be a waiver of the Supplier's liability under this Agreement.
- 1.10 The Supplier shall notify the Authority at least ten (10) days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 1.11 Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) working days after any insurance claim in excess of fifty thousand pounds (£50,000) relating to this Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim. The Supplier shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 1.12 Where any Insurance requires payment of a premium, the Supplier shall be liable for such premium.
- 1.13 Where any Insurance referred to in this Schedule 4 and Annex 1 (*Required Insurances*) to this Schedule 4 is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or

deductible and shall indemnify the Authority against any loss or claims which would otherwise be insured but for the excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.

Annex 1: REQUIRED INSURANCES

1 Third Party (Non Aviation) Public Liability Insurance

1.1 Insured

Supplier

1.2 Interest

To indemnify the insured (in paragraph 1.1 above) in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

1.2.1 death or bodily injury to or sickness, illness or disease contracted by any person;

1.2.2 loss of or damage to property;

happening during the period of insurance (in paragraph 1.4 below) and arising out of or in connection with the Agreement and the provision of the Services.

1.3 Limit of indemnity

Not less than ten million pounds (£10,000,000) in respect of any one occurrence, the number of occurrences being unlimited, but ten million pounds (£10,000,000) any one occurrence and in the aggregate per annum in respect of products and pollution liability (to the extent insured by the policy).

1.4 Period of insurance

From the date of this Agreement for the duration of the Agreement and renewable on an annual basis unless agreed otherwise.

1.5 Territorial limits

Worldwide

1.6 Cover features and extensions

1.6.1 Indemnity to principals clause (or additional insured equivalent)

1.6.2 Legal defence costs

1.6.3 Contingent motor liability

1.7 Principal exclusions

1.7.1 War and related perils.

1.7.2 Nuclear and radioactive risks.

1.7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.

- 1.7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- 1.7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 1.7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 1.7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 1.7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

1.8 Maximum deductible threshold

Not to exceed two hundred and fifty pounds (£250) for each and every third party property damage claim (personal injury claims to be paid in full).

2 Aviation Liability Insurance

2.1 Insured

Supplier

2.2 Interest

To indemnify the insured (in paragraph 2.1 above) in respect of all sums that they may become legally liable to pay as damages in respect of

2.2.1 death or bodily injury to any person; and

2.2.2 loss of or damage to property;

happening during the period of insurance (in paragraph 2.4 below) and arising out of or in connection with the Agreement excluding legal liability in respect of non-aviation liability coverage specified in Third Party (Non Aviation) Public Liability Insurance of this Annex 1 to Schedule 4.

2.3 Limit of indemnity

Not less than a combined single limit for bodily injury and property damage, one hundred million pounds (£100,000,000) any one occurrence the number of occurrences being unlimited but in the annual aggregate in respect of aviation product liability (to the extent insured by the policy).

2.4 Period of insurance

From the date of the Agreement and for the duration of the Agreement and renewable on an annual basis unless agreed otherwise by the Parties.

2.5 Territorial limits

Worldwide

2.6 Cover Features and Extensions

2.6.1 Personal injury extension clause in accordance with prevailing aviation insurance market practice AVN60A (or equivalent).

2.6.2 Extended coverage endorsement (aviation liability) in accordance with prevailing aviation insurance market practice AVN52E (or equivalent).

2.7 Principal exclusions

2.7.1 Nuclear risks exclusion clause (AVN38B or equivalent)

2.7.2 War, hijacking and other perils exclusion clause (AVN48B or equivalent)

2.7.3 Noise and pollution and other perils exclusion clause (AVN46B or equivalent)

2.7.4 Date recognition exclusion (AVN2000A subject to AVN2001A or equivalent)

2.7.5 Asbestos (AGM248800003) or equivalent)

2.7.6 Contracts (Rights of Third Parties) Act 1999 (AVN72 or equivalent)

2.8 Maximum deductible threshold

2.8.1 There is no maximum deductible threshold for claims made under this paragraph.

3 Compulsory insurances (employers liability insurance and third party motor liability insurance)

3.1 The Supplier is required to meet its United Kingdom and all other statutory or insurances required by law worldwide in full. Insurances are required to comply with all statutory requirements including, but not limited to, United Kingdom employers' liability insurance and motor third party liability insurance.

3.2 Where relevant, motor third party airside liability insurance with a limit of indemnity of not less than fifty million pounds (£50,000,000) in respect of any one occurrence the number of occurrences being unlimited in any annual period of insurance in respect of any relevant claims associated with the Agreement.

Schedule 5

SUPPLIER SOLUTION

UR No	Service Requirement	Supplier Solution
1.1	The Supplier shall provide a system which is available 95% of the time	<p><u>Description</u></p> <p>The Service will be delivered with two dedicated King Air 200 aircraft, based at 2 Excel's 24hr operational base at Doncaster Sheffield Airport (DSA), painted in the Authority livery, equipped with industry-leading sensors and operated by exceptional crews.</p> <p><u>Removal of Third-Party Risk</u></p> <p>High levels of availability and readiness will be achieved, in part, by the removal of third-party risk. 2 Excel has invested considerably over the past decade to bring the following capabilities in-house:</p> <ul style="list-style-type: none"> • Design and certification • Production • Maintenance • Operations • Ground support • Training • CAMO <p>The aircraft will be owned by 2 Excel, the staff will be employees not contractors, no sub-contracts will be let; the whole Service will be designed, built and delivered in-house.</p> <p><u>Platform Description</u></p> <p>Both aircraft will be modified with mission power and communications systems and be fully capable of delivering the requirement. Each day, one of the aircraft will be declared as the Primary and the other as the Secondary. There will be periods when the Secondary aircraft is in maintenance (discussed later in this section).</p>

		<p><u>Surveillance Capability</u></p> <p>The primary sensors (radar, sensor turret and line-scanner) will be mounted in an under-belly special missions pod known as the LEAP-MP. In designing the mission system for this capability, 2 Excel has leveraged previous STCs and modifications made to its fleet – this reduces cost and risk:</p> <ul style="list-style-type: none"> • The LEAP-MP pod is an evolution of the LEAP-R which has an EASA STC. • The Mission power system has already been installed to other Company King Airs. • 2 Excel holds numerous STCs for sensor turrets, antenna installations, satcom and cabin reconfigurations. <p><u>Single Pod Option</u></p> <p>This proposal is written for a single surveillance pod that will be moved, with sensors in-situ, between the aircraft when required. A mission rack containing the satcom and broadband communications system will also be transferred between the aircraft. Fixed equipment will be permanently installed on both aircraft, for instance cockpit equipment, antennas and the drop-tube (Section 3 details the equipment).</p> <p><u>Availability</u></p> <p>At a flying rate of 1000hrs/yr, there will be 4 pod moves (single pod option) and approximately 15-20 days when only one aircraft is available.</p> <p>The single pod option will deliver availability in excess of 95%. Resourcing a second set of surveillance equipment would increase this further towards 99%, but our experience has been that 100% requires even more resource.</p> <p><u>Access to the 2 Excel Fleet</u></p> <p>It is assumed that the Authority cannot accept capability gaps for aircraft down-time. 2 Excel will guarantee the provision of a Service by providing access to the wider fleet of surveillance aircraft.</p> <p>Whilst the pod is being moved from one aircraft to the other, or in the unlikely event of both King</p>
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		<p>Airs being unavailable, a supplementary service will be provided using another 2 Excel surveillance aircraft. The primary option will be a PA-31 Navajo, equipped with a sensor turret, mission system and satellite and VHF communications.</p> <p>In addition, 2 Excel has 2 further King Air 200 special-missions aircraft which are used for other tasks. Subject to the flying programme, these are also available to cover for unplanned downtime of the Authority aircraft.</p> <p><u>Basing</u></p> <p>DSA is a 24/7/365 international airport with excellent road and rail links. It has full IFR facilities and robust snow and ice clearing equipment and plans. Unlike similar airports in the UK, DSA is not subject to slot-time restrictions, enabling rapid response ops to take place without restriction.</p> <p><u>Personnel</u></p> <p>2 Excel would roster 2 crews each 24hr period. Sufficient crews will be employed and trained to cover unexpected absences such as sickness. The flight-crew would work to the Company's existing approved FTL scheme. No changes are required for this contract. Accommodation will be provided close to the airport to minimise fatigue and ensure the most efficient use of crew.</p> <p>Additional Ops and Ramp staff will be provided to ensure continuity of service 24/7/365.</p> <p>An increase to the Company overhead will be made to cover the additional requirement on departments such as CAM, Compliance, admin, HR and other support functions.</p> <p><u>Company Structure and Management</u></p> <p>The Service will be managed and delivered using 2 Excel's existing framework. As an AOC holder, and Part SPO operator, 2 Excel has all overhead functions required to ensure the successful delivery of this Contract. Customer liaison, contract management, CAMO staff and other support personnel are all located at DSA.</p>
2.1	The Supplier shall only Accept Tasks from the ARCC which may be by any	2 Excel Ops controllers will accept tasking from the ARCC through auditable means. Ops SOPs will be followed to ensure that tasking is understood, recorded and auditable.

	auditable means (including by telephone and email) or if the System is already tasked by the most appropriate means.	On a daily basis, tasking from the Authority will be accepted by 2 Excel Ops, through the most suitable means (e.g. email, telephone etc). If the aircraft is already airborne, direct tasking from the ARCC or via 2 Excel Ops (via satphone) can be used. It will also be possible to use email or the AIMS mission-system chat functionality to task or re-task the aircraft once it is already airborne.
2.2	The Supplier shall liaise with the relevant Co-Ordinating Authority after issue of the Task and shall comply with the instructions of the Co-Ordinating Authority	After issue of the task, liaison with the relevant Co-Ordinating Authority will be the responsibility of the Duty Ops Controller, assisted where required by the Duty Manager and Liaison Officer. Once a task has been accepted, the instructions of the Co-ordinating Authority shall be followed.
2.3	The Supplier shall complete (as determined by the ARCC or the Co-Ordinating Authority) all Planned Tasks in accordance with the Programme. The Programme will be provided to the Supplier by the Authority no later than ten (10) Working Days prior to start of the calendar month in which the Planned Task was programmed.	On receipt of the Programme, the Liaison Officer, in conjunction with the Planning Cell (a 2 Excel Management Team), will produce the Flying Programme for the coming month. The Flying Programme will be held on LEON, 2 Excel's Ops Management Software application. On a day-to-day basis, changes to the flying programme to achieve the task will be made depending on weather and other factors. A review of the tasks achieved vs. the programme will be made weekly, and the flying programme updated accordingly.
2.4	The Supplier shall complete (as determined by the ARCC or the Co-Ordinating Authority) all Unplanned Tasks having confirmed Acceptance	Task acceptance will be confirmed by 2 Excel Ops, which will initiate the dispatch. The flight crew will then conduct all unplanned tasks in accordance with the direction of the ARCC.
2.5	The Supplier shall ensure that the System shall be airborne and in transit to each Accepted Unplanned	The flight-crew shall be able to dispatch within 45 mins of notification by the Authority between 08:00 and 22:00 local time. Each shift, the off-going crew shall ensure that the aircraft is ready for immediate dispatch, and

	Task within 60 minutes of notification by the Tasking Authority between 08:00 and 22:00 local time.	the on-coming crew shall carry out start-work checks. Aircraft shall always be fuelled for immediate dispatch.
2.6	The Supplier shall ensure that the System shall be airborne and in transit to each Accepted Unplanned Task within 120 minutes of notification by the Tasking Authority between 22:01 and 07:59 local time.	The flight-crew shall be able to dispatch within 60 mins of notification by the Authority between 22:01 and 07:59 local time.
2.7	The Supplier shall comply with any requirement of the Authority to reschedule or re-task Planned Tasks to be commenced between 08:00 – 22:00 local time provided the Authority has given at least 6 hours' notice of such rescheduling or re-tasking.	The Supplier shall comply with any requirement of the Authority to reschedule or re-task Planned Tasks to be commenced between 08:00 – 22:00 local time provided the Authority has given at least 2 hours' notice of such rescheduling or re-tasking.
2.8	The Supplier shall comply with any requirement of the Authority to reschedule or re-task Planned Tasks to be commenced between 22:01 and 07:59 local time provided the Authority has given at least 10 hours' notice of such rescheduling or re-tasking.	The Supplier shall comply with any requirement of the Authority to reschedule or re-task Planned Tasks to be commenced between 08:00 – 22:00 local time provided the Authority has given at least 2 hours' notice of such rescheduling or re-tasking.
2.9	Whilst engaged upon non-routine Tasks, the Supplier shall utilise opportunities to conduct concurrent or	During unplanned tasking, opportunities to achieve routine tasking will be taken; the 2 Excel Ops team will identify these tasks and relay them to the crew before flight, or via the satcom.

	subsequent routine activity	
2.10	The Supplier shall ensure that the System produces plans to support the Task.	<p>For pre-planned tasks, flight planning will be completed by the flight-crew and Ops staff, using a system called Rocket Route (RR) for IFR sectors, and SkyDemon for VFR tactical planning.</p> <p>For reactionary tasking, a basic flight-plan will be created by the Ops staff, with flight-crew completing tactical plans en-route to the task.</p> <p>The plans will be uploaded to the crew EFBs before departure.</p>
2.11	The Supplier shall ensure that the System displays on the aircraft and shares in near real time off aircraft the plan to support the Task.	<p>The planned track and sensor search patterns will be displayed on the AIMS Mission Management System (MMS) on the aircraft. AIMS output can be shared with a ground-station in the ARCC, or any other Authority location, in near real-time.</p> <p>The AIMS MMS is discussed in more detail in the UR3.0 Response</p>
2.12	The Supplier shall ensure that the System calculates and promulgates the planned probability of detection and produces and displays on the aircraft and shares electronically in near real time off aircraft overlays of the area covered by all sensors to support the Task.	<p>The System will determine the PD by evaluating the sensor detection performance against the specified target and search area uncertainty volume. This will produce a PD value which can be promulgated to the Authority via the MMS.</p> <p>The AIMS MMS is discussed in more detail in the Section 3 Response</p> <p>Sensor overlays can be shared over the satellite link using AIMS.</p>
2.13	The Supplier shall ensure that the System responds to an incident that requires operations over an extended timeframe in a geographical area whilst minimizing the effect upon existing and	<p>In the event of an ongoing task, 2 Excel will use its extended surveillance fleet to ensure that appropriate assets are allocated to each task.</p> <p>If the Primary asset is repeatedly tasked to a single incident, the delivery of the pre-planned Programme can be continued using other 2 Excel aircraft. The choice of aircraft type would be agreed between the 2 Excel Duty Manager/Liaison Officer and the Authority; other King Airs and Navajos would be available, with varying sensor fits possible.</p>

	Planned Tasks.	Use of non-Authority assets would be charged at a DOC rate - 2 Excel will offer additional assets at the Authority's disposal with no addition to the monthly standing charge (more detail is provided in Section 2.14 below).
2.14	The Supplier shall, where required, conduct two concurrent Tasks (whether Planned Tasks or Accepted Unplanned Tasks or both).	The supplier will have the capability to conduct concurrent ops, using aircraft from the wider 2 Excel surveillance fleet. Liaison between the ARCC and the 2 Excel Liaison Officer would ensure that the best-suited platform is allocated to each task: For instance, an overland mission for the Border Force might only require an EO/IR turret and VHF radio, not the whole sensor suite.
3.1	The Supplier shall ensure that the System operates throughout the UK EEZ.	The System can operate throughout the whole UK EEZ, all of which falls within 2 Excel's existing AOC region. Operations outside of the EEZ, covering the whole UK SRR would be enabled by extension of the approved AOC region out to 30° West. The King Air 200 has a Radius of Action (ROA) of 632 nautical miles (nm).
3.2	The Supplier shall ensure that the System operates, upon request, in neighbouring states in compliance with all relevant laws and regulations of such states.	A fully compliant Service can be provided in neighbouring states. The operation would be conducted in accordance with EASA Part SPO, allowing unrestricted operations in all EASA states. In the event that the UK is not a member of EASA, then a permit may be required for operations in the third country; however, from the airworthiness, compliance, licensing and insurance viewpoints, there would be no obstacles to obtaining such permissions, e.g. the aircraft would not be restricted to operations within UK airspace.
3.3	The Supplier shall ensure that the System detects targets and areas of interest anywhere in the UK EEZ within 150 minutes of take-off.	The King Air 200 has a Radius of Action of 632 nautical miles (nm) and a maximum continuous cruise of 260kts True Airspeed. From our Main Operating Base (MOB) at Doncaster Sheffield Airport the aircraft can fly to any point within the EEZ within 150 minutes of take-off. When the aircraft and sensor performance are combined the System can achieve coverage of the furthest point in the EEZ from our MOB within 104 minutes.
3.4	The Supplier shall ensure that the System remains on	The King Air 200 has a Max Useable Fuel of 3645lbs, and a loiter burn rate of 500 lbs/hr. Even if the area of interest is at the furthest point of the EEZ from our MOB the System can remain on

	scene once transit to area of interest is complete for a minimum of 120 minutes	scene in excess of 120 minutes.
3.5	The Supplier shall ensure that the System operates in all UK weather conditions.	The King Air 200 and LEAP surveillance pod are certified and approved to operate Day or night in all UK weather conditions, including known icing conditions.
3.6	The Supplier shall ensure that the System operates day or night in Visual Flight Rules (VFR) and Instrument Flight Rules (IFR) conditions with no restrictions.	The King Air 200 is certified and approved to operate day or night in both VFR and IFR conditions. 2 Excel is certified and approved for VFR and IFR operations.
3.7	The Supplier shall communicate any limitations on System performance including: <ul style="list-style-type: none"> • platform • sensors • personnel • support equipment • infrastructure • climatic conditions immediately to the Authority by: <ul style="list-style-type: none"> • telephone; • email; and • web-based application 	At the start of each day 2 Excel will submit a Report to the Authority detailing the status of the Service. Any deficiencies at that time, or that emerge throughout the subsequent period, will be communicated by all required means.
3.8	The Supplier shall provide near real time asset position information to the Authority electronically in a format that is available on the Authority's system(s). Positional information shall comply with WGS84	<p>The aircraft will be fitted with a Spidertracks GPS tracking system, which uses the Iridium network. The system provides a continuous GPS position and track which can be monitored from any internet connected device.</p> <p>The system provides lat/long/date/time and all flights are automatically archived. Third parties (e.g. OGDs) can be given logins to track the aircraft from their devices (PC, tablet, phone etc).</p> <p>In addition, the satellite airtime provider will be SATCOM Direct. GPS asset tracking will be</p>

	standard and provide latitude, longitude and date/time stamp for position fix. Examples of the data sources the Authority's systems can accept include "SATCOM Direct" and "Skytrac" systems.	available over the Inmarsat network, through SATCOM Direct.
3.9	The Supplier shall ensure that the System overlays the area covered by all sensors upon the aircraft track.	Sensor footprint overlays are one of the core features of AIMS. The system will display these on the aircraft in real-time, and over the satellite link to the AIMS ground-station in the ARCC or deployed location.
3.10	The Supplier shall ensure that the System detects, categorizes and tracks up to two target vessels in all light and weather conditions and makes available the information to the Authority in near real time.	<p>The primary sensors of 2 Excel's System are all class leading capabilities, a theme that runs throughout this description of mission system capability:</p> <p>The WESCAM MX-15HDI EO/IR sensor turret is a high-end military surveillance system, as good as any currently in-service in the UK. Leonardo's Osprey is their newest Active Electronic Scanned Array (AESA) radar and is the most capable and complete surveillance radar for land, sea and air applications available today. It is the primary sensor for maritime surveillance and paired with the MX-15 provides a formidable capability.</p> <p>The Osprey radar's Maritime Surveillance mode is optimised for long range maritime detection and tracking of up to 1000 targets out to 200nm. The radar operates in the X-Band which is optimised for maritime, long range performance in all light and weather conditions. The LEAP-MP which forms part of the System was created by 2 Excel specifically for Leonardo's X-band radars and therefore generates maximum performance from the sensor.</p> <p>Near real time updates are via the Aviator-SP broadband satellite communication system which is fully integrated with the AIMS mission management software.</p>
3.11	The Supplier shall ensure that the System detects and categorizes up to two static Targets; on land, on sea and in air, in all light and weather conditions and	The Osprey 30 Radar capability is derived from the extensive capabilities of Leonardo's Overland (PicoSAR), Maritime (SeaSpray) and Air (Vixen) radars. The radar in combination with the HD EO/IR sensor and other mission system sensors can detect and categorise up to 1000 targets. The Osprey radar performance is robust in all light and weather conditions and information can be made available to the Authority via AIMS and BLOS comms.

	<p>makes available the information to the Authority in near real time.</p>	<p>On Land</p> <ul style="list-style-type: none"> • Ground Imaging (SpotSAR & StripSAR) <p>SpotSAR and StripSAR Spotlight (Spot) SAR is used to generate a high-resolution image centred at an Operator-designated location. A number of SpotSAR resolutions are provided by the Osprey Radar – 0.15m, 0.3m and 1.0m – thus providing high detail and image clarity to the Operator of the selected area.</p> <p>StripSAR imaging generates a continuous rolling wide area strip map of a selected range swath. StripSAR is typically used when little a-priori knowledge of target position is available e.g. in a search scenario where a search pattern is usually adopted to search a wide geographical area. The Osprey Radar provides a number of StripSAR resolutions – 1m, 3m and 10m</p> <p>On Sea</p> <ul style="list-style-type: none"> • Maritime Small Target Detection <p>Small Target Detection One of the great challenges in maritime surveillance is the detection of small targets in high clutter. The Osprey Radar uses electronic beam steering and coherent processing to provide exceptional small target detection capability in high sea states and from high altitude.</p> <ul style="list-style-type: none"> • ISAR / Range Profiling <p>The Osprey Radar is provided with an ISAR mode. With a nominated track of interest, the Radar will form either a 2-dimensional ISAR image or a 1-dimensional High Resolution Range (HRR) profile. Both outputs can be used to provide key dimensions and shape profiles of the target to aid target classification.</p> <p>In Air</p> <ul style="list-style-type: none"> • Air-to-Air Intercept <p>An Air-to-Air Intercept mode is provided in the Osprey Radar that permits the Operator to detect and track multiple airborne targets.</p>
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		<p>The Air-to-Air Intercept mode has a maximum instrumented range of 50 nm. Track While Scan (TWS) and Single Target Tracking (STT) schemes are available to choose between wide area detection and tracking of multiple airborne targets (TWS) or alternatively high accuracy, fast update tracking performance against a single target of interest (STT).</p> <ul style="list-style-type: none"> Probability of detection is calculated by comparing the RCS of the target (a predictor of detection range) with the rate of search (calculated from maximum predicted detection range and speed) and endurance of the aircraft. If the entire search volume can be covered within the endurance limit of the aircraft then a high PD (>0.7) will be achieved.
3.12	<p>The Supplier shall ensure that the System detects, categorises and tracks up to two moving Targets; on land, on sea and in air, in all light and weather conditions and makes available the information to the Authority in near real time.</p>	<p>The System is as per 3.11 with the addition of the following moving target specific additions.</p> <ul style="list-style-type: none"> Ground Moving Target Indication (GMTI) <p>The radar can contribute to the System overland picture by employing the GMTI mode to detect moving land objects down to very low Minimum Detectable Velocities (MDV). If these objects (people, cars, trucks etc) are detected then they can be automatically tracked in isolation in a rural environment (up to 1000 targets for Osprey). The radar will categorise speed and size of target based on aspect (RCS). Additionally, the radar can take very high resolution 'pictures' both as single images or with a moving picture of points of interest on the ground using the SAR imaging modes.</p> Maritime Moving Target Indication (TI) <p>The Osprey Radar has a coherent Maritime MTI mode that provides "go-fast" target detection over the sea. The geo-referenced target detections are overlaid on the MMS. In this mode, detection performance is provided out to 50 nm. The target detections can be optionally output in STANAG 4607 format (for military End Users).</p> Probability of detection is calculated by comparing the RCS of the target (a predictor of detection range) with the rate of search (calculated from maximum predicted detection range and speed) and endurance of the aircraft. If the entire search volume can be covered within the endurance limit of the aircraft then a high PD (>0.7) will be achieved.
3.13	<p>The Supplier shall ensure that the System detects and</p>	<p>The aircraft will be installed with an L-3/WESCAM MX-15HDi, a high-performance airborne surveillance system.</p>

	<p>localises thermal variances and provides a report to the Authority, with imagery, identifying hot spots on board a casualty vessel or the extent of Oil / chemical product spills.</p>	<p>The MX-15HDi features a high-performance gimbal and associated 4-axis stabilisation for excellent long-range/high magnification performance. With high quality optics, this results in industry leading target detection, recognition and identification ranges for a 15" class turret. A built-in Inertial Measurement Unit (IMU), mounted directly to the optical bench, provides for highly accurate target localisation of targets. The system also features advanced image processing for real-time image enhancement on all sensors, including high-performance haze penetration and improved feature recognition and Identification</p> <p>The system's integrated advanced multi-mode video tracker provides for robust target tracking overland or sea, supported by intelligent break-lock/coast functionality to ensure rapid re-acquisition.</p> <p>The main sensor in the MX-15HDi is a Mid-Wave IR (MWIR – 3 to 5 µm) Thermal Imaging (TI) camera, which is capable of long-range hot spot detection and high-resolution imaging of persons and objects</p> <p>The mission equipment also includes an IR/UV Line Scanner, which incorporates a Long Wave IR (LWIR – 8 to 12 µm) camera, optimised to detect and map thermal variances on the sea surface.</p>
3.14	<p>The Supplier shall ensure that the System identifies and homes on up to two transponders and emergency emitters (including AIS, Aircraft Transponders, PLB, SARTs, EPIRB, VMS) and makes available the information to the Authority in near real time.</p>	<p>Compliance of this requirement will be achieved through integration of sensors procured specifically for the purpose of homing and tracking, in addition to comprehensive integration of the System's other major surveillance sensors (Turret and Radar).</p> <p>The MMS will combine inputs from the Osprey 30 radar to integrate AIS for the identification and tracking of multiple transponders and incorporates a Beacon Detection mode for Search and Rescue Transponders (SART).</p> <p>The RHOTHETA RT-600 is a SAR DF specific system capable of capturing and indicating directions to any source of an emergency signal on VHF, UHF, all nineteen 406 MHz COSPAS-SARSAT frequencies, and all 88 maritime channels. The RT-600 can be extended by additional frequency bands to cover a frequency range from 118 to 470 MHz at its full stage of extension.</p> <p>The aircraft will be installed with a Traffic Collision Avoidance System (TCAS) to provide for airborne Situational Awareness (SA) and homing of aircraft transponders. This can be combined</p>

		with the Osprey's Air to Air mode to enhance the in-air capabilities. VMS will be accessed using the BLOS SATCOM.
3.15	The Supplier shall ensure that the System captures video and still high definition (HD) imagery in all light levels at all stages of flight. Images/videos shall be date time, and position stamped in accordance with PACE and disclosure principles for evidential purposes. Such imagery shall identify vessels via PLN (Port Letter Numbers) or name as displayed on the side (specified in EC Regulation 1381/1987 Annex 2). Data provided shall be fully compliant with EU Inspire directive. Positional information (of target and capture system) shall comply with WGS84 standard and provide Latitude, Longitude and date/time stamp for position fix of the target.	The MX-15HDi Electro-Optic Turret, incorporates High Definition (HD) IR and EO sensors. The TI features a 1280 x 1024 pixel cooled MWIR sensor; a HD (1920 x 1080) continuous zoom colour camera is supported by a narrow field HD (1920 x 1080) spotter camera. Fields of view for the sensors: <ul style="list-style-type: none"> • TI 35.5° to 1.2° • Daylight Zoom 31.2° to 1.8° • Daylight Spotter 1.1° to 0.43° These fields of view facilitate operator Situational Awareness (SA) and the ability to discern fine detail, such as vessel lettering at typical (mission specific) stand-off ranges. Video overlay shows time, own ship position and target position (in WGS84 format, selectable), which may be continuously recorded to various hard media utilising an Avalex Recorder. The mission system will incorporate an Avalex multi-channel HD DVR, capable of video recording in accordance with PACE requirements. HD stills images will be captured utilising a stabilised DSLR camera with time/date and GPS position overlay, with data captured on built-in Secure Digital (SD) Card Format. Image intensifying (SOFRADIR-EC) lens attachments would facilitate image capture under low light conditions
3.16	The Supplier shall ensure that imagery captured shall be viewable in flight on board the aircraft and viewable in near real time on the Authority's	The aircraft system operator will be provided with two high-brightness HD (1920 x 1080) monitors, capable of displaying all sensor outputs and matched to the MX-15 HDi native EO sensor resolution. Sensor output will be routed, by the operator, via the Mission Management System (MMS), to the multi-channel HD recorder and to the Aviator-SP satellite link (described in Section 5), where

	<p>tasking/coordination system. Such imagery shall identify vessels via PLN (Port Letter Numbers) or name as displayed on the side (specified in EC Regulation 1381/1987 Annex 2). Data provided shall be fully compliant with EU Inspire directive. Positional information (of target and capture system) shall comply with WGS84 standard and provide Latitude, Longitude and date/time stamp for position fix of the target.</p>	<p>selected video streams can be sent to the Authority's tasking/coordination system. Frame rate and resolution will be selectable. Sensor video overlay will continuously display time and target position in the recorded and linked data streams.</p>
3.17	<p>The Supplier shall ensure that the HD imagery captured shall be viewable on the Authority's tasking/coordination system within 45 minutes post flight. Such imagery shall identify vessels via PLN (Port Letter Numbers) or name as displayed on the side (specified in EC Regulation 1381/1987 Annex 2). Data provided shall be fully compliant with EU Inspire directive. Positional information (of target and capture system) shall comply with WGS84</p>	<p>HD imagery will be uploaded to the SharePoint site within 45 mins of arriving on-blocks. The System will be capable of capturing vessel PLNs and data will be EU Inspire compliant. WGS84 standards will be used, and imagery metadata will include positional and time information.</p>

	<p>standard and provide Latitude, Longitude and date/time stamp for position fix of the target.</p>	
<p>3.18</p>	<p>The Supplier shall ensure that the System detects and classifies Oil in all light levels by day and night and provides a report to the Authority classifying:</p> <p>3. by Daylight only, the Oil by type, thickness and coverage within an hour of finding the Oil;</p> <p>by Night Time Hours, a report to the Authority of the location and coverage of the Oil within an hour of finding it</p>	<p>Detection and classification of Oil will be achieved using the full suite of onboard sensors; synthetic aperture radar, EO and MWIR cameras, and a LWIR and UV line-scanner. Crewmembers will also be trained how to classify and quantify oil-spills visually, in accordance with Bonn Agreement protocols.</p> <p>By day the System will classify oil by type, thickness and coverage, within 1 hour of detection. By night, the sensor suite will be capable of detecting the location and coverage of the oil within 1 hour of detection.</p> <p><u>Detection</u></p> <p>If an accurate position of the spill can be provided, the System can rapidly detect the oil and commence surveillance. If the precise location is unknown, the System would use all its onboard sensors to locate the spill:</p> <p><u>Wide-area surveillance</u></p> <p>Initial detection would be achieved using the Leonardo Osprey 30 synthetic aperture radar (SAR); the use of SAR is a well-established method of detecting and quantifying oil-spills, and the Osprey is a brand new and very high-performance SAR. Interpretation of the SAR image is manual, with oil usually presenting a darker return than the surrounding surface. Once detected at range by SAR, the aircraft would position to overhead the spill to employ the narrow-area sensors.</p> <p><u>Narrow-area surveillance</u></p> <p>Accurate quantification of the spill is achieved using the WESCAM MX-15 sensors, and the Optimare IR/UV line-scanner:</p> <p>MX-15 Sensor Turret:</p>

	<p>The WESCAM MX-15 is an industry leading surveillance sensor turret, used extensively by military and other government users across the world. The daylight HD EO sensor image is displayed to the crew via AIMS-ISR on HD screens in the cabin. The Medium Wave Infra-Red (MWIR) sensor would be used in conjunction with the EO; in our experience MWIR is good for identifying thicker areas of pollution, and by combining these outputs through the mission software, highly accurate quantification is achieved. Using Bonn Agreement protocols, the crew would assess oil coverage and thickness</p> <p>By day, the EO and MWIR sensors (by night MWIR only) would be used to trace the perimeter of the spill, which is automatically logged (drawn) onto the AIMS-ISR mapping system; the area of the spill can be quickly established and shared over the satcom with the ARCC in near real-time. The type of oil should be known due to location (e.g. associated with an oil platform – all mapped on AIMS-ISR) or ship, identified by AIS or onboard sensors.</p> <p>Optimare IR/UV Line-scanner:</p> <p>To achieve the best possible quantification of the spill, the System also includes an Optimare Long Wave Infra-red (LWIR) and UV sensor, manufactured by Aerodata. These sensors, which would be integrated with the AIMS-ISR mapping system, provide highly resolved mapping of very thin and thick oil layers on the water surface and create thermatic maps of the oil-spill scene (automated scene analysis). IR/UV line-scanners have been established as standard tools in airborne oil spill remote sensing, they are capable of simultaneously mapping the total extent of the oil spill (layer thickness > 0.01 µm) as well as areas of intermediate (2 to 70 µm) and large oil layer thickness (> 50 µm).</p> <p>Mapping System and Mission Integration:</p> <p>CarteNav AIMS-ISR is at the heart of the mission-system. For oil-spill surveillance, it provides a superb capability to map and quantify pollution. The crew would use camera boresight to draw a real-time virtual-reality perimeter around the oil-spill. Different perimeters are created around differing pollution areas, the volume of these areas is automatically calculated, then by using the Bonn Agreement classifications, thickness and quantity is calculated.</p> <p>An AIMS-ISR software licence would also be provided for the Authority, and over the satellite link Authority personnel would be able to observe the mission in near-real-time. Aircraft tracks, AIS</p>
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		contacts, radar imagery, spill perimeters, EO/IR snapshots, target locations, sensor footprints, and reports are all shared over the link, through AIMS. 2 Excel uses exactly this system on its existing oil-spill surveillance platform; the ability to datalink the mission in near real-time to clients on the ground has proven to be an excellent capability, enhancing situational awareness in ops rooms as well as on the aircraft.
3.19	The Supplier shall ensure that the System detects and classifies any Pollutants (other than Oil) in all light levels, by Daylight and Night Time Hours, and provides a report to the Authority classifying the Pollutant(s) by physical nature and coverage within an hour of finding the Pollutant(s).	<p>Unspecified pollutants will be detected utilising SAR and EO/IR sensors, supported by visual identification where practicable.</p> <p>Once detected the line-scanner will also be used to survey the pollution.</p> <p>The Mission Management system incorporates automatic compilation/reporting function, which facilitates near real-time transmission via the satcom, if time critical, or onward dissemination post-sortie.</p>
3.20	The Supplier shall ensure that the System detects the presence of Oil (beyond a sheen) and Pollutants within the search area at least at the sea surface coverage rate per hour specified in the Supplier's Solution.	The sea-surface coverage rate depends on the sensor used (radar, turret or line-scanner). Of these, the most restrictive is the Optimare IR/UV line scanner. The OEM recommends operations at 1000ft AMSL with a sensor FOV of 90 degrees; therefore, a sea surface coverage rate of 60nm ² /hr can be achieved by the System when employed in that role. Greater rates can be achieved by increasing the altitude for the UV/IR LS (the OEM permits operation up to 15,000ft AMSL) augmented with the core radar and EO/IR turret. In other roles where the IR/UV line scanner is not required significantly larger sea surface coverage rates can be achieved utilising the radar and EO/IR sensors.
3.21	The Supplier shall ensure that the System states and promulgates the actual probability of detection (PD) achieved to the Authority	The System will determine the PD by evaluating the sensor detection performance against the specified target and search area uncertainty volume. This will produce a PD value which can be promulgated to the Authority via the MMS.
3.22	The Supplier shall ensure that the System produces a report of the areas covered by the sensors, overlaid	The CarteNav AIMS-ISR mission-management system will provide a display of sensor footprint, referenced to aircraft position and track. This data will be shared with Authority over the satellite link to an AIMS ground-station, in near real-time.

	onto the aircraft track, viewable on the aircraft and shared electronically in near real time with the Authority	
3.23	The Supplier shall ensure that all data captured by the System sensors is stored off aircraft post flight and made available in a web-based application to the Authority immediately upon request. On expiry or termination of this Agreement the Supplier shall ensure that all data is handed over to the Authority for continued storage.	<p>2 Excel will use the Acronis cloud data service, an ISO 27001 accredited data service using FIP140-2 encryption to ensure compliance with the requirements of an 'Official' protective marking.</p> <p>The Authority will be provided with Acronis account log-ins, which can be used at any time to access the data.</p> <p>On completion of the contract the data will be downloaded and handed over to the Authority, or the Authority could choose to maintain the Acronis service.</p>
3.24	<p>The Supplier shall ensure that the System safely deploys items from the aircraft in flight, including:</p> <ol style="list-style-type: none"> 1. a first aid kit; 2. a communication device; and 3. method of marking position from the aircraft to the surface in support of the mission 	2 Excel will install a 6.5" drop tube through the rear empennage of the aircraft. This system will deploy a custom made, free-fall air deployable survival pack, containing a first-aid kit, communication device, and position marker.
4.1	The Supplier shall ensure that assets engaged in the delivery of this capability shall be immediately visibly identifiable and include	Both aircraft will be painted in the Authority livery, and additional OGD branding.

	HMCG branding as per Appendix A and OGD branding.	
4.2	The Supplier shall ensure that the System complies with SD-2018/001.	NA
5.1	<p>The Supplier shall ensure that the System shall communicate by voice</p> <p>LOS and BLOS allowing communications between:</p> <ul style="list-style-type: none"> • the Tasking Authority; • the Co-Ordinating Authority; • other air vehicles; • Air Traffic Services surface vessels and installations; • emergency responders; • military assets; • ground assets; • persons in distress or potential distress equipped with mobile phones; • Linking communications between the Co-Ordinating Authority and vessels/aircraft/assets; and • any other third parties as required by the Authority. 	<p>2 Excel's communications solution for the System consists broadly of 3 elements; capable and reliable aircraft systems, a state-of-the-art tactical multi-channel software defined radio and an aviation specific Inmarsat SATCOM paired with a range topping High Gain Antenna (HGA).</p> <p>Aircraft communications will be augmented with a PS Engineering PAC 45 audio controller which will allow for flexible, configurable communications (transmit and receive) for all crew members.</p> <p>For operational LOS communications, the aircraft will be fitted with a Cobham RT-7000 multi-channel radio.</p> <p>The RT-7000 The unit covers the VHF/UHF frequencies between 29.7 MHz and 960MHz. For the initial installation, the standard Wideband Transceiver Module (WTM) will be installed but additional encrypted capabilities can be added for communications with other third parties.</p> <p>Additional radios may also be connected via the associated SAL-7000 connection unit to provide for:</p> <ul style="list-style-type: none"> • PRC-117 • LMR • Cellular • Satcom • Tetra <p>SAT-SAT and SAT-GSM Full voice capability is also available through the associated PTA-100 dialler and integrated with the aircraft audio control system.</p> <p>BLOS voice and data will be via a dual-channel Cobham AVIATOR-SP SATCOM. Data is via Inmarsat and includes in-flight access to the Internet, email, voice-calls as well as video streaming, video conferencing and aerial surveillance. Background data rates are of up to 432kbps per channel which can be achieved with the specified HGA.</p>

	<p>Supplier shall ensure that the System shall communicate by voice LOS and BLOS allowing communications between:</p> <ul style="list-style-type: none"> • the Tasking Authority; • the Co-Ordinating Authority; • other air vehicles; • Air Traffic Services <p>The Supplier shall ensure that the System shall communicate by voice LOS and BLOS allowing communications between:</p> <ul style="list-style-type: none"> • the Tasking Authority; • the Co-Ordinating Authority; • other air vehicles; • Air Traffic Services; 	
5.2	<p>The Supplier shall ensure that the System shall communicate LOS and BLOS securely by voice to facilitate safe operation and conduct of the Task allowing communications between:</p> <ul style="list-style-type: none"> • the Co-Ordinating Authority; • other air vehicles; • Emergency responders; <p>and</p>	<p>Through a combination of aircraft, tactical and SATCOM capabilities the System can communicate securely by voice to all the specified users by any crew member. The exact method of communication will vary depending on the receiving unit's capability. Secure LOS comms are via the RT-7000 and can be configured with multiple encryption types.</p> <p>Encryption:</p> <ul style="list-style-type: none"> • FIPS 140-2, Level 2/3 • P25 AES & DES • Analogue DES, DES-XL, DVP • P25 OTAR • Multi-key

	<ul style="list-style-type: none"> • Equipped surface vessels 	The System achieve secure BLOS capability through the AVIATOR-SP SATCOM.
5.3	<p>The Supplier shall ensure that the System sends and receives digital information including images, documents and video in near real time LOS and BLOS with:</p> <ul style="list-style-type: none"> • the Tasking Authority and the Co-Ordinating Authority; • other air vehicles; • Air Traffic Services; • surface vessels and installations; • emergency responders; • military assets; • ground assets; • persons in distress or potential distress equipped with mobile phones; and • any other third parties as required by the Authority. 	<p>Digital information including images, documents and video will all be managed via the Mission Management System (MMS). Information generated by onboard sensors can be transmitted and digital information by off board sources received via the AVIATOR-SP Satcom system in Near Real Time (NRT).</p>
5.4	<p>The Supplier shall ensure that the System sends and receives secure digital information including images, documents and video in near real time LOS and BLOS with:</p> <ul style="list-style-type: none"> • the Co-Ordinating Authority; • other air vehicles; • emergency responders; and • Border Force cutters 	<p>The System can send and receive secure digital information via the MMS and dedicated BLOS SATCOM link.</p> <p>The Cobham AVIATOR-SP will facilitate the transmission and receipt of data.</p> <p>The system utilises a Virtual Private Network (VPN) over the Satcom bearer. 2 Excel has considerable experience using the 'LogMeln – Hamachi VPN'. This service is a secure system using AES 256-bit encryption, AIMS-ISR mission data, images, documents and video can be passed via this system.</p>

5.5	The Supplier shall ensure that the System provides concurrent voice and data communications with one voice and one data channel. The Supplier shall ensure that safe aircraft operations shall remain unaffected by this requirement.	The System incorporates concurrent voice and data communications. The suite of aircraft, tactical and SATCOM communications integrated through the PAC45 allows for simultaneous and independent transmit and receive for all crew members. There are two data channels available through the AVIATOR-SP BLOS SATCOMS. Aircraft safety is paramount, and every element of the System will be airworthy and 100% compliant with the relevant regulations, including thorough EMI/EMC testing.
6.1	The Supplier shall ensure that all personnel handling sensitive information shall hold appropriate security clearance and that all foreign nationals must be cleared via ACRO in addition to Baseline or CTC checks.	All personnel handling sensitive information shall hold the appropriate security clearance. Foreign nationals will be cleared via ACRO in addition to Baseline or CTC checks.
6.2	The Supplier shall ensure that the System carries one supernumerary crew upon request.	The aircraft shall be able to carry one supernumerary crewmember
6.3	The Supplier shall ensure that System operators shall be trained and warranted as Marine Enforcement Officers.	System Operators shall be trained and warranted as Marine Enforcement Officers
7.1	The Supplier shall ensure that the daily crew list is submitted to the ARCC through a web-based application at the beginning of the shift and notify the ARCC of any crew changes	A monthly roster will be produced 2 weeks prior to the start of each month. Crew composition will be confirmed daily, and any changes occurring during the day notified to the ARCC.

	during a given shift.	
7.2	<p>The Supplier shall ensure that pre-mission daily reports are submitted to the ARCC through a web-based application for non-operational and planned flights including the following:</p> <ul style="list-style-type: none"> • training flights; • all other flying (take-off and landing times and an outline purpose of the flight to be provided). 	<p>Weekly and Daily Reports will be published containing details of all planned flying. The report will include aircraft tail number, timings, crew composition and purpose of the flight.</p> <p>Plans will be distributed by email and a SharePoint site.</p>
7.3	<p>The Supplier shall ensure that, on the conclusion of any Task, a Post Task Report is submitted to the Authority through a web-based application within one (1) Working Day.</p>	<p>For routine tasking, a Post-Flight Report (PFR) will be submitted to the Authority by SharePoint within 1 day.</p> <p>For Emergency Response (e.g. SAR or oil-spill) PFRs will be actioned immediately to inform the ARCC and enable planning for subsequent missions.</p>
7.4	<p>The Supplier shall ensure that monthly Flying Activity Returns are submitted to the Authority through a web-based application.</p>	<p>A Monthly Report will be distributed by email and SharePoint by the 5th day of each month. It will detail all completed flying activity in the previous month, highlight achieved tasking and training, and forecast activity in the forthcoming period.</p>
7.5	<p>The Supplier shall ensure that training achievement records are readily available for audit purposes through a web-based application.</p>	<p>All flight-crew training records will be accessible on CENTRIK, 2 Excel's web-based management system.</p>

7.6	The Supplier shall provide to the Authority through a web-based application all Mandatory Occurrence Reports. This information will be a copy of that reported to the regulatory authority and the Supplier's head office.	The Authority shall have read access to Mandatory and Voluntary reports as they are submitted. This will be achieved using CENTRIK, the means by which MORs are submitted to the CAA and distributed to 2 Excel management.
7.7	The Supplier shall provide to the Authority through a web-based application a report on all hazards and safety issues.	The Authority shall have access to 2 Excel's hazard and safety issue management system through CENTRIK.
7.8	The Supplier shall provide details to the Authority through a web-based application all quality issues directly related to the service and its delivery.	The Authority will be provided with all relevant Compliance (Quality) audits completed internally, by external 3 rd party auditors (e.g. ISO) and the UK CAA.

Schedule 7

NOTIFIED KEY SUB-CONTRACTORS

- 1 In accordance with Clause 15.6 (*Appointment of Key Sub-contractors*), the Supplier is entitled to sub-contract its obligations under this Agreement to the Key Sub-contractors listed in the table below.
- 2 The Parties agree that they will update this Schedule periodically to record any Key Sub-contractors appointed by the Supplier with the consent of the Authority after the Effective Date for the purposes of the delivery of the Services.

Key Sub-contractor name and address (if not the same as the registered office)	Registered office and company number	Related product/Service description	Key Sub-contract price expressed as a percentage of total projected Charges over the Term	Key role in delivery of the Services
Nil				

Schedule 8

THIRD PARTY CONTRACTS

- 1 The contracts listed in the table below constitute Third Party Contracts entered into exclusively for the purposes of delivering the Services.
- 2 The Supplier shall be entitled to update this Schedule in accordance with Clause 15.5 (*Appointment of Sub-contractors*).

Third party supplier name and address (if not the same as the registered office)	Registered office and company number	Related product/service description
Nil		

Schedule 9

TRANSITION PLAN

1 TRANSITION PLAN

- 1.1 The Transition Plan is set out in Annex 1.
- 1.2 All changes to the Transition Plan shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with Clause 29 (*Authority Cause*)).

2 REPORTING

- 2.1 The Supplier shall report progress against the achievement of the Milestones at least once per month before the Service Commencement Date.

3 RISK

- 3.1 The issue of a Milestone Achievement Certificate shall not:
 - 3.1.1 operate to transfer any risk that the relevant Milestone is complete or will meet and/or satisfy the Authority's requirements for that Milestone; or
 - 3.1.2 affect the Authority's right subsequently to reject any Milestone to which the Milestone Achievement Certificate relates.
- 3.2 Notwithstanding the issuing of any Milestone Achievement Certificate (including the Milestone Achievement Certificate in respect of Authority to Proceed), the Supplier shall remain solely responsible for ensuring that:
 - 3.2.1 the Supplier Solution as designed and developed is suitable for the delivery of the Services and meets the Authority Requirements;
 - 3.2.2 the Services are implemented in accordance with this Agreement; and
 - 3.2.3 each Service Requirement is met from the relevant Service Commencement Date.

4 ISSUE OF MILESTONE ACHIEVEMENT CERTIFICATE

- 4.1 The Authority shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following performance by the Supplier to the reasonable satisfaction of the Authority of any tasks identified in the Transition Plan as associated with that Milestone.
- 4.2 If a Milestone is not Achieved, the Authority shall promptly issue a report to the Supplier setting out any reasons for the relevant Milestone not being Achieved and the failure to Achieve a Milestone by the Milestone Date shall constitute a Notifiable Default for the purposes of Clause 27.1 (*Rectification Plan Process*).

ANNEX 1: TRANSITION PLAN

1 Introduction

- 1.1 The major risks to the Transition Plan are the inability to complete on time and on budget. The many facets of the project require careful coordination to ensure all elements are carefully managed in order to deliver the milestones. The risk reduces as the number of third-party suppliers reduce; 2 Excel has all the capabilities in-house to conceive, design, build, certify, test and deliver the service. The Company has vast experience in delivering aircraft projects with extremely demanding timelines and against fixed budgets. This programme falls in the heart of 2 Excel's capabilities, having delivered large scale projects such as the Oil Spill Response Boeing 727 aerial dispersant aircraft, to many smaller projects such as numerous King Air and Navajo mission capable aircraft. Recently, 2 Excel has created 2 special-missions King Air aircraft, including the design, certification and build of a surveillance pod, cleared for flight with numerous surveillance radars including the Osprey-30. These recent projects have generated many of the Supplementary Type Certificates that will be used during the Transition Phase of this project. A further risk is the inability to fund the Transition Phase, but 2 Excel has significant retained reserves plus adequate funding facilities from our trusted financial partners; furthermore, this is a manageable CAPEX requirement, particularly as it is supported by a long-term contract with a Government agency. 2 Excel is a company providing many similar contracts, it is extremely well structured to train and support the crews, it has numerous specialist aircrew providing deep resilience and redundancy in the late stages of the Transition Phase and the early stages of delivery.
- 1.2 2 Excel will deliver the Service using two newly procured dedicated King Air 200s, modified with surveillance equipment specifically to deliver the MCA requirement. This project will take 8 months to deliver from award of contract; therefore, the planned Service Commencement Date is 1 Oct 2019. The Transition Plan is outlined in Sections A3-A5.
- 1.3 Whilst the full capability is created, if required, 2 Excel can offer an option to deliver an interim Service using other surveillance aircraft, so that a service can be provided to the MCA ahead of the acceptance of the dedicated aircraft.

2 Project Management

- 2.1 In accordance with normal Company service delivery, a single Project Manager (PM) will be assigned to manage the delivery of the Transition Plan. The PM will be supported by the rest of the Company resources to deliver the Plan on time. The Plan comprises an Engineering Phase, a Crewing Phase, and an Operational Readiness Phase. The PM will provide the primary liaison between 2 Excel and the Authority during the Transition.

3 Engineering Phase

- 3.1 Leading Edge capabilities. The Engineering Phase will be managed and delivered by Leading Edge, 2 Excel's engineering arm based at DSA. Leading Edge comprises an approved aerospace design organization (Part 21J), production organization (Part 21G) and maintenance organization (Part 145). The organizations work closely

together under the same management team and in the same facilities, taking new capabilities from concept to delivery for internal and external customers.

3.2 The Engineering Phase has 3 main elements:

3.2.1 Design and Certification. Delivery of the MCA capability requires 17 design changes ('mods'), some major, some minor. The Concept part of this Phase is complete; the mods have been identified, quantified and categorized. The major elements of the design have already been certified by Leading Edge on other aircraft – the design of the MCA aircraft pulls together the best elements of many years of innovation and testing on a variety of unique projects; as a result, the design changes required have been accurately quantified, costed and scheduled. Whilst the whole mission system will be bespoke and tailored exactly for the MCA requirement, the project risk is low – Leading Edge was created to deliver exactly these types of capabilities and the project leverages years of risk-reduction:

- (i) LEAP Surveillance pod – Minor alterations will be made to the existing certified belly-pod (known as LEAP-R) to meet the exact MCA requirement – importantly the radome has already been flight tested with the Osprey-30 radar and this part of the pod remains unchanged. The main changes are the introduction of an EO/IR sensor turret and IR/UV line-scanner to the rear-half of the pod. Due to the profile changes, this part of the project will require flight-testing to confirm no significant changes to flight characteristics; Leading Edge has a comprehensive flight-test approval as well as its own in-house test pilots – no changes are anticipated because the main part of the pod, the radome, is not affected by the alterations. Leading Edge is one of a few DOAs in the UK holding flight-test privileges: Having completed major flight-test programmes on the B727 and King Airs in the last few years, it has gained and maintains the confidence of the regulatory authorities of EASA and the UK CAA.
- (ii) The introduction of a means to launch a water-deployable survival payload ('Drop Tube'). New mod, but similar systems are already employed in other King Air 200 aircraft; none of these meet the exact MCA requirement so it is easier to make a new design. An important point is that the precedent has been set and so this design is considered low-risk.
- (iii) A Mission Power system (adaption of existing mod). G-IMEA, 2 Excel's developmental King Air 200 which provides flight-trials for Leonardo's radar team is equipped with a comprehensive mission-power system. The requirements for the MCA aircraft are not as far-reaching as the developmental aircraft, so only part of the existing system is required. Low-risk.
- (iv) Movement (if required) of existing antennas, and the installation of mission system communications antennas; this is standard practice when building special-missions aircraft. Low-risk.
- (v) Introduction of mission system control in the cabin (comprising numerous minor mods for equipment racking, radios, satcom,

screens etc). To control risk, cost and time, most of the surveillance equipment is located in, and controlled from, the cabin by the System Operator. Only a few cockpit modifications are required; video-repeater, comms controller, Garmin GTN750/650 NavCom units. Low-risk.

3.2.2 Production and Installation. This part of the Phase will include:

- (i) Procurement of all commercially available System components such as the aircraft, radar, turret, line-scanner, other sensors, electrical components, connectors, and communications LRUs. All these components have been identified and costed; many coming from trusted partners with long-term relationships such as Leonardo for the Osprey 30.
- (ii) The manufacture of bespoke components. These will include the modified belly-pod (which will be called the LEAP-MP, an evolution of the existing pod), all external doublers and mounting structures, equipment racking, and numerous small internal components. Manufactured items will initially be released under a Prototype Form 1; once the associated modifications are approved a full EASA Form 1 will be issued for all parts.
- (iii) Installation of all mods to the aircraft, including the new livery.

3.2.3 Operational Testing. This phase will include testing individual components (for functionality) and culminates in the operational test of the entire Mission System. During this phase the AIMS-ISR Mission Management System will be integrated with the surveillance sensor and communications equipment; this integration is pivotal to the ultimate success of the project and OEM on-site support will be provided to ensure the full capability is achieved. The final phase is the Technical Acceptance Phase (TEAP). The Authority will be invited to observe and participate throughout the testing phase, and it is anticipated that considerable involvement will be scheduled during the TEAP. This part of the Engineering Phase will overlap with the training of the new crewmembers, and final development of tactical SOPs.

3.3 Equipment Lead Times. The lead-times for equipment all fall within the timescale of the Engineering Phase except for the Osprey-30 radar which has a 12-month lead-time. Due to its close working relationship with Leonardo, 2 Excel has secured the loan of a SeaSpray 7300 surveillance radar for the Transition Phase and until the Osprey-30 is delivered. The SeaSpray 7300 is an outstanding maritime surveillance radar, which is already cleared for flight in the LEAP surveillance pod – numerous flights of the radar have been conducted by 2 Excel supporting radar demonstrations and development for Leonardo. The SeaSpray 7300 meets all the Authority's operational requirements that will be covered by the Osprey-30; whilst both radars are compliant, the Osprey-30 was chosen because it is more modern, smaller, lighter, capable, and offers significantly better long-term value for money.

3.4 Management of Risk. Having ownership and control of the whole Engineering Phase, under a coherent team of highly capable engineers, eliminates all third-party risk. Furthermore, the configuration of the MCA aircraft leverages numerous aircraft designs already certified by Leading Edge for other surveillance projects; Leading Edge has already certified a special-missions belly-pod for a King Air 200 (the LEAP-

R), and has other approved designs for sensor turrets, mission power systems, communication systems including satcom, and surveillance-mission cabin configurations. It could be summarised that the Engineering Phase has been significantly de-risked by the elimination of third-party dependencies, and the leveraging of existing mods. Funds are identified for aircraft and equipment purchase (as described in the financial submission).

4 Crewing Phase

4.1 2 Excel currently employs 14 King Air pilots, 8 Surveillance System Operators (SO), and is very familiar with the demands of manning a 24hr rapid-reaction service. The Company Ops Dept, which includes Ramp Staff, already holds a 24hr commitment to support existing contracts. The delivery of this Contract will require the recruitment and training of additional staff which is planned as follows:

4.1.1 Final assessment of flight-crew recruitment; this will be made in the Spring of 2019 and is influenced by the effects of TUPE (if applicable), and internal pilot and SO movements. The MCA crews will almost certainly be a blend of existing 2 Excel flight-crew and new-hires. 2 Excel has very competitive salary rates, an Employee Ownership Scheme, outstanding reputation, and is an attractive employer; the acquisition of the best available crews on the market is not undervalued, and enough financial provision has been made to ensure the flight-crew posts will be filled.

4.1.2 Advertisement of available posts will be made in Apr 19. It is anticipated that additional pilots, SOs and Ops staff will be required. There will also be a modest addition to the 2 Excel overhead.

4.1.3 New flight-crew will start training in Jul 19. Pilot type-ratings will be scheduled first, followed by SO training.

(i) The initial King Air type-rating takes approximately 2 weeks. Once rated, the pilots will be available to undertake line-training with Broadsword, 2 Excel's charter airline. This will ensure that the pilots are familiar with Company operations (manuals, SOPs etc) before undertaking tactical training.

(ii) SO training will commence in Aug 19, several weeks before the MCA aircraft are on the line. Included in this package will be formal training in the use of the sensors and mission system (training provided by the OEMs has been costed into the Plan), following by line-training. 2 Excel operates aircraft with a similar mission system (EO/IR/UV sensors, satcom, AIMS-ISR) in the oil-spill response role for another customer; the SOs will commence line-training using these assets before graduating to the MCA role.

4.1.4 The crew complement will include tactical instructors, with previous experience of maritime operations; these personnel are already employed by 2 Excel (e.g. SAR helicopter, Nimrod and P-3 Orion).

4.1.5 Additional Ops Controllers will be resourced throughout the summer of 2019 to ensure enough resilience for concurrent 24hr ops; our experience has been that 2 simultaneous callouts during the quiet hours can overwhelm a single Ops Controller (a rare event, but one that must be

covered) – sufficient staff will be resourced to ensure Ops can manage simultaneous callouts.

5 Operational Readiness Phase

5.1 As the Engineering Phase concludes, and the initial recruitment and training phases are complete, the Operational Readiness Phase will commence:

5.1.1 Pilots will continue to gain experience in Company King Air operations by flying charter sorties; as soon as the MCA King Airs are on the line (Sep 19), the pilots will all carry out surveillance familiarization flights followed by tactical line-training.

5.1.2 The SOs will be scheduled to participate in Operational Testing during the end of the Engineering Phase. This will include the TEAP programme.

5.1.3 Time and financial resource have been allocated for flight-crew line-training. This will be conducted in-house by instructors experienced in maritime operations.

(i) Prior to line-training, tactical SOPs will have been created. The Operational Readiness Phase provides the opportunity to test and develop these procedures.

5.1.4 Throughout this phase, the Authority will be invited to participate, perhaps by generating training SAR or oil-spill scenarios if able.

(i) Subject to the availability of assets, training with other Authority aircraft (SAR helicopters), and OGDs, is recommended during this phase.

6 Option - Interim Service Provision

6.1 Because 2 Excel already operates a sizeable surveillance fleet, assets could be made available prior to the Service Delivery Phase; 2 Excel could stand-up a PA-31 Navajo special-missions aircraft equipped with an EO-IR sensor turret, satellite and VHF air and surface communications, an integrated mission system, data-recorders, DSLR, and trained crew. This Service is capable of operating day and night, all-weather, overland and off-shore, able to conduct SAR and counter-pollution missions as well as supporting OGDs. This capability is analogous to the rapid response capability currently delivered by 2 Excel to the Oil and Gas Industry in the UKCS area, and to OGDs through ongoing contracts.

7 Transition Milestones

Milestone reference	Milestone name	Milestone Date	Deliverables and tasks to be completed for Milestone Achievement
M1	Concept Capture Meeting (CCM)	19 Mar	CCM conducted and minuted
M2	Arrival of first aircraft	9 Apr	First aircraft procured and on-site at DSA

M3	Flight-crew recruitment	7 May	Flight-crew recruitment underway; positions advertised internally and externally
M4	Flight-crew interviews	4 Jun	Flight-crew interviews complete and offers made
M5	Prototype flight test	25 Jun	Flight test of new LEAP-MP belly pod complete
M6	First install	30 Jul	Installation of radar, line-scanner and sensor turret
M7	Shakedown	17 Sep	Completion of basic system testing and shakedown
M8	Final LRU installation	15 Oct	Final installation of all mission LRUs, in pod and both aircraft
M9	TEAP	22 Oct	Start of the Technical Acceptance Programme, flight trials and crew training
M10	ATP Milestone	19 Nov	System acceptance by Authority

ANNEX 2: MILESTONE ACHIEVEMENT CERTIFICATE

To: 2 Excel Aviation Limited
FROM: Maritime & Coastguard Agency
[Date]

Dear Sirs,

MILESTONE ACHIEVEMENT CERTIFICATE

Milestone: *[insert description of Milestone]*

We refer to the agreement (the "**Agreement**") relating to the provision of the Services between the Maritime & Coastguard Agency (the "**Authority**") and 2 Excel Aviation Limited (the "**Supplier**") dated *[date]*.

We confirm that all deliverables and tasks relating to Milestone *[number]* have been completed.

Yours faithfully

[Name]

[Position]

acting on behalf of the Maritime & Coastguard Agency

Schedule 10

CHARGES AND INVOICING

1 PRICING MECHANISM

- 1.1 Charges for a month shall be the sum of $A + B + (C \times D \times E)$

Where:

A is the Standing Charge for the relevant month as described in the "Price Schedule" sheet of the Financial Model;

B is the Flying Charge for that month calculated by multiplying the Flying Charge per hour for the relevant month as described in the "Price Schedule" sheet of the Financial Model by the number of complete hours flown by the Supplier's aircraft that month;

C is the number of complete hours flown by the Supplier's aircraft that month;

D is the Fuel Burn Rate for the relevant aircraft in litres per hour for the relevant month as described in the "Price Schedule" sheet of the Financial Model; and

E is the Price of Fuel Incurred per litre, calculated by reference to the weighted average fuel price of DSA-based operations under this Contract for the relevant month (with no margin or mark-up added by the Supplier) as demonstrated by Supporting Documentation.

2 FIRM PRICING

- 2.1 The Standing Charge and Flying Charge as described in the "Price Schedule" sheet of the Financial Model shall not be subject to increases by way of reference to inflation indices such as RPI or CPI either during the Initial Term or any Extension Period.

3 CHARGES

- 3.1 Charges shall commence on the Achievement of the ATP Milestone.

- 3.2 Charges shall be invoiced by the Supplier for each Service Period in arrears.

- 3.3 If the Services:

3.3.1 commence on a day other than the first day of a month; and/or

3.3.2 ends on a day other than the last day of a month,

the Charge for the relevant Service Period shall be pro-rated based on the proportion which the number of days in the month for which the Service is provided bears to the total number of days in that month.

- 3.4 Any Service Credits that accrue during a Service Period shall be deducted from the Charges payable for the next following Service Period. An invoice for a Charge shall not be payable by the Authority unless all adjustments (including Service Credits)

relating to the Charges for the immediately preceding Service Period have been agreed.

4 SUPPLIER INVOICES

- 4.1 The Supplier shall prepare and provide to the Authority for approval of the format a template invoice within 10 Working Days of the Effective Date which shall include, as a minimum, the details set out in Paragraph 4.2 together with such other information as the Authority may reasonably require to assess whether the Charges that will be detailed therein are properly payable. If the template invoice is not approved by the Authority then the Supplier shall make such amendments as may be reasonably required by the Authority. If the Authority uses an e-invoicing system then the Supplier shall instead comply with the requirements of that system
- 4.2 The Supplier shall ensure that each invoice is submitted in the correct format for the Authority's e-invoicing system, or that it contains the following information:
- 4.2.1 the date of the invoice;
 - 4.2.2 a unique invoice number;
 - 4.2.3 the Service Period or other period(s) to which the relevant Charge(s) relate;
 - 4.2.4 the correct reference for this Agreement;
 - 4.2.5 the reference number of the purchase order to which it relates (if any);
 - 4.2.6 the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
 - 4.2.7 a description of the Services;
 - 4.2.8 the total Charges gross and net of any applicable deductions and, separately, any VAT or other sales tax payable in respect of each of the same;
 - 4.2.9 details of any Service Credits or similar deductions that shall apply to the Charges detailed on the invoice;
 - 4.2.10 reference to any reports required by the Authority in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Services);
 - 4.2.11 a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries; and
 - 4.2.12 the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
- 4.3 The Supplier shall first submit to the Authority a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within 5 Working

Days of its receipt by the Authority, following which the Supplier shall be entitled to submit its invoice.

- 4.4 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Authority as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.
- 4.5 Invoices should be submitted, once payment details have been accepted by both parties quoting a valid purchase order number to:

Shared Services, 5 Sandringham Park, Swansea Value, Swansea SA7 0EA.

- 4.6 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
- 4.7 The Authority shall regard an invoice as valid only if it complies with the provisions of this Schedule. Where any invoice does not conform to the Authority's requirements set out in this Schedule, the Authority shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.
- 4.8 If the Authority fails to consider and verify an invoice in accordance with Paragraphs 4.3 and 4.7, the invoice shall be regarded as valid and undisputed for the purpose of Paragraph 5.1 (*Payment in 30 days*) after a reasonable time has passed.

5 PAYMENT TERMS

- 5.1 Subject to the relevant provisions of this Schedule, the Authority shall make payment to the Supplier within 30 days of verifying that the invoice is valid and undisputed.
- 5.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

Schedule 11

PAYMENTS ON TERMINATION

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Applicable Supplier Personnel" any Supplier Personnel who:

- (a) at the Termination Date:
 - (i) are employees of the Supplier;
 - (ii) are Dedicated Supplier Personnel;
 - (iii) have not transferred (and are not in scope to transfer at a later date) to the Authority or the Replacement Supplier by virtue of the Employment Regulations; and
- (b) are dismissed or given notice of dismissal by the Supplier within:
 - (i) 40 Working Days of the Termination Date; or
 - (ii) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and
- (c) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and
- (d) the Supplier can demonstrate to the satisfaction of the Authority:
 - (i) are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers;
 - (ii) are genuinely being dismissed for reasons of redundancy; and
 - (iii) have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement under this provision in respect of such employees;

"Breakage Costs Payment" an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with Paragraph 3;

"Contract Breakage Costs" the amounts payable by the Supplier to its Key Sub-contractors or other third parties (as applicable) for terminating all relevant Key Sub-contracts or Third Party Contracts as a direct result of the early termination of this Agreement;

"Dedicated Supplier Personnel" all Supplier Personnel then assigned to the Services or any part of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the

Authority whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services;

"Redundancy Costs" the total sum of any statutory redundancy payment paid to Applicable Supplier Personnel, each amount apportioned between the Supplier and the Authority based on the time spent by such employee on the Services as a proportion of the total Service duration:

"Request for Estimate" a written request sent by the Authority to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment that would be payable if the Authority exercised its right under Clause 31.1.1 (*Termination by the Authority*) to terminate this Agreement for convenience on a specified Termination Date;

"Termination Estimate" has the meaning given in Paragraph 9.2; and

"Third Party Contract" a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services, as listed in Schedule 8 (*Third Party Contracts*).

2 TERMINATION PAYMENT

The Termination Payment payable pursuant to Clause 32.3 (*Payments by the Authority*) shall be an amount equal to the Breakage Costs Payment.

3 BREAKAGE COSTS PAYMENT

3.1 The Supplier may recover through the Breakage Costs Payment only those costs incurred by the Supplier directly as a result of the termination of this Agreement which:

3.1.1 would not have been incurred had this Agreement continued until expiry of the Initial Term, or in the event that the Term has been extended, the expiry of the Extension Period;

3.1.2 are unavoidable, proven, reasonable, and not capable of recovery;

3.1.3 are incurred under arrangements or agreements that are directly associated with this Agreement;

3.1.4 are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier; and

3.1.5 relate directly to the termination of the Services.

Limitation on Breakage Costs Payment

3.2 The Breakage Costs Payment shall not exceed the lower of:

3.2.1 the relevant limit set out in Annex 1; and

3.2.2 120% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

Redundancy Costs

- 3.3 The Authority shall not be liable under this Schedule for any costs associated with Supplier Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.
- 3.4 Where the Supplier can demonstrate that a member of Supplier Personnel will be made redundant following termination of this Agreement, but redeployment of such person is possible and would offer value for money to the Authority when compared with redundancy, then the Authority shall pay the Supplier the actual direct costs incurred by the Supplier or its Sub-contractor arising out of the redeployment of such person (including retraining and relocation costs) subject to a maximum amount of £30,000 per relevant member of the Supplier Personnel.

Contract Breakage Costs

- 3.5 The Supplier shall be entitled to Contract Breakage Costs only in respect of Third Party Contracts or Sub-contracts which:
- 3.5.1 are not assigned or novated to a Replacement Supplier at the request of the Authority in accordance with Schedule 17 (*Exit Management*); and
 - 3.5.2 the Supplier can demonstrate:
 - 3.5.3 are surplus to the Supplier's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other customers; and
 - 3.5.4 have been entered into by it in the ordinary course of business.
- 3.6 The Supplier shall seek to negotiate termination of any Third Party Contracts or Sub-contracts with the relevant third party or Sub-contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.
- 3.7 Except with the prior written agreement of the Authority, the Authority shall not be liable for any costs (including cancellation or termination charges) that the Supplier is obliged to pay in respect of:
- 3.7.1 the termination of any contractual arrangements for occupation of, support of and/or services provided for Supplier premises which may arise as a consequence of the termination of this Agreement; and/or
 - 3.7.2 Assets not yet installed at the Termination Date.

4 MITIGATION OF CONTRACT BREAKAGE COSTS AND REDUNDANCY COSTS

- 4.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs and Redundancy Costs by:
- 4.1.1 the appropriation of Assets, employees and resources for other purposes;
 - 4.1.2 at the Authority's request, assigning any Third Party Contracts and Sub-contracts to the Authority or a third party acting on behalf of the Authority; and
 - 4.1.3 in relation Third Party Contracts and Sub-contract that are not to be assigned to the Authority or to another third party, terminating those

contracts at the earliest possible date without breach or where contractually permitted.

- 4.2 If Assets, employees and resources can be used by the Supplier for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs and Redundancy Costs payable by the Authority or a third party to the Supplier. In the event of any Dispute arising over whether the Supplier can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the Dispute shall be referred to an Expert for determination in accordance with the procedure detailed in Schedule 15 (*Dispute Resolution Procedure*).

5 FULL AND FINAL SETTLEMENT

Any Termination Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Authority pursuant to Clause 31.1.1 (*Termination by the Authority*) or termination by the Supplier pursuant to Clause 31.3 (*Termination by the Supplier*) (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

6 INVOICING FOR THE PAYMENTS ON TERMINATION

All sums due under this Schedule shall be payable by the Authority to the Supplier in accordance with the payment terms set out in Schedule 10 (*Charges and Invoicing*).

7 SET OFF

The Authority shall be entitled to set off any outstanding liabilities of the Supplier against any amounts that are payable by it pursuant to this Schedule.

8 NO DOUBLE RECOVERY

- 8.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that the Authority makes any payments pursuant to Schedule 17 (*Exit Management*) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.

- 8.2 The value of the Termination Payment shall be reduced or extinguished to the extent that the Supplier has already received the Charges or the financial benefit of any other rights or remedy given under this Agreement so that there is no double counting in calculating the relevant payment.

- 8.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

9 ESTIMATE OF TERMINATION PAYMENT

- 9.1 The Authority may issue a Request for Estimate at any time during the Term provided that no more than 2 Requests for Estimate may be issued in any 6 month period.
- 9.2 The Supplier shall within 20 Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written

estimate of the Termination Payment that would be payable by the Authority based on a postulated Termination Date specified in the Request for Estimate (such estimate being the "**Termination Estimate**"). The Termination Estimate shall:

- 9.2.1 be based on the relevant amounts set out in the Financial Model;
- 9.2.2 include:
 - (i) details of the mechanism by which the Termination Payment is calculated;
 - (ii) full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and
 - (iii) such information as the Authority may reasonably require; and
- 9.2.3 state the period for which that Termination Estimate remains valid, which shall be not less than 20 Working Days.
- 9.3 The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Authority to terminate this Agreement.
- 9.4 If the Authority issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Supplier and the Authority.

ANNEX 1: MAXIMUM PAYMENTS ON TERMINATION

The table below sets out, by Contract Year, the maximum amount of the Breakage Costs Payment that the Authority shall be liable to pay to the Supplier pursuant to this Agreement:

Termination Date	Maximum Breakage Costs Payment
Anytime in the first Contract Year	£6,067,056
Anytime in the second Contract Year	£5,275,438
Anytime in the third contract year	£4,492,202
Anytime in the fourth contract year	£3,692,202
Anytime in the fifth contract year	£2,892,202
Anytime in the sixth contract year	£2,092,202
Anytime in the seventh contract year	£1,292,202

Schedule 12

FINANCIAL REPORTS AND AUDIT RIGHTS

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Annual Contract Report" the annual contract report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;

"Audit Agents" the Authority's internal and external auditors;

- (a) the Authority's statutory or regulatory auditors;
- (b) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (c) HM Treasury or the Cabinet Office;
- (d) any party formally appointed by the Authority to carry out audit or similar review functions; and
- (e) successors or assigns of any of the above;

"Contract Amendment Report" the contract amendment report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;

"Final Reconciliation Report" the final reconciliation report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;

"Financial Reports" the Financial Model and the reports listed in the table in Paragraph 1.1 of Part B;

"Financial Representative" a reasonably skilled and experienced member of the Supplier's staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Financial Reports;

"Financial Transparency Objectives" has the meaning given in Paragraph 1 of Part A;

"Material Change" a Change which:

- (a) materially changes the profile of the Charges; or
- (b) varies the total Charges payable during the Term (as forecast in the latest Financial Model) by:
 - (i) 5% or more; or
 - (ii) £1m or more;

PART A: FINANCIAL TRANSPARENCY OBJECTIVES

1 FINANCIAL TRANSPARENCY OBJECTIVES

- 1.1 The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with the Authority in order to achieve, the following objectives:

Understanding the Charges

- 1.1.1 for the Authority to understand any payment sought from it by the Supplier including an analysis of the costs, overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Services and the Supplier profit margin;
- 1.1.2 for both Parties to be able to understand the Financial Model and cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;

Agreeing the impact of Change

- 1.1.3 for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Supplier's Charges;
- 1.1.4 for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

Continuous improvement

- 1.1.5 for the Parties to challenge each other with ideas for efficiency and improvements; and
- 1.1.6 to enable the Authority to demonstrate that it is achieving value for money for the tax payer relative to current market prices,

(together the "Financial Transparency Objectives").

PART B: FINANCIAL REPORTS

1 PROVISION OF THE FINANCIAL REPORTS

- 1.1 The Supplier shall provide during the Term the following financial reports to the Authority, in the frequency specified below:

Financial Report	When to be provided
Contract Amendment Report	Within 1 month of a Material Change being agreed between the Supplier and the Authority
Annual Contract Report	Within 1 month of the end of the Contract Year to which that report relates
Final Reconciliation Report	Within 6 months after the end of the Term

- 1.2 The Supplier shall provide to the Authority the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Authority to the Supplier on or before the Effective Date for the purposes of this Agreement. The Authority shall be entitled to modify the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.
- 1.3 A copy of each Financial Report shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.
- 1.4 Each Financial Report shall:
- 1.4.1 be completed by the Supplier using reasonable skill and care;
 - 1.4.2 incorporate and use the same defined terms as are used in this Agreement;
 - 1.4.3 quote all monetary values in pounds sterling;
 - 1.4.4 quote all costs as exclusive of any VAT;
 - 1.4.5 quote all costs and Charges based on current prices; and
 - 1.4.6 use and report against the cost summary headings in the Financial Model.
- 1.5 Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Financial Report), acting with express authority, as:
- 1.5.1 being accurate and not misleading;
 - 1.5.2 having been prepared in conformity with generally accepted accounting principles within the United Kingdom;

- 1.5.3 being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and
- 1.5.4 compliant with the requirements of Paragraph 1.6.
- 1.6 The Supplier shall:
 - 1.6.1 prepare each Financial Report using the same methodology as that used for the Financial Model;
 - 1.6.2 ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the costs and Supplier profit margin forecast by the Supplier;
 - 1.6.3 the Final Reconciliation Report is a true and fair reflection of the costs; and
 - 1.6.4 not have any other internal financial model in relation to the Services inconsistent with the Financial Model.
- 1.7 During the Term, and for a period of 18 months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Authority may have on any of the Financial Reports.
- 1.8 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:
 - 1.8.1 the costs incurred (or those forecast to be incurred) by the Supplier; and/or
 - 1.8.2 the forecast Charges for the remainder of the Term,

the Supplier shall, as soon as practicable, notify the Authority in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this Paragraph 1.8 shall not have the effect of amending any provisions of this Agreement.

2 FINANCIAL MODEL

- 2.1 Following the delivery by the Supplier of a Contract Amendment Report:
 - 2.1.1 If requested by the Authority, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;
 - 2.1.2 the Authority shall either within 10 Working Days of the report being issued or, if applicable, within 10 Working Days of the meeting referred to in Paragraph 2.1.1 notify the Supplier that:
 - (i) the Contract Amendment Report contains errors or omissions or that further explanations or supporting information is required, in which event the Supplier shall make any necessary modifications to the Contract Amendment Report and/or supply the Authority with such supporting evidence as is required to address the

Authority's concerns within 10 Working Days of such notification and the Authority shall following receipt of such amended Contract Amendment Report and/or supporting information, approve or reject such Contract Amendment Report; or

- (ii) the Authority has approved the relevant Contract Amendment Report.

2.2 Following approval by the Authority of the relevant Contract Amendment Report in accordance with Paragraph 2.1.2, the Supplier shall update the Financial Model, a version of which shall be held by both the Authority and the Supplier. If there is a Dispute regarding the Financial Model, the Authority's copy shall be authoritative.

2.3 If the Parties are unable to reach agreement on any Contract Amendment Report within 30 Working Days of its receipt by the Authority, the matter shall be referred for determination in accordance with Schedule 15 (*Dispute Resolution Procedure*).

3 DISCUSSION OF FINAL RECONCILIATION REPORT

3.1 Following the delivery by the Supplier of the Final Reconciliation Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

PART C: AUDIT RIGHTS

1 AUDIT RIGHTS

- 1.1 The Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Agreement, including for the following purposes:
- 1.1.1 to verify the integrity and content of any Financial Report;
 - 1.1.2 to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments);
 - 1.1.3 to verify the costs (including the amounts paid for fuel and amounts paid to all Sub-contractors and any third party suppliers);
 - 1.1.4 to verify the Supplier's compliance with this Agreement and applicable Law;
 - 1.1.5 to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - 1.1.6 to identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or the Guarantor or the Supplier's ability to perform the Services;
 - 1.1.7 to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - 1.1.8 to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
 - 1.1.9 to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
 - 1.1.10 to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - 1.1.11 to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
 - 1.1.12 to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
 - 1.1.13 to inspect the service delivery environment (or any part of it);

- 1.1.14 to review the accuracy and completeness of the Registers;
- 1.1.15 to review any records created during the design and development of the Supplier System and pre-operational environment;
- 1.1.16 to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
- 1.1.17 to review the Supplier's compliance with the Standards;
- 1.1.18 to inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or

to review the integrity, confidentiality and security of the Authority Data.

- 1.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement, the Authority may not conduct an audit of the Supplier more than twice in any Contract Year.
- 1.3 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier for the purposes of and pursuant to applicable Law.

2 CONDUCT OF AUDITS

- 2.1 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 2.2 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:
 - 2.2.1 all information requested by the Authority within the permitted scope of the audit;
 - 2.2.2 reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - 2.2.3 access to the Supplier System; and
 - 2.2.4 access to Supplier Personnel.
- 2.3 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 Requirements at a level of detail sufficient to verify compliance with the Service Requirements.
- 2.4 The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.

- 2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

3 RESPONSE TO AUDITS

- 3.1 If an audit undertaken pursuant to Paragraph 1 identifies that:

- 3.1.1 the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
- 3.1.2 there is an error in a Financial Report, the Supplier shall promptly rectify the error;
- 3.1.3 the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
- (i) the amount overpaid;
 - (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
 - (iii) the reasonable costs incurred by the Authority in undertaking the audit,
 - (iv) the Authority may exercise its right to deduct such amount from the Charges if it prefers; and
- 3.1.4 the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.

Schedule 13

GOVERNANCE

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Board Member" the initial persons appointed by the Authority and Supplier to the Boards as set out in Annex 1 and any replacements from time to time agreed by the Parties in accordance with Paragraph 3.3;

"Boards" the Contract Management Board, the Tactical Portfolio Management Board (TPMB), the Technical Assurance Working Group (TAWG) and the Transition Working Group (TWG) and **"Board"** shall mean any of them;

"Contract Management Board" the body described in Paragraph 4;

"Tactical Portfolio Management Board" the body described in Paragraph 5;

"Technical Assurance Working Group (TAWG)" the body described in Paragraph 6;

"Contract Managers" the individuals appointed as such by the Authority and the Supplier in accordance with Paragraph 2.1; and

"Transition Working Group" the body described in Paragraph 7.

2 MANAGEMENT OF THE SERVICES

2.1 The Supplier and the Authority shall each appoint a Contract Manager for the purposes of this Agreement through whom the Services shall be managed on a day-to-day basis.

2.2 Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Agreement can be fully realised.

3 BOARDS

Establishment and structure of the Boards

3.1 The Boards shall be established by the Authority for the purposes of this Agreement on which both the Supplier and the Authority shall be represented.

3.2 In relation to each Board, the:

3.2.1 Authority Board Members;

3.2.2 Supplier Board Members;

3.2.3 frequency that the Board shall meet (unless otherwise agreed between the Parties);

3.2.4 location of the Board's meetings; and

3.2.5 planned start date by which the Board shall be established,
shall be as set out in Annex 1.

- 3.3 In the event that either Party wishes to replace any of its appointed Board Members, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority Board Member has at all times a counterpart Supplier Board Member of equivalent seniority and expertise.

Board meetings

- 3.4 Each Party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:
- 3.4.1 a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and
 - 3.4.2 he/she is debriefed by such delegate after the Board Meeting.
- 3.5 A chairperson shall be appointed by the Authority for each Board as identified in Annex 1. The chairperson shall be responsible for:
- 3.5.1 scheduling Board meetings;
 - 3.5.2 setting the agenda for Board meetings and circulating to all attendees in advance of such meeting;
 - 3.5.3 chairing the Board meetings;
 - 3.5.4 monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;
 - 3.5.5 ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within seven Working Days after the Board meeting; and
 - 3.5.6 facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.
- 3.6 Board meetings shall be quorate as long as at least two representatives from each Party are present.
- 3.7 The Parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

4 ROLE OF THE CONTRACT MANAGEMENT BOARD

- 4.1 The Contract Management Board shall be responsible for the executive management of the Services and shall:

- 4.1.1 be accountable to the Tactical Portfolio Management Board for comprehensive oversight of the Services and for the senior management of the operational relationship between the Parties;
- 4.1.2 report to the Tactical Portfolio Management Board on significant issues requiring decision and resolution by the Tactical Portfolio Management Board and on progress against the high-level Implementation Plan;
- 4.1.3 receive reports from the Contract Managers on matters such as issues relating to delivery of existing Services and performance against the Service Requirements, progress against the Implementation Plan and possible future developments;
- 4.1.4 review and report to the Tactical Portfolio Management Board on service management, co-ordination of individual projects and any integration issues;
- 4.1.5 deal with the prioritisation of resources and the appointment of Contract Managers on behalf of the Parties;
- 4.1.6 consider and resolve Disputes (including Disputes as to the cause of a Delay or the performance of the Services) in the first instance and if necessary escalate the Dispute to the Tactical Portfolio Management Board; and
- 4.1.7 develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same.

5 ROLE OF THE TACTICAL PORTFOLIO MANAGEMENT BOARD (TPMB)

- 5.1 The Tactical Portfolio Management Board shall:
 - 5.1.1 provide senior level guidance, leadership and strategy for the overall delivery of the Services;
 - 5.1.2 be the point of escalation from the Transition Working Group, the Technical Assurance Working Group and the Contract Management Board; and
 - 5.1.3 carry out the specific obligations attributed to it in Paragraph 5.2.
- 5.2 The Tactical Portfolio Management Board shall:
 - 5.2.1 ensure that this Agreement is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by the Authority and the commercial benefit derived by the Supplier;
 - 5.2.2 receive and review reports from the Transition Working Group or Contract Management Board and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;

- 5.2.3 determine business strategy and provide guidance on policy matters which may impact on the implementation of the Services or on any Optional Services;
- 5.2.4 authorise the commissioning and initiation of, and assess opportunities for, Optional Services; and
- 5.2.5 provide guidance and authorisation to the Contract Management Board on relevant Changes.

6 ROLE OF THE TECHNICAL ASSURANCE WORKING GROUP (TAWG)

- 6.1 The Technical Board shall be accountable to the Tactical Portfolio Management Board for oversight of the technology used in the Supplier Solution and ensuring that technological choices are made to maximise the long term value of the Supplier Solution as a business asset of the Authority.
- 6.2 The Technical Assurance Working Group shall:
 - 6.2.1 ensure compliance with the Standards;
 - 6.2.2 grant dispensations for variations from such compliance where appropriate;
 - 6.2.3 assure the coherence and consistency of the systems architecture for the Supplier Solution;
 - 6.2.4 monitor developments in new technology and reporting on their potential benefit to the Services;
 - 6.2.5 provide advice, guidance and information on technical issues; and
 - 6.2.6 assure that the technical architecture of the Supplier Solution is aligned to the Service Requirements and has sufficient flexibility to cope with future requirements of the Authority.

7 ROLE OF THE TRANSITION WORKING GROUP

- 7.1 The Transition Working Group is responsible for the management of mobilisation and transition activities prior to the operational commencement of services.
- 7.2 The Transition Working Group shall:
 - 7.2.1 regularly meet to review service transition activities based on the approved service transition/project plan;
 - 7.2.2 review transition based risks and escalate to the Tactical Portfolio Management board for awareness or additional actions as required;
 - 7.2.3 monitor the effective deployment of the Authority's resources to support the transition of services;
 - 7.2.4 monitor and contribute to the development of effective organisational, structures to aid the management of both transition and operational delivery;

- 7.2.5 provide assurance to the Aviation Assistant Director regarding progress; and
- 7.2.6 commission assurance reviews, via the Aviation Portfolio Office or Technical Assurance Manager, to assess readiness for service prior to operational go live.

8 CONTRACT MANAGEMENT MECHANISMS

- 8.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Agreement.
- 8.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for:
 - 8.2.1 the identification and management of risks;
 - 8.2.2 the identification and management of issues; and
 - 8.2.3 monitoring, reporting and controlling project plans.
- 8.3 The Risk Register shall be updated by the Supplier and submitted for review by the Contract Management Board.

9 ANNUAL REVIEW

- 9.1 An annual review meeting shall be held throughout the Term on a date to be agreed between the Parties.
- 9.2 The meetings shall be attended by the Commercial Manager / Contract Director of the Supplier and the Aviation Assistant Director of the Authority and any other persons considered by the Authority necessary for the review.

ANNEX 1: MANAGEMENT BOARD COMPOSITION AND LOGISTICS

Contract Management

Authority Members of Service Management Board	<p>Name – ASV Commercial Manager (Chairperson)</p> <p>Name – Head of Aviation (Deputy Chair)</p> <p>Name – Aviation Finance Business Partner</p> <p>Name – Aviation Technical Assurance Manager</p> <p>Name – Deputy Aviation Contract Manager</p>
Supplier Members of Service Management Board	<p>Name – Service Director</p> <p>Name – Contract Manager</p> <p>Name – Finance Lead</p>
Start Date for Service Management Board meetings	To be agreed post contract award.
Frequency of Service Management Board meetings	Quarterly
Location of Service Management Board meetings	Alternate between Authority and Supplier premises

Tactical Portfolio Management Board Representation and Structure

Authority members of Tactical Portfolio Management Board	<p>Name – Aviation Programme Director (Service SRO, meeting Chairperson)</p> <p>Name – Aviation Deputy Programme Manager;</p> <p>Name – Aviation Portfolio Manager</p> <p>Name – Aviation Business Change Manager</p> <p>Name – Aviation Strategic Relations Manager</p> <p>Name – Head of Aviation Operations</p> <p>Name – Aviation Technical Assurance Manager</p> <p>Name – Aviation Commercial Manager</p> <p>Name – Aviation Finance Business</p>
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	Partner. 1 x DFT Maritime Representative(s) – Non Executive Board Member
Supplier members of Tactical Portfolio Management Board	None
Start date for Tactical Portfolio Management Board meetings	To be agreed post contract award.
Frequency of Tactical Portfolio Management Board meetings	Monthly
Location of Tactical Portfolio Management Board meetings	Authority Headquarters, Spring Place, Southampton (Video/Teleconference facilities to be used as required)

Technical Assurance Working Group and Structure

Authority Members of Technical Board	Name – Technical Assurance Manager (Chairperson) Name – Aviation Technical Lead (Deputy Chair) Name – Aviation Requirements Lead Name – Head of Aviation Operations (Optional)
Supplier Members of Technical Board	Name - Contract Manager Name - Operational Requirements Manager Name - Technical Requirements Manager (Membership may change)
Start Date for Technical Board meetings	To be agreed post contract award.
Frequency of Technical Board meetings	TAWG will convene monthly and/or at key decision points and be aligned such that the outputs can feed into the TPMB and CMB schedule
Location of Technical Board meetings	To be identified by TAWG Chairperson.

Transition Working Group

Authority Members for Transition Working Group	Name – Aviation Technical Assurance manager (Chairperson) Name – Aviation Deputy Programme Manager
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	<p>Name Aviation Portfolio Manager</p> <p>Name – Aviation Strategic Relations Manager.</p> <p><u>Composition at Quarterly Reviews</u></p> <p>Name – Aviation Commercial Manager</p> <p>Name – Aviation Programme Director</p>
Supplier Members for Transition Working Group	<p>Name - Service Director</p> <p>Name Project Manager</p> <p>Name Technical Design, Installation, and Certification Lead</p> <p>Name - Change Manager</p>
Start Date for Transition Working Group Meetings	Within 1 week of Contract Award
Frequency of Transition Working Group	Monthly
Location of Transition Working Group meetings	To be identified by TWG Chairperson.

Schedule 14

CHANGE CONTROL PROCEDURE

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Change Request" a written request for a Contract Change which shall be substantially in the form of Annex 1;

"Change Communication" any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;

"Impact Assessment" an assessment of a Change Request in accordance with Paragraph 5;

"Impact Assessment Estimate" has the meaning given in Paragraph 4.3; and

"Receiving Party" the Party which receives a proposed Contract Change.

2 GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

2.1 This Schedule sets out the procedure for dealing with Changes.

2.2 Operational Changes shall be processed in accordance with Paragraph 8. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.

2.3 The Parties shall deal with Contract Change as follows:

2.3.1 either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;

2.3.2 unless this Agreement otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 before the Contract Change can be either approved or implemented;

2.3.3 the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;

2.3.4 the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;

2.3.5 save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2.

2.4 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2, then:

- 2.4.1 unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and
- 2.4.2 any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Agreement.
- 2.5 To the extent that any Contract Change requires a programme for implementation, then the Parties shall follow the procedures set out in Schedule 9 (*Transition Plan*), and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and/or Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.
- 2.6 The Supplier shall:
- 2.6.1 within 10 Working Days of the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
- 2.6.2 thereafter provide to the Authority such further copies of the updated Agreement as the Authority may from time to time request.

3 COSTS

- 3.1 Subject to Paragraph 3.3:
- 3.1.1 the costs of preparing each Change Request shall be borne by the Party making the Change Request; and
- 3.1.2 the costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Party making the Change Request provided that the Authority shall not be required to pay any such costs if:
- (i) such costs are below five thousand pounds (£5,000);
 - (ii) the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or
 - (iii) such costs exceed those in the accepted Impact Assessment Estimate.
- 3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Schedule 10 (*Charges and Invoicing*). The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of

resources required for the provision of the Services as amended by the Contract Change.

- 3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.

4 CHANGE REQUEST

- 4.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 1.

- 4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within 10 Working Days of the date of issuing the Change Request.

- 4.3 If the Authority issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within 10 working days of the date of receiving the Change Request an estimate ("**Impact Assessment Estimate**") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Authority within 10 working days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Authority.

- 4.4 If the Authority accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Authority as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient information is received by the Authority to fully understand:

4.4.1 the nature of the request for clarification; and

4.4.2 the reasonable justification for the request;

the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

5 IMPACT ASSESSMENT

- 5.1 Each Impact Assessment shall be completed in good faith and shall include:

5.1.1 details of the proposed Contract Change including the reason for the Contract Change;

5.1.2 details of the impact of the proposed Contract Change on the Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Agreement; and

5.1.3 any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:

(i) the Services Description and/or, the Service Points;

- (ii) the format of Authority Data, as set out in the Services Description;
 - (iii) the Milestones, Transition Plan and any other timetable previously agreed by the Parties;
- 5.1.4 other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority's IT infrastructure;
- 5.1.5 details of the cost of implementing the proposed Contract Change;
- 5.1.6 details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
- 5.1.7 a timetable for the implementation, together with any proposals for the testing of the Contract Change;
- 5.1.8 details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
- 5.1.9 such other information as the Authority may reasonably request in (or in response to) the Change Request.
- 5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 23 (*Protection of Personal Data*).
- 5.3 Subject to the provisions of Paragraph 5.4, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment.
- 5.4 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within 5 Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority within 10 Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
- 5.5 The calculation of costs for the purposes of Paragraphs 5.1.4 and 5.1.5 shall:
- 5.5.1 be based on the Financial Model;
 - 5.5.2 facilitate the Financial Transparency Objectives;
 - 5.5.3 include estimated volumes of each type of resource to be employed and the applicable rate card;
 - 5.5.4 include full disclosure of any assumptions underlying such Impact Assessment;

- 5.5.5 include evidence of the cost of any assets required for the Change; and
- 5.5.6 include details of any new Sub-contracts necessary to accomplish the Change.

6 AUTHORITY'S RIGHT OF APPROVAL

- 6.1 Within 15 Working Days of receiving the Impact Assessment from the Supplier or within 10 Working Days of receiving the further information that it may request pursuant to Paragraph 5.4, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:
 - 6.1.1 approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
 - 6.1.2 in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
 - 6.1.3 in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within 5 Working Days of such request. Subject to Paragraph 5.4, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change within 10 Working Days.
- 6.2 If the Authority approves the proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 7, then it shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Authority's signature the Change Authorisation Note shall constitute (or, where the Authority has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Agreement.
- 6.3 If the Authority does not sign the Change Authorisation Note within 10 Working Days, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within 5 Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

7 SUPPLIER'S RIGHT OF APPROVAL

- 7.1 Following an Impact Assessment, if:
 - 7.1.1 the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:

- 7.1.2 materially and adversely affect the risks to the health and safety of any person;
- 7.1.3 require the Services to be performed in a way that infringes any Law; and/or
- 7.1.4 the Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within 5 Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 4.3.

8 OPERATIONAL CHANGE PROCEDURE

- 8.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:
 - 8.1.1 have an impact on the business of the Authority;
 - 8.1.2 require a change to this Agreement;
 - 8.1.3 have a direct impact on use of the Services; or
 - 8.1.4 involve the Authority in paying any additional Charges or other costs.
- 8.2 The Authority may request an Operational Change by submitting a written request for Operational Change ("**RFOC**") to the Supplier Representative.
- 8.3 The RFOC shall include the following details:
 - 8.3.1 the proposed Operational Change; and
 - 8.3.2 the time-scale for completion of the Operational Change.
- 8.4 The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.
- 8.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Authority when the Operational Change is completed.

9 COMMUNICATIONS

- 9.1 For any Change Communication to be valid under this Schedule, it must be sent to either the Authority Representative or the Supplier Representative, as applicable. The provisions of Clause 42 (*Notices*) shall apply to a Change Communication as if it were a notice.

ANNEX 1: CHANGE REQUEST FORM

CR NO.:	TITLE:	TYPE OF CHANGE:
CONTRACT:		REQUIRED BY DATE:
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED (OPTIONAL FIELD):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

ANNEX 2: CHANGE AUTHORISATION NOTE

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
MILESTONE DATE: <i>[if any]</i>		
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS):		
SIGNED ON BEHALF OF THE AUTHORITY:		SIGNED ON BEHALF OF THE SUPPLIER:
Signature: _____		Signature: _____
Name: _____		Name: _____
Position: _____		Position: _____
Date: _____		Date: _____

Schedule 15

DISPUTE RESOLUTION PROCEDURE

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"CEDR" the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;

"Counter Notice" has the meaning given in Paragraph 7.2;

"Expert" in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute;

"Expert Determination" determination by an Expert in accordance with Paragraph 6;

"Mediation Notice" has the meaning given in Paragraph 4.2;

"Mediator" the independent third party appointed in accordance with Paragraph 5.2 to mediate a Dispute;

"Multi-Party Dispute" a Dispute which involves the Parties and one or more Related Third Parties;

"Multi-Party Dispute Representatives" has the meaning given in Paragraph 9.6;

"Multi-Party Dispute Resolution Board" has the meaning given in Paragraph 9.6;

"Related Third Party" a party to:

- (a) another contract with the Authority or the Supplier which is relevant to this Agreement; or
- (b) a Sub-contract; and

"Supplier Request" a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

2 DISPUTE NOTICES

2.1 If a Dispute arises then:

2.1.1 the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and

2.1.2 if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice:

- 2.2.1 shall set out:
- (i) the material particulars of the Dispute;
 - (ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
 - (iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and
- 2.2.2 may specify in accordance with the requirements of Paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case Paragraph 2.3 shall apply.
- 2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to Paragraph 2.2.2, then:
- 2.3.1 if it is served by the Authority it shall be treated as a Multi-Party Procedure Initiation Notice; and
 - 2.3.2 if it is served by the Supplier it shall be treated as a Supplier Request,
 - 2.3.3 and in each case the provisions of Paragraph 9 shall apply.
- 2.4 Subject to Paragraphs 2.5 and 3.2 and so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:
- 2.4.1 first by commercial negotiation (as prescribed in Paragraph 4);
 - 2.4.2 then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5); and
 - 2.4.3 lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 44 (*Governing Law and Jurisdiction*)).
- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.
- 2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under Paragraph 8 (*Urgent Relief*).

3 EXPEDITED DISPUTE TIMETABLE

- 3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within 5 Working Days of the issue

of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.

- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
- 3.2.1 in Paragraph 4.2.3, 10 Working Days;
 - 3.2.2 in Paragraph 5.2, 10 Working Days;
 - 3.2.3 in Paragraph 6.2, 5 Working Days; and
 - 3.2.4 in Paragraph 7.2, 10 Working Days.
- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within 2 Working Days after the deadline has passed, the Authority may set a revised deadline provided that it is no less than 5 Working Days before the end of the period of time specified in the applicable paragraphs (or 2 Working Days in the case of Paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

4 COMMERCIAL NEGOTIATION

- 4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Authority Representative and the Supplier Representative.
- 4.2 If:
- 4.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;
 - 4.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this Paragraph 4; or
 - 4.2.3 the Parties have not settled the Dispute in accordance with Paragraph 4.1 within 30 Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation in accordance with Paragraph 5 (a "**Mediation Notice**").

5 MEDIATION

- 5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Procedure which is current

at the time the Mediation Notice is served (or such other version as the Parties may agree).

- 5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within 20 Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.
- 5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 5.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

6 EXPERT DETERMINATION

- 6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 or, if applicable, mediation in accordance with Paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.
- 6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Working Days of the relevant request made pursuant to Paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:
 - 6.2.1 if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);
 - 6.2.2 if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
 - 6.2.3 if the Dispute relates to a matter of a technical nature not falling within Paragraphs 6.2.1 or 6.2.2, on the instructions of the president (or equivalent) of:
 - (i) an appropriate body agreed between the Parties; or
 - (ii) if the Parties do not reach agreement on the relevant body within 15 Working Days of the relevant request made pursuant to Paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.
- 6.3 The Expert shall act on the following basis:

- 6.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- 6.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- 6.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- 6.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the Parties;
- 6.3.5 the process shall be conducted in private and shall be confidential; and
- 6.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7 ARBITRATION

- 7.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.
- 7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have 15 Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.
- 7.3 If the Authority serves a Counter Notice, then:
 - 7.3.1 if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or
 - 7.3.2 if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.
- 7.4 If the Authority does not serve a Counter Notice within the 15 Working Day period referred to in Paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
- 7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:

- 7.5.1 the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("LCIA") (subject to Paragraphs 7.5.5, 7.5.6 and 7.5.7);
- 7.5.2 the arbitration shall be administered by the LCIA;
- 7.5.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- 7.5.4 if the Parties fail to agree the appointment of the arbitrator within 10 Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 7.5.5 the chair of the arbitral tribunal shall be British;
- 7.5.6 the arbitration proceedings shall take place in London and in the English language; and
- 7.5.7 the seat of the arbitration shall be London.

8 URGENT RELIEF

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

9 MULTI-PARTY DISPUTES

- 9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 9 (the "**Multi-Party Dispute Resolution Procedure**").
- 9.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier which sets out the Authority's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a "**Multi-Party Procedure Initiation Notice**".
- 9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with Paragraph 7, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.

- 9.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:
- 9.4.1 a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
 - 9.4.2 not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 8.
- 9.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
- 9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the "**Multi-Party Dispute Resolution Board**") comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:
- 9.6.1 the Authority;
 - 9.6.2 the Supplier;
 - 9.6.3 each Related Third Party involved in the Multi-Party Dispute; and
 - 9.6.4 any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,
- (together "**Multi-Party Dispute Representatives**").
- 9.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:
- 9.7.1 the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
 - 9.7.2 the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within 5 Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
 - 9.7.3 in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties

and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

9.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within 25 Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:

9.8.1 either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Paragraph 5 shall apply;

9.8.2 either Party may request that the Multi-Party Dispute is referred to an expert in which case Paragraph 6 shall apply; and/or

9.8.3 subject to Paragraph 9.9, Paragraph 7 shall apply to the Multi-Party Dispute,

and in each case references to the "Supplier" or the "Parties" in such provisions shall include a reference to all Related Third Parties.

9.9 If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-Contractor, by the Supplier.

Schedule 16

REPORTS AND RECORDS PROVISIONS

1 TRANSPARENCY REPORTS

- 1.1 Within three (3) months of the Effective Date the Supplier shall provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) draft reports in accordance with Annex 1 (once approved, the "**Transparency Reports**").
- 1.2 If the Authority rejects any draft Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under Paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.

2 OTHER REPORTS

- 2.1 The Supplier shall provide copies of any internal or external audits including Civil Aviation Authority (CAA) and European Aviation Safety Agency (EASA) audits of the Services or any aspect of performance of the Agreement to the Authority Representative within 5 Working Days of receipt by the Supplier of such audit.
- 2.2 The Authority may require any or all of the following reports:
 - 2.2.1 delay reports;
 - 2.2.2 reports which the Supplier is required to supply as part of the Management Information;
 - 2.2.3 annual reports on the Insurances;
 - 2.2.4 security reports; and
 - 2.2.5 Force Majeure Event reports.

3 RECORDS

- 3.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Annex 1 (together "**Records**");
 - 3.1.1 in accordance with the requirements of The National Archives and Good Industry Practice;

- 3.1.2 in chronological order;
 - 3.1.3 in a form that is capable of audit; and
 - 3.1.4 at its own expense.
- 3.2 The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.
- 3.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.
- 3.4 The Supplier shall, during the Term and a period of at least 7 years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.
- 3.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least 7 years after the expiry or termination of this Agreement.
- 3.6 Without prejudice to the foregoing, the Supplier shall provide the Authority:
- 3.6.1 as soon as they are available, and in any event within 60 Working Days after the end of the first 6 months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such 6 month period; and
 - 3.6.2 as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than 130 Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.

ANNEX 1: TRANSPARENCY REPORTS

TITLE	CONTENT	FORMAT	FREQUENCY
Daily Report	Aircraft and crew status, planned activity	CENTRIK	Daily
Weekly Report	Summary of aircraft and crew status, planned activity	CENTRIK	Weekly
Performance	A summary of significant activity and achievements	PDF Report	Monthly
Charges	Summary of invoices issued	PDF Report	Monthly
Technical	Summary of technical performance, achievements, opportunities, and issues	PDF Report	Monthly
Performance management	Summary of availability, maintenance planning, and issues	PDF Report	Monthly

ANNEX 2: RECORDS TO BE KEPT BY THE SUPPLIER

The records to be kept by the Supplier are:

- 1 This Agreement, its Schedules and all amendments to such documents.
- 2 All other documents which this Agreement expressly requires to be prepared.
- 3 Records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel.
- 4 Notices, reports and other documentation submitted by any Expert.
- 5 All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and Supplier Equipment.
- 6 Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
- 7 All formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of the Services.
- 8 All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
- 9 Documents prepared by the Supplier in support of claims for the Charges.
- 10 Documents submitted by the Supplier pursuant to the Change Control Procedure.
- 11 Documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure.
- 12 Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
- 13 Invoices and records related to VAT sought to be recovered by the Supplier.
- 14 Financial records, including audited and un-audited accounts of the Guarantor and the Supplier.
- 15 Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
- 16 All documents relating to the insurances to be maintained under this Agreement and any claims made in respect of them.
- 17 All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement.

Schedule 17

EXIT MANAGEMENT

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Emergency Exit" any termination of this Agreement which is a:

- (a) termination of the whole or part of this Agreement in accordance with Clause 31 (*Termination Rights*), except where the period of notice given under that Clause is greater than or equal to 6 months;
- (b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 31 (*Termination Rights*); or
- (c) wrongful termination or repudiation of this Agreement by either Party;

"Exclusive Assets" those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;

"Exit Information" has the meaning given in Paragraph 3.1;

"Exit Manager" the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties' respective obligations under this Schedule;

"Net Book Value" the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of the same date as this Agreement;

"Non-Exclusive Assets" those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services but which are also used by the Supplier or Key Sub-contractor for other purposes of material value;

"Ordinary Exit" any termination of this Agreement which occurs:

- (a) pursuant to Clause 31 (*Termination Rights*) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or
- (b) as a result of the expiry of the Initial Term or any Extension Period;

"Registers" the register and configuration database referred to in Paragraphs 2.1.1 and 2.1.2;

"Transferable Assets" those of the Exclusive Assets which are capable of legal transfer to the Authority;

"Transferable Contracts" the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation; and

"Transferring Contracts" has the meaning given in Paragraph 6.3.

2 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

2.1 During the Term, the Supplier shall:

2.1.1 create and maintain a register of all:

(i) Assets, detailing their:

(A) make, model and asset number;

(B) ownership and status as either Exclusive Assets or Non-Exclusive Assets;

(C) Net Book Value;

(D) condition and physical location; and

(E) use (including technical specifications); and

(ii) Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;

2.1.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;

2.1.3 agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and

2.1.4 at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.

2.2 The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.

2.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within 3 months of the Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule and each Party's compliance with it.

3 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 3.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
- 3.1.1 details of the Service(s);
 - 3.1.2 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
 - 3.1.3 an inventory of Authority Data in the Supplier's possession or control;
 - 3.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - 3.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
 - 3.1.6 to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Agreement; and
 - 3.1.7 such other material and information as the Authority shall reasonably require,
- (together, the "Exit Information").
- 3.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this Paragraph 3.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).
- 3.3 The Supplier shall:
- 3.3.1 notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and
 - 3.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Authority.
- 3.4 The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than 4 updates in any 6 month period.

- 3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
- 3.5.1 prepare an informed offer for those Services; and
 - 3.5.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

4 EXIT PLAN

- 4.1 The Supplier shall, within 3 months after the Effective Date, deliver to the Authority an Exit Plan which:
- 4.1.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Authority and/or its Replacement Supplier on the expiry or termination of this Agreement;
 - 4.1.2 complies with the requirements set out in Paragraph 4.2; and
 - 4.1.3 is otherwise reasonably satisfactory to the Authority.
- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.3 The Exit Plan shall set out, as a minimum:
- 4.3.1 how the Exit Information is obtained;
 - 4.3.2 separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;
 - 4.3.3 the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
 - 4.3.4 the management structure to be employed during the Termination Assistance Period;
 - 4.3.5 a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
 - 4.3.6 how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);

- 4.3.7 the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Annex 1 as are applicable);
 - 4.3.8 a timetable and critical issues for providing the Termination Services;
 - 4.3.9 any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
 - 4.3.10 how the Termination Services would be provided (if required) during the Termination Assistance Period;
 - 4.3.11 procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 20 (*Staff Transfer*); and
 - 4.3.12 how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.
- 4.4 The Parties acknowledge that the migration of the Services from the Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
- 4.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Authority for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

Finalisation of the Exit Plan

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

5 TERMINATION SERVICES

Notification of Requirements for Termination Services

5.1 The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least 4 months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

5.1.1 the date from which Termination Services are required;

5.1.2 the nature of the Termination Services required; and

5.1.3 the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the date that the Supplier ceases to provide the Services.

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

Termination Assistance Period

5.3 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:

5.3.1 continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 5.1, provide the Termination Services;

5.3.2 in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;

5.3.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 5.3.2 without additional costs to the Authority;

5.3.4 provide the Services and the Termination Services at no detriment to the Service Requirements, save to the extent that the Parties agree otherwise in accordance with Paragraph 5.5; and

5.3.5 at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.

- 5.4 Without prejudice to the Supplier's obligations under Paragraph 5.3.3, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 5.3.2 without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.
- 5.5 If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Requirement(s), the Parties shall vary the relevant Service Requirement(s) and/or the applicable Service Credits to take account of such adverse effect.

Termination Obligations

- 5.6 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 5.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), the Supplier shall:
- 5.7.1 cease to use the Authority Data;
 - 5.7.2 provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
 - 5.7.3 erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
 - 5.7.4 return to the Authority such of the following as is in the Supplier's possession or control:
 - (i) all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Agreement;
 - (ii) all materials created by the Supplier under this Agreement in which the IPRs are owned by the Authority;
 - (iii) any equipment which belongs to the Authority; and
 - (iv) any items that have been on-charged to the Authority, such as consumables;
 - 5.7.5 vacate any Authority Premises;
 - 5.7.6 provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after expiry or termination to:
 - (i) such information relating to the Services as remains in the possession or control of the Supplier; and

- (ii) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 5.7.6(ii).

- 5.8 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.
- 5.9 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

6 ASSETS, SUB-CONTRACTS AND SOFTWARE

- 6.1 Following notice of termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, without the Authority's prior written consent:
- 6.1.1 terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;
 - 6.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
 - 6.1.3 terminate, enter into or vary any licence for software in connection with the Services.
- 6.2 Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 5.3.5, the Authority shall provide written notice to the Supplier setting out:
- 6.2.1 which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier ("**Transferring Assets**");
 - 6.2.2 which, if any, of:
 - (i) the Exclusive Assets that are not Transferable Assets; and
 - (ii) the Non-Exclusive Assets,

the Authority and/or the Replacement Supplier requires the continued use of; and

- 6.3 which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the "Transferring Contracts"),

in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services or Replacement Services.

- 6.4 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:

6.4.1 a Termination Payment is payable by the Authority to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or

6.4.2 the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Agreement, in which case the Authority shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.

- 6.5 Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.

- 6.6 Where the Supplier is notified in accordance with Paragraph 6.2.2 that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:

6.6.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which

6.6.2 procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.

- 6.7 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.

- 6.8 The Authority shall:

6.8.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and

- 6.8.2 once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 6.9 The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.
- 6.10 The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to Paragraph 6.6 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract.

7 SUPPLIER PERSONNEL

- 7.1 The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 20 (*Staff Transfer*) shall apply.
- 7.2 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.
- 7.3 During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Authority and/or the Replacement Supplier.
- 7.4 The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 7.5 The Supplier shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier, except that this paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

8 CHARGES

- 8.1 During the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), the Authority shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.

- 8.2 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 8.3 Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

9 APPORTIONMENTS

- 9.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- 9.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
- 9.1.2 the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
- 9.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 9.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 9.1 as soon as reasonably practicable.

ANNEX 1: SCOPE OF THE TERMINATION SERVICES

- 1 The Termination Services to be provided by the Supplier shall include such of the following services as the Authority may specify:
- 1.1 ceasing all non-critical Software changes (except where agreed in writing with the Authority);
- 1.2 notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
- 1.3 providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority and/or the Replacement Supplier after the end of the Termination Assistance Period;
- 1.4 delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12 month period immediately prior to the commencement of the Termination Services);

- 1.5 providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
- 1.6 with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
- 1.7 providing the Authority with any problem logs which have not previously been provided to the Authority;
- 1.8 providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of 12 months after the Termination Assistance Period;
- 1.9 providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
- 1.10 reviewing all Software libraries used in connection with the Services and providing details of these to the Authority and/or the Replacement Supplier;
- 1.11 making available to the Authority and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry;
- 1.12 assisting in establishing naming conventions for any new production site;
- 1.13 analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- 1.14 agreeing with the Authority a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
- 1.15 delivering copies of the production databases (with content listings) to the Authority's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Authority;
- 1.16 assisting with the loading, testing and implementation of the production databases;
- 1.17 assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;
- 1.18 in respect of the maintenance and support of the Supplier System, providing historical performance data for the previous 12 months;
- 1.19 assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by the Authority (provided that these

Services shall end on a date no later than the end of the Termination Assistance Period);

- 1.20 providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
- 1.21 answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;
- 1.22 agreeing with the Authority and/or the Replacement Supplier a plan for the migration of the Authority Data to the Authority and/or the Replacement Supplier;
- 1.23 providing access to the Authority and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 months afterwards for the purpose of the smooth transfer of the Services to the Authority and/or the Replacement Supplier:
 - 1.23.1 to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
 - 1.23.2 following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- 1.24 knowledge transfer services, including:
 - 1.24.1 transferring all training material and providing appropriate training to those Authority and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;
 - 1.24.2 providing for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
 - 1.24.3 providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors.

2 The Supplier shall:

- 2.1 provide a documented plan relating to the training matters referred to in Paragraph 1.11 for agreement by the Authority at the time of termination or expiry of this Agreement;

- 2.2 co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.14, providing skills and expertise of a suitable standard; and
 - 2.3 fully co-operate in the execution of the Authority Database migration plan agreed pursuant to Paragraph 1.22, providing skills and expertise of a reasonably acceptable standard.
- 3 To facilitate the transfer of knowledge from the Supplier to the Authority and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Authority and/or the Replacement Supplier.
- 4 The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to Paragraph 1.24 shall include:
- 4.1 copies of up-to-date procedures and operations manuals;
 - 4.2 product information;
 - 4.3 agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;
 - 4.4 key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule;
 - 4.5 information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
 - 4.5.1 details of physical and logical security processes and tools which will be available to the Authority; and
 - 4.5.2 any relevant interface information.
 - 4.6 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or the Authority access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:
 - 4.7 any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 4.6 shall:
 - 4.7.1 sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
 - 4.7.2 during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Authority deems reasonable; and
 - 4.8 the Authority and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

Schedule 18

BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN

References:

- (A) 2 Excel Aviation Ltd Emergency Response Plan Version 1.2 Dated 1st July 2018.
- (B) 2 Excel Aviation Ltd Business Continuity Plan Version 1.0 Dated 1st October 2018.

1 Introduction

- 1.1 The Authority Surveillance Operation will be conducted in accordance with 2 Excel's existing approved Operations Manuals, and emergencies and contingencies managed in accordance with existing strategies (References A & B). The relevant parts of these contingency plans are summarized in this Schedule.

2 Communications

2.1 Aircraft Communications.

- 2.1.1 2 Excel will provide 24hr monitoring of the Authority aircraft from its Company Ops facility at Doncaster Sheffield Airport (DSA). This includes tracking by satellite communication devices on board the aircraft. For aircraft operating in remote areas (e.g. offshore), the established procedure is for the crew to make an 'ops-normal' communication with Company Ops every 30mins. If this is missed, the Duty Ops Controller will attempt to contact the crew by satphone.
- 2.1.2 If communications are lost with the Authority aircraft, 2 Excel Ops will implement the Emergency Response Plan (ERP) at Reference A in an escalated manner in order to inform senior staff of a potential issue. The ERP will be up-issued to include liaison with the ARCC. 2 Excel Ops and the ARCC will have access to the live track of the aircraft through its satellite tracking device - this will be used to establish whether the aircraft is on station, returning to base using No Radio procedures, or an emergency situation exists. Any information gathered will be passed to Air Traffic Control to aid the return of the aircraft to the nearest suitable airfield.
- 2.1.3 If the aircraft becomes overdue and cannot be contacted, 2 Excel Ops will be responsible for implementing the ERP procedure for 'overdue aircraft' and notifying the ARCC.

2.2 Base Communications.

- 2.2.1 The 2 Excel Operations Room operates 24 hours a day, 365 days a year and will support the Authority aircraft whenever it is tasked. The Operations Room has multiple redundancies built in to ensure that it can remain functional, supporting operations, in the event of critical failures.

2.2.2 The Operations Room uses VOIP phones. In the event of an Internet loss there is a back-phone connected to a fixed land line ensuring continuity of communications. The Duty Operations Controller also carries a Duty Mobile Phone which can be used to provide a 4G hotspot, and can also be taken outside in the event of a building evacuation (e.g. fire alarm).

2.2.3 For prolonged communications issues, or Internet down-time, operational control will be handed over to 2 Excel's Secondary Operations Room at Sywell. The Back-up Ops Facility can replicate the levels of capability of DSA Ops.

2.3 Emergency Communications

2.3.1 The Company ERP details how communications are managed in the event of an aircraft emergency or accident. An incident control room is established and duty staff action contingency procedures to ensure all required agencies and people are contacted. This includes procedures for management of media enquiries.

3 Infrastructure

3.1 Airport and Ops Facilities.

3.1.1 The Authority aircraft will be based with 2 Excel's Hangar 3 at DSA, a 24-hour international airport with IFR approach aids, a robust Snow-Clearance Plan, fuel and all other facilities required for the operation. In the unlikely event that either Hangar 3 or DSA are unable to support flying operations (e.g. fuel supply) the Authority aircraft will deploy to another suitable location; East Midlands Airport has been identified as the primary alternate, but 2 Excel also has operations based at Stansted, Cambridge, Oxford and Sywell Airports. The dispersal of Company aircraft is activated under the Company BCP (Reference B).

3.1.2 The 2 Excel headquarters is at Sywell Aerodrome in Northamptonshire, where the secondary Ops Room is also located. In the event of a prolonged unavailability of Hangar 3 at DSA, the Authority operation will be run from Sywell where all the required infrastructure and facilities are available – these include flight planning equipment, and all communications means.

4 Personnel

4.1 Flight-crew

4.1.1 2 Excel has been operating the King Air for over 8 years and has a current pool of 14 type-rated pilots. Additional pilots will be recruited to deliver the Authority contract, but there is enough depth in the King Air pilot cadre to manage staff turnover. The Company also has 19 PA-31 Navajo pilots; if a Navajo is used to deliver parts of the Service, there is considerable depth to this capability also.

4.1.2 The Company currently has a pool of 8 System Operators and will recruit more staff to deliver the Authority contract. As with the pilots, this is

enough strength-in-depth to manage staff turnover and other Company requirements.

- 4.1.3 All flight-crew are employed with a 3-month notice period to provide time to recruit and train replacements in the event of a crew-member turnover. Furthermore, 2 Excel provides all employees with membership of its Employee Ownership Trust (EOT), an incentive for employees to join remain with 2 Excel, minimising churn and maintaining expertise in place.

4.2 Support Staff

- 4.2.1 2 Excel already operates a 24hr operation from DSA. There is considerable depth of Ops staff, ramp staff and other personnel required to deliver the Authority mission. In the event of short-term shortages, staff will be moved to DSA from the Company's other operational bases as required to cover the requirement.

- 4.2.2 The Company operates 25 other aircraft and has a large and well-managed resource of other support staff such as CAMO, Compliance, HR and administrative support including training. The addition of the Authority aircraft and staff will require a modest addition to this team. In common with the Ops Dept, short-term churn of personnel would be managed by re-assigning staff to ensure continuity of the Authority capability.

5 **5 Aircraft**

5.1 King Airs

- 5.1.1 2 Excel will provide a primary Authority aircraft and a back-up to cater for scheduled and unscheduled maintenance. Both aircraft will be fully mission capable.

- 5.1.2 2 Excel also operates a further five King Airs which will be able to cover periods when neither of the Authority aircraft are available.

5.2 Navajos

- 5.2.1 The Company operates a fleet of 9 PA-31 Navajos in the surveillance role. All these aircraft can be fitted with EO/IR sensor turrets and other mission equipment to deliver the Authority role. In the unlikely event that both dedicated Authority King Airs are unavailable, the best alternative capability may be delivered by temporarily placing a Navajo on the line. This decision will be made by the Company management team in consultation with the Authority.

6 **Financial Hardship**

- 6.1 The Authority contract will, at the time of commencement, account for approximately 7% of 2 Excel's turnover. The Company has been trading for 12 years and has delivered a profit each year – the likelihood of financial hardship is minimal. Furthermore, a significant retained-profit continues to be maintained to manage short-term requirements for project funding.

7 Loss of Approvals

- 7.1 Should any of 2 Excel's approval be lost (AOC, EASA Part21 or P145) then delivery of the Project would be subcontracted to another operator. Whilst they are not planned to be used for this Project, existing partnering agreements are in place with other organizations that carry out sub-contracted work for 2 Excel's other business interests. These would be able to be used for the Authority contract.

Schedule 19

CONDUCT OF CLAIMS

1 INDEMNITIES

- 1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Agreement (the "Indemnifier"), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the "Beneficiary").
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement (a "Claim"), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 1.3 Subject to Paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
- 1.4.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - 1.4.2 the Indemnifier shall not bring the name of the Beneficiary into disrepute;
 - 1.4.3 the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - 1.4.4 the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:
- 1.5.1 the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
 - 1.5.2 the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice

from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or

- 1.5.3 the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

2 SENSITIVE CLAIMS

- 2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "Sensitive Claim"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

3 RECOVERY OF SUMS

- 3.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- 3.1.1 an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
- 3.1.2 the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

4 MITIGATION

- 4.1 Each of the Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.

Schedule 20

STAFF TRANSFER

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Former Supplier" a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);

"Replacement Sub-contractor" a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);

"Relevant Transfer" a transfer of employment to which the Employment Regulations applies;

"Relevant Transfer Date" in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

"Service Transfer" any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;

"Service Transfer Date" the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;

"Staffing Information" in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement, gender and place of work;
- (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;

- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

"Supplier's Final Supplier Personnel List" a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date; and

"Supplier's Provisional Supplier Personnel List" a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier.

2 **INTERPRETATION**

Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

PART A: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1 PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 The Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.
- 1.2 If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 1.2.1 the Supplier shall, and shall procure that the relevant Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and
- 1.2.2 the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the 15 Working Day period specified in Paragraph 1.2.2:
- 1.4.1 no such offer of employment has been made;
- 1.4.2 such offer has been made but not accepted; or
- 1.4.3 the situation has not otherwise been resolved,
- the Supplier and/or the Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2 INDEMNITIES

- 2.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:
- 2.1.1 indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes all reasonable steps to minimise any such Employee Liabilities; and

- 2.1.2 procure that the Former Supplier indemnifies the Supplier against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.
- 2.4 The indemnities in Paragraph 2.1:
- 2.4.1 shall not apply to:
- (i) any claim for:
- (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
- 2.4.2 any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and
- 2.4.3 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-contractor to the Authority and, if applicable, Former Supplier within 6 months of the Effective Date.

3 PROCUREMENT OBLIGATIONS

Where in this Part C the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

PART B: EMPLOYMENT EXIT PROVISIONS

1 PRE-SERVICE TRANSFER OBLIGATIONS

- 1.1 The Supplier agrees that within 20 Working Days of the earliest of:
- 1.1.1 receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
 - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
 - 1.1.3 the date which is 12 months before the end of the Term; and
 - 1.1.4 receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),
- it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.
- 1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:
- 1.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
 - 1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.
- 1.4 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):
- 1.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

- 1.5.2 make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
- 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

- 1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:
 - 1.6.1 the numbers of employees engaged in providing the Services;
 - 1.6.2 the percentage of time spent by each employee engaged in providing the Services; and
 - 1.6.3 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
 - 1.7.1 the most recent month's copy pay slip data;

- 1.7.2 details of cumulative pay for tax and pension purposes;
- 1.7.3 details of cumulative tax paid;
- 1.7.4 tax code;
- 1.7.5 details of any voluntary deductions from pay; and
- 1.7.6 bank/building society account details for payroll purposes.

2 EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 2.1 The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:
 - 2.3.1 any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
 - 2.3.2 the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:

- (i) any collective agreement applicable to the Transferring Supplier Employees;
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
 - (iii) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date; and/or
 - (iv) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (A) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (B) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel list, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- 2.3.3 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- 2.3.4 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel list for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 2.3.5 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
 - 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Supplier's Final Supplier Personnel list claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel list a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- 2.5.1 the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
 - 2.5.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the 15 Working Day period specified in Paragraph 2.5.2 has elapsed:
- 2.7.1 no such offer of employment has been made;
 - 2.7.2 such offer has been made but not accepted; or
 - 2.7.3 the situation has not otherwise been resolved
- the Authority shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor

against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

2.9.1 shall not apply to:

2.9.2 any claim for:

- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or

2.9.3 any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and

2.9.4 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date .

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.

2.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel list before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

2.11.1 the Supplier and/or any Sub-contractor; and

2.11.2 the Replacement Supplier and/or the Replacement Sub-contractor.

2.12 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties

under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

- 2.13 Subject to Paragraph 2.14, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- 2.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
 - 2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
 - (ii) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
 - 2.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
 - 2.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
 - 2.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;

- 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (i) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- 2.13.7 a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and
- 2.13.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

Schedule 21

KEY PERSONNEL

KEY ROLE	Name of KEY Personnel	Responsibilities/ Authorities	Phase of the project during which they will be a MEMBER OF Key Personnel	MINIMUM PERIOD in Key Role
Director	Name	Contract oversight	All	2 yrs
Finance Director		Finance	All	2 yrs
Head of Department		Contract management and delivery	All	2 yrs
Head of Department		Management of engineering	All	2 yrs
Safety Manager		Safety and change management	All	2 yrs
Technical Lead		Mission system design and performance	All	2 yrs

Schedule 22

GUARANTEE

DATED _____ **[]**

2 EXCEL (HOLDINGS) LIMITED (1)

and

MARITIME & COASTGUARD AGENCY (2)
ACTING ON BEHALF OF THE
SECRETARY OF STATE FOR
TRANSPORT

PARENT COMPANY GUARANTEE

DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the day of 20[]

BETWEEN:

- (1) 2 Excel (Holdings) Ltd, a company registered in England and Wales with company number 10656583 and whose registered office is at 72 Fielding Road, London W4 1DB ("**Guarantor**"); in favour of
- (2) MARITIME & COASTGUARD AGENCY of 105 Commercial Road Southampton SO15 1EG acting on behalf of the Secretary of State for Transport ("**Beneficiary**")

WHEREAS:

- (A) It is a condition of the Beneficiary entering into the Guaranteed Agreement that the Guarantor executes and delivers this Deed of Guarantee to the Beneficiary.
- (B) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.
- (C) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

1 Definitions and Interpretation

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.2 the words and phrases below shall have the following meanings:
 - 1.2.1 "**Guaranteed Agreement**" means the contract for the provision of aerial surveillance made between the Beneficiary and the Supplier on [*insert date*]; and
 - 1.2.2 "**Guaranteed Obligations**" means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement.
- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;

- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent, present or future.

2 Guarantee and indemnity

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
 - 2.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
 - 2.3.2 as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed

Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.

- 2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3 Obligation to enter into a new contract

If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

4 Demands and Notices

- 4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

2 Excel (Holdings) Ltd
72 Fielding Road
London
W4 1DB

Fax: 940

For the Attention of Mr

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

- 4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

4.2.1 if delivered by hand, at the time of delivery; or

4.2.2 if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or

- 4.2.3 if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.
- 4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.
- 4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.
- 5 Beneficiary's protections**
- 5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- 5.2.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
- 5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
- 5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
- 5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach by the

Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.

- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

6 Guarantor intent

Without prejudice to the generality of Clause 5 (*Beneficiary's protections*), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

7 Rights of subrogation

- 7.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:
 - 7.1.1 of subrogation and indemnity;
 - 7.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
 - 7.1.3 to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights up to such amount as the Beneficiary determines in its sole discretion represents the amount of the Guarantor's liabilities under this Deed of Guarantee (the "**Guarantee Estimate Amount**") on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor may retain for its own account or otherwise deal with any such amounts recovered in excess of the Guarantee Estimate Amount as the Guarantor may determine in its sole discretion. The Guarantor hereby confirms that it has not taken any security from the Supplier (other than cross-indemnities or other security taken in the ordinary course of its financial arrangements with its Affiliates) and agrees not to do take any further security until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

8 Deferral of rights

- 8.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:
- 8.1.1 claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement; or
 - 8.1.2 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement.
- 8.2 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not following the occurrence of a Supplier Termination Event:
- 8.2.1 exercise any rights it may have to be indemnified by the Supplier;
 - 8.2.2 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or
 - 8.2.3 claim any set-off or counterclaim against the Supplier.
- 8.3 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

9 Representations and warranties

The Guarantor hereby represents and warrants to the Beneficiary that:

- 9.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;

- 9.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
- 9.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
- 9.3.1 the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
- 9.3.2 any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
- 9.3.3 the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
- 9.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 9.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

10 Payments and set-off

- 10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

11 Guarantor's acknowledgement

The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

12 Assignment

- 12.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.
- 12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

13 Severance

If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

14 Third party rights

- 14.1 A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

15 Governing Law

- 15.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
- 15.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 15.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by 2 Excel
(Holdings) Limited acting by [insert/print
names]

)
)
)
)

.....

Director

.....

Director/Secretary

Schedule 23

DATA PROCESSING

- 1.1. The Supplier shall comply with any further written instructions with respect to processing by the Authority.
- 1.2 Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	Contact details for Authority staff and Authority contractors.
Duration of the processing	For the Term.
Nature and purposes of the processing	To be able to provide the Services through use of key contact points within the Authority for day to day operations and at times of escalation.
Type of Personal Data	<ul style="list-style-type: none">• name;• job title;• work telephone numbers; and• work email addresses.
Categories of Data Subject	<ul style="list-style-type: none">• Authority staff• Authority contractors
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	7 years after the end of the Term.

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