



Scottish Government
Riaghaltas na h-Alba
gov.scot

Contract For the Provision of
Landscape Review

FORM OF TENDER

SCHEDULE 5

FORM OF TENDER TO THE SCOTTISH GOVERNMENT

*I/We the undersigned do hereby contract and agree on the acceptance of the Tender by the Scottish Ministers, to provide the Services in the Specification of Requirements in accordance with the Schedules, at the prices entered in the Pricing Schedule and in accordance with the Scottish Government Terms and Conditions for Services.

*I/We the undersigned undertake to submit a tender in accordance with the following documents:

- Instructions for Tenderers
- Specification of Requirements
- Technical Proposal
- Pricing Schedule
- Form Of Tender
- Terms and Conditions

*I/We agree to abide by this tender from **12:00 noon** on **4th February 2022**. the date fixed for receiving tenders, until the Award of Contract.

*I/We understand that the Scottish Ministers are not bound to accept the lowest or any tender and shall not be bound to use the Supplier as a sole supplier.

*I/We understand that the service provision is expected to commence on **14th February 2022** and expire on **30th September 2022**. unless the Contract is terminated in accordance with the Terms and Conditions of this Contract.

Signature:

Name:

(BLOCK CAPITALS)

Designation:

Duly authorised to sign Tenders for and on behalf of:

Name of Tenderer

Nature of Firm

Address

Email Address

Telephone No

INCLUDE AREA CODE

Date

It must be clearly shown whether the Tenderer is a limited liability company, statutory corporation, partnership, or single individual trading under his own name.

SCOTTISH PROCUREMENT

**CONTRACT FOR THE PROVISION OF
LANDSCAPE REVIEW**

INFORMATION AND INSTRUCTIONS TO TENDERERS

GENERAL INFORMATION FOR TENDERERS

Overview of the Requirement

Invitation to Tender (ITT) – Contract for the Provision of a Landscape Review.

Due for Return by **12:00** on **4th February 2022**

Overview of the Requirement

1. The Authority wish to award a Contract for the provision of a Landscape Review.
2. The contract is for an initial term of 12 months.
3. Full details of the service requirements are detailed in the Specification of ITT.

Tender Information

4. It is the responsibility of the Tenderer to obtain at their own expense, any additional information necessary for the preparation of the tender.
5. All information supplied by the Scottish Ministers in connection with the Invitation to Tender shall be treated as confidential by Tenderers except that such information may be disclosed for the purpose of obtaining sureties and quotations necessary for the preparation and submission of the tender.

Evaluation Criteria

6. This requirement will follow the Digital and Technology Services DPS - Lot 1 - Digital Technology Services. Tenderers will be evaluated against a series of Selection and Award criteria which are included in the Technical envelopes within PCS-T.

Instructions for the Completion & Submission of Tender Documentation

7. The Invitation to Tender (ITT) must be completed and returned electronically through the Public Contracts Scotland - Tender (PCS-T) web portal. Full guidance on the submission process is provided at the System Guidance document within the attachments for this ITT. No hard copies will be accepted. Correspondence connected with this ITT that requires attention before the closing date must be submitted using the PCS-T portal messaging area for this ITT.
8. Tenderers must complete all the questions as detailed in the Qualification, Technical and Commercial Envelopes in the PCS-T System. Tenderers must complete the Qualification, Technical, and Commercial Envelopes within the ITT. A separate response is required for each Lot da Tenderer applies for.
9. All questions in the “Technical Envelope” and “Commercial Envelope” must be answered before the Tenderer submits their response.

10. All responses to questions must be entered into the answer facility within PCS-T system and failure to do so may invalidate the bid. Treat each question and response in isolation and answer each question in full. Tenderers should not assume evaluators will read more than one answer so do not cross-refer between answers. Supporting information should not be sent in isolation, but only in support of specific questions where requested. Do not use links unless expressly directed to do so.
11. Please note that on questions where the instructions are to provide responses in attached documents, the attachments should be headed with the question number and the question itself. These headers will not be counted in the word limits applied to that question. Please upload all attachments onto PCS-T where appropriate.
12. Only information provided as a direct response to a question will be evaluated. Tenderers should respond to the questions on the basis that the Authority has no prior knowledge of your organisation. Information and detail which forms part of the general company literature or promotional brochures, etc., will not form part of the evaluation process. General or irrelevant marketing material should not be included.
13. Please note for all responses in the ITT (particularly for questions where longer responses are required) it is helpful if Tenderers use plain English and punctuate their answers where appropriate using headings, sections and/or bullet points. This will assist evaluators to find the information necessary to enable them to score accurately.
14. The technical score will be calculated by combining the scores bidders receive from the Technical Envelope. These combined scores represent the Technical part of the evaluation and are worth **60%** of the total marks available. The Commercial Envelope is worth **40%** of the total marks available.
15. The commercial evaluation will assess how well each tender has met the criteria set down in the Commercial Envelope. The Tenderer must therefore take care to ensure that they insert a value for every line item.
16. Bidders are also able to view and print a copy of the allocated weightings by using the "Printable View Inc Tender Weightings" button within the PCS-T system.
17. The Authority will not enter into detailed discussions with Tenderers in relation to its requirements at this stage. All questions regarding the content of this ITT should be directed through the dedicated PCS-T messaging area by **21st January 2022**. No other form of communication will be accepted. All technical queries should be directed to the BravoSolution helpdesk on 0800 368 4850 or at help@bravosolution.co.uk
18. If the Authority considers any questions or requests for clarification to be of material significance, both the query and the response will be communicated to

all Tenderers that have expressed interest in this ITT. The Authority will take steps not to identify the source of the query. Tenderers should indicate if they do not want their question and response circulated. The Authority reserves the right to circulate if not doing so would breach the principle of equal treatment. The Authority will aim to have a response to all questions raised by 5 working days before the tender return date.

19. Tenderers are asked to provide a single point of contact in their organisation for their response to the ITT in PCS-T. The Authority shall not be responsible for contacting Tenderers through any route other than the nominated PCS-T contact. Tenderers must therefore keep their contact details on the PCS-T system up to date or they will be unable to receive communications from the Authority. Tenderers must also undertake to notify any changes to their single point of contact promptly.
20. Completed Invitation to Tenders must be submitted via the PCS-T portal by the deadline **12:00 on 4th February 2022**. All submissions from the Tenderers will remain sealed on the PCS-T system until the deadline. Please note that your response will not actually be submitted until you press the “submit response” button. You will then receive a confirmation email that your response has been received. You may amend your submitted response up until the closing deadline. The Authority will not be able to see your response until the closing deadline date has passed.
21. We strongly advise that you submit your electronic response well in advance of the deadline to allow sufficient time for uploading.
22. Tenderers are reminded that they can check and amend their submissions after they have been submitted and up until the deadline. In the event that a Tenderer submits their tender more than once, PCS-T will only accept the final version of the tender submission.
23. If you experience any technical difficulties, please seek advice through the PCS-T BravoSolution customer services helpline on 0800 368 4850 or help@bravosolution.co.uk. The Authority cannot assist you with technical matters and CS/PCS-T Bravo Solutions customer services cannot help you once the tender return deadline has passed.
24. Should you decline to tender the Authority would request that you provide a brief reason for doing so. This information will help us improve our tender processes in future. Any responses of this nature will be kept confidential.

Award Criteria

25. The Authority is not bound to accept the lowest cost or any tender. The Award Criteria will include consideration of Technical (Quality) aspects as well as Commercial (Price). Each tender will be subjected to a Technical and Commercial evaluation. The aim of the evaluations is to select the tender which represents the Most Economically Advantageous Tender (MEAT). Upon completion of the Technical (Quality) evaluation and the Price (Commercial) evaluation, Tenders will be subject to a Price/Quality Ratio (PQR) calculation.

The PQR to be used will be **40%** Price to **60%** Quality and the PQR calculation will determine the Most Economically Advantageous Tenderer(s).

26. The Technical (Quality) evaluation will assess how well each tender has met the criteria set down in the Technical Envelope. The Commercial (Price) evaluation will assess how well each tender has met the criteria set down in the Commercial Envelope. The Tenderer must therefore take care to ensure that in their tender they address and make clear how they propose to fulfil each aspect of the Invitation to Tender.
27. To complete the MEAT evaluation, a tender rating system will be used and the criteria and weightings for this are explained in this document at Section 'Tender Evaluation Methodology'
28. Any contract awarded as a result of this tendering exercise will be subject to the agreed Terms and Conditions of Framework which form part of the Entire Agreement document.

Indicative Procurement Timetable

29. The Authority has provided an indicative timetable of Procurement activity, below. Please note that the dates below are best estimates and may be subject *to change*.

Task	Date
Issue ITT	13 January 2022
Tenders due back	04 February 2022
Evaluate Tenders	11 February 2022
Approve Recommendation Report	16 February 2022
Contract Award	18 February 2022

CONDITIONS OF TENDERING

Right to Reject and/or Disqualify

30. The Authority reserves the right to reject or exclude from the procurement process a Tender, where the Tenderer has failed to submit a response which is in compliance with the requirements of the ITT; the ITT response is submitted late, is completed incorrectly or is incomplete; the Tenderer fails to respond in satisfactory terms to a request by the Authority for supplementary or to provide clarity in relation to the Tenderer's response to the ITT; or the Tenderer or any of its sub-contractors or consortium members is/are guilty of serious misrepresentation in relation to its response to the ITT and/or the procurement process.

Bidders Composition

31. In the event that a Tenderer alters its composition (which shall include, but not be limited to, a change in the identity of any entity named in the ITT response

whose capacity has been relied upon in responding to the ITT), the Authority reserves the right to request that any proposed reconstituted Tenderer complete the selection part of the ITT i.e. Business Probity, Criminal Convictions and Financial Standing for re-evaluation in accordance with the criteria used in relation to the evaluation of the original ITT response.

Late Tenders

32. It is the responsibility of all Tenderers to ensure that their ITT response is submitted no later than the appointed date and time. Responses received after that time may not be considered. Completed Tenders may be submitted at any time before the closing date.

Relevant and Appropriate Responses

33. Tenderers must ensure that they read each question carefully, that all answers you provide are relevant, and that each question is completed in full. All information must be provided in English. Only information provided as a direct response to the questions contained in the ITT will be evaluated.
34. Supplementary documentation may be uploaded as part of your response where you have been directed to do so. Such material must be clearly marked and named in accordance with the instructions.
35. Once you have submitted your response to this ITT you will receive an automated system e-mail confirming receipt of your submitted response.

Requests for Clarification or Further Information

36. Subject to the terms of the Regulations, the Authority expressly reserves the right to require a Tenderer to provide additional written information supplementing or clarifying any of the information provided by that Tenderer in response to requests for information or questions contained in the ITT.

Misleading or Falsification of Documents

37. The Tenderer should be aware that should any of its responses be found to be deliberately misleading or falsified, the bidding organisation may be disqualified from the tender process. If the Tenderer provides false information regarding any criminal convictions or business probity the Tenderer may also be guilty of a criminal offence.

Tender Evaluation

38. The successful tender will be selected on the basis of the most economically advantageous bid, having regard to the price and quality of the proposals against defined evaluation criteria. Each tender will be subject to a Technical and a Commercial Analysis and the aim of the evaluation is to select the tender which represents the most economically advantageous tender. The analysis will assess the tenderer's ability to meet the Specification. The objective of the evaluation is to select the tender which represents the best overall value for money.
39. Tenderers should read the tenderers guidance notes for each section and take care when selecting their response particularly in relation to those which indicate a particular response could result in a non-compliant bid. (i.e. Tenders not wholly compliant with the Purchaser's requirements as set out in this ITT) Tenderers should ensure that all relevant documents for questions that require additional attachments are uploaded.
40. A Tender Evaluation Panel will be set up to evaluate the tenders. This will include representatives from the Authority's Procurement and Social Security Scotland
41. Prior to commencing the evaluation of the Tenderer's technical and commercial responses, the tender submission will be checked for completeness and accuracy by Scottish Procurement.
42. Only information provided as a direct response to the Invitation to Tender will be evaluated. The Tenderer should not embed URLs in response to any questions as these will not be evaluated. Information and detail which forms part of general company literature or marketing or promotional material etc. should not be submitted by the Tenderer and will not be evaluated.
43. The table below sets out how the Evaluation Panel shall determine the appropriate mark for each question in the Technical Response/Technical Envelope for all tenders. Marks awarded will be based only on the evidence submitted in the tender response to each question.

0	Unacceptable	Nil or inadequate response. Fails to demonstrate an ability to meet the requirement.
1	Poor	Response is partially relevant but generally poor. The response addresses some elements of the requirement but contains insufficient/limited detail or explanation to demonstrate how the requirement will be fulfilled.
2	Acceptable	Response is relevant and acceptable. The response addresses a broad understanding of the requirement but may lack details on how the requirement will be fulfilled in certain areas.
3	Good	Response is relevant and good. The response is sufficiently detailed to demonstrate a good understanding and provides details on how the requirements will be fulfilled.
4	Excellent	Response is completely relevant and excellent overall. The response is comprehensive, unambiguous and demonstrates a thorough understanding of the requirement and provides details of how the requirement will be met in full.

Tender Evaluation - Technical/Quality award criteria

44. The Technical element will be evaluated independently of the Commercial element of this tender. Members of the Technical Evaluation Panel (TEP) will undertake individual scoring of Tenderers' responses to the Technical requirements.
45. Once each Evaluation Panel Member has independently evaluated each of the tender submissions, the Evaluation Panel will attend a Moderation Meeting, facilitated and chaired by Scottish Procurement and Commercial Directorate (SPCD). The scores and the Tenderer's response to the questions will be discussed at the Moderation Meeting.
46. The final score for each question will then be calculated using the mean average of the individual scores of all evaluators. The mean average of all evaluators scores will then be multiplied by the relevant question weighting to give the weighted score for each question.
47. The Technical response will be evaluated using the method below:

Each Tenderer's score will be calculated by taking the arithmetical **mean** Average (Mean average scores will be rounded to 2 decimal places) for each section, multiplied by the section weighting to give a Total Weighted Section Score. The final score will be the sum of the Total Weighted Section Scores, multiplied by the Quality (Technical) Award Criteria Weighting (60%) to give the Overall Technical (Quality) Score.
48. The Technical response will be evaluated using the method below:

Individual Question Score (expressed as a percentage) x Question Weighting X the Section Weighting = Question Weighted Score.

Sum of all Question Weighted Scores within a section = Total Section Weighted Score
 Sum of all Section Weighted Scores = Overall Technical Score for each Bidder.

Quality				Tenderer's name			
Example of Quality Criteria		Section Weighting %	Question Weighting	Score (out of 4)	Score as a percentage	Question Weighted Score	Section Weighted Score
Functionality		20%					18.00
Q1	Characteristics of functionality		45%	4	100.00%	9.00	
Q2	Design details		40%	3	75.00%	6.00	
Q3	Details of the functionality		15%	4	100.00%	3.00	

Tender Evaluation - Price (Commercial) Evaluation

49. Tenderer's must adhere to the instructions in the "Pricing Schedule" spreadsheet as detailed within the Pricing Schedule/Commercial Envelope contained in PCS-T with regard to the entering of price information as failure to comply may result in their tender not be considered further or taken forward to the Combined Score (Quality/Price Ratio calculation).
50. The Commercial response of this procurement exercise will be evaluated independently of the Technical response.

If a Tenderer submits a tender price that the Authority considers abnormally low, Scottish Procurement will write to the Tenderer requesting evidence on those aspects of the bid which are considered to be abnormally low. The evidence will be considered and if the Scottish Procurement still considers the bid to be abnormally low, it will verify this with the Tenderer and we may exclude them from further participation in the tender process.

Tender Evaluation - Combined Evaluation Methodology

51. The Tenderer with the highest overall combined Quality and Price score will be awarded the contract.

(Technical score x technical response weighting) + (Commercial (price) score x Commercial response weighting)

Example

Bidder A	Bidder B
Technical Score: 78	Technical Score: 62
Commercial Score: 83.33	Commercial Score: 100
Weighted Technical Score: 78 x 60% = 46.8	Weighted Technical Score: 62 x 60% = 37.20
Weighted Commercial Score: 83.33 x 40% = 33.33	Weighted Commercial Score: 100 x 40% = 40.00
Bidder A Final Score: 46.8 + 33.33 = 80.13	Bidder B Final Score: 37.20 + 40.00 = 77.20

52. Bidder A has the lower commercial score (higher price), but overall provided the most economically advantageous tender (by providing a higher quality bid). The evaluation will be based to two decimal places.

Tie Breaker

53. This will only be applied where two or more winning tenderers have achieved the same score following the evaluation of the bids. In these circumstances, the tie breaker will involve additional weighting being given to certain questions or areas in the ITT response.
54. Where a tiebreaker is required, it will be applied to the scores of all tenderers with winning equal scores.
55. Note that the use of one tie breaker may not be sufficient to clearly identify the winning bid. So in the event that the first tie breaker does not produce a result which differentiates the tenderers who have the same score, the second tie breaker will be applied. If this still does not produce a result which differentiates the tenderers who have the same score, the third tie breaker will be applied. If this still does not produce a result which differentiates the tenderers who have the same score, the fourth tie breaker will be applied;
56. The application of the tie breaker will be as follows.

First Tie Breaker

The tenderer with the highest quality score will be considered the winning bidder.

Freedom of Information

57. Nothing in this ITT shall preclude the Authority from making public, under the Freedom of Information (Scotland) Act 2002 (“FOISA”) and/or the Environmental Information (Scotland) Regulations 2004 (“EIRS”) or otherwise, details of all matters relating to this ITT and responses thereto unless such details fall within an exemption under FOISA and/or EIRS as may be applicable at the discretion of the Authority and the Authority (at its sole discretion) consider that such exemption shall apply, and (in respect of commercially sensitive information only) a Tenderer has advised the Authority in writing that disclosure of specified information would or would be likely to substantially prejudice the commercial interests of any person (including but not limited to the Tenderer or the Authority).
58. Tenderers should also note that the receipt of any material or document marked “confidential” or equivalent by the Authority and/or any participating Authority should not be taken to mean that the Authority and/or any participating Authority accepts any duty of confidence by virtue of that marking. In addition please see the attached Privacy Notice at **annex 1**.

Constitution of Contracts

59. No information contained in this ITT or in any communication made between the Authority and any Tenderers in connection with this ITT shall be relied upon as constituting a contract, agreement, warranty or representation as to the Authority's ultimate decision in relation to the requirement which is the subject matter of this ITT or that any contract or framework agreement shall be awarded or entered into pursuant to this ITT.

Canvassing

60. Direct or indirect canvassing of any elected official, public sector employee or agent by any Tenderer concerning this requirement, or any attempt to procure information from any elected official, public sector employee or agent concerning this ITT may result in the disqualification of the Tenderer from consideration for this requirement.

Right to Cancel, Clarify or Vary the Process

61. Subject to the terms of the Regulations, the Authority expressly reserves the right to change, without notice, the basis of, or the procedures for, this procurement process or to terminate the process at any time.

Non-Conclusive

62. The ITT does not purport to be all-inclusive or to contain all of the information that a Tenderer, or any of its sub-contractors or any consortium member, may require. Tenderers must make their own independent assessment in relation to the subject matter of this ITT and all matters relevant thereto after making investigation and taking such professional advice as they deem necessary. In no circumstances shall the Authority or its advisors, consultants, employees or agent incur any liability or responsibility arising out of or in respect of the issue of this ITT.

No Representation or Warranty

63. The Authority, its advisers, officers, members, employees, other staff and agents: make no representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the information contained in this ITT; accept no responsibility for the information contained in this ITT or for its fairness, accuracy or completeness; shall not be liable for any loss or damage (other than In respect of fraudulent misrepresentation) as a result of reliance on the information contained in this ITT or any subsequent communication.

Collusion

64. The Tenderer certifies that this is a bona fide tender submission, intended to be competitive, and it has not fixed or adjusted the tender by, under or in accordance with any agreement or arrangement with any other person or Tenderer. The Tenderer also certifies that it has not done and it undertakes that

it will not do at any time before the returnable date for this tender any of the following acts:-

- a) Communicating to any person the content of the tender herewith submitted;
- b) Entering into any agreement or arrangement with any person that he/she shall refrain from submitting a tender or as to the content of any tender to be submitted; and
- c) Offering or paying or giving or agreeing to pay or give any sum of money or consideration directly or indirectly to any Tenderer for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the said work any act or thing of the sort described above.

Conflict of Interest

65. Tenderers must disclose in their ITT response (by answering the conflict of interest questions found within the ITT's qualification envelope) any circumstances, including, without limitation, personal financial and business activities that would, or may be likely to, give rise to a conflict of interest between the Authority and/or any sub-contractors or members of the Tenderer's consortium and the Tenderer. Where a Tenderer identifies any actual or potential conflicts of interest in their response to this ITT, it must state how it intends to avoid such conflicts. The Authority reserves the right to reject any response to this ITT which, in the Authority's opinion, gives rise, or may be likely to give rise to, a conflict of interest.

No Inducement or Incentive

66. The Invitation to Tender is issued on the basis that nothing contained in it shall constitute an inducement or incentive nor shall have in any other way persuaded a Tenderer to submit a tender or enter into any contractual agreement.

Annex 1

Scottish Procurement and Commercial Directorate - Privacy Notice

Scottish Procurement and Commercial Directorate (Scottish Procurement) is part of the Scottish Government and is responsible for providing professional procurement services and collaborative procurement arrangements to the Scottish Government and Scottish Public Bodies.

In order to carry out its functions, Scottish Procurement is required to process personal information. The types of data we hold and the reasons we are required to process it are set out below. The Scottish Government is the data controller of the information and is committed to protecting your privacy at all times when using your personal data.

This notice relates to the personal information we process about you as part of tender exercises conducted by Scottish Procurement. It explains what personal information we process about you when you submit a response in relation to a tender exercise, why we process it, and what we do with it. It also explains your rights under data protection laws.

The Public Contracts Scotland Portal and PCS-Tender are provided by external suppliers. Details of the Privacy Policies for the Public Contracts Scotland Portal and PCS-Tender can be found on the respective websites.

1. Your data

We collect information from you (including name, email address, business address, home address, date of birth, telephone number, financial information, experience, qualifications) for the following purpose:

- We need to process your personal information in order to allow Scottish Procurement to assess suitability of bidders, evaluate tenders, provide feedback to bidders, award contracts to the successful supplier and to ensure contract requirements are delivered.
- To respond to your queries or requests when you contact us. We will route your messages to the relevant team.
- To contact you about tender and procurement related matters.

2. Legal basis of processing

The legal basis for processing your data is for the performance of a task carried out in the public interest.

3. Recipients

We will share your information with:

- Individuals involved in the procurement exercise or in the evaluation. This may include Scottish Government staff, individuals from other public sector bodies participating in the evaluation of bids, consultants or expert advisers involved in the tender exercise.
- Procurement team members to allow them to respond to your queries or to send you updates on procurement related matters.
- As your personal data will be stored on our IT infrastructure it may be shared with our data processors who provide electronic tendering systems, advertising portals, email, document management, surveys and storage services. The Privacy Policies for the Public Contracts Scotland and PCS-Tender systems are available at the following links:

4. Retention

We will only keep your information while there is an ongoing business need or Regulatory requirement to retain the information. For successful tenderers the information will be retained until **Five (5)** years after expiry of the contract. For unsuccessful tenderers the information will be retained for **xx** years after the date that the contract is awarded.

6. Your rights

You have the right:

- to request information about how your personal data is processed and to request a copy of that personal data.
- to request that any inaccuracies in your personal data are rectified without delay.
- to request that your personal data is erased if there is no longer a justification for it to be processed.

Further information on your rights can be found on the Scottish Government website at the attached link :

[Your right to access personal information](#)

7. Contact

7.1 You can contact the Collaborative and Scottish Procurement at the following address:

Scottish Procurement and Commercial Directorate
Scottish Government
3A-South, Victoria Quay
Edinburgh EH6 6QQ

scottishprocurement@gov.scot

7.2 Details of the Scottish Government Data Protection Officer and the procedures for complaints can be found at the following link:

[Contact Data Protection Officer](#)



Contract For the Provision of
Social Care Systems and Approaches
Landscape Technology Review

Technical Response Template

Instructions

Bidders Guidance

Tenderers should complete the questions within this Technical Response Template in the spaces provided below each question. These will expand to accommodate your full response. However, Tenderers should aim to keep their answers as concise as possible. Tenderers are instructed to provide an answer for each question failure to do so may lead to the bid being deemed non-compliant.

Once complete Tenderers are requested to upload this document to Public Contracts Scotland.

Please ensure you have answered all of the questions in the document before uploading your response. Please note that there is a 30 MB file limit on attachment questions within PCS.

The Information and Instruction to Tenderers document provides further information about the scoring and weighting of each section and the questions contained within.

Responses should provide a complete answer to each question without cross-referencing to other areas in the response template.

Only the information provided in the tender submission will be evaluated.

Tenderers must also provide details of any services which will be carried out by Sub-Contractors or Consortia members in delivering the core requirements and clearly articulate how this will be delivered in practice.

Tenderers should be aware that information provided in response to the questions contained within this document will be classified as Service Provider Sensitive Information and will only be used by the evaluation panel to score the response.

The information will be treated as confidential, and all evaluators will be required to complete and sign a confidentiality/non-disclosure and conflict of interest declaration prior to being given access to the tenderers responses.

Question 1 - Proposed approach and plan to deliver this requirement (65%)

Please provide a detailed delivery plan and describe your approach to delivering this requirement. This should include the minimum of the following:

- Identify the key staff responsible for each section of the work and the approach to data gathering and validation.
- Indicate how the approach will work sensitively and collaboratively with social care service providers and the Scottish Government team.
- A detailed plan that will list all deliverable milestones, including final report iterations and progress reviews with Contract Manager.

Response:

Question 2 – Experience of delivery of similar data gathering and analysis reports and working with public and third sector organisations (35%)

Please provide evidence of your experience of large scale data gathering and the production of a similar report in a public sector context. Tenderers may wish to reference case studies to support their response.

Response:

Question 3 – Mandatory Participation Requirements (0%)

Referring the Mandatory Exclusion Grounds listed at Regulation 58 of the Public Contracts (Scotland) Regulations 2015, and to the Terms and Conditions set-out at Schedule 8 of this ITT, please confirm that you are meet all requirements and that there is no lawful reason for your exclusion from this tender exercise.

YES/NO*

*ANSWERING 'NO' TO THIS QUESTION MAY RESULT IN A TENDERER'S EXCLUSION FROM THIS TENDER EXERCISE

Response:

Question 4 – Real Living Wage (0%)

Please state whether or not you pay employees, and, if relevant, all contractors the [Real Living Wage Scotland](#). Responses to this question will not be evaluated.

Response:

SERVICES CONTRACT

-between-

(1) **THE SCOTTISH MINISTERS ACTING THROUGH []**
(THE “PURCHASER”) [AMEND AS APPROPRIATE]

-and-

(2) (THE “SERVICE PROVIDER”)

-relating to the supply of-

SERVICES

Guidance notes: There are three conceivable types of public sector services contracts:

1. A continuing requirement contract where multiple orders are placed under a single continuing contract;
2. A call-off contract under a framework agreement where the contract concerns a single order; and
3. An ad hoc requirement not under a framework agreement where the contract concerns a single order.

This model contract is for type 3 requirements, i.e. an ad hoc requirement not under a framework agreement where the contract concerns a single order. In particular it is intended for use with higher value or complex ICT contracts. However, this model contract can also be tailored and simplified as appropriate for other forms of ICT contracts.

Please note that this model is an “entire agreement” document and as such relevant content from the ITT/tender will have to be replicated in the Schedules. Post-tender discussions that previously might have been narrated in an award letter should be directly incorporated into the Schedules.

Since this is a generic model contract, buyers must consider which bespoke conditions they may require (perhaps having regard to previous bespoke contracts) and take appropriate legal advice.

Contains public sector information licensed under the Open Government Licence v3.0 (<http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>).

Users of this model contract should refer to the Guidance Notes set out in the contract and tailor the contract to meet their specific requirements. Users should also ensure that the Guidance notes are removed before the contract is issued outside their organisation.

A separate Model ICT Services Contract Guidance Note accompanies this model contract and should also be referred to by users.

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PREAMBLE:

- ONE The Purchaser requires the provision of services;
- TWO On [date contract notice published] the Purchaser's contract notice relating to the Services was published in [name of publication] with reference number [reference number];
- THREE On [date SPD completed] the Service Provider completed its SPD;
- FOUR On [date ITT issued] the Purchaser issued its ITT to potential service providers (including the Service Provider) in respect of the provision of services;
- FIVE On [date Tender submitted] the Service Provider submitted its Tender;
- SIX On the basis of the Tender, the Purchaser has selected the Service Provider to supply the Services under this Contract;
- SEVEN This Contract establishes standard terms of supply for the provision of services;
- EIGHT This Contract also includes:
- a Specification setting out the Services that the Service Provider has undertaken to provide, [including Service Levels setting out particular levels of service that the Service Provider has undertaken to meet];
 - a Pricing Schedule setting out details of the pricing of the Services [including provision for Service Credits];
 - details of Key Individuals involved in the provision of the Services;
 - details of approved Sub-contractors as at Contract award;
 - details of the Service Provider's information which is deemed to be Service Provider Sensitive Information; and
 - Management Arrangements for the strategic management of the relationship between the Parties.

Guidance note:

Please ensure that the preamble reflects the history to the award of the contract –This is a helpful reference for users of the contract and advisers that might not have been involved in the procurement process.

Adjust as appropriate:

* Delete reference to Service Levels and Service Credits if no Service Levels or Service Credits.

* Are there any Key Individuals or approved Sub-contractors? If not delete.

SUBSTANTIVE PROVISIONS:**SECTION A: INTRODUCTORY PROVISIONS****1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Contract, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*).
- 1.2 The interpretation and construction of this Contract is subject to the following provisions:
- 1.2.1 words importing the singular meaning include, where the context so admits, the plural and vice versa;
 - 1.2.2 words importing the masculine include the feminine and neuter;
 - 1.2.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;
 - 1.2.4 references to any statute, enactment, order, regulation or other similar instrument are construed as a reference to the instrument as amended by any subsequent instrument or re-enacted;
 - 1.2.5 references to any person include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
 - 1.2.6 reference to “expiry or termination” of this Contract includes the making of a Judicial Order;
 - 1.2.7 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
 - 1.2.8 the index and headings are included in this Contract for ease of reference only and do not affect the interpretation or construction of this Contract.
- 1.3 The Schedules and its Annexes form part of this Contract.

Guidance notes: The interpretative provisions in clauses 1.2 and 1.3 are fairly standard for public sector contracts.

2. CONFLICT

- 2.1 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:
- 2.1.1 the clauses and Schedule 1 (*Definitions*);
 - 2.1.2 Schedule 2 (*Specification and [Service Levels]*) and their Annexes;
 - 2.1.3 any other Schedule and their Annexes.

Guidance note: Adjust as necessary depending on additional Schedules. Any standard terms which the Service Provider wishes to include (for example, software licence terms) would normally be last in the order of precedence. This is important as sometimes such standard terms include what would otherwise be a conflicting provision as to order of precedence.

3. CONDITION PRECEDENT: REQUIREMENT FOR A PARENT COMPANY GUARANTEE

It shall be a condition of this Contract that, if required by the Purchaser, the Service Provider shall deliver a validly executed parent company guarantee in the form set out in 0 (*Parent Company Guarantee*). The rights and obligations of the Parties shall have no force or effect

unless the parent company guarantee has been properly executed and delivered to the Purchaser. The Parties acknowledge that if this condition has not been fulfilled any performance of this Contract by the Service Provider shall be at the risk of the Service Provider and the Purchaser shall not be liable for and the Service Provider irrevocably waives any entitlement to payment of any fees, expenses or other payments in relation to such performance. Where the Service Provider has failed to fulfil this condition within fourteen (14) days from the Commencement Date the Purchaser shall have the right to terminate this Contract by notice in writing to the Service Provider.

Guidance note: A parent company guarantee can provide the Purchaser with additional comfort depending on the financial standing of the Service Provider (for example, the Service Provider may have a short trading history when compared to its parent company). The parent company guarantee is a condition of the Contract but only if required by the Purchaser.

4. NATURE OF THIS CONTRACT

- 4.1 This Contract is a public services contract within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2015.
- 4.2 Save to the extent specifically provided for in this Contract, the Service Provider acknowledges that it is not the exclusive service provider of the Services to the Purchaser and as such no guarantee of work or volume of work has been granted by the Purchaser.

Guidance note: This clause makes it clear that the Contract is neither a framework agreement nor a “commitment” contract where a volume of work has been guaranteed.

5. PERIOD

- 5.1 Subject to clause 3 (Condition Precedent: Requirement for a Parent Company Guarantee), the period of this Contract is from and including the Commencement Date and, unless it is terminated earlier or extended under clause 5.2, this Contract shall expire at the end of the Initial Term.
- 5.2 The Purchaser may extend the period of this Contract for additional extension periods (the “**Extension Periods**” with each extension period being an “**Extension Period**”), provided that:
- 5.2.1 any Extension Period shall not be for less than **[Insert number e.g. six (6) months]** months in duration;
- 5.2.2 the total duration of the Extension Periods shall not exceed a period of **[insert number, e.g. five (5) years]** from the expiry of the Initial Term;
- 5.2.3 if extending this Contract upon the expiry of the Initial Term, the Purchaser shall provide at least **[insert number e.g. sixty (60) Working Days]** notice prior to the expiry of the Initial Term; and
- 5.2.4 if extending this Contract upon the expiry of any Extension Period, the Purchaser shall provide at least **[insert number, e.g. sixty (60) Working Days]** notice prior to the expiry of the relevant Extension Period.

Guidance note: If the Contract is to have a simple single term without the possibility of extension, this clause can be simplified by shortening clause 5.1 and removing clause 5.2.

Although clause 5.2 allows for an extension this may not always be appropriate. The timescales included at clauses 5.2.1, 5.2.2, 5.2.3 and 5.2.4 are examples only and should be amended or removed in accordance with the requirements of the specific project.

Please note that there is no need to duplicate period/extension provisions in the Specification or Management Arrangements.

6. SPECIFICATION, SERVICE LEVELS AND SERVICE CREDITS

The Service Provider must comply with the Specification. The Service Provider shall supply the Services to the Purchaser in a manner which meets or exceeds the Service Levels (if applicable). If this Contract specifies that Service Credits are to be awarded for poor performance, such Service Credits shall be payable in accordance with the terms of this Contract.

Guidance note: This clause is to introduce Schedule 2 which must be completed. References to Service Levels and Service Credits should be deleted if they will not be applicable.

7. MANAGEMENT ARRANGEMENTS

- 7.1 The Service Provider must maintain the capacity to supply the Services throughout the Term.
- 7.2 The Parties must comply with the Management Arrangements as set out in Schedule 5 (*Management Arrangements*).

SECTION B: MISCELLANEOUS PROVISIONS INCLUDING THOSE RELATING TO PRICE, PAYMENT AND INFORMATION

8. SERVICE PROVIDER'S STATUS

At all times during the Term the Service Provider is an independent service provider and nothing in this Contract establishes a contract of employment, a relationship of agency or partnership or a joint venture between the Parties or between the Purchaser and any Service Provider Representative. Accordingly, neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Contract.

Guidance notes: This is a clause to exclude any implication that the Service Provider has any special authority beyond that of an external Service Provider performing Services under the Contract.

9. NOTICES

- 9.1 Any notice or other communication which is to be given by a Party to the other under this Contract must be:
- 9.1.1 given in writing;
 - 9.1.2 addressed in accordance with clause 9.3; and
 - 9.1.3 sent by letter (delivered by hand, first class post or by recorded delivery or special delivery), fax or e-mail.
- 9.2 Provided the relevant notice or communication is not returned or rejected as undelivered, the notice or communication is deemed to have been given:
- 9.2.1 on the Working Day that the letter is delivered by hand;
 - 9.2.2 two (2) Working Days after the day on which the letter was posted; or
 - 9.2.3 four (4) Working Hours after the communication was sent, in the case of fax or email.
- 9.3 For the purposes of this clause, the address of each Party is:
- 9.3.1 For the Purchaser:
[Purchaser address for notices]

For the attention of: Head of Delivery and Service Management

Tel: [Purchaser phone number]

Fax: [Purchaser fax number for notices]

E-mail: [Purchaser e-mail address for notices]

9.3.2 For the Service Provider:

[Service Provider address for notices]

For the attention of: [Service Provider individual contact for notices]

Tel: [Service Provider phone number]

Fax: [Service Provider fax number for notices]

E-mail: [Service Provider e-mail address for notices]

Guidance notes: This is a clause making it clear what is and is not a valid written notice under the contract (e.g. a termination notice) and when a notice is and is not deemed to be received. This avoids having to consider the rules for notices that would be implied at common law.

It should be ensured that notices sent to the Purchaser will be picked up at the given address – the e-mail address used might therefore be a specific commodity e-mail address rather than any individual's e-mail address. Please note that there is no need to duplicate notice provisions in the Specification or Management Arrangements.

- 9.4 Either Party may change its address details by serving a notice in accordance with this clause.
- 9.5 Notices under clause 65 (*Termination on Insolvency or Change of Control*) may be sent to the Service Provider's trustee, receiver, liquidator or administrator, as appropriate.
- 9.6 This clause 9 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 request for arbitration under clause 61.2 (*Dispute Resolution*)).

10. PRICE

- 10.1 In consideration of the Service Provider's performance of its obligations, the Purchaser must pay:
- 10.1.1 the price due in accordance with the Pricing Schedule; and
- 10.1.2 a sum equal to the value added tax chargeable at the prevailing rate.
- 10.2 The Service Provider must automatically credit the Purchaser with Service Credits in accordance with the Pricing Schedule.
- 10.3 The Service Provider may not suspend the provision of Services if it considers that the Purchaser has failed to pay the price due.
- 10.4 The Pricing Schedule sets out details of the pricing of the Services (including provision for Service Credits).
- 10.5 The prices in the Pricing Schedule may be varied in accordance with the arrangements set out in the Pricing Schedule.
- 10.6 Accordingly, the Service Provider may not unilaterally increase the prices in the Pricing Schedule. But nothing in this Contract prevents the Service Provider from improving on the prices in the Pricing Schedule.

- 10.7 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under this Contract.

Guidance note: This clause requires the Purchaser to pay for acceptably provided Services, subject to any Service Credits. Standard invoicing and payment provisions are found in clause 11 (*Payment and Invoicing*). This clause assumes that Service Credits will be utilised but if not, this will need to be adapted accordingly.

11. PAYMENT AND INVOICING

- 11.1 The Purchaser must pay all sums due to the Service Provider within thirty (30) days of receipt of a valid invoice.
- 11.2 The Service Provider must render invoices monthly.
- 11.3 The Service Provider must ensure that each invoice contains appropriate contract references, details of any Service Credits applied and a detailed breakdown of the Services provided. The Service Provider must supply such other documentation reasonably required by the Purchaser to substantiate any invoice.
- 11.4 Where any Service Credits have been credited to the Purchaser they must be applied against the next invoice rendered by the Service Provider. Where no invoice is due or likely to be rendered for a period exceeding two (2) months, the Service Provider must promptly issue a credit note and pay the credited sum to the Purchaser within thirty (30) days of issue.
- 11.5 Interest is payable on the late payment of any undisputed sums of money in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. In the case of sums due by the Purchaser, the sums referred to in this clause must be properly invoiced by the Service Provider.
- 11.6 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Purchaser following delivery of a valid VAT invoice. VAT, where applicable, must be shown separately on all invoices as a strictly net extra charge.
- 11.7 The Service Provider shall indemnify the Purchaser on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Purchaser at any time in respect of the Service Provider's failure to account for or to pay any VAT relating to payments made to the Service Provider under this Contract. Any amounts due under this clause 11.7 shall be paid in cleared funds by the Service Provider to the Purchaser not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Purchaser.
- 11.8 In this clause 11, 'valid invoice' includes an electronic invoice meeting all the requirements set out in regulation 70A of the Public Contracts (Scotland) Regulations 2015 or regulation 44A of the Concession Contracts (Scotland) Regulations 2016.

Guidance notes: These payment terms may be amended as required to reflect the agreed arrangement. Payment terms in sub-contracts are addressed in clause 41 (*Sub-Contracting*).

12. RECOVERY OF SUMS DUE

- 12.1 Wherever under this Contract any sum of money is recoverable from or payable by the Service Provider to the Purchaser, the Purchaser may deduct that sum from any sum due to the Service Provider whether under this Contract or otherwise.
- 12.2 The Service Provider must make any payments due to the Purchaser without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Purchaser to the Service Provider.

Guidance notes: There are only limited circumstances under which the Service Provider will be due to pay monies to the Purchaser under the Contract – see e.g. the indemnity in clause 58.2 (*Limitation of Liability and Indemnity*) - however it is appropriate in those cases that the Purchaser can set-off such sums against any sums it might be due to pay to the Service Provider under the Contract or otherwise. The opposite is provided for the Service Provider i.e. no set-off.

13. DATA PROTECTION

- 13.1 The Service Provider acknowledges that Personal Data described in the scope of 0 (*Data Protection*) will be Processed in connection with the Services under this Contract. For the purposes of any such Processing, the Parties agree that the Service Provider acts as the Processor and the Purchaser acts as the Controller.
- 13.2 Both Parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this clause 13 are without prejudice to any obligations and duties imposed directly on the Service Provider under the Data Protection Laws and the Service Provider hereby agrees to comply with those obligations and duties.
- 13.3 The Service Provider will, in conjunction with the Purchaser and in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with the Data Protection Laws.
- 13.4 The Service Provider will provide the Purchaser with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 13.5 The Service Provider must:
- 13.5.1 agree and comply with the terms of the data processing provisions set out in 0 (*Data Protection*);
 - 13.5.2 process Personal Data only as necessary in accordance with obligations under this Contract and any written instructions given by the Purchaser (which may be specific or of a general nature), including with regard to transfers of Personal Data to any third country other than within European Economic Area unless required to do so by European Union or domestic law or regulatory body to which the Service Provider is subject; in which case the Service Provider must, unless prohibited by that law or regulatory body, inform the Purchaser of that legal requirement before processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Service Provider's obligations under this Contract or as is required by the Law;
 - 13.5.3 subject to clause 13.5.2 only process or otherwise transfer any Personal Data in or to any third country other than within the European Economic Area with the Purchaser's prior written consent;
 - 13.5.4 take all reasonable steps to ensure the reliability and integrity of any Service Provider Representatives who have access to the Personal Data and ensure that the Service Provider Representatives:
 - (a) are aware of and comply with the Service Provider's duties under this clause;
 - (b) are subject to appropriate confidentiality undertakings with the Service Provider or the relevant Sub-contractor;
 - (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 Purchaser or as otherwise permitted by this Contract; and

- (d) have undergone adequate training in the use, care, protection and handling of Personal Data.
- 13.5.5 implement appropriate technical and organisational measures including those set out in 0 (*Data Protection*) and in accordance with Article 32 of the UK GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.
- 13.6 The Service Provider shall not engage a Sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Purchaser. In the case of general written authorisation, the Service Provider must inform the Purchaser of any intended changes concerning the addition or replacement of any other Sub-contractor and give the Purchaser an opportunity to object to such changes.
- 13.7 If the Service Provider engages a Sub-contractor for carrying out Processing activities on behalf of the Purchaser, the Service Provider must ensure that the same data protection obligations as set out in this Contract are imposed on the Sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Service Provider shall remain fully liable to the Purchaser for the performance of the sub-contractor's performance of the obligations.
- 13.8 The Service Provider must provide to the Purchaser reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the UK GDPR.
- 13.9 The Service Provider must notify the Purchase if it:
- 13.9.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 13.9.2 receives a request to rectify, block or erase any Personal Data;
 - 13.9.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
 - 13.9.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract; or
 - 13.9.5 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;
- and such notification must take place as soon as is possible but in any event within three (3) Working Days of receipt of the request or any other period as agreed in writing with the Purchaser from time to time.
- 13.10 Taking into account the nature of the Processing and the information available, the Service Provider must assist the Purchaser in complying with the Purchaser's obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the UK GDPR. These obligations include:
- 13.10.1 ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the Processing as well as the projected probability and severity of a possible infringement of the Law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events;
 - 13.10.2 notifying a Personal Data breach to the Purchaser without undue delay and in any event no later than twenty four (24) hours after becoming aware of a Personal Data breach;

- 13.10.3 assisting the Purchaser with communication of a personal data breach to a Data Subject;
- 13.10.4 supporting the Purchaser with preparation of a data protection impact assessment; and
- 13.10.5 supporting the Purchaser with regard to prior consultation of the Supervisory Authority.
- 13.10.6 At the end of the provision of Services relating to Processing the Service Provider must, on written instruction of the Purchaser, delete or return to the Purchaser all Personal Data and delete existing copies unless EU or domestic law requires storage of the Personal Data.
- 13.11 The Service Provider must maintain written records including in electronic form, of all Processing activities carried out in performance of the Services or otherwise on behalf of the Purchaser containing the information set out in Article 30(2) of the UK GDPR.
- 13.12 The Service Provider must:
- 13.12.1 provide such information as is necessary to enable the Purchaser to satisfy itself of the Service Provider's compliance with this clause 13;
- 13.12.2 allow the Purchaser, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this clause 13 and contribute as is reasonable to those audits and inspections; and
- 13.12.3 inform the Purchaser if in its opinion an instruction from the Purchaser infringes any obligation under Data Protection Laws.
- 13.13 If requested, the Service Provider must make such records referred to in clause 13.11 available to the Information Commissioner on request and co-operate with the Information Commissioner in the performance of its tasks.
- 13.14 The Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under clause 13.12.2 with minimum disruption to the Service Provider's day to day business.

Guidance notes: Some contracts will involve the transfer of personal data to the Service Provider or the processing of that data in carrying out the delivery of the services, so this clause is included so that any such processing by the Service Provider in respect of Purchaser personal data is given in accordance with data protection laws. This wording has been prepared to take account of the requirements of the UK General Data Protection Regulation. The UK GDPR imposes certain minimum requirements for contracts and Clause 13 and Schedule 10 (*Data Protection*) meet those minimum requirements. If Clause 13 is amended care should be taken to ensure that the Purchaser's position is not weakened and the minimum requirements are not affected in such a way that the Purchaser would not be compliant with the UK GDPR. If there is a need to amend this Clause **appropriate legal advice should be taken** so that the minimum requirements are respected.

All dealings in Purchaser personal data must nonetheless be otherwise in accordance with all other requirements of the Data Protection Laws, inc. fair and lawful.

Please note that personal data for which the Purchaser is the data controller will be caught within the wider concept of "Purchaser Protected Information". Clause 68.3 (*Consequences of Expiry or Termination*) requires the return/destruction of all such information at the end of the Contract period.

14. TRANSPARENCY AND FREEDOM OF INFORMATION

- 14.1 The Service Provider acknowledges that the Purchaser is subject to the requirements of FOISA and the Environmental Information Regulations. The Service Provider shall:

(a) provide all necessary assistance and cooperation as the Purchaser may reasonably request to enable the Purchaser to comply with its obligations under FOISA and Environmental Information Regulations;

(b) transfer to the Purchaser all Requests for Information relating to this Agreement that the Service Provider receives as soon as practicable and in any event within 2 Working Days of receipt;

(c) provide the Purchaser with a copy of all information held on behalf of the Purchaser which is requested in a Request For Information and which is in the Service Provider's possession or control. The information must be provided within 5 Working Days (or such other period as the Purchaser may reasonably specify) in the form that the Purchaser requires.

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

14.2 If the Request for Information appears to be directed to information held by the Purchaser, the Service Provider must promptly inform the applicant in writing that the Request for Information can be directed to the Purchaser.

14.3 If the Purchaser receives a Request for Information concerning the Contract, the Purchaser is responsible for determining at its absolute discretion whether the information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with FOISA or the Environmental Information Regulations.

14.4 The Service Provider acknowledges that the Purchaser may, acting in accordance with the Purchaser's Code of Practice on the Discharge of Functions of Public Authorities issued under section 60(5) of FOISA (as may be issued and revised from time to time), be obliged under FOISA or the Environmental Information Regulations to disclose information requested concerning the Service Provider or the Contract:

14.4.1 in certain circumstances without consulting the Service Provider, or

14.4.2 following consultation with the Service Provider and having taken its views into account.

14.5 Where 14.4.1 applies the Purchaser must take reasonable steps, if practicable, to give the Service Provider advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of the Service Provider after such disclosure to the extent that it is permissible and reasonably practical for it to do.

14.6 Where a Request for Information concerns Service Provider Sensitive Information specified in Schedule 8 (having regard to the justifications and durations set out there), the Purchaser must take reasonable steps, where practicable, to consult with the Service Provider before disclosing it pursuant to a Request for Information.

14.7 The Service Provider acknowledges that Transparency Reports and the content of this Agreement including any Amendments, agreed from time to time, (together the "Transparency Information") are not Confidential Information. However, for the avoidance of doubt, the following shall be treated as Confidential Information:

(a) any information that the Purchaser determine is exempt from disclosure in accordance with the provisions of FOISA; and

(b) Commercially Sensitive Information

and if the Purchaser believes that publication of any element of the Transparency Information should be treated as Confidential Information the Purchaser may, in its discretion exclude such information from publication.

- 14.8 Notwithstanding any other provision of this Agreement, the Service Provider hereby gives consent for the Purchaser to publish to the general public, the Transparency Information in its entirety. The Purchaser shall, prior to publication, consult with the Service Provider 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
- 14.9 The Service Provider shall assist and co-operate with the Purchaser to enable the Purchaser to publish the Transparency Information including the preparation of Transparency Reports.
- 14.10 To The Purchaser 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 Service Provider
- 14.11 The Service Provider agrees that any further 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 Purchaser upon request, unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of FOISA. The Purchaser may disclose such information under FOISA and the EIRs and may (except for Commercially Sensitive or Confidential Information) publish such Information. The Service Provider shall provide to the Purchaser within 5 working days (or such other period as the Purchaser may reasonably specify) any such Information requested by the Purchaser.
- 14.12 To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Purchaser publishes an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over £25,000. The Service Provider should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of payment) in both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.

Guidance notes: FOI provisions in public sector contracts vary. This clause aims to meet current practice, having particular regard to the revised section 60 code of practice.

Clause 14.8 gives effect to section 31(3) of the Public Services Reform (Scotland) Act 2010 and the requirement to publish an annual statement of all payments over £25,000. However, some of this clause is specific to Scottish Government and should be removed or amended as appropriate for other public sector bodies.

15. CONFIDENTIAL INFORMATION

- 15.1 Subject to clauses 14 (*Transparency and Freedom of Information*), 16 (*Purchaser Protected Information*) and 17 (*Service Provider Sensitive Information*):
- 15.1.1 a party ("**Receiving Party**") shall keep in strict confidence all Confidential Information that has been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors (and in the case of the Service Provider, the Service Provider Representatives), which the Receiving Party may obtain through the performance of this Contract; and
- 15.1.2 the Receiving Party shall only be able to disclose such Confidential Information:
- (a) to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under this Contract, provided that the Disclosing Party has required that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to this Contract;
 - (b) in accordance with the provisions of clause 16.3 (*Purchaser Protected Information*) provided that: (i) in clause 16.3.2 the reference to "**Service Provider**" shall read "**Receiving Party**" and "**Purchaser**" shall read

“**Disclosing Party**”; and (ii) in clause 16.3.5 the reference to “**Purchaser Protected Information**” shall read as “**Confidential Information**”; and

- (c) in the case of the Purchaser, where disclosure is in accordance with the provisions of clauses 17.3.1 to 17.3.7 (*Service Provider Sensitive Information*).

16. PURCHASER PROTECTED INFORMATION

- 16.1 The Service Provider must:
- 16.1.1 treat all Purchaser Protected Information as confidential and safeguard it accordingly, implementing appropriate technical and organisational measures to protect Purchaser Protected Information against disclosure;
 - 16.1.2 only use the Purchaser Protected Information for the purposes of performing its obligations under this Contract;
 - 16.1.3 only disclose the Purchaser Protected Information to such Service Provider Representatives that are directly involved in the performance of this Contract and need to know the information; and
 - 16.1.4 not disclose any Purchaser Protected Information without the prior written consent of the Purchaser.
- 16.2 The Service Provider must immediately notify the Purchaser of any actual or suspected Breach of Security concerning the Purchaser Protected Information. The Service Provider must fully co-operate with the Purchaser in any investigation that the Purchaser considers necessary to undertake as a result of any such actual or suspected Breach of Security.
- 16.3 Clause 16.1 does not apply to the extent that:
- 16.3.1 disclosure is required by Law or by order of any competent court or tribunal;
 - 16.3.2 information is in the possession of the Service Provider without restriction as to its disclosure prior to its disclosure by the Purchaser;
 - 16.3.3 information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
 - 16.3.4 information is already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 16.3.5 information is independently developed without access to the Purchaser Protected Information.
- 16.4 Breach of this clause or the Official Secrets Acts 1911 to 1989 by the Service Provider is a material breach for the purposes of clause 64.1.3 (*Termination Rights*).

Guidance notes: Conventionally, a single “**confidential information**” clause covers both Parties. Policy and practice (particularly concerning proactive disclosure of information by public bodies) has however moved to a degree that it is appropriate to distinguish the non-disclosure obligations of both parties. The non-disclosure requirements on the Service Provider are stricter than those applicable to the Purchaser but if the Service Provider wishes to make a disclosure prohibited by this clause it can always seek the approval of the Purchaser.

Please note that clause 68.3 (*Consequences of Expiry or Termination*) requires the return/destruction of all Purchaser Protected Information at the end of the Contract period

17. SERVICE PROVIDER SENSITIVE INFORMATION

- 17.1 The Purchaser must:

- 17.1.1 treat all Service Provider Sensitive Information as confidential and safeguard it accordingly; and
 - 17.1.2 not disclose any Service Provider Sensitive Information to any other person without the prior written consent of the Service Provider.
- 17.2 Clause 17.1 does not apply to the extent that:
- 17.2.1 disclosure is required by Law or by order of any competent court or tribunal;
 - 17.2.2 information is in the possession of the Purchaser without restriction as to its disclosure prior to its disclosure by the Service Provider;
 - 17.2.3 information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
 - 17.2.4 information is already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 17.2.5 information is independently developed without access to the Service Provider Sensitive Information.
- 17.3 Nothing in this Contract prevents the Purchaser from disclosing any Service Provider Sensitive Information or any other information concerning the Service Provider or the Contract:
- 17.3.1 pursuant to a Request for Information concerning the information (see clause 14 (*Transparency and Freedom of Information*));
 - 17.3.2 in accordance with the Purchaser's publication scheme (within the meaning of section 23 of FOISA) as reviewed from time to time;
 - 17.3.3 in accordance with the requirements of Part 3 of the Public Services Reform (Scotland) Act 2010;
 - 17.3.4 in accordance with any future policies of the Purchaser concerning the routine disclosure of government information in the interests of transparency;
 - 17.3.5 to any consultant, service provider or other person engaged by the Purchaser, for example to conduct a gateway review;
 - 17.3.6 in response to a Parliamentary Question from a Member of the Scottish Parliament, a member of the United Kingdom Parliament, or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents, and when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both Parties that the Purchaser shall if the Purchaser sees fit disclose such information but is unable to impose any restrictions upon the information that the Purchaser provides to Members of the Scottish Parliament or Members of the United Kingdom Parliament; or
 - 17.3.7 for the purpose of any examination by any auditors of the Purchaser (including Audit Scotland, the Auditor General for Scotland and the Scottish Parliament) of the economy, efficiency and effectiveness with which the Purchaser has used its resources.
- 17.4 The Service Provider consents to the publication of this Contract by the Purchaser, subject to such redactions as the Purchaser may decide to make. The Purchaser may consult with the Service Provider to inform its decisions concerning redaction (for example to exclude any Service Provider Sensitive Information) but any decisions taken by the Purchaser are final and conclusive.

Guidance notes: Given FOI and transparency considerations, the non-disclosure requirements on the Purchaser are much less extensive than those applicable to the Service Provider. Nothing that the Purchaser has to proactively publish will breach this clause. Previously clauses have tended to include a tension between "all Purchaser information is confidential" and "everything can nonetheless

be disclosed” so this clause attempts to set a fair balance taking into account transparency requirements.

The Purchaser may consider that some of the exemptions highlighted in Clause 17.3 will not apply. If so, they can be deleted.

18. AUDIT AND FINANCIAL REPORTS

- 18.1 The Service Provider must retain and maintain until five (5) years after the end of the Term full and accurate records of this Contract including the Services provided and payments made and reimbursed under it.
- 18.2 The Service Provider must on request, and without any charge to the Purchaser, afford the Purchaser, or the Purchaser’s representatives, such access to those records as may reasonably be requested by the Purchaser in connection with this Contract.
- 18.3 The Service Provider shall comply with the provisions of Section A of Schedule 4 (*Financial Reports and Model*) in relation to the maintenance of Open Book Data.
- 18.4 The Parties shall comply with the provisions of Section B of Schedule 4 (*Financial Reports and Model*) in relation to the provision of the Financial Reports.

Guidance notes: This clause ensures that the Service Provider retains records that the Purchaser may need to see to comply with its audit obligations and to give the Purchaser access to those records. The first clause 18.2 sometimes presents concerns to Service Providers such as consultants, but it should be retained.

Depending on the form that Schedule 4 (*Financial Reports and Model*) takes, the Purchaser may wish to amend this clause.

19. PUBLICITY

The Service Provider must not make any press announcement or otherwise publicise this Contract in any way, except with the written consent of the Purchaser.

Guidance notes: This clause ensures that the Purchaser can control press releases etc. from the Service Provider. This clause is often made mutual but the Purchaser might innocently forget to get the Service Provider’s consent to press releases so it is appropriate to apply this clause to the Service Provider only.

SECTION C: PROVISION OF SERVICES

20. PROVISION OF THE SERVICES

- 20.1 The Service Provider shall provide:
- 20.1.1 the Implementation Services from (and including) the Implementation Services Commencement Date; and
 - 20.1.2 the Operational Services in each case from (and including) the relevant Operational Service Commencement Date.
- 20.2 The Service Provider shall ensure that the Services:
- 20.2.1 comply in all respects with the Specification; and
 - 20.2.2 are supplied in accordance with the provisions of this Contract; and
 - (a) where:

- (b) the Operational Services to be provided from any Operational Service Commencement Date are similar to services that the Purchaser was receiving immediately prior to that Operational Service Commencement Date (such similar services being “**Preceding Services**”); and
- (c) the standard and level of service received by the Purchaser in respect of any of the Preceding Services in the twelve (12) month period immediately prior to that Operational Service Commencement Date have been disclosed to the Service Provider in the Due Diligence Information (such preceding services being “**Relevant Preceding Services**”),

the Operational Services to be provided from the relevant Operational Service Commencement Date that are similar to the Relevant Preceding Services are in each case provided to a standard and level of service which is at least as good as the standard and level of service received by the Purchaser in respect of the Relevant Preceding Services in the twelve (12) month period immediately prior to the relevant Operational Service Commencement Date.

- 20.3 Where, as part of the Services, the Service Provider is to sell goods or equipment (“**Goods**”) to the Purchaser:
- 20.3.1 the relevant Goods and their prices shall be as set out in **[insert description of catalogue or include list in Schedules]**;
 - 20.3.2 the Service Provider shall supply and, where relevant, install the Goods in accordance with the relevant specification;
 - 20.3.3 the Service Provider shall ensure that the Goods are free from material defects in design, materials and workmanship and remain so for twelve (12) months after delivery;
 - 20.3.4 if following inspection or testing the Purchaser considers that the Goods do not conform with the relevant specification, the Purchaser shall inform the Service Provider and the Service Provider shall immediately take such remedial action as is necessary to ensure compliance; and
 - 20.3.5 without prejudice to any other rights or remedies of the Purchaser:
 - (a) risk in the Goods shall pass to the Purchaser at the time of delivery; and
 - (b) ownership of the Goods shall pass to the Purchaser at the time of payment.
- 20.4 The Service Provider must perform its obligations under this Agreement, including in relation to the supply of the Services and any Goods:
- 20.4.1 in accordance with all applicable Law;
 - 20.4.2 in accordance with Good Industry Practice;
 - 20.4.3 in accordance with the Specification and the Service Levels;
 - 20.4.4 to the satisfaction of the Purchaser acting reasonably; and
 - 20.4.5 in accordance with the Service Provider’s own established procedures and practices to the extent the same do not conflict with the requirements of clauses 20.4.1 to 5.
- 20.5 The Service Provider must deliver the Services using efficient business processes and ways of working having regard to the Purchaser’s obligation to ensure value for money.
- 20.6 The Service Provider acknowledges that the Purchaser relies on the skill, care, diligence and judgment of the Service Provider in the supply of the Services and the performance of its obligations under this Contract.

Guidance note: These are general requirements for the provision of services. The Contract assumes that Implementation Services will be provided from the Implementation Services Commencement Date and that Operational Services will be provided from the relevant Operational Service Commencement Date. There may be more than one Operational Service Commencement Date.

21. SERVICE PROVIDER OBLIGATIONS

21.1 The Service Provider shall:

21.1.1 at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Contract;

21.1.2 obtain, and maintain throughout the Term, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;

21.1.3 ensure that:

- (a) the release of any new Software or upgrade to any Software complies with the interface requirements in the Specification and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Purchaser as soon as reasonably practical before the release of any new Software or upgrade;
- (b) all Software including upgrades, updates and new releases used by or on behalf of the Service Provider are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
- (c) it shall minimise any disruption to the Services, the Purchaser's System, the Service Provider's System and/or the Purchaser's operations when carrying out its obligations under this Contract;
- (d) ensure that any documentation and training provided by the Service Provider to the Purchaser are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (e) co-operate with the Related Service Providers and provide reasonable information, advice and assistance in connection with the Services to any Related Service Providers to enable such Related Service Providers to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Services (or any of them) to the Purchaser and/or to any Replacement Service Provider;
- (f) to the extent it is legally able to do so, hold on trust for the sole benefit of the Purchaser, 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 Purchaser may notify from time to time to the Service Provider;
- (g) unless it is unable to do so, assign to the Purchaser on the Purchaser's written request and at the cost of the Service Provider any such warranties and/or indemnities as are referred to in clause 21.1.3 (f);
- (h) provide the Purchaser with such assistance as the Purchaser may reasonably require during the Term in respect of the supply of the Services; and
- (i) gather, collate and provide such information and co-operation as the Purchaser may reasonably request for the purposes of ascertaining the Service Provider's compliance with its obligations under this Contract.

- 21.2 An obligation on the Service Provider to do, or to refrain from doing, any act or thing shall include an obligation upon the Service Provider to procure that all Service Provider Representatives also do, or refrain from doing, such act or thing.

22. DELIVERABLES AND MILESTONES

- 22.1 The Service Provider must provide the Services, including any Deliverables:
- 22.1.1 at the date(s), time(s) and location(s) required by the Purchaser; and
- 22.1.2 in good time to meet any Milestones required by the Purchaser, all in accordance with the terms of this Contract.
- 22.2 The Parties shall comply with the provisions of 0 (*Testing Procedures*) in relation to this Contract and the testing of Deliverables.
- 22.3 Risk and ownership in any Deliverables that are corporeal moveables and in any physical media in which any Deliverables are delivered vests in the Purchaser upon acceptance in accordance with the terms of 0 (*Testing Procedures*).
- 22.4 Without prejudice to clause 26 (*Purchaser Cause*), whether any defect or delay in relation to Deliverables is due to the Purchaser or not, the Service Provider shall deploy all additional resources to address the consequences of the default or delay. Where such default or delay is solely due to the Purchaser, any additional costs in respect of the said additional resources shall be agreed between the Parties both acting reasonably and where applicable in accordance with any daily rates set out in the Pricing Schedule.

Guidance notes: This clause provides for the timely provision of the Services and the completion of Milestones and Deliverables as required by the Purchaser. There is no time of the essence clause allowing termination of the whole contract if there is lateness under a single order. Therefore the Specification and Service Levels (if applicable) should make clear the levels of failure that are deemed to be intolerable and justifying termination.

Clauses 47 (*Access to the Purchaser's Premises*) and 48 (*Service Provider's Equipment*) regulate the Purchaser's conduct when carrying out Services or other activities on the Purchaser's premises.

Regarding milestones, part of the pricing should be performance based, which is then forfeited in the event of failure to meet a milestone.

23. STANDARDS

The Service Provider shall comply with the standards outlined in the Specification in performing its obligations under this Contract. The Service Provider shall discuss with the Purchaser any conflict that the Service Provider reasonably believes that there is or will be between any such standards and any other obligation under this Contract, and shall comply with the Purchaser's decision on the resolution of that conflict.

24. IMPLEMENTATION

Implementation Plan and Delays

- 24.1 The Parties shall comply with the provisions of 0 (*Implementation Plan*) in relation to this Contract and maintenance of the Detailed Implementation Plan.
- 24.2 The Service Provider shall:
- 24.2.1 comply with the Implementation Plan; and
- 24.2.2 ensure that each Milestone is Achieved on or before its Milestone Date.

Rectification Plan

- 24.3 If the Service Provider becomes aware that there is, or there is reasonably likely to be a Delay, the following process shall apply:
- 24.3.1 as soon as practicable the Service Provider shall notify the Purchaser of the Delay but in any event within three (3) Working Days of becoming aware of the Delay, detailing the actual or anticipated effect of the Delay;
 - 24.3.2 the Service Provider shall submit a draft rectification plan outlining how the Service Provider shall rectify the Delay which as a minimum shall include: (a) full details of the Delay that has occurred, including a root cause analysis; (b) the actual or anticipated effect of the Delay; and (c) the steps which the Service Provider proposes to take to rectify the Delay (if applicable) and to prevent such Delay from recurring, including timescales for such steps and for the rectification of the Delay (where applicable) (the “**Rectification Plan**”) to the Purchaser for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to clause 24.3.1;
 - 24.3.3 the Service Provider shall promptly provide to the Purchaser any further documentation that the Purchaser reasonably requires to assess the Service Provider’s root cause analysis;
 - 24.3.4 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 in accordance with the dispute resolution process set out in clause 61 (*Dispute Resolution*);
 - 24.3.5 the Purchaser may reject the draft Rectification Plan by notice to the Service Provider if, acting reasonably, it considers that the draft Rectification Plan is inadequate;
 - 24.3.6 the Purchaser shall notify the Service Provider whether it consents to the draft Rectification Plan as soon as reasonably practicable;
 - 24.3.7 if the Purchaser rejects the draft Rectification Plan, the Purchaser shall give reasons for its decision and the Service Provider shall take the reasons into account in the preparation of a revised Rectification Plan;
 - 24.3.8 the Service Provider shall submit the revised draft of the Rectification Plan to the Purchaser for review within five (5) Working Days (or such other period as agreed between the Parties) of the Purchaser’s notice rejecting the first draft;
 - 24.3.9 if the Purchaser consents to the Rectification Plan the Service Provider shall immediately start work on the actions set out in the Rectification Plan; and
 - 24.3.10 at all times when complying with its obligations under this clause 24.3.10, the Service Provider shall use all reasonable endeavours to eliminate or mitigate the consequences of any Delay.
- 24.4 For the avoidance of doubt, clause 24.3 is without prejudice to any of the Purchaser’s other rights and/or remedies under this Contract.

Guidance note: If there is, or may be, a delay in meeting a date set out in the Implementation Plan, including a Milestone, the Service Provider must prepare a Rectification Plan for the Purchaser and the plan must be approved by the Purchaser. However, the Purchaser may still be able to claim damages or terminate the Contract.

Testing and Achievement of Milestones

- 24.5 The Parties shall comply with the provisions of 0 (*Testing Procedures*) in relation to the procedures to determine whether a Milestone or Test has been Achieved.

25. SERVICES IMPROVEMENT

- 25.1 The Service Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this clause, and as outlined elsewhere in this Contract. The Service Provider shall identify and report to the Purchaser no less than once every twelve (12) months new or potential improvements to the Services.
- 25.2 The Service Provider shall ensure that the information that it provides to the Purchaser in accordance with clause 25.1 shall be sufficient for the Purchaser to decide whether any improvement should be implemented. The Service Provider shall provide any further information that the Purchaser requests.
- 25.3 If the Purchaser wishes to incorporate any improvement identified by the Service Provider the Purchaser shall send the Service Provider a Change Request in accordance with the Change Control Procedure.

Guidance note: Requiring the Service Provider to identify and report on new or potential improvements to the Services will help assist the Purchaser in ensuring that the Services can withstand the passage of time.

26. PURCHASER CAUSE

- 26.1 If the Service Provider has failed to:
- 26.1.1 achieve a Milestone by its Milestone Date;
 - 26.1.2 provide the Operational Services in accordance with the Service Levels; and/or
 - 26.1.3 comply with its obligations under this Contract,
- (each a “**Service Provider Non-Performance**”),
- and can demonstrate that such Service Provider Non-Performance would not have occurred but for a Purchaser Cause then, (subject to the Service Provider fulfilling its obligations in this clause 26):
- (a) the Service Provider shall not be treated as being in breach of this Contract to the extent the Service Provider can demonstrate that the Service Provider Non-Performance was caused by the Purchaser Cause;
 - (b) the Purchaser shall not be entitled to exercise any rights that may arise as a result of that Service Provider Non-Performance;
 - (c) where the Service Provider Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Service Provider can demonstrate was caused by the Purchaser Cause;
 - (ii) if the Purchaser, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Purchaser Cause; and
 - (iii) the Service Provider shall be entitled to claim compensation subject to and in accordance with this clause 26 and clause 58 (*Limitation of Liability and Indemnity*); and/or
 - (d) where the Service Provider Non-Performance constitutes a failure to meet an applicable Service Level :

- (i) the Service Provider shall not be liable to accrue Service Credits; and
- (ii) the Service Provider shall be entitled to invoice for Operational Service Charges for the relevant Operational Services affected by the Purchaser Cause,

in each case, to the extent that the Service Provider can demonstrate that the Service Provider Non-Performance was caused by the Purchaser Cause.

- 26.2 In order to claim any of the rights and/or relief referred to in clause 26.1, the Service Provider shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that a Purchaser Cause has caused, or is reasonably likely to cause a Service Provider Non-Performance give the Purchaser notice (a “**Relief Notice**”) setting out details of:
- 26.2.1 the Service Provider Non-Performance (including, where applicable, the relevant Milestone or Deliverable that is impacted);
 - 26.2.2 the Purchaser Cause and its effect, or likely effect, on the Purchaser’s ability to meet its obligations under this Contract (including, where applicable, the relevant Milestone or Deliverable);
 - 26.2.3 any steps which the Purchaser can take to eliminate or mitigate the consequences and impact of such Purchaser Cause; and
 - 26.2.4 the relief and/or compensation claimed by the Service Provider.
- 26.3 Following the receipt of a Relief Notice, the Purchaser shall as soon as reasonably practicable consider the nature of the Service Provider Non-Performance and the alleged Purchaser Cause and whether it agrees with the Service Provider’s assessment set out in the Relief Notice as to the effect of the relevant Purchaser Cause, consulting with the Service Provider where necessary.
- 26.4 The Service Provider shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Purchaser Cause, including any Losses that the Service Provider may incur and the duration and consequences of any Delay or anticipated Delay.
- 26.5 If a dispute arises as to:
- 26.5.1 whether a Service Provider Non-Performance would not have occurred but for a Purchaser Cause; and/or
 - 26.5.2 the nature and/or extent of the relief and/or compensation claimed by the Service Provider,
- the dispute shall be resolved in accordance with clause 61 (*Dispute Resolution*).
- 26.6 Pending the resolution of the dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Service Provider Non-Performance.

Guidance note: There may be occasions where the Service Provider is unable to comply with its obligations because of something that the Purchaser has done or not done. This clause allows the Service Provider to be excused non-performance in such circumstances provided it serves a Relief Notice which is accepted by the Purchaser. If there is any disagreement the matter will be treated as a dispute and subject to the dispute resolution procedure.

27. TRANSFERRED ASSETS

- 27.1 The Service Provider shall carry out an audit of any Purchaser materials, software, assets, equipment or other property owned by and/or licenced or leased to the Purchaser (the “**Purchaser Assets**”) that are to be transferred from the Purchaser to the Service Provider as

part of this Contract and provide the Purchaser with a report detailing the Purchaser Assets (the “**Assets Report**”).

- 27.2 The Purchaser will then review the Assets Report and confirm its acceptance or otherwise of the same.
- 27.3 If the Purchaser notifies the Service Provider of any discrepancies in the Assets Report the Service Provider shall update the Assets Report in accordance with the Purchaser’s comments.
- 27.4 Throughout the Term, the Purchaser shall ensure that the Assets Report is accurate and kept up to date and shall make the Assets Report available for review by the Purchaser upon request. The Exit Plan shall outline the arrangements in respect of the Purchaser Assets at the expiry of the Term.

Guidance note: There may be occasions when assets of the Purchaser are to transfer to the Service Provider. If so these have to be agreed in an Assets Report which must be maintained by the Service Provider.

SECTION D: STAFF INVOLVED IN THE PROVISION OF SERVICES

28. KEY INDIVIDUALS

- 28.1 The Service Provider acknowledges that the Key Individuals are essential to the proper provision of the Services to the Purchaser.
- 28.2 The Key Individuals must not be released from providing the Services without the approval of the Purchaser (including when carrying out the Exit Management Services), except by reason of long-term sickness, maternity, paternity, adoption or parental leave, termination of employment or equivalent extenuating circumstances. Where such extenuating circumstances arise or are foreseeable, the Service Provider must immediately give notice of that fact to the Purchaser.
- 28.3 The Service Provider may propose a replacement to a Key Individual (and must do so when a Key Individual is to be released from providing the Services), in which case:
- 28.3.1 appropriate arrangements must be made to minimise any adverse impact on this Contract which could be caused by the change in Key Individuals (including, wherever possible, a transfer period of sufficient duration to allow for the transfer of know-how and skills); and
- 28.3.2 the replacement must be of at least equal status and of equivalent qualifications, experience, training and skills to the Key Individual being replaced and must be fully competent to carry out the responsibilities of that person in relation to the Services.
- 28.4 Any proposed replacement to a Key Individual is subject to the approval of the Purchaser. Subject to the Service Provider’s compliance with this clause, the Purchaser must not unreasonably withhold such approval.

Guidance notes: This clause is an optional clause where Key Individuals can be identified before contract award. If deleting this clause, delete the Key Individuals Schedule and all fields relating to Key Individuals.

29. OFFERS OF EMPLOYMENT

- 29.1 For the Term and for a period of twelve (12) months thereafter the Service Provider must not employ or offer employment to any of the Purchaser’s employees who have been associated with this Contract and/or the contract management of this Contract without the Purchaser’s prior approval.
- 29.2 This clause does not prevent the Service Provider from employing or offering employment to any person who has applied for employment in response to an advertisement placed in the

normal course of business and not placed with the objective of soliciting the Purchaser's employees.

Guidance notes: This is a non-solicitation clause to prevent the Service Provider from "poaching" Purchaser employees. It does not prevent recruitment following an advertisement in the normal course.

30. STAFF TRANSFER AT COMMENCEMENT

- 30.1 The Parties agree that the commencement of the provision of the Services by the Service Provider does not involve a Relevant Transfer. However if a Relevant Transfer takes place the following provisions of this clause apply. **OR (I.E. DELETE THE FOREGOING TWO SENTENCES OR THE FOLLOWING DEPENDING ON WHAT IS APPLICABLE)** The Parties agree that the commencement of the provision of the Services by the Service Provider may constitute a Relevant Transfer in respect of the Incoming Employees.
- 30.2 The Service Provider is responsible for all emoluments and outgoings in respect of the Incoming Employees (including all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period from the date of the Relevant Transfer, including bonuses or commission which are payable on or before the date of the Relevant Transfer but attributable in whole or in part to the period from the date of the Relevant Transfer.
- 30.3 The Service Provider indemnifies the Purchaser and the transferor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the Purchaser and the transferor may incur in respect of the emoluments and outgoings referred to in clause 30.2.
- 30.4 The Service Provider indemnities the Purchaser and the Transferor for any failure by the Service Provider to comply with its obligations under TUPE.

Guidance notes: Please include optional first option clause 30.1 and delete second option if it is clear that there will be no TUPE transfer of staff from the Purchaser or from a previous service provider on commencement of the provision of the Services. **Seek Employment advice if there is any doubt as to the position.**

"Incoming Employees" who become Service Provider employees are likely to be the employees of a previous service provider who is ceasing to carry out work for the Purchaser. The old service provider enjoys rights under this clause, but their obligations (if any) will be determined by the older contract that they are party to. Where two contracts based on this model contract follow each other, the obligations of the two service providers join up.

If there is any prospect that the "Incoming Employees" are Purchaser employees (i.e. that Purchaser employees might transfer to the private sector) then Employment advice and assistance must be sought.

31. INFORMATION ABOUT SERVICE PROVIDER EMPLOYEES

- 31.1 The Purchaser may by notice require the Service Provider to disclose such information as the Purchaser may require relating to any person wholly or mainly engaged or employed by the Service Provider or any other party in carrying out activities under or connected with this Contract.
- 31.2 The Service Provider must disclose by notice all such information as is required by the Purchaser under clause 31.1, within such reasonable period specified by the Purchaser. The Service Provider acknowledges that the Data Protection Laws do not prevent the disclosure of anonymised data that is not Personal Data.

- 31.3 The Service Provider consents to the disclosure by the Purchaser of all information provided by the Service Provider under this clause to other service providers that the Purchaser may invite to tender or appoint for services to be provided in substitution for the Services.

Guidance notes: Irrespective of whether a TUPE transfer on expiry or termination is likely, it is desirable for the Purchaser to be able to pull together employee liability information for inclusion in future ITTs.

To the extent that it is desirable to include a requirement that the Service Provider provides information about other matters, this can be included in the Management Arrangements.

32. STAFF TRANSFER ON EXPIRY OR TERMINATION

- 32.1 The Parties agree that the ceasing of the provision of the Services (whether in whole or in part) by the Service Provider will not constitute a Relevant Transfer. However in the event that a Relevant Transfer takes place the following provisions of this clause 32 apply. **OR (I.E. DELETE THE FOREGOING OR THE FOLLOWING DEPENDING ON WHAT IS APPLICABLE)** The Parties agree that the ceasing of the provision of the Services by the Service Provider may constitute a Relevant Transfer in respect of the Outgoing Employees.
- 32.2 The Service Provider agrees that within twenty (20) Working Days of the earliest of:
- 32.2.1 receipt of a notification from the Purchaser of a Service Transfer or intended Service Transfer;
 - 32.2.2 receipt of the giving of notice of early termination or any partial termination of this Contract;
 - 32.2.3 the date which is twenty four (24) months before the end of the Initial Term; **[Note: this period may require to be amended depending on the length of the Contract.]** and
 - 32.2.4 receipt of a written request of the Purchaser at any time (provided that the Purchaser shall only be entitled to make one such request in any six (6) month period),
- it shall provide to the Purchaser in a suitably anonymised format so as to comply with the Data Protection Laws, the Service Provider's Provisional Personnel List, together with the Staffing Information in relation to the Service Provider's Provisional Personnel List and it shall provide an updated Service Provider's Provisional Personnel List at such intervals as are reasonably requested by the Purchaser.
- 32.3 At least twenty eight (28) Working Days prior to the Relevant Transfer, the Service Provider shall provide to the Purchaser or at the direction of the Purchaser to any Replacement Service Provider and/or any Replacement Sub-contractor:
- 32.3.1 the Service Provider's Final Personnel List (which shall be complete and accurate in all material respects); and
 - 32.3.2 the Staffing Information in relation to the Service Provider's Final Personnel List (insofar as such information has not previously been provided).
- 32.4 The Purchaser shall be permitted to use and disclose information provided by the Service Provider under this clause 32 for the purpose of informing any prospective Replacement Service Provider and/or Replacement Sub-contractor.
- 32.5 From the date of the earliest event referred to in clause 32.2, the Service Provider agrees that it shall not, and agrees to procure that any Sub-contractor shall not, assign any person to the provision of the Services (or the relevant part) which is the subject of a Relevant Transfer who is not listed on the Service Provider's Provisional Personnel List and shall not without the prior written approval of the Purchaser (not to be unreasonably withheld or delayed):
- 32.5.1 replace or re-deploy any person listed on the Service Provider's Provisional 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;

- 32.5.2 make, promise, propose or permit any material changes to the terms and conditions of employment of any person on the Service Provider's Provisional Personnel List (including any payments connected with the termination of employment);
- 32.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any person on the Service Provider's Provisional Personnel List save for fulfilling assignments and projects previously scheduled and agreed with the Purchaser;
- 32.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any persons listed on the Service Provider's Provisional Personnel List;
- 32.5.5 increase or reduce the total number of persons so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- 32.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Service Provider's Provisional Personnel List save by due disciplinary process,

and shall promptly notify, and procure that any Sub-contractor shall promptly notify the Purchaser or, at the direction of the Purchaser, any Replacement Service Provider of any notice to terminate the employment given or received by the Service Provider or relevant Sub-contractor from any persons listed on the Service Provider's Provisional Personnel List regardless of when such notice takes effect.

- 32.6 The Service Provider indemnifies the Purchaser and any Replacement Service Provider and/or Replacement Sub-contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Purchaser and/or any Replacement Service Provider and/or Replacement Sub-contractor may suffer as a result of or in connection with:
 - 32.6.1 the provision of information pursuant to clauses 31 and/or 32;
 - 32.6.2 any claim or demand by any Outgoing Employee (whether in contract, delict, under statute or otherwise) arising directly or indirectly from any act, fault or omission of the Service Provider in respect of any Outgoing Employee on or before the date of the Relevant Transfer;
 - 32.6.3 any claim or demand by any person employed or formerly employed by the Service Provider other than an Outgoing Employee for which it is alleged the Purchaser or any Replacement Service Provider or Replacement Sub-contractor may be liable by virtue of this Contract and/or TUPE;
 - 32.6.4 any claim or demand arising from any act or omission of the Service Provider in relation to any other Service Provider's personnel who is not an Outgoing Employee during any period whether before, on or after the Relevant Transfer;
 - 32.6.5 any failure by the Service Provider to comply with its obligations under regulations 11, 12, 13 or 14 of TUPE or any award of compensation under regulation 13 or 15 of TUPE save where such failure arises from the failure of the Purchaser or any Replacement Service Provider and/or Replacement Sub-contractor to comply with its obligations under regulation 13 of TUPE; and
 - 32.6.6 any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Outgoing Employees arising from or connected with any failure by the Service Provider to comply with any legal obligation to such trade union, body or person.

- 32.7 The Service Provider is responsible for all emoluments and outgoings in respect of the Outgoing Employees (including all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the date of the Relevant Transfer (including bonuses or commission which are payable after the date of the Relevant Transfer but attributable in whole or in part to the period on or before the date of the Relevant Transfer).
- 32.8 The Service Provider indemnifies the Purchaser and any Replacement Service Provider against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the Purchaser and/or any Replacement Service Provider may incur in respect of the emoluments and outgoings referred to in clause 32.7.

Guidance notes: Please include optional first option clause 32.1 and delete second option if it is clear that there will be no TUPE transfer of staff from the Purchaser on expiry or termination. **Seek Employment advice if there is any doubt as to the position.**

“**Outgoing Employees**” are those that transfer from the Service Provider’s employment on expiry or termination of the Contract (they could include “Incoming Employees” transferred at the commencement of the Contract). A replacement service provider enjoys rights under this clause but their obligations (if any) will be determined by the older contract that they are party to. Where two contracts based on this model contract follow each other, the obligations of the two service providers join up.

If there is any prospect that the “Outgoing Employees” become Purchaser employees then Employment advice and assistance must be sought

33. SECURITY AND DATA

- 33.1 The Service Provider shall not delete or remove any proprietary notices contained within or relating to the Purchaser Data.
- 33.2 The Service Provider shall not store, copy, disclose, or use the Purchaser Data except as necessary for the performance by the Service Provider of its obligations under this Contract or as otherwise expressly authorised in writing by the Purchaser.
- 33.3 The Service Provider shall preserve the integrity of the Purchaser Data and prevent the corruption or loss of the Purchaser Data, ensuring at all times that the relevant Purchaser Data is under its control or the control of any Sub-contractor.
- 33.4 The Service Provider shall perform secure back-ups of all Purchaser Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the BCDR Plan. The Service Provider shall ensure that such back-ups are available to the Purchaser (or to such other person as the Purchaser may direct) at all times upon request and are delivered to the Purchaser at such other intervals as may be agreed in writing between the Parties.
- 33.5 The Service Provider shall ensure that any system on which the Service Provider holds any Purchaser Data, including back-up data, is a secure system that complies with the Security Plan. Where appropriate, the system should reflect the Scottish Public Sector Supply Chain Cyber Security Policy for cloud-based requirements as the same may be updated from time to time.
- 33.6 The Service Provider shall at all times when performing the Services comply with the terms of the BCDR Plan.
- 33.7 If any of the Purchaser Data is corrupted, lost or sufficiently degraded as a result of the Service Provider's Default so as to be unusable, the Purchaser may:
- 33.7.1 require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of Purchaser Data to the extent and in accordance with the requirements specified in 0 (*Business Continuity and Disaster Recovery*) and the Service Provider shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Purchaser’s notice; and/or

- 33.7.2 itself restore or procure the restoration of Purchaser Data, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in 0 (*Business Continuity and Disaster Recovery*).
- 33.8 If at any time the Service Provider suspects or has reason to believe that Purchaser Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Service Provider shall notify the Purchaser immediately and inform the Purchaser of the remedial action the Service Provider proposes to take.
- 33.9 The Service Provider shall comply with the requirements of **Error! Reference source not found.** (*Security Management*).

34. MALICIOUS SOFTWARE

- 34.1 The Service Provider shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, actively monitor for, contain the spread of, and minimise the impact of, Malicious Software in relation to the Purchaser's System and the Service Provider's System.
- 34.2 Notwithstanding clause 34.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Purchaser Data, assist each other to restore the Services to their desired operating efficiency.
- 34.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause 34.2 shall be borne by the Parties as follows:
- 34.3.1 by the Service Provider where the Malicious Software originates from the Service Provider Software, the Third Party Software supplied by the Service Provider or the Purchaser Data (whilst the Purchaser Data was under the control of the Service Provider) unless the Service Provider can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Purchaser when provided to the Service Provider; and
- 34.3.2 otherwise by the Purchaser.

SECTION E: PROVISIONS RELATING TO INTELLECTUAL PROPERTY AND GOVERNANCE

Intellectual Property Rights

35. PARTIES' PRE-EXISTING INTELLECTUAL PROPERTY RIGHTS

Except as expressly provided for in this Contract, neither Party acquires any interest in or licence to use the other Party's Intellectual Property Rights as they subsist at the Commencement Date (Purchaser Background IPRs and Service Provider Background IPRs) or as developed independently of this Contract.

Guidance notes: An express provision along these lines is not always included but Service Providers often request it and it is appropriate to include it. This clause avoids the need to say "the Purchaser does not have rights in this or that" – the default position is no rights unless expressly given.

36. SPECIALLY CREATED INTELLECTUAL PROPERTY RIGHTS

- 36.1 Subject to clause 35, all Intellectual Property Rights in:
- 36.1.1 the Documentation, Source Code and the Object Code of the Specially Written Software;

- 36.1.2 all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software;
- 36.1.3 the Project Specific IPRs; and
- 36.1.4 any other Deliverables and any reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material where such Intellectual Property Rights are prepared by or for the Service Provider on behalf of the Purchaser for use, or intended use, in relation to the performance by the Service Provider of its obligations under this Contract,

shall belong to the **[Service Provider/Purchaser- Need to adjust as appropriate]**.

Guidance notes: This clause provides for who is to own the specially created intellectual property rights. The clause should be amended to make it clear whether they are owned by the Service Provider or by the Purchaser.

If they are to be owned by the Service Provider then the Purchaser will require appropriate licences to use the rights. This is provided as an option in clause 37.1 (*Licences of Intellectual Property Rights*).

If they are to be owned by the Purchaser then the Service Provider will require a right to use them in order to perform the Services. This is provided as an option in clause 37.5 (*Licences of Intellectual Property Rights*).

37. LICENCES OF INTELLECTUAL PROPERTY RIGHTS

Licences Granted by the Service Provider

- 37.1 The Service Provider grants to the Purchaser a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights owned or developed prior to the Commencement Date (including Service Provider Software) for the purposes of delivery of the Services by or for the Service Provider and which the Purchaser reasonably requires in order to enjoy the benefit of the Services including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display).
- 37.2 [The Service Provider grants to the Purchaser a royalty-free, perpetual, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights created under clause 36. **Delete if the Purchaser will own the specially created intellectual property rights]**

Third Party Software and Third Party IPRs

- 37.3 The Service Provider must ensure that the third party owner of any Intellectual Property Rights (including Third Party Software) that are or which may be used to perform this Contract grants to the Purchaser a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) or, if itself a licensee of those rights, grants to the Purchaser an authorised and equivalently wide sub-licence, to use, reproduce, modify, develop and maintain such Intellectual Property Rights. Such licence or sub-licence must be non-exclusive, perpetual, royalty free and irrevocable.
- 37.4 All Software licensed to the Purchaser pursuant to this Contract is set out in 0 (*Software Licences*).

Guidance notes: This clause gives the Purchaser licences to use Service Provider and third party IPR (including Third Party Software) as may be required to enjoy the benefit of the Services. Third party software may be made available on different licence terms in which case this clause may require to be amended.

If there is a need to amend these terms or a need for more detailed IPR provisions e.g. where multiple different types of IPR or software are involved, **appropriate legal advice should be taken.**

Licences Granted by the Purchaser

- 37.5 The Purchaser hereby grants to the Service Provider a royalty-free, non-exclusive, non-transferable licence during the Term to use the Purchaser Software, the Purchaser Background IPRs, [the Specially Written Software, the Project Specific IPRs and all other Intellectual Property Rights owned by the Purchaser pursuant to clause 36 (*Specially Created Intellectual Property Rights*) **Delete the highlighted text if the Service Provider will own the specially created intellectual property rights**] and the Purchaser Data solely to the extent necessary for performing the Services in accordance with this Contract, including the right to grant sub-licences to Sub-Contractors provided that the Service Provider shall not, without the Purchaser's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Purchaser.
- 37.6 In the event of the termination or expiry of this Contract, the licence granted pursuant to clause 37.5 and any sub-licence granted by the Service Provider in accordance with clause 37.5 shall terminate automatically on the date of such termination or expiry and the Service Provider shall:
- 37.6.1 immediately cease all use of the Purchaser Software, the Purchaser Background IPRs, [the Specially Written Software, the Project Specific IPRs and all other Intellectual Property Rights owned by the Purchaser pursuant to clause 36 (*Specially Created Intellectual Property Rights*) **Delete the highlighted text if the Service Provider will own the specially created intellectual property rights**] and the Purchaser Data (as the case may be);
- 37.6.2 at the discretion of the Purchaser, return or destroy documents and other tangible materials that contain any of the Purchaser Software, the Purchaser Background IPRs, [the Specially Written Software, the Project Specific IPRs and all other Intellectual Property Rights owned by the Purchaser pursuant to clause 36 (*Specially Created Intellectual Property Rights*) **Delete the highlighted text if the Service Provider will own the specially created intellectual property rights**] and the Purchaser Data, provided that if the Purchaser has not made an election within six (6) months of the termination of the licence, the Service Provider may destroy the documents and other tangible materials that contain any of the Purchaser Software, the Purchaser Background IPRs, [the Specially Written Software, the Project Specific IPRs and all other Intellectual Property Rights owned by the Purchaser pursuant to clause 36 (*Specially Created Intellectual Property Rights*) **Delete the highlighted text if the Service Provider will own the specially created intellectual property rights**] and the Purchaser Data (as the case may be); and
- 37.6.3 ensure, so far as reasonably practicable, that any Purchaser Software, Purchaser Background IPRs [the Specially Written Software, the Project Specific IPRs and all other Intellectual Property Rights owned by the Purchaser pursuant to clause 36 (*Specially Created Intellectual Property Rights*) **Delete the highlighted text if the Service Provider will own the specially created intellectual property rights**] and Purchaser Data that are held in electronic, digital or other machine-readable form cease to be readily accessible from any Service Provider computer, word processor, voicemail system or any other Service Provider device containing the same.

Guidance notes: This clause gives the Service Provider a licence to use the Purchaser Software, the Purchaser Background IPRs, the Purchaser Data and any specially created Intellectual Property Rights owned by the Purchaser in accordance with clause 36 (*Specially Created Intellectual Property Rights*).

If the Purchaser will not own any specially created Intellectual Property Rights in accordance with clause 36 (*Specially Created Intellectual Property Rights*), the highlighted text should be deleted.

If there is a need to amend these terms or a need for more detailed IPR provisions e.g. where multiple different types of IPR or software are involved, appropriate legal advice should be taken.

Claims relating to Intellectual Property Rights

- 37.7 The Service Provider must not infringe any Intellectual Property Rights of any third party in providing the Services or otherwise performing its obligations under this Contract and must ensure that the provision of the Services and the use or possession of the Deliverables does not infringe such Intellectual Property Rights.
- 37.8 The Service Provider shall at all times, during and after the Term, on written demand indemnify the Purchaser and each other Indemnified Person, and keep the Purchaser 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 IPR Claim.
- 37.9 If an IPR Claim is made, or the Service Provider anticipates that an IPR Claim might be made, the Service Provider may, at its own expense and sole option, either:
- 37.9.1 procure for the Purchaser and/or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPR Claim; or
- 37.9.2 replace or modify the relevant item with non-infringing substitutes provided that:
- (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (b) the replaced or modified item does not have an adverse effect on any other services, the Purchaser's System and/or the Service Provider's System;
 - (c) there is no additional cost to the Purchaser and/or relevant Indemnified Person (as the case may be); and
 - (d) the terms and conditions of this Contract shall apply to the replaced or modified Services.
- 37.10 If the Service Provider elects to procure a licence in accordance with clause 37.9.1 or to modify or replace an item pursuant to clause 37.9.2, but this has not avoided or resolved the IPRs Claim, then:
- 37.10.1 the Purchaser may terminate this Contract (if subsisting) with immediate effect by written notice to the Service Provider; and
- 37.10.2 without prejudice to the indemnity set out in clause 37.8, the Service Provider shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

Guidance notes: The Purchaser should have comfort that no third party IPRs are infringed in the Services and Deliverables provided by the Service Provider. This clause seeks to ensure that.

38. ESCROW

- 38.1 As soon as reasonably practicable following the Commencement Date, the Service Provider shall enter into a standard form Escrow Agreement with a reputable Escrow Agent satisfactory to the Purchaser in relation to the software and/or documentation agreed by the Parties that is to be deposited in escrow (the "**Escrowed Material**").

- 38.2 The Service Provider shall deposit the Escrowed Material with the Escrow Agent on the basis of the terms agreed in the Escrow Agreement within ten (10) days of the date of the Escrow Agreement being signed.
- 38.3 The Service Provider shall pay the initial storage fees, the annual fees and update fees under the Escrow Agreement and the Purchaser shall pay the release fee.

Guidance notes: It may be appropriate to have escrow arrangements where source code to software should be placed in escrow. This clause allows for escrow arrangements.

39. ASSIGNATION

- 39.1 The Service Provider may not assign any of its rights, obligations or interest in this Contract or any part of it without the prior written consent of the Purchaser.
- 39.2 Notwithstanding clause 39.1, the Service Provider may assign to another person (an "**Assignee**") the right to receive the price due to the Service Provider under this Contract subject to:
- 39.2.1 deduction of sums in respect of which the Purchaser exercises its right of recovery under clause 12 (*Recovery of Sums Due*); and
- 39.2.2 all the related rights of the Purchaser under this Contract in relation to the recovery of sums due but unpaid.
- 39.3 The Service Provider must notify or ensure that any Assignee notifies the Purchaser of any variations to the arrangements for making payments or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification the Purchaser is under no obligation to vary its arrangements for making payments or for handling invoices.
- 39.4 Subject to clause 39.6, the Purchaser may assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to:
- 39.4.1 any Government Body; or
- 39.4.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Purchaser; or
- 39.4.3 any private sector body which substantially performs the functions of the Purchaser,
- provided that any such assignation, novation or other disposal shall not increase the burden of the Service Provider's obligations under this Contract.
- 39.5 Any change in the legal status of the Purchaser such that it ceases to be a Government Body shall not, subject to clause 39.6, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Purchaser.
- 39.6 If the rights and obligations under this Contract are assigned, novated or otherwise disposed of pursuant to clause 39.4 to a body which is not a Government Body or if there is a change in the legal status of the Purchaser such that it ceases to be a Government Body (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):
- 39.6.1 the rights of termination of the Purchaser in clauses 64 (*Termination Rights*) and 65 (*Termination on Insolvency or Change of Control*) shall be available to the Service Provider in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- 39.6.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the prior consent in writing of the Service Provider.

- 39.7 The Purchaser may disclose to any Transferee any Service Provider Confidential Information which relates to the performance of the Service Provider's obligations under this Contract. In such circumstances the Purchaser shall authorise the Transferee to use such Service Provider Confidential Information only for purposes relating to the performance of the Service Provider's obligations under this Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Service Provider Confidential Information.

Guidance notes: A change of Service Provider is in principle a material and impermissible amendment to a public Contract so it is important that the Purchaser should be able to control assignment or novation (i.e. transfer). **Legal advice should be taken before approving assignment or novation** – law might require the request to be rejected and require the contract to be terminated if the change goes ahead (see clause 65.2 (*Termination on Insolvency or Change of Control*)).

If the Purchaser is part of Scottish Government Clauses 39.2 and 39.3 are standard requirements.

The position of the Purchaser is not otherwise expressly addressed but it is unlikely to be able to assign its interest at common law.

Clauses 39.5, 39.6 and 39.7 are specific to Government Bodies and should be deleted if the Purchaser is not a Government Body.

40. CHANGE OF CONTROL

- 40.1 The Service Provider must notify the Purchaser:
- 40.1.1 whenever it proposes to undergo a change of Control, or a change of control is likely to occur; and
 - 40.1.2 immediately following a change of Control that has occurred.

Guidance notes: A change of control is in principle a material and impermissible amendment to a public contract so it is important that the Purchaser should be able to control change of Control. **Legal advice should be taken before approving change of Control** – law might require the request to be rejected and require the contract to be terminated if the change goes ahead (see clause 65.2 (*Termination on Insolvency or Change of Control*)).

41. SUB-CONTRACTING

- 41.1 The Purchaser approves the appointment of the Sub-contractors specified in Schedule 7 (*Approved Sub-contractors*) in respect of the obligations specified in that Schedule.
- 41.2 The Service Provider may not sub-contract its obligations under this Contract to other Sub-contractors without the prior written consent of the Purchaser. Sub-contracting of any part of this Contract shall not relieve the Service Provider of any obligation or duty attributable to the Service Provider under this Contract. The Service Provider shall be responsible for the acts and omissions of its Sub-contractors as though they are its own.
- 41.3 Where the Service Provider enters into a Sub-contract the Service Provider must ensure that a provision is included which:
- 41.3.1 requires payment to be made of all sums due by the Service Provider to the Sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice as defined by the Sub-contract requirements and provides that, where the Purchaser has made payment to the Service Provider in respect of Services and the Sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Service Provider is not exercising a right of retention or set-off in respect of a breach of contract by the Sub-contractor or in respect

of a sum otherwise due by the Sub-contractor to the Service Provider, payment must be made to the Sub-contractor without deduction;

- 41.3.2 notifies the Sub-contractor that the Sub-contract forms part of a larger contract for the benefit of the Purchaser and that should the Sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the Sub-contractor to the Purchaser;
 - 41.3.3 requires that all contracts with Sub-contractors and suppliers which the Sub-contractor intends to procure, and which the Sub-contractor has not before the Commencement Date already planned to award to a particular supplier, are advertised through the Public Contracts Scotland procurement portal (www.publiccontractsscotland.gov.uk) and awarded following a fair, open, transparent and competitive process proportionate to the nature and value of the contract;
 - 41.3.4 includes provisions requiring the conduct of audits; and
 - 41.3.5 is in the same terms as that set out in this clause 41.3 (including this clause 41.3.5 subject only to modification to refer to the correct designation of the equivalent party as the Service Provider and Sub-contractor as the case may be.
- 41.4 The Service Provider shall also include in every Sub-contract:
- 41.4.1 a right for the Service Provider to terminate that Sub-contract if the relevant Sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events specified in clause 64.3 (*Termination Rights*) occur; and
 - 41.4.2 a requirement that the Sub-contractor includes a provision having the same effect as clause 41.4.1 in any Sub-contract which it awards.
- 41.5 Where requested by the Purchaser, copies of any Sub-contract must be sent by the Service Provider to the Purchaser as soon as reasonably practicable.
- 41.6 Where the Service Provider proposes to enter into a Sub-contract it must:
- 41.6.1 advertise its intention to do so in at least one trade journal and the Public Contracts Scotland Portal; and
 - 41.6.2 follow a procedure leading to the selection of the Sub-contractor which ensures reasonable competition following principles of equal treatment, non-discrimination and transparency and which ensures that such procedure is accessible by small and medium enterprises.

Guidance notes: Please delete clause 41.1 and Schedule 7 (*Approved Sub-contractors*) if there are no pre-approved sub-contractors as at contract award. **A change to the sub-contractor position might be a material and impermissible amendment to a public contract** so it is important that the Purchaser should be able to control sub-contracting. **Legal advice should be taken before approving changes to the sub-contracting position** – EU law might require a request to be rejected and require the contract to be terminated if the change goes ahead (see clause 65.2 (*Termination on Insolvency or Change of Control*)).

See also clause 41.2 on responsibility for the acts and omissions of sub-contractors.

41A. SUPPLY CHAIN TRANSPARENCY AND PROTECTIONS

Supply Chain Transparency & Protections

Knowledge of the supply chain

41A.1. In performing its role as a reseller, the Service Provider will use its reasonable endeavours to ensure that the suppliers operating in its supply chain (the “Service Provider’s Suppliers”) prepare and maintain a written supplier code of conduct or supplier policy that addresses the following.

- child labour,
- forced labour,
- working hours,
- wages,
- discrimination,
- health and safety,
- freedom of association,
- collective bargaining,
- disciplinary practices,
- humane treatment of workers,
- training,
- engagement with NGOs, and
- worker grievance procedures .

The Service Provider will provide the Purchaser with a copy of the Service Provider’s suppliers codes of conduct or supplier policies on request.

41A.2. The Service Provider will use its reasonable endeavours to ensure that the Service Provider’s Suppliers prepare and maintain appropriate policies and procedures to identify, manage and mitigate labour and human rights risks in their supply chains relevant to this Contract (the “Service Provider Supply Chain”).

41A.3. The Service Provider will, within 20 Working Days of the Contract Commencement Date, provide the Purchaser with the names, locations and details of the roles of suppliers (including details of the factories used by suppliers and specific components produced in each factory) within the Service Provider Supply Chain. The Service Provider will notify the Purchaser of any changes as soon as reasonably practicable.

41A.4. Not used.

Supply chain working conditions

41A.5. The Service Provider will submit an annual written report to the Purchaser outlining the Service Provider’s objectives, targets and specific actions for monitoring and improving labour standards and working conditions within the Service Provider Supply Chain.

41A.6. The Service Provider will take all reasonable steps to ensure that all Goods supplied under this Contract are produced in accordance with all International Labour Organisation (ILO) conventions that have been ratified by the country of their origin.

41A.7. In respect of the Service Provider Supply Chain and the Service Provider’s Suppliers, the Service Provider must ensure the following:

41A.7.1. forced, bonded (including debt bonded) or indentured labour, involuntary or exploitative prison labour, slavery or trafficking of persons is not permitted;

41A.7.2. child labour is not used in any stage of manufacturing or in the provision of services or supplies;

41A.7.3. workers do not undertake excessive working hours. For the purposes of this Contract, working hours must not exceed the maximum set by local law; a working week must not be more than 60 hours per week, including overtime, except in emergency or unusual situations and workers shall be allowed at least one day off every seven days;

41A.7.4. compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits; in compliance with local laws, workers shall be compensated for overtime at pay rates greater than regular hourly rates; that deductions from wages as a disciplinary measure shall not be permitted; that for each pay period, workers shall be provided with a timely and understandable wage statement that includes sufficient information to verify accurate compensation for work performed; and that all use of temporary, dispatch and outsourced labour will comply with local laws;

41A.7.5. all workers must have the right to form and join trade unions, of their own choosing, to bargain collectively and to engage in peaceful assembly and the right of workers to refrain from such activities must be respected;

41A.7.6. workers must not be subject to any harsh or inhumane treatment, including any sexual harassment, sexual abuse, corporal punishment, mental or physical coercion or verbal abuse of workers; nor is there to be the threat of any such treatment;

41A.7.7. workers must not be subject to harassment or unlawful discrimination;
and

41A.7.8. workers must be provided with safe and healthy working conditions.

41A.8. In respect of the Service Provider Supply Chain and the Service Provider's Suppliers, the Service Provider will use its reasonable endeavours to ensure the following:

41A.8.1. compliance with all applicable whistleblowing laws, statutes and regulations in force from time to time in the jurisdiction where the Goods are manufactured;

41A.8.2. implementation of an appropriate (e.g. anonymous) whistleblowing policy which encourages openness and ensures support and protection from detrimental treatment for workers which raise genuine concerns.

Managing risks in the supply

41A.9. The Service Provider will use its reasonable endeavours to require the Service Provider's Suppliers to audit, evaluate and report in writing to the Service Provider not less than once every twelve (12) months on performance against the Service Provider's Suppliers' codes of conduct and or supplier policies and their policies on labour and human rights impacts in respect of the Service Provider Supply Chain. The Service Provider shall provide the Purchaser on request with a copy of any such reports in so far as they relate to the Service Provider Supply Chain.

41A.10. The Service Provider will use its reasonable endeavours to ensure that the Service Provider's Suppliers undertake a defined program of supply-chain audits. Audits must be undertaken by third party accredited certification bodies and independently verified. These audits must either include or be supplemented by external consultation and engagement with local labour unions or civil society organisations/NGOs, and off-site worker interviews to gain a more accurate understanding of working conditions. The Service Provider shall provide the Purchaser on request with a copy of any such audits, and supplementary evidence where relevant, in its possession or control in so far as they relate to the Service Provider Supply Chain.

Corrective and preventive measures to ensure social responsibility in the supply chain

41A.11. The Service Provider will use its reasonable endeavours to ensure the outcomes of the Service Provider's Suppliers supply-chain audits are subject to corrective actions by the Service Provider's Suppliers in a timely manner. The Service Provider shall provide the Purchaser on request with details in its possession or control of any actions taken or proposed to be taken in so far as they relate to the Service Provider Supply Chain .

41A.12. The Service Provider will use its reasonable endeavours to actively engage with the Service Provider Supply Chain to ensure continuous improvement in labour and human rights standards and supplier compliance with such standards .

41A.13. The Service Provider will use its reasonable endeavours to ensure that the Service Provider's Suppliers communicate and publicly report progress in addressing labour and human rights issues within the Service Provider Supply Chain not less than once every twelve (12) months .

Measures to control the supply chain

41A.14. The Service Provider will use its reasonable endeavours to ensure that the Service Provider's Suppliers' sourcing policies address labour and human rights impacts during the extraction phase of production and include the use of conflict free smelters in accordance with the [Responsible Minerals Initiative](#). The Service Provider will use its reasonable endeavours to ensure that the Service Provider's Suppliers provide and maintain a written list of tantalum, tin, tungsten, and gold smelters/refiners reported by the Service Provider Supply Chain and provide the Purchaser on request with details.

41A.15. The Service Provider will use its reasonable endeavours to ensure that the Service Provider's Suppliers implement and adhere to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (as the same may be updated from time to time) and produce a publicly viewable annual summary of their due diligence and risk management measures consistent with this guidance.

41A.16. The Service Provider will use its reasonable endeavours to provide the Purchaser on request with evidence of direct and ongoing collaboration by the Service Provider's Suppliers with external organisations (such as NGOs, civil society organisations and governments) to address labour and human rights impacts on the Service Provider Supply Chain.

Supply chain contract termination

41A.17. The Service Provider will use its reasonable endeavours to ensure that all contracts in the Service Provider Supply Chain give the Purchaser a right to terminate the sub-contract if the supplier fails to comply with legal obligations in the fields of environmental, social, labour or human rights law.

42. CHANGE

Change Control Procedure

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

Change in Law

42.2 The Service Provider shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Charges as the result of:

42.2.1 a General Change in Law; or

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

- 42.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in clause 42.2.2), the Service Provider shall:
- 42.3.1 notify the Purchaser as soon as reasonably practicable of the likely effects of that change, including:
- (a) whether any Change is required to the Services, the Charges or this Contract; and
 - (b) whether any relief from compliance with the Service Provider's obligations is required, including any obligation to Achieve a Milestone and/or to meet any relevant Service Levels; and
- 42.3.2 provide the Purchaser with evidence:
- (a) that the Service Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
 - (b) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (c) demonstrating that any expenditure that has been avoided has been taken into account in amending the Charges.
- 42.4 Any variation in the Charges or relief from the Service Provider's obligations resulting from a Specific Change in Law (other than as referred to in clause 42.2.2) shall be implemented in accordance with the Change Control Procedure.

SECTION F SERVICE PROVIDER CONDUCT REQUIREMENTS

43. COMPLIANCE WITH THE LAW ETC.

- 43.1 In providing the Services and otherwise when performing this Contract, the Service Provider must comply in all respects with:
- 43.1.1 all applicable Law;
- 43.1.2 any applicable requirements of regulatory bodies; and
- 43.1.3 Good Industry Practice.

Guidance notes: A Service Provider could conceivably discharge its primary contractual obligations by breaching the law e.g. by paying its staff less than the statutory minimum wage or by entering into anti-competitive arrangements. There is a general public interest in upholding and complying with the law and as such this clause makes it a breach of contract for the Service Provider to breach any applicable law or regulatory requirement when performing its obligations under the Contract.

If a Service Provider is involved in a public controversy it may be that the Purchaser can rely on this clause to hold the Service Provider to be in breach of contract. But please note that this clause only relates to the Service Provider's activities under the Contract.

In particular, consider whether special provision needs to be made regarding compliance with tax obligations and tax avoidance. This could be included as an obligation on the Service Provider or as a warranty by the Service Provider.

44. OFFICIAL SECRETS ACTS

The Service Provider undertakes to abide and procure that the Service Provider Representatives abide by the provisions of the Official Secrets Acts 1911 to 1989.

45. FINANCIAL DISTRESS

- 45.1 During the Term, the Service Provider shall regularly monitor its own and each of its Key Sub-contractors' credit ratings or (where used as proxies for credit ratings) Dun & Bradstreet rating, which at the Commencement Date are as follows:

ORGANISATION	AGENCY	RATING
Service Provider	[rating agency to be confirmed]	[actual rating to be inserted prior to contract signature]
[Name of Key Subcontractor]	[rating agency to be confirmed]	[actual rating to be inserted prior to contract signature]

- 45.2 During the Term, the Service Provider shall not enter into a Key Sub-contract, or extend the duration of a Key Sub-contract if, at the time the Key Sub-contract is entered into or extended, the relevant Key Sub-contractor has:

45.2.1 a credit rating that is lower than S&P "investment grade (BBB)" (or the equivalent credit rating level for another Rating Agency); or

45.2.2 a Risk Indicator rating of more than 2 (low risk) with Dun & Bradstreet.

- 45.3 The Service Provider shall promptly notify (or shall procure that its auditors promptly notify) the Purchaser in writing following the occurrence of a Financial Distress Event (and in any event ensure that such notification is made within ten (10) Working Days of the date on which the Service Provider first becomes aware of the Financial Distress Event).

- 45.4 If the Purchaser reasonably believes that the Financial Distress Event could adversely impact the performance of this Contract, at the request of the Purchaser the Service Provider shall:

45.4.1 (and shall procure that the relevant Key Sub-contractors shall) meet with the Purchaser as soon as practicable to review the effect of the Financial Distress Event on the continued performance of this Contract;

45.4.2 as soon as practicable and in any event within ten (10) Working Days (taking into account any discussions and any representations made pursuant to clause 45.4.1), provide a draft Financial Distress Event Remedial Plan for approval by the Purchaser explaining how the Service Provider and/or relevant Key Sub-contractor will remedy the potential adverse impact of the Financial Distress Event on the continued performance of this Contract; and

45.4.3 provide such financial information as the Purchaser may reasonably require to support clause 45.4.2.

- 45.5 The Service Provider shall incorporate any reasonable comments provided by the Purchaser on the draft Financial Distress Event Remedial Plan and provide such number of revised drafts as may reasonably be required until the Purchaser has approved the Financial Distress Event Remedial Plan (which approval shall not be unreasonably withheld or delayed).

- 45.6 Following approval of any Financial Distress Event Remedial Plan pursuant to clause 45.5, the Service Provider shall implement the plan in accordance with its terms and review the plan on a regular basis and assess whether it remains adequate and up to date so as to ensure the continued performance of this Contract.

46. SERVICE PROVIDER'S RESPONSIBILITY FOR STAFF ETC.

- 46.1 The Service Provider is responsible for the acts and omissions of all Service Provider Representatives relating to this Contract as though such acts and omissions are the Service Provider's own.

- 46.2 The Service Provider must ensure that all Service Provider Representatives:

46.2.1 are appropriately experienced, skilled, qualified and trained;

- 46.2.2 carry out their activities connected with this Contract faithfully and diligently and with all due skill, care and diligence; and
- 46.2.3 obey all lawful and reasonable directions of the Purchaser when carrying out activities under this Contract.

Guidance notes: The approach taken here means that **any** time an obligation is placed on “the Service Provider” it includes staff, agents, sub-contractors etc.

Please note the use of the words “relating to the Contract” which ensures that strict vicarious liability does not apply to activities of staff or sub-contractors that are unconnected with the Contract. Directions under clause 46.2.3 could for example be directions to comply with certain Purchaser policies during performance of the Services e.g. dignity at work policy.

47. ACCESS TO THE PURCHASER’S PREMISES

- 47.1 Any access to, or occupation of, the Purchaser’s premises which the Purchaser may grant the Service Provider from time to time is on a non-exclusive licence basis free of charge. The Service Provider must use the Purchaser’s premises solely for the purpose of performing its obligations under this Contract and must limit access to the Purchaser’s premises to such individuals as are necessary for that purpose.
- 47.2 The Service Provider must comply with the Purchaser’s policies concerning Baseline Personnel Security Standard clearance and such modifications to those policies or replacement policies as are notified to the Service Provider from time to time.
- 47.3 The Service Provider must notify the Purchaser of any matter or other change in circumstances which might adversely affect future Baseline Personnel Security Standard clearance.
- 47.4 At the Purchaser’s written request, the Service Provider must provide a list of the names and addresses of all persons who may require admission to the Purchaser’s premises in connection with this Contract, specifying the capacities in which they are concerned with this Contract and giving such other particulars as the Purchaser may reasonably request.
- 47.5 The Service Provider must ensure that any individual Service Provider Representative entering the Purchaser’s premises has completed the process for obtaining Baseline Personnel Security Standard clearance. The Service Provider acknowledges that the Purchaser has the right to deny entry to any individual that has not completed the process for obtaining Baseline Personnel Security Standard clearance.
- 47.6 In accordance with the Purchaser’s policies concerning visitor access, entry to the Purchaser’s premises may be granted to individual Service Provider Representatives for the purposes of meetings, notwithstanding that the process for obtaining Baseline Personnel Security Standard clearance has not commenced or completed.
- 47.7 The Purchaser may, by notice to the Service Provider, refuse to admit onto, or withdraw permission to remain on, the Purchaser’s premises any Service Provider Representative whose admission or continued presence would, in the opinion of the Purchaser acting reasonably, be undesirable.
- 47.8 The Purchaser must provide advice and assistance acting reasonably to the Service Provider to facilitate the Service Provider’s compliance with this clause.
- 47.9 All decisions of the Purchaser under this clause are final and conclusive.

Guidance notes: This clause sets out the basis on which the Service Provider has access to Purchaser premises and is also the “**Disclosure Scotland**” clause. It is based on the Baseline Personnel Security Standard. However, where this Standard is not applicable this clause should be modified to match the Purchaser’s own security policies.

Disclosure Scotland provisions that require a basic disclosure certificate before entering premises are considered over extensive – in that genuine visitors do not require disclosure – and under extensive – in that disclosure is only one part of the baseline security clearance process.

Clause 47.9 is included so that if Purchaser security staff refuse access according to their policies there can be no contractual claim by the Service Provider.

48. SERVICE PROVIDER'S EQUIPMENT

- 48.1 The Service Provider must provide all Equipment necessary to perform any required activities on the Purchaser's premises or otherwise necessary for the provision of Services.
- 48.2 But the Service Provider must not, without the Purchaser's approval:
- 48.2.1 bring Equipment onto the Purchaser's premises; or
- 48.2.2 leave Equipment on the Purchaser's premises.
- 48.3 Any Equipment brought onto the Purchaser's premises:
- 48.3.1 remains the property of the Service Provider; and
- 48.3.2 is at the Service Provider's own risk and the Purchaser has no liability for any loss of or damage to the Equipment unless the Service Provider is able to demonstrate that such loss or damage was caused or contributed to by the Purchaser's Default.
- 48.4 The Service Provider must keep all Equipment brought onto the Purchaser's premises in a safe, serviceable and clean condition. The Purchaser may at any time require the Service Provider to remove from the Purchaser's premises any Equipment which in the opinion of the Purchaser acting reasonably is either hazardous, noxious or not in accordance with this Contract and substitute proper and suitable Equipment at the Service Provider's expense as soon as reasonably practicable.
- 48.5 On completion of any required activities on the Purchaser's premises or at the end of a Working Day (as appropriate), the Service Provider must at its own expense:
- 48.5.1 remove all Equipment; and
- 48.5.2 leave the premises in a clean, safe and tidy condition, clearing away all rubbish arising out of the Service Provider's activities.
- 48.6 The Service Provider is solely responsible for making good any damage to the Purchaser's premises or any objects contained therein, other than wear and tear, which is caused by the Service Provider.

Guidance note: This clause deals with Service Provider property brought onto the Purchaser's premises. It is deliberate that "**activities**" are referred to rather than "**Services**" because this clause might have application in other contexts e.g. the Service Provider is bringing Equipment to meetings or for the purposes of training.

49. PURCHASER PROPERTY

- 49.1 Where the Purchaser issues Purchaser Property to the Service Provider, the Purchaser Property remains at all times the property of the Purchaser.
- 49.2 The Service Provider undertakes the safe custody of the Purchaser Property and to that end must:
- 49.2.1 keep the Purchaser Property in good order and condition (excluding wear and tear);

- 49.2.2 comply with any particular security requirements communicated to the Purchaser in relation to the Purchaser Property;
 - 49.2.3 use any Purchaser Property solely in connection with this Contract and for no other purpose; and
 - 49.2.4 store the Purchaser Property separately and ensure that it is clearly identifiable as belonging to the Purchaser.
- 49.3 The Purchaser Property is deemed for the purposes of clause 49.2.1 to be in good order and condition when received by the Service Provider unless the Service Provider notifies the Purchaser otherwise within five (5) Working Days of receipt.
- 49.4 The Service Provider must not:
- 49.4.1 modify or replace the Purchaser Property;
 - 49.4.2 use the Purchaser Property as security for a loan or other obligation;
 - 49.4.3 sell, or attempt to sell or part with possession of the Purchaser Property; or
 - 49.4.4 allow anyone to obtain a lien over, or right to retain, the Purchaser Property.
- 49.5 The Service Provider licences the Purchaser to enter any premises of the Service Provider during Working Hours on reasonable notice to recover any Purchaser Property.
- 49.6 The Service Provider undertakes the due return of the Purchaser Property and as such is liable for all loss of, or damage to, the Purchaser Property (excluding wear and tear), unless such loss or damage was caused or contributed to by the Purchaser's Default. The Service Provider must notify the Purchaser promptly and, in any event within two (2) Working Days, upon becoming aware of any defects appearing in or losses or damage occurring to the Purchaser Property.

Guidance notes: This clause is sometimes known as "free issue materials". It ensures that the Service Provider takes good care of any Purchaser Property given to it by the Purchaser. Clause 68.3.1 (*Consequences of Expiry or Termination*) requires the Service Provider to return any Purchaser Property on expiry or termination of the Contract.

50. HEALTH AND SAFETY ETC.

- 50.1 While on the Purchaser's premises, the Service Provider must comply with the Purchaser's policies concerning health and safety and fire and such modifications to those policies or replacement policies as are notified to the Service Provider from time to time.
- 50.2 The Service Provider must immediately inform the Purchaser in the event of any incident occurring in the performance of its obligations under this Contract on the Purchaser's premises where that incident causes any personal injury or damage to property which could give rise to personal injury. The Service Provider must then promptly notify the Purchaser of that fact.
- 50.3 The Purchaser must promptly notify the Service Provider of any health and safety hazards which may exist or arise at the Purchaser's premises and which may affect the Service Provider in the performance of its obligations under this Contract.
- 50.4 The Service Provider must promptly make available its statutory health and safety policy statement to the Purchaser on request.

Guidance notes: These are provisions concerning health and safety on Purchaser premises. There is no need for this clause to require the Service Provider to comply with the Health and Safety at Work etc. Act 1974 and associated legislation because that is already covered by clause 43 the (Compliance with the Law etc).

51. OFFENCES

- 51.1 The Service Provider shall:
- 51.1.1 comply with the Relevant Requirements;
 - 51.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 51.1.3 have and shall maintain in place throughout the Term its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and
 - 51.1.4 promptly report to the Purchaser any request or demand for any undue financial or other advantage of any kind received by the Service Provider in connection with the performance of this Contract.
- 51.2 For the purpose of clause 51.1, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.
- 51.3 The Service Provider must not commit or attempt to commit any offence
- 51.3.1 of fraud, uttering, or embezzlement at common law; or
 - 51.3.2 of any other kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015.
- 51.4 In performing its obligations under this Contract, the Service Provider shall, and shall ensure that each of its Sub-contractors shall, comply with the terms of the Modern Slavery Act 2015 and all applicable regulations and codes in force in relation thereto.
- 51.5 The Service Provider shall:
- 51.5.1 not engage in any activity, practice or conduct which would constitute either:
 - (a) a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or
 - (b) a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;
 - 51.5.2 have and shall maintain in place throughout the Term such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person and to ensure compliance with clause 51.5;
 - 51.5.3 promptly report to the Purchaser any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of this Agreement;
- 51.6 For the purposes of clause 51.5, the meaning of reasonable prevention procedure shall be determined in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017.
- 51.7 The Service Provider shall ensure that any person associated with the Service Provider who is performing services and providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Service Provider in this clause. The Service Provider shall be responsible for the observance and performance by such persons of such terms, and shall be directly liable to the Purchaser for any breach by such persons of any of those terms.

51.8 For the purposes of this clause 51 a person associated with the Service Provider includes any Sub-contractor of the Service Provider.

51.9 Breach of this clause is a material breach for the purposes of clause 64.1.3 (*Termination Rights*).

Guidance notes: The [Bribery Act 2010](#) includes at section 7 an offence where commercial organisations fail to prevent bribery so there is no need to place a contractual obligation on the Service Provider to take steps to prevent bribery.

The Modern Slavery Act 2015 is designed to combat crimes of slavery and human trafficking. Section 54 of the Act requires commercial organisations, having a global turnover above £36 million, to publish an annual slavery and human trafficking statement.

Part 3 of the Criminal Finances Act 2017 (CFA 2017) introduces corporate criminal offences of failure to prevent the facilitation of tax evasion so there is no need to place a contractual obligation on the Service Provider to take steps to prevent the facilitation of tax evasion.

Summary termination is available if the Service Provider breaches this clause – any costs suffered by the Purchaser will be caught by the general indemnity in clause 58.2 (*Limitation of Liability and Indemnity*).

51A. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS

51A.1. In performing its obligations under this Contract, the Service Provider shall:

51A.1.1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force, including the Modern Slavery Act 2015 and the Human Trafficking and Exploitation (Scotland) Act 2015;

51A.1.2. not engage in any activity, practice or conduct that would constitute an offence under the Human Trafficking and Exploitation (Scotland) Act 2015 if such activity, practice or conduct were carried out in the UK;

51A.1.3. include in contracts with its direct subcontractors and contractors provisions which are at least as onerous as those set out in this clause;

51A.1.4. notify the Purchaser as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement;

51A.1.5. maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Purchaser; and

51A.1.6. provide the Purchaser and its third party representatives access to such records.

51A.2 The Service Provider represents and warrants that it has not been convicted of any offence involving slavery and human trafficking nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

51A.3. The Service Provider shall prepare and deliver to the Customer, each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

51A.4. The Purchaser may terminate this Agreement with immediate effect by giving written notice to the Service Provider if the Service Provider commits a breach of this clause.

52. TAX ARRANGEMENTS

- 52.1 Where the Service Provider is liable to be taxed in the UK in respect of consideration received under this Contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 52.2 Where the Service Provider is liable to National Insurance Contributions (NICs) in respect of consideration received under this Contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations
- 52.3 The Purchaser may, at any time during the Term, request the Service Provider to provide information which demonstrates how the Service Provider complies with sub-clauses 52.1 and 52.2 above or why those clauses do not apply to it.
- 52.4 A request under sub-clause 52.3 above may specify the information which the Service Provider must provide and the period within which that information must be provided.
- 52.5 The Purchaser may supply any information which it receives under this clause 52 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 52.6 The Service Provider shall take all reasonable steps to ensure the observance of the provisions of this clause 52 by all of the Service Provider Representatives.
- 52.7 Where the Service Provider enters into any Sub-contract with any of the Service Provider Representatives, the Service Provider must ensure that a provision is included which is in the same terms as this clause 52 subject only to modification to refer to the correct designation of the equivalent party as the Service Provider.
- 52.8 The Service Provider shall indemnify the Purchaser 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 Service Provider or any Service Provider Representatives.

Guidance notes: This clause is the result of SPPN 6/2012 (Tax arrangements of Scottish public sector workers).

Where there is no 'direct' contract between the worker and the contracting Scottish public body it is necessary to ensure that these provisions are contained in the Contract and that the Service Provider is legally obliged to flow these terms down to the worker with whom it contracts, and confirm that it must be included in any terms between the 'supplier' and the worker.

53. DISCRIMINATION

The Service Provider must not unlawfully discriminate against any person within the meaning of the Equality Act 2010 in its activities relating to this Contract or any other contract with the Purchaser.

Guidance notes: Because the [Equality Act 2010](#) is a single code for equality law, it is not necessary to refer to a great number of statutes as was the case in the past, nor is it necessary to spell out that sex, race, disability, sexual orientation etc. discrimination is covered. That is clear from the 2010 Act.

54. BLACKLISTING

The Service Provider must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Laws by unlawfully

Processing Personal Data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle the Purchaser to terminate this Contract.

55. SUSTAINABILITY ETC.

- 55.1 The Service Provider shall perform its obligations under this Contract in a manner so as to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimize the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment. The Service Provider shall make all reasonable efforts to minimise its use of packaging and avoid the use of packaging which consumes a disproportionate amount of energy during manufacture, use, or disposal or which contains materials derived from threatened species or threatened environments. If requested by the Purchaser, the Service Provider shall provide the Purchaser with a copy of its environmental policy.
- 55.2 The Service Provider is expected to have appropriate standards for its organisation and its supply chain regarding legal, ethical and social issues. This should include for example: health and safety, security of employment rights, equality and fair trade, in particular in low cost or developing countries. If requested by the Purchaser, the Service Provider shall provide the Purchaser with a copy of its ethical sourcing policy.
- 55.3 The Service Provider must take all reasonable steps to ensure that all products supplied under this Contract are produced in accordance with all International Labour Organisation (ILO) conventions that have been ratified by the country of their origin, in particular in relation to working conditions and the use of child labour.

Guidance notes: This clause is intended to match and support the Government's policies concerning sustainable procurement (which includes "ethical" considerations), "Zero Waste" and strict carbon reduction targets. This clause is considered to be proportionate and relevant to the subject matter of all services contracts.

56. CONFLICTS OF INTEREST

- 56.1 The Service Provider must take appropriate steps to ensure that the Purchaser is not placed in a position where, in the reasonable opinion of the Purchaser, there is an actual or potential conflict between the interests of the Service Provider and the duties owed to the Purchaser under this Contract.
- 56.2 The Service Provider must disclose by notice to the Purchaser full particulars of any actual or potential conflict of interest which may arise and must take such steps as are necessary to avoid or remove the conflict of interest.
- 56.3 Breach of this clause is a material breach for the purposes of clause 64.1.3 (*Termination Rights*).

Guidance notes: Service Providers may have many "clients" and it is critical that the Service Provider focuses on the Purchaser's interests when performing the Contract. Similarly, a Service Provider may have a bias to use a third party's goods or services that might not be the cheapest/best for the Purchaser. Actual or potential conflicts of interest must therefore be avoided and disclosed.

SECTION G FINAL PROVISIONS

57. WARRANTIES AND REPRESENTATIONS

- 57.1 The Service Provider warrants and represents that:
- 57.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this Contract and that this Contract is executed by a duly authorised individual;

- 57.1.2 in entering this Contract it has not committed any offence under the Bribery Act 2010 or of fraud or uttering at common law or any other kind referred to in the Public Contracts (Scotland) Regulations 2015;
- 57.1.3 it has not committed any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or committed any breach of the Data Protection Laws by unlawfully Processing Personal Data in connection with any blacklisting activities;
- 57.1.4 as at the Commencement Date, all information contained in the SPD and Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Purchaser prior to execution of this Contract;
- 57.1.5 no claim is being asserted and no litigation, alternative dispute resolution procedure or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under this Contract;
- 57.1.6 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 Contract;
- 57.1.7 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 Service Provider 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 Service Provider's assets or revenue;
- 57.1.8 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Contract;
- 57.1.9 in the three (3) years prior to the Commencement Date:
- (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
- 57.1.10 it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Contract;
- 57.1.11 it has made appropriate inquiries (for example as regards the Purchaser's premises) so as to be satisfied in relation to all matters connected with the performance of its obligations under this Contract;
- 57.1.12 it is familiar with the Purchaser's policies concerning Baseline Personnel Security Standard clearance, Disclosure Scotland checks, and health and safety and fire as they apply at the Commencement Date;
- 57.1.13 it has in place appropriate technical and organisational measures to safeguard any Purchaser Protected Information, Purchaser Confidential Information, and the Purchaser Data;
- 57.1.14 there are no actual or potential conflicts between the interests of the Service Provider and the duties owed to the Purchaser under this Contract, save as may have been specifically disclosed in writing to the Purchaser prior to execution of this Contract; and
- 57.1.15 it is deemed to have inspected any premises at which the Services are to be performed as set out in the Specification (the 'Premises') before tendering so as to have

understood the nature and extent of the Services to be carried out and is deemed to be satisfied in relation to all matters connected with the Services and the Premises.

Guidance notes: These warranties and representations are important contractual promises that the Service Provider must make, covering key areas where the SG requires comfort. If the Service Provider is unable to give any of the warranties it raises the question of whether they should be awarded the Contract.

58. LIMITATION OF LIABILITY AND INDEMNITY

- 58.1 Neither Party excludes or limits liability to the other Party for:
- 58.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
 - 58.1.2 fraud or fraudulent misrepresentation by it or its employees;
 - 58.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 11B of the Supply of Goods and Services Act 1982;
 - 58.1.4 breach of any obligation under the Data Protection Laws; or
 - 58.1.5 any liability to the extent it cannot be limited or excluded by Law.
- 58.2 Subject to clauses 58.3 and 58.5, the Service Provider shall indemnify the Purchaser and keep the Purchaser indemnified fully against all Losses which may arise out of, or in consequence of, the supply and/or commissioning of the Services, or the late or purported supply and/or commissioning of the Services, or the performance or non-performance by the Service Provider of its obligations under this Contract; or the presence of the Service Provider and/or the Service Provider Representatives on the Purchaser premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice negligently given or negligently omitted to be given by the Service Provider, or any other loss which is caused directly or indirectly by any act or omission of the Service Provider or Service Provider Representatives.
- 58.3 The Service Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Purchaser or by breach by the Purchaser of its obligations under this Contract or failure by the Purchaser to take reasonable endeavours to mitigate the effects of any loss or damage covered by this clause.
- 58.4 The Purchaser shall indemnify the Service Provider in respect of all claims, proceedings, actions, damages, fines, costs, expenses or other liabilities which may arise out of, or in consequence of, a breach of Data Protection Laws where the breach is a direct result of the Service Provider acting in accordance with the Purchaser's specific written instructions. This indemnity provision shall not apply if the Service Provider:
- 58.4.1 acts on the Purchaser's specific written instructions but fails to notify the Purchaser in accordance with clause 13.12.3 (*Data Protection*); or
 - 58.4.2 fails to comply with any other obligation under the Contract.
- Guidance notes:** Clause 58.4 provides an indemnity in limited circumstances where the Service Provider suffers a loss as a direct consequence of specific instructions from the Purchaser to do something under data protection law. It is subject to the Service Provider notifying the Purchaser that it thinks the instructions are in breach of data protection law. Offering an indemnity on this limited basis is intended to provide a commercial balance to the unlimited liability which the Service Provider will be subject to in accordance with the liability provisions in the event of a data protection breach.
- 58.5 Subject always to clause 58.1, the liability of either Party to the other for Defaults under or in connection with this Contract shall in no event exceed **INSERT APPROPRIATE SUM – SEE**

GUIDANCE NOTES BELOW for any one incident or series of related incidents annually (for that purpose counting from the Commencement Date), provided that the Service Provider's liability in relation to the following clauses shall be unlimited:

- 58.5.1 clause 11.7 (*Payment and Invoicing*);
- 58.5.2 clause 13 (*Data Protection*);
- 58.5.3 clause 15 (*Confidential Information*);
- 58.5.4 clause 17 (*Purchaser Protected Information*);
- 58.5.5 clause 30.3 (*Staff transfer at commencement*);
- 58.5.6 clauses 32.8 (*Staff transfer on expiry or termination*);
- 58.5.7 clause 37.8 (*Claims relating to Intellectual Property Rights*);
- 58.5.8 clause 51 (*Offences*);
- 58.5.9 clause 52.8 (*Tax Arrangements*);
- 58.5.10 clause 53 (*Discrimination*); and
- 58.5.11 clauses 57.1.1 and 57.1.2 (*Warranties and Representations*).

Guidance notes: The limit on the liability of each of the Purchaser and the Service Provider applies to a single incident or series of related incidents and applies annually. The appropriate sum to be inserted at clause 58.5 in respect of the cap on liability will depend on a number of factors relative to the nature of the contract.

In calculating the cap on liability, the Purchaser should seek appropriate legal advice and take into account the likely nature and extent of the risks involved in the Services, the value of the contract and the amount of insurance cover available to each party. It is important to ensure that the cap offers sufficient protection to the Purchaser in the event of a "**worst case**" scenario arising, while understanding that a higher cap will invariably result in higher pricing being offered by bidders. For further guidance on this point, please see the Model Services Contract Guidance.

58.6 Subject always to clauses 58.1 and 58.2 in so far as this relates to the indemnity in respect of financial loss arising from any advice negligently given or negligently omitted to be given by the Service Provider, in no event shall either Party be liable to the other for any:

- 58.6.1 loss of profits, business, revenue or goodwill;
- 58.6.2 loss of anticipated savings (where this is provided for in this Contract); and/or
- 58.6.3 indirect or consequential loss or damage,

providing that the Service Provider shall be liable to the Purchaser for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Service Provider.

Guidance notes: General indemnities of this nature are sometimes included in public sector contracts. This allows the Purchaser to recover on a "pound for pound" basis any costs it may incur caused by the Service Provider breaching the contract.

The alternative is to leave the recovery position to common law damages, where there is a duty on the Purchaser to demonstrate loss, establish that the loss is not too remote from the act of the Service Provider and mitigate its loss. This clause avoids disputes as to whether there is a recoverable loss at all, whether the loss is too remote and whether the Purchaser has sufficiently mitigated its loss.

If clause 58.5 requires to be more flexible e.g. split out a number of different liability caps, legal advice should be sought.

59. INSURANCES

- 59.1 The Service Provider must effect and maintain with a reputable insurance company:
- 59.1.1 public liability insurance in the sum of not less than **[INSERT APPROPRIATE SUM – SEE GUIDANCE NOTES BELOW]** for any one incident and unlimited in total; and
- 59.1.2 professional indemnity insurance in the sum of not less than **[INSERT APPROPRIATE SUM – SEE GUIDANCE NOTES BELOW]** for any one incident and unlimited in total.
- 59.2 Such insurance must be maintained for the Term and for a minimum of five (5) years following the expiry of the Term.
- 59.3 The Service Provider must give the Purchaser, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 59.4 If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by this Contract, the Purchaser may make alternative arrangements to protect its interests and may recover the costs of making such arrangements from the Service Provider.
- 59.5 The provisions of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under this Contract.

Guidance notes: The types of insurances set out in clause 59.1 can be varied. But please note that there is no express requirement here to hold any insurances “**in accordance with legal requirements**” i.e. employers' liability insurance, motor vehicle insurance, products liability, because that is already covered by the compliance with the law clause 43. However, express requirements should be included if the Service Provider is asked to go further than the general law.

In terms of the minimum insurance sums to be inserted at clauses 59.1.1 and 59.1.2, these should be calculated in accordance with a number of factors relevant to the nature of the contract. In calculating these figures, the Purchaser should seek appropriate legal advice and take into account the likely nature and extent of the risks involved in the Services and the value of the contract. For further guidance on this point, please see the Model Services Contract Guidance.

60. FORCE MAJEURE

- 60.1 Neither Party is liable to the other Party for any delay in performing, or other failure to perform, its obligations under this Contract to the extent that such delay or failure is a result of Force Majeure, subject in relation to the Service Provider, its compliance with its obligations in 0 (*Business Continuity and Disaster Recovery*). Nonetheless, each Party must use all reasonable endeavours to continue to perform its obligations under this Contract for the duration of such Force Majeure. However, if Force Majeure prevents either Party from performing its material obligations under this Contract for a period in excess of ninety (90) days, the unaffected Party may terminate this Contract with immediate effect by notice.
- 60.2 Any delay or other failure by the Service Provider in performing its obligations under this Contract which results from any failure or delay by a Service Provider Representative is only to be regarded as due to Force Majeure if that Service Provider Representative is itself impeded by Force Majeure from complying with an obligation to the Service Provider.
- 60.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any delay or failure on its part as described in clause 60.1, it must immediately notify the other Party of the Force Majeure and the estimated period for which the failure or delay is to continue.

60.4 The only events that afford relief from liability for failure or delay under this Contract are Force Majeure events.

Guidance notes: Force majeure clauses anticipate certain “acts of God” and provide contractually for what is to happen. This is a fairly standard provision requiring notice to be given of Force Majeure events and preventing an innocent Party that is unable to perform its obligations from being in breach of contract. The common law doctrine of “frustration” is disapplied and the clause expressly provides a longstop period of ninety (90) after which the Contract may be terminated. The Purchaser may wish to vary this longstop period.

61. DISPUTE RESOLUTION

61.1 The Parties must attempt in good faith to resolve any dispute between them arising out of or in connection with this Contract in accordance with paragraphs 4 and 5 of Schedule 5 (*Management Arrangements*).

61.2 Any dispute or difference arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, which cannot be resolved in accordance with clause 61, shall be determined by the appointment of a single arbitrator to be agreed between the Parties, and failing agreement within fourteen (14) days after either Party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either Party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English.

61.3 Any arbitration under clause 61.1 is subject to the Arbitration (Scotland) Act 2010.

Guidance notes: Informal dispute resolution mechanisms – discussions, management escalation – should be included in the Management Arrangements. This clause proceeds on the basis that any contractual disputes that cannot be resolved informally are generally referred to arbitration under the [Arbitration \(Scotland\) Act 2010](#). The statutory object of arbitration under the 2010 Act is to resolve disputes fairly, impartially and without unnecessary delay or expense – arbitration is therefore likely to be considerably quicker and cheaper than going to court. The courts will however have jurisdiction to intervene in the limited circumstances contemplated by the 2010 Act.

Please note however that there will be circumstances where other forms of alternative dispute resolution may be appropriate such as mediation as referred to in the Management Arrangements.

Purchasers should amend this clause to ensure that it meets their specific requirements on how disputes are to be resolved

62. SEVERABILITY

If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision is severed and the remainder of the provisions of this Contract continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

Guidance notes: The function of this clause is to prevent any part of the contract that is held to be illegal from “infecting” the rest of the contract. Case law on the extent to which an illegal provision is severable or “infecting” is unclear, so it is better to make express contractual provision.

63. WAIVER AND CUMULATIVE REMEDIES

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

- 63.2 Accordingly, no waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 9 (*Notices*).
- 63.3 A waiver of any Default is not a waiver of any subsequent Default.
- 63.4 The rights and remedies provided by this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy is not to be deemed an election of such remedy to the exclusion of other remedies.

Guidance notes: Clause 63.1 ensures that there is no implication that the strict requirements of the Contract have been waived by the Purchaser e.g. if officials overlook non-compliance but later wish to hold the Service Provider to the terms. A particular breach may give the Purchaser various remedies, in which case clause 63.4 allows any or all of them to be exercised cumulatively. It avoids the need to constantly say “**without prejudice to other remedies**”.

64. TERMINATION RIGHTS

- 64.1 The Purchaser may terminate this Contract in whole or in part by notice to the Service Provider with immediate effect if the Service Provider commits a Default and:
- 64.1.1 the Service Provider has not remedied the Default to the satisfaction of the Purchaser within twenty (20) Working Days, or such other period as may be specified by the Purchaser, after issue of a notice specifying the Default and requesting it to be remedied;
- 64.1.2 the Default is not in the opinion of the Purchaser, capable of remedy; or
- 64.1.3 the Default is a material breach of this Contract.
- 64.2 The Purchaser may also terminate this Contract in whole or in part in accordance with any provisions of the Schedules.
- 64.3 The Purchaser may terminate this Contract in whole or in part if:
- 64.3.1 this Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of the Public Contracts (Scotland) Regulations 2015; or
- 64.3.2 the Service Provider has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of the Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure.
- 64.4 The Purchaser may also terminate this Contract in whole or in part in the event of a failure by the Service Provider to comply in the performance of the Services with legal obligations in the fields of environmental, social or employment law.

Guidance notes: In line with usual practice, this clause offers the potential for fault-based termination of the Contract. The clause anticipates the Service Provider being given the option of remedying non-material Defaults in the first instance. A material Default – justifying summary termination without a remedial period – might be a repudiation by the Service Provider of its obligations under the Contract. Certain clauses expressly state that particular breaches are material breaches.

Clause 64.2 is included as an optional in anticipation that the Specification, Pricing Schedule or Management Arrangements might prescribe particular circumstances where termination is appropriate e.g. inability to agree on price variation, a Service Level threshold has been hit or where failure to follow a remedial plan has occurred.

See also clause 60 (*Force Majeure*) which provides for termination where there is Force Majeure and clause 66.2 (*Break*) which may require the Service Provider to make compensatory payments to the SG.

65. TERMINATION ON INSOLVENCY, CHANGE OF CONTROL OR FINANCIAL DISTRESS

- 65.1 The Service Provider shall notify in writing immediately, and the Purchaser may terminate this Contract in whole or in part with immediate effect by notice, where in respect of the Service Provider:
- 65.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignation for the benefit of, its creditors; or
 - 65.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
 - 65.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
 - 65.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - 65.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
 - 65.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
 - 65.1.7 being a "**small company**" within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to schedule A1 to the Insolvency Act 1986; or
 - 65.1.8 a debt relief order is entered into; or
 - 65.1.9 any event similar to those listed above occurs under the law of any other jurisdiction.
- 65.2 The Purchaser may terminate this Contract in whole or in part by notice with immediate effect within six (6) months of:
- 65.2.1 being notified that a change of Control has occurred in accordance with clause 40 (*Change of Control*); or
 - 65.2.2 where no such notification has been given, the date that the Purchaser becomes aware of the change of Control.
- 65.3 But the Purchaser may not terminate this Contract under clause 65.2 where approval of the change of Control has been granted by notice by the Purchaser.
- 65.4 The Purchaser shall be entitled to terminate this Contract with immediate effect by written notice to the Service Provider if:
- 65.4.1 the Service Provider fails to notify the Purchaser of a Financial Distress Event in accordance with clause 45.3 (*Financial Distress*); and/or
 - 65.4.2 the Parties fail to agree a Financial Distress Event Remedial Plan in accordance with clause 45.5 (*Financial Distress*); and/or
 - 65.4.3 the Service Provider fails to comply with the terms of the Financial Distress Event Remedial Plan in accordance with clause 45.6 (*Financial Distress*).

Guidance notes: In line with usual practice, clause 65.1 empowers the Purchaser to terminate the Contract where the Service Provider is insolvent.

Clause 65.2 empowers the Purchaser to terminate the Contract where it is not content with a change of Control that has taken place. The Purchaser might actually be duty bound currently to terminate under law where there is a change of control. Earlier clause 40 (*Change of Control*) requires the Service Provider to notify changes of Control for approval by the Purchaser in advance of the change. As noted above in relation to clause 40 (*Change of Control*), **legal advice should be taken before approving change of Control.**

The Purchaser may also terminate if the Service provider is in financial distress in accordance with clause 65.4.

66. BREAK

- 66.1 The Purchaser shall have the right to terminate this Contract in whole or in part at any time by giving a minimum of three (3) months' notice to the Service Provider.
- 66.2 Subject to clause 68 (*Consequences of Expiry or Termination*), where the Purchaser terminates this Contract in whole or in part under clause 66.1, the Purchaser shall indemnify the Service Provider against any commitments, liabilities and expenditure which represent an unavoidable direct loss to the Service Provider by reason of the termination of this Contract in whole or in part, provided that the Service Provider takes all reasonable steps to mitigate such loss. Where the Service Provider holds insurance, the Purchaser shall only indemnify the Service Provider for those unavoidable direct costs that are not covered by the insurance available. The Service Provider shall submit a fully itemised and costed list of unavoidable direct loss which it seeks to recover from the Purchaser, with supporting evidence of losses reasonably and actually incurred by the Service Provider as a result of termination in whole or in part under this clause.

Guidance notes: Clause 66.1 empowers the Purchaser to terminate all or part of the Contract for convenience on three (3) months' notice. Whether such a right to terminate is appropriate will be a matter for negotiation. However, the Purchaser should note the requirement to indemnify the Service Provider against any commitments, liabilities and expenditure which represent an unavoidable direct loss to the Service Provider by reason of termination by the Purchaser.

67. EXIT MANAGEMENT

The Parties shall comply with the provisions of 0 (*Exit Management*) and any current Exit Plan in relation to orderly transition of the Services to the Purchaser or the Replacement Service Provider.

68. CONSEQUENCES OF EXPIRY OR TERMINATION

- 68.1 Where the Purchaser terminates this Contract in whole or in part under clause 64 (*Termination Rights*) and makes other arrangements for the provision of services, the Service Provider indemnifies the Purchaser against all costs incurred in making those arrangements.
- 68.2 Except as provided for in this Contract, no indemnity is given or special payment is to be made by either Party to the other Party on expiry or termination in whole or in part of this Contract.
- 68.3 On expiry or termination in whole or in part of this Contract (provided always to the extent necessary where this Contract has been terminated in part) the Service Provider must:
- 68.3.1 immediately return to the Purchaser all Purchaser Property, Purchaser Confidential Information and Purchaser Protected Information in its possession; and
 - 68.3.2 destroy or delete any copies of Purchaser Protected Information (whether physical or electronic) in its possession.

- 68.4 Where this Contract is terminated by the Purchaser only in part, the Parties shall agree the effect of any Change required by such partial termination in accordance with the Change Control Procedure, including the effect the partial termination may have on any other Services and the Charges.
- 68.5 The following provisions survive the expiry or termination of this Contract:
- 68.5.1 clause 1 (*Definitions and Interpretation*);
 - 68.5.2 clause 2 (*Conflict*);
 - 68.5.3 clause 9 (*Notices*);
 - 68.5.4 clause 12 (*Recovery of Sums Due*);
 - 68.5.5 clause 13 (*Data Protection*);
 - 68.5.6 clause 14 (*Transparency and Freedom of Information*);
 - 68.5.7 clause 15 (*Confidential Information*);
 - 68.5.8 clause 16 (*Purchaser Protected Information*);
 - 68.5.9 clause 17 (*Service Provider Sensitive Information*);
 - 68.5.10 clause 18 (*Audit and Financial Reports*);
 - 68.5.11 clause 19 (*Publicity*);
 - 68.5.12 clause 29 (*Offers of Employment*);
 - 68.5.13 clause 31 (*Information about Service Provider Employees*);
 - 68.5.14 clause 32 (*Staff transfer on expiry or termination*);
 - 68.5.15 clause 35 (*Parties' pre-existing Intellectual Property Rights*);
 - 68.5.16 clause 36 (*Specially Created Intellectual Property Rights*);
 - 68.5.17 clauses 37.1 and [37.3] (*Licences of Intellectual Property Rights*);
 - 68.5.18 clause 37.8 (*Claims relating to Intellectual Property Rights*);
 - 68.5.19 clause 44 (*Official Secrets Acts*);
 - 68.5.20 clause 48 (*Service Provider's Equipment*);
 - 68.5.21 clause 49 (*Purchaser Property*);
 - 68.5.22 clause 52 (*Tax arrangements*);
 - 68.5.23 clause 55 (*Sustainability*);
 - 68.5.24 clause 57 (*Warranties and Representations*);
 - 68.5.25 clause 58 (*Limitation of Liability and Indemnity*);
 - 68.5.26 clause 59 (*Insurances*);
 - 68.5.27 clause 61 (*Dispute Resolution*);
 - 68.5.28 clause 62 (*Severability*);
 - 68.5.29 clause 63 (*Waiver and Cumulative Remedies*);

- 68.5.30 clause 67 (*Exit Management*);
- 68.5.31 this clause 68 (*Consequences of Expiry or Termination*);
- 68.5.32 clause 69 (*Entire Agreement*);
- 68.5.33 clause 70 (*Third Party Rights*);
- 68.5.34 clause 71 (*Governing Law and Jurisdiction*);
- 68.5.35 *Schedule 1(Definitions)*;
- 68.5.36 *Schedule 4 (Financial Reports and Model)*;
- 68.5.37 paragraphs 4 and 5 of *Schedule 5 (Management Arrangements)*;
- 68.5.38 **Error! Reference source not found.** (*Transparency Reports and Service Provider Sensitive Information*);
- 68.5.39 *Schedule 9 (Parent Company Guarantee)*;
- 68.5.40 0 (*Exit Management*); and
- 68.5.41 *Schedule 13, paragraphs 2.6 and 2.7 (Security Arrangements)*.

Guidance notes: Clause 68.1 allows the Purchaser to recover retendering costs after having to terminate the contract for Default. See also clause 12 (*Recovery of Sums Due*) which will allow the Purchaser to set-off sums due to the Service Provider under the Contract or otherwise.

Please note that “**expiry or termination**” includes the making of a Judicial Order. Clause 68.2 is intended to make it clear that no compensatory payments are to be made to the Service Provider on expiry/termination/Judicial Order except as specifically provided elsewhere.

Other consequences of termination or expiry are detailed in 0 (*Exit Management*).

69. ENTIRE AGREEMENT

- 69.1 This Contract constitutes the entire agreement between the Parties in respect of the matters dealt with herein. This Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause does not exclude liability in respect of any misrepresentation (whether in the SPD or Tender or otherwise).

Guidance notes: This clause means what it says – provisions in the ITT and post-tender correspondence will all fall away and the completed contract document with Schedules comprises the entire agreement. It is therefore incumbent on buyers to copy the relevant provisions of the ITT and incorporate the relevant provisions of post-tender correspondence in the Schedules (see the guidance notes to each Schedule). The entire agreement approach avoids the need to refer back to the ITT and other extraneous documents and also has the advantage of allowing all relevant material to be incorporated together in one agreement signed under the Requirements of Writing (Scotland) Act 1995. When advisers come to look at the contract in future they can be certain that they are seeing the full picture in one document.

The entire agreement document should be complete and ready to be signed **before commencing the standstill period** – if it cannot be pulled together then it is difficult to see how the contract is ready to be awarded.

70. THIRD PARTY RIGHTS

Except as set out in this Contract, a person who is not a Party to this Contract has no right to enforce any term of this Contract and this Contract does not give rise to any rights under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term of this Contract.

71. GOVERNING LAW AND JURISDICTION

This Contract and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) is governed by and interpreted in accordance with Scots law and, subject to clause 61 (*Dispute Resolution*), the Parties submit to the exclusive jurisdiction of the Scottish courts over any dispute, claim or matter arising under or in connection with this Contract or the legal relationships established by this Contract (including non-contractual disputes or claims).

Guidance notes: This is a standard clause with the contract made subject to Scots law and Scots jurisdiction. There are only limited circumstances however in which the Scottish courts will be able to hear a dispute because clause 61 (*Dispute Resolution*) provides for formal dispute resolution by way of arbitration under the [Arbitration \(Scotland\) Act 2010](#). One of the founding principles of the Act is that the courts should not intervene in an arbitration except as provided by the Act. Conventionally, this is the last clause in a Scottish contract.

IN WITNESS WHEREOF these presents typewritten on this and the [INSERT] preceding pages together with the Schedules annexed are executed as follows:

SIGNED for and on behalf of
[The Scottish Ministers acting through []]

SIGNED for and on behalf of [NAME OF SERVICE PROVIDER]

At.....
 On.....
 Signature.....
 Full name

Position

Address.....

At.....
 On.....
 Signature.....
 Full name.....
 Position.....
 Address.....

In the presence of

Signature.....
 Full name

Address.....

In the presence of

Signature.....
 Full name.....
 Address.....

**THIS SCHEDULE COMPRISES SCHEDULE 1 TO THE FOREGOING SERVICES CONTRACT
BETWEEN [THE SCOTTISH MINISTERS ACTING THROUGH [] [AMEND AS APPROPRIATE]]
AND [NAME OF SERVICE PROVIDER]**

**SCHEDULE 1
DEFINITIONS**

In this Contract, unless otherwise provided or the context requires otherwise, the following terms have the meanings given to them below:

“Achieve” means

- (a) in respect of a Test, to successfully pass a Test without any Test Issues; and
- (b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule 16 (*Testing Procedures*),

and **“Achieved”** and **“Achievement”** shall be construed accordingly.

“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” means the annual contract report to be provided by the Service Provider to the Purchaser pursuant to paragraph 1 of Part B of Schedule 4 (*Financial Reports and Model*).

“Assets” means any materials, software, assets, equipment or other property owned by and/or licensed or leased to the Service Provider.

“Assets Report” has the meaning given in clause 27.1 (*Transferred Assets*).

“Assignee” has the meaning given in clause 39.2 (*Assignment*).

“ATP Milestone” means the Milestone linked to Authority to Proceed for the relevant Operational Services set out in the Implementation Plan.

“Audit Agents” means

- (a) the Purchaser’s internal and external auditors;
- (b) the Purchaser’s statutory or regulatory auditors;
- (c) Audit Scotland or the Auditor General, their staff and/or any of their appointed representatives;
- (d) any party formally appointed by the Purchaser to carry out audit or similar review functions; and
- (e) successors or assigns of any of the above.

“Authority to Proceed” or **“ATP”** means the authorisation to the Service Provider to commence the provision of the relevant Operational Services to the Purchaser, provided by the Purchaser in the form of a Milestone Achievement Certificate in respect of the ATP Milestone.

“Baseline Personnel Security Standard” means the pre-employment controls for all civil servants, members of the Armed Forces, temporary staff and government contractors generally as updated from time to time by the Purchaser.

“BCDR Plan” means any plan prepared pursuant to paragraph 1 of 0 (*Business Continuity and Disaster Recovery*), as may be amended from time to time.

“BCDR Services” means the business continuity and disaster recovery services set out in 0 (*Business Continuity and Disaster Recovery*).

“Breach of Security” means the occurrence of:

- (a) any unauthorised access to or use of the Services, the Purchaser’s premises, the sites used by the Service Provider to provide the Services, the Service Provider’s System, the Purchaser’s System (to the extent that it is under the control of the Service Provider) and/or any IT, information or data (including the Confidential Information and the Purchaser Data) used by the Purchaser and/or the Service Provider in connection with this Contract; and/or
- (b) the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information and the Purchaser Data), including any copies of such information or data, used by the Purchaser and/or the Service Provider in connection with this Contract, in either case as more particularly set out in the security requirements in Schedule 2 (*Specification [and Service Levels]*) and the Baseline Personnel Security Standard; and/or
- (c) a Cyber Security Incident.

“Business Continuity Plan” has the meaning given in paragraph 1.2.1.2 of 0 (*Business Continuity and Disaster Recovery*).

“Business Continuity Services” has the meaning given in paragraph 3.2.2 of 0 (*Business Continuity and Disaster Recovery*).

“Change” means any **change to this Contract**.

“Change Authorisation Note” means the form used by the Parties to set out an agreed Contract Change and which shall be substantially in the form of Annex 3 to 0 (*Change Control Procedure*).

“Change Communication” means any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to 0 (*Change Control Procedure*).

“Change Control Procedure” means the procedure for changing this Contract set out in Schedule 12 (*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 Commencement Date.

“Change Request” means a written request for a Contract Change which shall be substantially in the form of Annex 1 to 0 (*Change Control Procedure*).

“Charges” means any charges payable in accordance with the Pricing Schedule in respect of the supply of the Services, including any Milestone Payment.

“CHECK Scheme” means the scheme for penetration testing of data processing systems operated by the Communications-Electronics Security Group;

“Commencement Date” means the last date of execution of this Contract by the Parties.

“Comparable Supply” means the supply of services to another customer of the Service Provider that are the same or similar to any of the Services.

“Component” means any constituent parts of the infrastructure for a Service, hardware or Software.

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data.

“Contract” means this Contract between the Parties consisting of clauses and **[17]** Schedules.

“Contract Amendment Report” means the contract amendment report to be provided by the Service Provider to the Purchaser pursuant to Paragraph 1 of Part B of Schedule 4 (*Financial Reports and Model*).

“Contract Change” means any change to this Contract other than an Operational Change.

“Contract Inception Report” means the initial financial model in a form agreed by the Service Provider and the Purchaser in writing on or before the Commencement Date.

“Contract Year” means:

- (f) a period of twelve (12) months commencing on the Commencement Date; or
- (g) thereafter a period of twelve (12) months commencing on each anniversary of the Commencement Date; provided that the final Contract Year shall end on the expiry or termination of the Term.

“Contracting Authority” has the meaning given in regulation 2 of the Public Contracts (Scotland) Regulations 2015.

“Control” means the possession by a 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.

“Costs” means the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Service Provider in providing the Services:

- (a) the cost to the Service Provider, calculated per Service Day, of engaging the Service Provider Representatives, including:
 - (i) base salary paid to the Service Provider Representatives;
 - (ii) employer’s national insurance contributions;
 - (iii) pension contributions;
 - (iv) car allowances;
 - (v) any other contractual employment benefits;
 - (vi) staff training;
 - (vii) work place accommodation;
 - (viii) work place IT equipment and tools reasonably necessary to perform the Services (but not including items included within limb (b) below); and
 - (ix) reasonable recruitment costs, as agreed with the Purchaser;
- (b) operational costs which are not included within (a) above, to the extent that such costs are necessary and properly incurred by the Service Provider in the delivery of the Services;
- (c) Forecast Contingency Costs;
- (d) expenses incurred in accordance with the Pricing Schedule;

but excluding:

- (i) overhead;
- (ii) financing or similar costs;
- (iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term;
- (iv) taxation;
- (v) fines and penalties ; and

- (vi) non-cash items (including depreciation, amortisation, impairments and movements in provisions).

“**COTS Software**” means Service Provider Software and Third Party Software (including open source software) that the Service Provider makes generally available commercially prior to the date of signature of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Service Provider save as to price.

“**CPP Milestone**” means a contract performance point as set out in the Implementation Plan, being the Milestone at which the Service Provider has demonstrated that the relevant Service is working satisfactorily in its operating environment in accordance with 0 (*Testing Procedures*).

“**Cyber Security Incident**” means any thing, event, act or omission which gives, or may give, rise to:

- a) unauthorised access to any information system, data or electronic communications network (including breach of an applicable security policy);
- b) reduced integrity of an information system, data or electronic communications network;
- c) unauthorised use of any information system or electronic communications network for the processing (including storing) of data;
- d) disruption or change of the operation (including, but not limited to, takeover of control, malicious disruption and/or denial of service) of an information system or electronic communications network;
- e) unauthorised changes to firmware, software or hardware;
- f) unauthorised destruction, damage, deletion or alteration of data residing in an information system or electronic communications network;
- g) removal or limiting the availability of, or possibility to use, data residing in an information system or electronic communications network;
- h) the appropriation, publication, dissemination or any other use of data by persons unauthorised to do so; or
- i) a breach of the Computer Misuse Act 1990, the Network and Information Systems Regulations 2018, the UK GDPR or the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Communications Act 2003, the Official Secrets Act 1911 to 1989, or any other applicable legal requirements in connection with cybersecurity and/or privacy

in connection with the Services and/or this Contract;

Guidance notes: Please note that the Privacy and Electronic Communications (EC Directive) Regulations 2003 are planned to be replaced with new legislation in the future.

“**Cyber Security Requirements**” means the Purchaser’s requirements in connection with cyber security as set out in **Section A (Cyber Security Requirements [and Section B (Cyber Implementation Plan)]**, of the Annex to Schedule 13 (*Security Management*) [and **the Specification**].

Guidance notes:

- Reference to Cyber Implementation Plan may not be required where a Cyber Implementation Plan will not be incorporated into this Contract.
- If the Specification includes any additional requirements relevant to cyber security, the Purchaser may wish to reference the Specification here. The Purchaser may wish to refer to specific paragraphs within the Specification.
- Where additional documents are included in this Contract (including the Specification) which refer to the Service Provider’s description of how it will supply the Services set out in the Specification and, if these include any **additional** obligations relevant to cyber security, the Purchaser may wish to reference these here. The Purchaser may wish to refer to specific paragraphs within the relevant document.

“**Data Controller**” (or “**Controller**”) has the meaning given in the Data Protection Laws.

“**Data Processor**” (or “**Processor**”) has the meaning given in the Data Protection Laws.

“Data Protection Laws” means any law, statute, subordinate legislation regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018, PECR, or any statutory amendment or re-enactment thereof and the UK GDPR.

“Data Subject” has the meaning given in the Data Protection Laws.

“Data Subject Access Request” has the meaning given in the Data Protection Laws.

“Deductions” means all Service Credits, liquidated damages, milestone retention payments or any other deduction which is paid or payable to the Purchaser under this Contract.

“Default” means any breach of the obligations of a Party (including material breach and wilful default) or any negligent act, omission or statement of a Party in connection with or in relation to this Contract.

“Delay” means

- (a) a delay in the Achievement of a Milestone by its Milestone Date; or
- (b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan; or
- (c) the Service Provider 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).

“Deliverable” means an item, feature or service associated with the provision of the Services or a change in the provision of the Services which is required to be delivered by the Service Provider at or before a Milestone Date or at any other stage during the performance of this Contract.

“Detailed Implementation Plan” means the plan developed and revised from time to time in accordance with paragraphs 4 and 5 of 0 (*Implementation Plan*).

“Disaster” means the occurrence of one or more events which, either separately or cumulatively, mean, in the opinion of the Purchaser, that the Services, or a material part of the Services will not be available and significant effort is required to restore the Services.

“Disaster Recovery Plan” has the meaning given in paragraph 1.2.1.3 of 0 (*Business Continuity and Disaster Recovery*).

“Disaster Recovery Services” means the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster.

“Disaster Recovery System” means the system used for the purpose of delivering the Disaster Recovery Services.

“Disclosing Party” has the meaning set out in clause 15.1.1. (*Confidential Information*).

“Documentation” means descriptions of the Services, details of the Service Provider System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:

- (a) is required to be supplied by the Service Provider to the Purchaser under this Contract;
- (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Purchaser to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services;

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

"Due Diligence Information" means any information supplied to the Service Provider by or on behalf of the Purchaser prior to the Commencement Date.

"Emergency Exit" means any termination of this Contract which is a:

- (e) termination of the whole or part of this Contract in accordance with clause 64 (*Termination Rights*), or clause 65 (*Termination on Insolvency or Change of Control*); or
- (f) wrongful termination or repudiation of this Contract by either Party.

"Environmental Information Regulations" means the Environmental Information (Scotland) Regulations 2004 (and any subordinate regulations made under them from time to time or any superseding or amending regulations) together with any guidance and/or codes or practice issued by the Scottish Information Commissioner and/or any relevant government department in relation to such Regulations.

"Escrowed Material" has the meaning given in clause 38.1 (*Escrow*).

"Equipment" means equipment, plant, tackle, materials and other items supplied and used by the Service Provider's Representatives in the performance of the Service Provider's obligations under this Contract.

"Exclusive Assets" means those Assets used by the Service Provider or a Key Sub-contractor which are used exclusively for the provision of the Services.

"Exit Information" has the meaning given in paragraph 2.1 of 0 (*Exit Management*).

"Exit Management" means the obligations and rights of the Parties to ensure a smooth transition of the Services (whether in whole or in part) from the Service Provider to the Purchaser and/or a Replacement Service Provider as set out in clause 67 (*Exit Management*) and 0 (*Exit Management*).

"Exit Management Date" means each of the following:

- (a) the date of a Termination Notice; and
- (b) if no Termination Notice has been served in relation to this Contract, the expiry of the later of the Initial Term, or any Extension Period.

"Exit Manager" means the person appointed by each Party pursuant to paragraph 1.3 of 0 (*Exit Management*) for managing the Parties' respective obligations in respect of Exit Management.

"Exit Management Service Charges" means the charges to be paid in accordance with the Pricing Schedule in respect of the supply of the Exit Management Services.

"Exit Management Services" the services and activities to be performed by the Service Provider: pursuant to (i) 0 (*Exit Management*); and (ii) the Specification; and any other services required pursuant to the Termination Assistance Notice.

"Exit Plan" means the exit plan to be developed and updated by the Service Provider and approved by the Purchaser in accordance with paragraph 3 of 0 (*Exit Management*).

"Extension Period" and **"Extension Periods"** have the meanings set out in clause 5.2 (*Period*).

"Fast-track Change" means any Contract Change which the parties agree to expedite in accordance with paragraph 7.2 of 0 (*Change Control Procedure*).

"Final Reconciliation Report" means the final reconciliation report to be provided by the Service Provider to the Purchaser pursuant to Paragraph 1 of Part B of Schedule 4 (*Financial Reports and Model*).

“Financial Distress Event” means the occurrence of one or more of the following events:

- (a) the Service Provider’s or the relevant Key Sub-contractor’s credit or Dun & Bradstreet rating (as applicable) drops one or more levels below the level set out in clause 45.1 (*Financial Distress*);
- (b) the Service Provider or a Key Sub-contractor issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects;
- (c) there is a public investigation into improper financial accounting and reporting, suspected fraud and/or any other impropriety of the Service Provider or a Key Sub-contractor;
- (d) the Service Provider or a Key Sub-Contractor commits a material breach of covenants to its lenders;
- (e) a Key Sub-Contractor notifies the Purchaser that the Service Provider has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
- (f) the commencement of any litigation against the Service Provider or a key Sub-Contractor with respect to financial indebtedness; or
- (g) any financial indebtedness of the Service Provider or a Key Sub-contractor becoming due as a result of an event of default which (in respect of this sub-section (g) only) the Purchaser reasonably believes could materially impact on the continued performance of the Services.

“Financial Distress Event Remedial Plan” means a plan provided by the Service Provider in accordance with clause 45 (*Financial Distress*) to remedy the potential adverse impact of the relevant Financial Distress Event on the continued performance of this Contract.

“Financial Model” means the Contract Inception Report, the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently approved by the Purchaser in accordance with Paragraph 2 of Part B of Schedule 4 (*Financial Reports and Model*).

“Financial Reports” means the Contract Inception Report and the reports listed in the table in Paragraph 1.1 of Part B of Schedule 4 (*Financial Reports and Model*).

“Financial Representative” means a reasonably skilled and experienced member of the Service Provider’s staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports.

“Financial Transparency Objectives” has the meaning given in Paragraph 1 of Part A of Schedule 4 (*Financial Reports and Model*).

“FOISA” means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under this Act from time to time or any superseding or amending enactments or regulations, together with any guidance and/or codes of practice issued by the Scottish Information Commissioner and/or any relevant government department in relation to such legislation.

“Forecast Contingency Costs” means the costs which the Service Provider forecasts may be incurred in relation to the risks and contingencies that are identified in the Risk Register (as such costs are updated from time to time).

“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including, fire, flood, violent storm, pestilence, explosion, malicious damage, armed conflict, acts of terrorism, nuclear, biological or chemical warfare, or any other disaster, natural or man-made but excluding any industrial dispute relating to the Service Provider or the Service Provider Personnel or any other failure in the Service Provider’s or a Sub-contractor’s supply chain.

“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 Service Provider) or which affects or relates to a Comparable Supply.

“Good Industry Practice” means standards, practices, methods and procedures conforming to legal and regulatory requirements and the degree of skill and care, diligence, prudence, foresight and timeliness which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking as the Service Provider under the same or similar circumstances.

“Goods” has the meaning given in Clause 20.3 (*Provision of the Services*).

“Government Body” means a body listed in one of the following sub-categories of the Scottish Government’s National Public Bodies Directory, as published and amended from time to time:

- (a) Scottish Government Department;
- (b) Non-Departmental Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department;
- (d) Other government funded organisation;
- (e) Any Contracting Authority; or
- (f) Executive Agency.

“Impact Analysis Report” means a report prepared by the Service Provider considering the impact of a Mandatory Change on the Services which shall contain the information described in the Change Control Procedure.

“Impact Assessment” means an assessment of a Change Request substantially in the form of Annex 2 of 0 (*Change Control Procedure*).

“Implementation Period” is the time from the Commencement Date to the Operational Services Commencement Date.

“Implementation Plan” means the Outline Implementation Plan and (if and when approved by the Purchaser pursuant to paragraph 4 of 0 (*Implementation Plan*) the Detailed Implementation Plan as updated in accordance with Paragraph 5 of 0 (Implementation Plan) from time to time.

“Implementation Services” means the implementation services described as such in Schedule 2 (*Specification [and Service Levels]*).

“Implementation Services Commencement Date” means the date on which the Service Provider is to commence provision of the first of the Implementation Services as set out in the Implementation Plan.

“Incident” means any event which is not part of the standard operation of the Services and which causes, or may cause an interruption to or reduction in the quality of the Services.

“Incoming Employees” means individuals whose employment transfers to the Service Provider on the commencement of the provision of the Services by operation of TUPE.

“Indemnified Person” means the Purchaser and each and every person to whom the Purchaser (or any direct or indirect sub licensee of the Purchaser) sub licenses, assigns or novates any Relevant IPR or rights in Relevant IPRs in accordance with this Contract. **“Information Commissioner”** means the Commissioner as set out in Part 5 of the Data Protection Act 2018.

“Initial Term” the period of **[xx years xx months]** from the Operational Services Commencement Date.

Guidance note: The Contract begins on the Commencement Date.

The Initial Term begins not from the Commencement Date but from the Operational Services Commencement Date.

If the Purchaser would prefer that the Initial Term begins on the Commencement Date this definition should be changed

“Intellectual Property Rights” or **“IPRs”** means patents, rights in inventions, semi-conductor topography rights, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, and the right to apply for registration, copyright, database rights, Internet domain names and website addresses, trade or business names, moral rights, Know-How, trade secrets and other rights in Confidential Information and other similar rights or obligations whether registerable or not in any country (including the United Kingdom) and the right to sue for passing off.

“IPR 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, or the use of the Purchaser Software by or on behalf of the Service Provider, in either case in combination with any item not supplied or recommended by the Service Provider pursuant to this Contract or for a purpose not reasonably to be inferred from the Specification or the provisions of this Contract.

“IT Environment” means the Purchaser System and the Service Provider System;

“ITT” means the Purchaser’s invitation to tender dated **[INSERT]**.

“Judicial Order” means an ineffectiveness order or an order shortening the duration of the contract made in relation to this Contract under Chapter 6 of the Public Contracts (Scotland) Regulations 2015.

“Key Individuals” means the Service Provider Representatives identified as being key individuals for the provision of the Services as set out in Schedule 6 (*Key Individuals*).

“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 Purchaser, 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) ten per cent (10%) of the aggregate Charges forecast to be payable under this Contract (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 Contract.

“Law” means:

- (a) any applicable statute or proclamation or any delegate or subordinate legislation;
- (b) any enforceable right forming part of retained EU law within the meaning of the European Union (Withdrawal) Act 2018;
- (c) any applicable guidance, direction, determination, or regulations with which the Purchaser and/or the Service Provider is bound to comply;
- (d) any applicable judgment of a relevant court of law which is a binding precedent in Scotland; and
- (e) and requirements of any regulatory body;

in each case in force during the period of the Contract in Scotland.

“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, delict, tort (including negligence), breach of statutory duty or otherwise.

“Malicious Software” means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

“Management Arrangements” means the arrangements for the strategic management of the relationship between the Parties, including arrangements for monitoring of the Service Provider’s compliance with the Specification [,the Service Levels] and the terms of this Contract, set out in Schedule 5 (*Management Arrangements*).

“Material Change” means 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) five percent (5%) or more; or
 - (ii) one million pounds sterling (£1m) or more;

“Material Test Issue” means a Test Issue of Severity Level 1 or Severity Level 2.

“Milestone” means an event or task described in the Implementation Plan which, if applicable, must be completed by the relevant Milestone Date, including a milestones in respect of Authority to Proceed (ATP) and any Contract Performance Point (CPP).

“Milestone Achievement Certificate” means the certificate to be granted by the Purchaser when the Service Provider has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 3 of 0 (*Testing Procedures*).

“Milestone Date” means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved.

“Milestone Payment” a payment to be made following the issue of a Milestone Achievement Certificate.

“month” means a calendar month and **“monthly”** shall be interpreted accordingly.

“Net Book Value” means the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Service Provider as agreed with the Purchaser.

“Non-conformance Report” means a report including detail of the reasons why any Test has failed or of any non-conformities in respect of any Milestone.

“Non-Exclusive Assets” means those Assets (if any) which are used by the Service Provider or a Key Sub-contractor in connection with the Services but which are also used by the Service Provider or a Key Sub-contractor for other purposes of material value.

“Object Code” means software and/or data in machine-readable, compiled object code form.

“Open Book Data” means complete and accurate financial and nonfinancial information which is sufficient to enable the Purchaser to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:

- (a) the Service Provider’s Costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
- (b) operating expenditure relating to the provision of the Services including an analysis showing:

- (i) the unit costs and quantity of consumables and bought-in services;
 - (ii) manpower resources broken down into the number and grade/role of all Service Provider Representatives (free of any contingency) together with a list of agreed rates against each manpower grade;
 - (iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Service Provider's Profit Margin; and
 - (iv) Reimbursable Expenses;
- (c) Overheads;
 - (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
 - (e) the Service Provider Profit achieved over the Term and on an annual basis;
 - (f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Service Provider;
 - (g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
 - (h) the actual Costs profile for each Service Period.

"Open Source Software" means computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other Intellectual Property Rights in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge.

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

- (a) will not affect the Charges or the Service Provider's costs of performing the Services and will not result in any other costs to the Purchaser; and
- (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; and
- (c) will not adversely affect the interfaces or interoperability of the Services with any of the Purchaser's IT infrastructure; and/or
- (d) will not require a change to this Contract.

"Operational Service Charges" means the charges to be paid in accordance with the Pricing Schedule in respect of the supply of the Operational Services.

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

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

"Operational Services" means the operational services described as such in Schedule 2 (*Specification [and Service Levels]*).

"Ordinary Exit" means any termination of this Contract which occurs pursuant to clause 66 (Break), or as a result of the expiry of the Initial Term, or any Extension Period.

“Outgoing Employees” means individuals whose employment transfers from the Service Provider to the Purchaser, any Replacement Service Provider and/or any Replacement Sub-contractor on the ceasing of the provision of the Services by the Service Provider by operation of TUPE.

“Outline Implementation Plan” means the outline plan referred to in paragraph 3 of 0 (*Implementation Plan*).

“Overhead” means those amounts which are intended to recover a proportion of the Service Provider’s indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Service Provider Representatives and accordingly included within limb (a) of the definition of **“Costs”**.

“Party” means either the Purchaser or the Service Provider.

“PECR” means the Privacy and Electronic Communications (EC Directive) Regulations 2003 as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 (PECR) and any other applicable Laws relating to direct marketing, including where applicable the guidance and codes of practice issued by the Information Commissioner or a relevant Government Body in relation to such Laws.

“Personal Data” means personal data (as defined in the Data Protection Laws) which is Processed by the Service Provider or any Sub-contractor on behalf of the Purchaser pursuant to or in connection with this Contract;

“Personal Data Breach” has the meaning given in the Data Protection Laws.

“Process” has the meaning given in the Data Protection Laws and cognate expressions including **“Processed”** and **“Processing”** shall be construed accordingly.

“Pricing Schedule” means the details of the pricing of the Services, including provision for Service Credits, set out in Schedule 3 (*Pricing*).

“Project Specific IPRs” means:

- (a) Intellectual Property Rights in items created by the Service Provider (or by a third party on behalf of the Service Provider) specifically for the purposes of this Contract and updates and amendments of these items including database schema; and/or
- (b) Intellectual Property Rights arising as a result of the performance of the Service Provider’s obligations under this Contract;

but shall not include the Service Provider Background IPRs or the Specially Written Software.

“Purchaser” has the meaning set out at the head of this Contract.

“Purchaser Assets” has the meaning set out in clause 27.1 (*Transferred Assets*).

“Purchaser Background IPRs” means

- (a) IPRs owned by the Purchaser before the Commencement Date, including IPRs contained in any of the Purchaser’s Know-How, documentation, processes and procedures;
- (b) IPRs created by the Purchaser independently of this Contract; and/or
- (c) Crown Copyright which is not available to the Service Provider otherwise than under this Contract;

but excluding IPRs owned by the Purchaser subsisting in the Purchaser Software;

“Purchaser Cause” means any material breach by the Purchaser of the Purchaser’s Responsibilities, except to the extent that such breach is:

- (a) the result of any act or omission by the Purchaser to which the Service Provider has given its prior consent; or
- (b) caused by the Service Provider, and/or any Service Provider Representative.

"Purchaser's Change Manager" means the person appointed to that position by the Purchaser from time to time and notified in writing to the Service Provider or, if no person is notified, the Purchaser's Contract Manager.

"Purchaser's Contract Manager" means the person appointed to that position by the Purchaser from time to time and notified in writing to the Service Provider.

"Purchaser Data" means 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:

- (a) supplied to the Service Provider by or on behalf of the Purchaser; and/or
- (b) which the Service Provider is required to generate, process, store or transmit pursuant to this Contract; or
- (c) any Personal Data for which the Purchaser is the Data Controller.

"Purchaser Property" means any corporeal moveable property issued or made available to the Service Provider by the Purchaser in connection with this Contract.

"Purchaser Protected Information" means any information provided by the Purchaser to the Service Provider which:

- (a) carries a protective marking such as **"Official"**, **"Secret"** or **"Top Secret"**; or
- (b) is exempt information as set out in Part 2 of FOISA (disregarding for that purpose whether a provision of Part 2 does not confer absolute exemption within the meaning of section 2(2) of FOISA); or
- (c) is excepted information as set out in regulation 10 of the Environmental Information Regulations.

"Purchaser's Responsibilities" means the responsibilities of the Purchaser specified in the Implementation Plan (Purchaser's Responsibilities).

"Purchaser Software" means software which is owned by or licensed to the Purchaser (other than under or pursuant to this Contract) and which is or will be used by the Service Provider for the purposes of providing the Services.

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

"Rating Agency" means any or all of Fitch Ratings Limited, Moody's Investors Service Limited or any other internationally recognised credit rating agency.

"Receiving Party" has the meaning given in clause 15.1.1 (*Confidentiality*).

"Registers" means the register and configuration database referred to in paragraph 1.1.1 of 0 (*Exit Management*).

"Reimbursable Expenses" means reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Purchaser's expenses policy current from time to time, but not including:

- (a) travel expenses incurred as a result of Service Provider Representatives travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Purchaser otherwise agrees in advance in writing; and
- (b) subsistence expenses incurred by Service Provider Representatives whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed.

“Related Service Provider” means any person who provides services to the Purchaser in relation to this Contract from time to time.

“Relevant IPRs” means IPRs used to provide the Services or as otherwise provided and/or licensed by the Service Provider (or to which the Service Provider has provided access) to the Purchaser, or other third party in the fulfilment of the Service Provider’s obligations under this Contract.

“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 Transfer” has the meaning given in regulation 2(1) of TUPE.

“Replacement Services” means any services which are the same as or substantially similar to any of the Services and which the Purchaser receives in substitution for any of the Services following the expiry or termination or partial termination of this Contract, whether those services are provided by the Purchaser internally and/or by any third party.

“Replacement Service Provider” means any third party service provider of Replacement Services appointed by the Purchaser from time to time (or where the Purchaser is providing replacement Services for its own account, the Purchaser).

“Replacement Sub-contractor” means any third party with whom:

- (a) the Replacement Service Provider 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.

“Relief Notice” has the meaning given in clause 26.2 (*Purchaser Cause*).

“Request for Information” means a request for information within the meaning of section 8 of FOISA or the Environmental Information Regulations and any attempted or apparent such request for information.

“Risk Indicator” means the rating calculated by Dun & Bradstreet on a scale of 1 to 4 to indicate the probability of failure of an organisation.

“Risk Register” means the register of risks and contingencies that have been factored into any Costs due under this Contract, in the form agreed between the Purchaser and the Service Provider.

“Schedule” means a schedule annexed to, and forming part of, this Contract.

“Security Plan” means the security management system, plan and processes to be developed by the Service Provider (including areas such as policy, staff management, supply chain management, asset management, technical controls and software life cycle management to ISO 27001 or equivalent) in accordance with paragraph 3 of **Error! Reference source not found.** (*Security Management*) as updated from time to time in accordance with this Contract.

“Service Credits” means the service credits payable to the Purchaser by the Service Provider in accordance with the Pricing Schedule if any of the Service Levels are not met in accordance with Schedule 2 (*Specification [and Service Levels]*).

“Service Levels” means the service levels and key performance indicators outlined in Schedule 2 (*Specification [and Service Levels]*).

“Service Provider” means **[INSERT]**.

Guidance notes: It is critical that this definition is filled out properly and completely. Major Service Providers will have various group companies so the correct company should be identified with the correct legal name and company number – see <https://www.gov.uk/get-information-about-a-company>.

“Service Provider Background IPRs” means

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

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 Service Provider subsisting in the Service Provider Software.

“Service Provider’s Change Manager” means the person appointed to that position by the Service Provider from time to time and notified in writing to the Purchaser or, if no person is notified, the Service Provider’s Contract Manager.

“Service Provider’s Contract Manager” means the person appointed to that position by the Service Provider from time to time and notified in writing to the Purchaser.

“Service Provider Non-Performance” has the meaning set out in clause 26.1 (*Purchaser Cause*).

“Service Provider Profit” means in relation to a period or a Milestone (as the context requires), the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;

“Service Provider Margin” means in relation to a period or a Milestone (as the context requires), the Service Provider Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;

“Service Provider Representatives” means all persons engaged by the Service Provider in the performance of its obligations under this Contract including:

- (a) its employees and workers (including persons employed by a third party but working for and under the control of the Service Provider);
- (b) its agents, service providers and carriers; and
- (c) any Sub-contractors of the Service Provider including employees, workers, agents, service providers and carriers of the same (whether approved under clause 41 (*Sub-contracting*) or otherwise).

“Service Provider Sensitive Information” means any information provided by the Service Provider to the Purchaser (disregarding any protective marking or assertion of confidentiality) which is specified as Service Provider Sensitive Information in **Error! Reference source not found.** (*Transparency Reports and Service Provider Sensitive Information*) and has not lost its sensitivity according to the justifications and durations set out in that Schedule.

“Service Provider Software” means software which is proprietary to the Service Provider (or an Affiliate of the Service Provider) and which is or will be used by the Service Provider for the purposes of providing the Services.

“Service Provider’s Final Personnel List” means a list provided by the Service Provider of all personnel who will transfer by operation of TUPE.

“Service Provider’s Provisional Service Provider Personnel List” means a list prepared and updated by the Service Provider of all Service Provider Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Service Provider;

“Service Provider’s System” means the information and communications technology system used by the Service Provider in implementing and performing the Services including the Software, the Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Purchaser’s System).

“Service Transfer” means any transfer of the Services (or any part of the Services), for whatever reason, from the Service Provider or any Sub-contractor to a Replacement Service Provider.

“Services” means any and all of the services (including the Implementation Services, the Operational Services and the Exit Management Services) to be provided by the Service Provider under this Contract including those set out in Schedule 2 (*Specification [and Service Levels]*).

“Severity Level” means the level of severity of a Test Issue, the criteria for which are described in Annex 1 of 0 (*Testing Procedures*).

“Software” means Specially Written Software, Service Provider Software and Third Party Software.

“Source Code” means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software.

“SPD” means the Single Procurement Document completed by the Service Provider and sent to the Purchaser on **[INSERT]**.

“Specially Written Software” means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Service Provider (or by a Sub-contractor or other third party on behalf of the Service Provider) specifically for the purposes of this Contract.

“Specification” means the specification set out in Schedule 2 (*Specification [and Service Levels]*).

“Specific Change in Law” a Change in Law that relates specifically to the business of the Purchaser and which would not affect a Comparable Supply.

“Staffing Information” means in relation to all Outgoing Employees, such information as the Purchaser may reasonably request (subject to all applicable provisions of the Data Protection Laws), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and sex;
- (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing, incentive and bonus 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 TUPE.

“**Sub-contract**” means any contract or agreement (or proposed contract or agreement) between the Service Provider (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Service Provider (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 Service Provider 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 a party to whom data processing functions are sub-contracted under this Contract.

“**Supervisory Authority**” has the meaning given in the Data Protection Laws.

“**Tender**” means the tender submitted by the Service Provider in response to the ITT.

“**Term**” means the period commencing on the Commencement Date and ending on the expiry of the Initial Term, or any Extension Period, or on earlier termination of this Contract.

“**Termination Assistance Notice**” has the meaning given in paragraph 4.1 of 0 (*Exit Management*).

“**Termination Assistance Period**” means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Service Provider is required to provide the Termination Services as such period may be extended pursuant to paragraph 4.2 of 0 (*Exit Management*).

“**Termination Notice**” 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 Contract (in whole or in part) on a specified date and setting out the grounds for termination.

“**Test Certificate**” means a certificate materially in the form of the document contained in Annex 2 of 0 (*Testing Procedures*) issued by the Purchaser when a Deliverable has satisfied its relevant Test Success Criteria.

“**Test Issue**” means any variance or non-conformity of a Deliverable from its requirements (such requirements being set out in the relevant Test Success Criteria).

“**Test Issue Management Log**” means a log for the recording of Test Issues as described further in paragraph 9.2 of 0 (*Testing Procedures*).

“**Test Issue Threshold**” means in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan.

“**Test Plan**” means a plan:

- (a) for the Testing of Deliverables; and
- (b) setting out other agreed criteria related to the Achievement of Milestones, as described further in paragraph 5 of 0 (*Testing Procedures*).

“Test Reports” means the reports to be produced by the Service Provider setting out the results of Tests.

“Test Specification” means the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in paragraph 7 of 0 (*Testing Procedures*).

“Test Strategy” means a strategy for the conduct of Testing as described further in paragraph 4 of 0 (*Testing Procedure*).

“Testing Procedures” means the applicable testing procedures and Test Success Criteria set out in 0 (*Testing Procedure*).

“Tests” and **“Testing”** means any tests required to be carried out under this Contract, as further described in 0 (*Testing Procedure*) and **“Tested”** shall be construed accordingly.

“Test Success Criteria” in relation to a Test, the test success criteria for that Test as referred to in paragraph 6 of 0 (*Testing Procedures*).

“Test Witness” means any person appointed by the Purchaser pursuant to paragraph 10.1 of 0 (*Testing Procedures*).

“Third country” means a country or territory outside the United Kingdom.

“Third Party IPRs” means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software.

“Third Party Software” means software which is proprietary to any third party (other than an Affiliate of the Service Provider) or any Open Source Software which in any case is, will be or is proposed to be used by the Service Provider for the purposes of providing the Services, including the software specified as such in 0 (*Software Licences*).

“Transferable Assets” means those of the Exclusive Assets which are capable of legal transfer to the Purchaser.

“Transferable Contracts” means the Sub-contracts, licences for Service Provider’s Software, licences for Third Party Software or other agreements which are necessary to enable any Replacement Service Provider to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation.

“Transferor” has the meaning given in regulation 2(1) of TUPE.

“Transferring Contracts” has the meaning given in paragraph 5.2 of 0 (*Exit Management*).

“Transparency Information” means the Transparency Reports and the content of this Contract.

“Transparency Reports” means a report in accordance with Schedule 8 Part 1 (Transparency Reports) containing the contract information as set out in the table for that Part for publication by the Purchaser in the interests of transparency.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006

“UK GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.

“Working Day” means a day other than a Saturday, Sunday or bank holiday in Scotland, within the meaning of the Banking and Financial Dealings Act 1971.

“Working Hour” means an hour between 0900 hours and 1700 hours on any Working Day.

Guidance notes: If words and phrases are capitalised they are likely to be defined terms defined in clause 1.1.

**THIS SCHEDULE COMPRISES SCHEDULE 2 TO THE FOREGOING SERVICES CONTRACT
BETWEEN [THE SCOTTISH MINISTERS ACTING THROUGH [] [AMEND AS APPROPRIATE]]
AND [NAME OF SERVICE PROVIDER]**

**SCHEDULE 2
SPECIFICATION [AND SERVICE LEVELS]**

Guidance notes: This Schedule is for the Specification. Where Service Levels are included these must be included here and clearly identified as Service Levels.

There is mixed practice as to incorporation of the Service Provider's response to the Specification. We advise caution if this is to be done. It is important to ensure that the Service Provider's responses do not undermine or conflict with the Specification.

Please include bespoke conditions here that realistically can never be included in model terms ("The Service Provider must include on the website copyright and disclaimer notices in a form acceptable to the Purchaser." – "The Service provider must use the latest versions of anti-virus definitions available from an industry accepted software vendor to check for and delete malicious software..."). Any quality standards should go here.

All pricing information should go in Schedule 3 and all Management Arrangements should go in Schedule 5. Duplication or using the wrong Schedule should be avoided. Baseline Security Requirements are already addressed in the Contract clauses.

Where the terminology "**Specification**" / "**Service Levels**" is absolutely not appropriate, find/replace can be used.

THIS SCHEDULE COMPRISES SCHEDULE 3 TO THE FOREGOING SERVICES CONTRACT BETWEEN [THE SCOTTISH MINISTERS ACTING THROUGH [] [AMEND AS APPROPRIATE]] AND [NAME OF SERVICE PROVIDER]

**SCHEDULE 3
PRICING**

Guidance notes: Pricing arrangements for contracts will vary considerably **but all relevant information must be included here** e.g. discounts, day rates, rebates. This includes the agreed prices themselves, mechanisms for price variation (if any) specifying any indexation allowed and the consequences of failing to agree price variations (dispute resolution procedure or termination), benchmarking provisions (if any) **and any Service Credits regime.**

Provisions relating to **invoicing/payment procedure, payment of sub-contractors and debt factoring** should not be included – these are already dealt with by the clauses.

Commercially sensitive aspects of the pricing should be cross referenced in Schedule 8 (Service Provider Sensitive Information).

**THIS SCHEDULE COMPRISES SCHEDULE 4 TO THE FOREGOING SERVICES CONTRACT
BETWEEN [THE SCOTTISH MINISTERS ACTING THROUGH [] [AMEND AS APPROPRIATE]]
AND [NAME OF SERVICE PROVIDER]**

**SCHEDULE 4
FINANCIAL REPORTS AND MODEL**

Guidance notes: This schedule includes detailed requirements in relation to financial reporting which may not be required in less complex projects. It also includes arrangements for the provision of “open book data” which may not be appropriate and which can be deleted.

PART A: Financial Transparency Objectives and Open Book Data

1. FINANCIAL TRANSPARENCY OBJECTIVES

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

Understanding the Charges

- 1.1.1 for the Purchaser to understand any payment sought from it by the Service Provider including an analysis of the Costs, Overhead recoveries (where relevant), time spent by Service Provider Personnel in providing the Services and the Service Provider Profit Margin; and
- 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 Service Provider’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 Purchaser to demonstrate that it is achieving value for money for the tax payer relative to current market prices,
- (together the “Financial Transparency Objectives”).

2. OPEN BOOK DATA

- 2.1 The Service Provider acknowledges the importance to the Purchaser of the Financial Transparency Objectives and the Purchaser’s need for complete transparency in the way in which the Charges are calculated.
- 2.2 During the Term, and for a period of 7 years following the end of the Term, the Service Provider shall
- 2.2.1 maintain and retain the Open Book Data; and

- 2.2.2 disclose and allow the Purchaser and/or the Audit Agents access to the Open Book Data.

PART B: FINANCIAL REPORTS

1. PROVISION OF THE FINANCIAL REPORTS

1.1 The Service Provider shall provide

1.1.1 the Contract Inception Report on or before the Commencement Date; and

1.1.2 during the Term the following financial reports to the Purchaser, 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 Service Provider and the Purchaser
Quarterly Contract Report	Within 1 month of the end of each Quarter
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 Service Provider shall provide to the Purchaser 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 Purchaser to the Service Provider on or before the Commencement Date for the purposes of this Contract. The Purchaser shall be entitled to modify the template for any Financial Report by giving written notice to the Service Provider, including a copy of the updated template.

1.3 A copy of each Financial Report shall be held by both the Purchaser and the Service Provider. If there is a dispute regarding a Financial Report, the Purchaser's copy of the relevant Financial Report shall be authoritative.

1.4 Each Financial Report shall:

1.4.1 be completed by the Service Provider using reasonable skill and care;

1.4.2 incorporate and use the same defined terms as are used in this Contract;

1.4.3 quote all monetary values in pounds sterling;

1.4.4 quote all Costs as exclusive of any VAT; and

1.4.5 quote all Costs and Charges based on current prices.

1.5 Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Service Provider's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Purchaser 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 Service Provider's management and statutory accounts; and

- 1.5.4 compliant with the requirements of paragraph 1.6.
- 1.6 The Service Provider shall:
- 1.6.1 prepare each Financial Report using the same methodology as that used for the Contract Inception Report;
- 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 Service Provider Profit Margin forecast by the Service Provider;
- 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 eighteen (18) months following the end of the Term, the Service Provider shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Purchaser may have on any of the Financial Reports and/or Open Book Data.
- 1.8 If the Service Provider 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 Service Provider; and/or
- 1.8.2 the forecast Charges for the remainder of the Term,
- the Service Provider shall, as soon as practicable, notify the Purchaser in writing of the event in question detailing the actual or anticipated effect. Notifications provided in accordance with this paragraph 1.8 shall not have the effect of amending any provisions of this Contract.

2. FINANCIAL MODEL

- 2.1 Following the delivery by the Service Provider of each Annual Contract Report and any Contract Amendment Report:
- 2.1.1 the Parties shall meet to discuss its contents within ten (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 Service Provider shall make appropriate Service Provider Personnel and advisers available to discuss any variations between the relevant Financial Report and the Contract Inception Report or immediately preceding Annual Contract Report or Contract Amendment Report (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Purchaser; and
- 2.1.3 the Purchaser shall either within ten (10) Working Days of the meeting referred to in paragraph 2.1.1 notify the Service Provider that:
- (a) the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the Service Provider shall make any necessary modifications to the Financial Report and/or supply the Purchaser with such supporting evidence as is required to address the Purchaser's concerns within ten (10) Working Days of such notification and the Purchaser shall following receipt of such amended Financial Report and/or supporting information, approve or reject such Financial Report; or
- (b) the Purchaser has approved the relevant Financial Report.
- 2.2 Following approval by the Purchaser of the relevant Financial Report in accordance with Paragraph 2.1.3, that version shall become, with effect from the date of such approval, the current approved version of the Financial Model for the purposes of this Contract, a version of

which shall be held by both the Purchaser and the Service Provider. If there is a dispute regarding a Financial Report, the Purchaser's copy of the relevant Financial Report shall be authoritative.

- 2.3 If the Parties are unable to reach agreement on any Financial Report within thirty (30) Working Days of its receipt by the Purchaser, the matter shall be referred for determination in accordance with clause 61 (*Dispute Resolution*).

3. DISCUSSION OF QUARTERLY CONTRACT REPORTS AND FINAL RECONCILIATION REPORT

- 3.1 Following the delivery by the Service Provider of each Quarterly Contract Report, the Parties shall meet to discuss its contents within ten (10) Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

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

4. KEY SUB-CONTRACTORS

- 4.1 The Service Provider shall, if requested by the Purchaser, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.

- 4.2 The Service Provider shall:

4.2.1 be responsible for auditing the financial models/reports of its Key Sub-contractors and for any associated costs and expenses incurred or forecast to be incurred; and

4.2.2 on written request by the Purchaser, provide the Purchaser or procure that the Purchaser is provided with:

- (a) full copies of audit reports for the Key Sub-contractors. The Purchaser shall be entitled to rely on such audit reports; and
- (b) further explanation of, and supporting information in relation to, any audit reports provided.

**THIS SCHEDULE COMPRISES SCHEDULE 5 TO THE FOREGOING SERVICES CONTRACT
BETWEEN [THE SCOTTISH MINISTERS ACTING THROUGH [] [AMEND AS APPROPRIATE]]
AND [NAME OF SERVICE PROVIDER]**

**SCHEDULE 5
MANAGEMENT ARRANGEMENTS**

PART A: GENERAL ARRANGEMENTS

1. REPORTING

- 1.1 The Service Provider must provide the reports as detailed at section [] of Schedule 2 (*Specification [and Service Levels]*).
- 1.2 The Service Provider, in conjunction with the Purchaser, will review the suitability of the reporting throughout the Term (which may include the provision of new reports and/or additional breakdown within reports as reasonably requested by the Purchaser).
- 1.3 The Risk Register shall be updated by the Service Provider and submitted for regular review by the Purchaser.

2. MEETINGS

- 2.1 The Service Provider will be expected to meet with the Purchaser at the frequency and for the purposes detailed at section [] of Schedule 2 (*Specification [and Service Levels]*).
- 2.2 The Service Provider may be required to undertake other ad hoc visits to the Purchaser and other third parties that are relevant to the Services to discuss the operation of this Contract.
- 2.3 The Service Provider, in conjunction with the Purchaser, will review the suitability of meeting frequency and purpose throughout the Term.
- 2.4 All costs incurred by the Service Provider in attending such meetings will be the responsibility of the Service Provider.

3. CONTRACT MANAGEMENT MECHANISMS

- 3.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.
- 3.2 The Service Provider shall develop, operate, maintain and amend, as agreed with the Purchaser, processes for:
 - 3.2.1 the identification and management of risks;
 - 3.2.2 the identification and management of issues; and
 - 3.2.3 monitoring and controlling project plans.

4. DISPUTE RESOLUTION

- 4.1 The Parties shall attempt to resolve any dispute between them arising out of, or in connection with, this Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute as follows.
- 4.2 Any dispute will, in the first instance, be presented to the Service Provider's Contract Manager and the Purchaser's Contract Manager for resolution.
- 4.3 If the Service Provider's Contract Manager and the Purchaser's Contract Manager cannot agree on a resolution, then a separate meeting will be held between the senior management of the Service Provider and the Purchaser for resolution.

4.4 If the dispute cannot be resolved by the Parties pursuant to this paragraph, the Parties shall refer it to mediation pursuant to the procedure set out at paragraph 5 to this Schedule unless:

4.4.1 the Purchaser considers that the dispute is not suitable for resolution by mediation; or

4.4.2 the Service Provider does not agree to mediation.

4.5 The obligations of the Parties under this Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Service Provider shall comply fully with the requirements of this Contract at all times.

5. MEDIATION

5.1 For the purposes of this mediation, the following terms are defined as follows:

5.1.1 ["CEDR" means the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London EC4Y 1EU (www.cedr.com)]; and

5.1.2 "Contract Mediator" means a neutral adviser or mediator chosen by agreement between the Parties.

5.2 A Contract Mediator shall be appointed or, if the Parties are unable to agree upon a Contract Mediator within ten (10) Working Days after a request by one Party to the other or if the Contract Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Contract Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the CEDR to appoint a Contract Mediator.

5.3 The Parties shall within ten (10) Working Days of the appointment of the Contract Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure.

5.4 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

5.5 If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

5.6 Failing agreement, either of the Parties may invite the Contract Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Contract without the prior written consent of both Parties.

5.7 If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Contract Mediator being appointed, or such longer period as may be agreed by the Parties, then, for the purposes of clause 61 (*Dispute Resolution*), the dispute cannot be resolved in accordance with paragraphs 4 and 5 of this Schedule.

Guidance notes: It may not always be appropriate to refer to CEDR and Purchasers may instead wish to refer to another body. In such cases details of the alternative body should be inserted and references to CEDR replaced.

THIS SCHEDULE COMPRISES SCHEDULE 6 TO THE FOREGOING SERVICES CONTRACT
 BETWEEN [THE SCOTTISH MINISTERS ACTING THROUGH [] [AMEND AS APPROPRIATE]]
 AND [NAME OF SERVICE PROVIDER]

**SCHEDULE 6
 KEY INDIVIDUALS**

Name	Role	Responsibilities/Authorities	Phase during which they will be a Key Individual

Guidance notes: Please delete this Schedule if there are no identified Key Individuals as at contract award.

**THIS SCHEDULE COMPRISES SCHEDULE 7 TO THE FOREGOING SERVICES CONTRACT
BETWEEN [THE SCOTTISH MINISTERS ACTING THROUGH [] [AMEND AS APPROPRIATE]]
AND [NAME OF SERVICE PROVIDER]**

**SCHEDULE 7
APPROVED SUB-CONTRACTORS**

1. In accordance with clause 41.1 (*Sub-Contracting*), the Service Provider is entitled to sub-contract its obligations under this Contract to the Sub-Contractors listed in the table below.
2. The Parties agree that they will update this Schedule periodically to record any Sub-Contractors appointed by the Service Provider with the consent of the Purchaser after the Commencement Date for the purposes of the delivery of the Services:

Sub-contractor	Registered Office and Company Number	Approximate value of Sub-contract expressed as a percentage of total value	Relevant obligations in delivery of the Services

Guidance notes: Please delete this Schedule if there are no approved sub-contractors as at contract award. However, please complete the Schedule if there are sub-contractors and ensure it is kept up to date should there be any changes.

**THIS SCHEDULE COMPRISES SCHEDULE 8 TO THE FOREGOING SERVICES CONTRACT
BETWEEN [THE SCOTTISH MINISTERS ACTING THROUGH [] [AMEND AS APPROPRIATE]]
AND [NAME OF SERVICE PROVIDER]**

SCHEDULE 8 – TRANSPARENCY REPORTS AND SERVICE PROVIDER SENSITIVE INFORMATION

Part 1- Transparency Reports

The Purchaser will routinely publish information in relation to the Contract. This information will be released in Transparency Reports. An example of the type and frequency of the information is as follows:

TRANSPARENCY REPORTS (to be completed by the Purchaser within 3 months of Contract Award)

TITLE	CONTENT	FORMAT	FREQUENCY
<i>(Performance)</i>			
<i>(Charges)</i>			
<i>(Major subcontractors)</i>			
<i>(Technical)</i>			
<i>(Performance management)</i>			

SERVICE PROVIDER SENSITIVE INFORMATION

Type of information specified as Service Provider Sensitive Information	Reason why information is sensitive	Duration of sensitivity

Guidance notes: Since the introduction of the FOI regime it has been recommended practice to ask contractors to be clear as to which of their information is sensitive and should not be disclosed under FOISA. Please delete this Schedule if it is not possible to identify this information. **Buyers should nonetheless make active efforts for this Schedule to be completed.**

Buyers may review the format of the Transparency Reports and tailor appropriately.

**THIS SCHEDULE COMPRISES SCHEDULE 9 TO THE FOREGOING SERVICES CONTRACT
BETWEEN [THE SCOTTISH MINISTERS ACTING THROUGH [] [AMEND AS APPROPRIATE]]
AND [NAME OF SERVICE PROVIDER]**

**SCHEDULE 9
PARENT COMPANY GUARANTEE**

3. We [here insert the full name of the parent company], a company incorporated under the Companies Acts (Company number []) and having our Registered Office at [] refer to the Contract dated [] and [] between [the Scottish Ministers acting through [] the **"Scottish Ministers" AMEND AS APPROPRIATE**] and [insert name of contractor], a company incorporated under the Companies Acts (Company number [] and having its Registered Office at [] (the **"Company"**) of which we are the ultimate holding company, for the provision [specify nature of the services] (the **"Contract"**) and in security of the Company's obligations thereunder guarantee the same in the following manner:-
- 3.1 We guarantee and undertake that the Company shall duly and punctually perform all its obligations contained in the Contract.
- 3.2 We guarantee and undertake upon demand to pay to the Scottish Ministers all monies and liabilities which are now or at any time hereafter shall have become payable by the Company to the Scottish Ministers under or in connection with the Contract or in respect of the Company's obligations arising under the Contract as if it were a primary obligor.
- 3.3 If the Company shall in any respect fail to perform its obligations under the Contract or shall commit any breach thereof (including any failure to pay any and all monies and liabilities referred to in clause 3.2), we undertake,
- 3.3.1 forthwith on first demand by the Scottish Ministers, and at our cost and expense, to perform fully or to take whatever steps may be necessary to achieve full performance of said obligations under the Contract; and,
- 3.3.2 as a separate and independent obligation and liability that we shall indemnify and keep indemnified the Scottish Ministers against any loss, damages, claims, costs and expenses which may be incurred by them by reason of any such failure or breach on the part of the Company.
- 3.4 Our guarantee and undertakings hereunder shall be unconditional and irrevocable, and without prejudice to the foregoing generality we shall not be released or discharged from our liability hereunder by:
- 3.4.1 any waiver or forbearance by the Scottish Ministers of or in respect of any of the Company's obligations under the Contract whether as to payment, time, performance or otherwise howsoever, or by any failure or delay by the Scottish Ministers to enforce the Contract or this instrument, or
- 3.4.2 any alteration to, addition to or deletion from the Contract or the scope of the work to be performed under the Contract, or
- 3.4.3 any change in the relationship between ourselves and the Company; or
- 3.4.4 the bankruptcy, insolvency, liquidation, amalgamation, reconstruction, reorganisation, administrative or other receivership or dissolution of the Company, and any equivalent or analogous proceeding by whatever name known and in whatever jurisdiction,
- and our guarantee and undertakings shall continue in force until all the Company's obligations under the Contract and all our obligations hereunder have been duly performed.
4. This Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed, construed and take effect in accordance with Scots law. We irrevocably agree for the benefit of the Scottish Ministers that the courts of Scotland 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 Guarantee and for such purposes hereby irrevocably submit to the jurisdiction of such courts.

5. Our obligations under this Guarantee may be enforced by the Scottish Ministers at their discretion without first having taken any steps or proceedings against the Company or any other person.
6. We shall, on demand by the Scottish Ministers, execute such documents or take such action as the Scottish Ministers may require, for protecting the Scottish Ministers' rights under this Guarantee.
7. Without prejudice to the generality of Clause 3, we expressly confirm that we intend that this Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Contract and any associated fees, costs and/or expenses.
8. All sums payable by us under this 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, we will pay that additional amount which is necessary to ensure that the Scottish Ministers receive a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
9. We shall pay interest on any amount due under this 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. We will reimburse the Scottish Ministers for all legal and other costs (including VAT) incurred by the Scottish Ministers in connection with the enforcement of this Guarantee.
11. If at any time any provision of this Guarantee is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity or enforceability of the other provisions of this Guarantee shall not be affected or impaired.
12. No single or partial exercise by the Scottish Ministers of any right, power or remedy provided by law or under this Guarantee shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
13. The rights, powers and remedies provided in this Guarantee are cumulative with, and not exclusive of, any rights, powers and remedies provided by law.
14. All notices and other communications required or permitted to be given in terms of this Guarantee, or any proceedings relating to it, shall be in writing and will be sufficiently served:
 - 14.1 if delivered by hand; or
 - 14.2 if sent by fax; or
 - 14.3 if sent by prepaid recorded or special delivery post; or
 - 14.4 if sent by email

to the address specified below or to such other address as is from time to time notified to the other party in accordance with the provisions of this Clause 14:

Scottish Ministers:

[to be completed]

[Guarantor]

[to be completed]

- 15. Any such notice or communication shall be deemed to have been served,
 - 15.1 if delivered by hand, on the date of delivery;
 - 15.2 if sent by fax, 4 working hours after the time at which the fax was sent;
 - 15.3 if sent by pre-paid recorded or special delivery post, on the date of delivery; or
 - 15.4 if sent by electronic mail, 4 working hours after the time at which the email was sent,
 - 15.5 provided that, if in accordance with the above provisions, any such notice or communication is delivered or received outside working hours on any working day, such notice or communications shall be deemed to have been served at the start of the working hour on the next working day thereafter.

15.6 For the purposes of this Clause 15:

'working day' means a day other than a Saturday, Sunday or bank holiday in Scotland, within the meaning of the Banking and Financial Dealings Act 1971; and

'working hour' means an hour between 0900 hours and 1700 hours on a working day.

16. We may not assign or transfer any of our rights and/or obligation under this Guarantee. The Scottish Ministers shall be entitled to assign or transfer the benefit of this Guarantee at any time to any person without our consent being required and any such assignation or transfer shall not release us from our liability under this Guarantee.

17. Each person giving a notice or making a communication hereunder by fax or email shall promptly confirm such notice or communication by post to the person to whom such notice or communication was addressed but the absence of any such confirmation shall not affect the validity of any such notice or communication or time upon which it is deemed to have been served: IN WITNESS WHEREOF these presents typewritten on this and the [3] preceding pages are executed as follows SIGNED for and on behalf of **[insert name of the Company]**.

At.....

On.....

Signature.....

Full name

Position

Address.....

.....

In the presence of

Signature.....

Full name

Address.....

.....

Guidance note: Where the Purchaser is not the Scottish Ministers, references to the Scottish Ministers should be replaced by references to the relevant Purchaser.

**THIS SCHEDULE COMPRISES SCHEDULE 10 TO THE FOREGOING SERVICES CONTRACT
BETWEEN [THE SCOTTISH MINISTERS ACTING THROUGH [] [AMEND AS APPROPRIATE]]
AND [NAME OF SERVICE PROVIDER]**

**10
DATA PROTECTION**

Part 1: Data Processing provision as required by Article 28(3) UK GDPR.

This Part includes certain details of the Processing of Personal Data in connection with the Services:

18. Subject matter and duration of the Processing of Personal Data

The subject matter and duration of the Processing of Personal Data are set out in this Contract.

19. The nature and purpose of the Processing of Personal Data

[Include description here]

20. The types of Personal Data to be Processed

[Include list of data types here]

21. The categories of Data Subject to whom Personal Data relates

[Include categories of data subjects here]

22. The obligations and rights of the Purchaser

The obligations and rights of the Purchaser as the Data Controller are set out in clause 13 (*Data Protection*) of this Contract.

**THIS SCHEDULE COMPRISES SCHEDULE 11 TO THE FOREGOING SERVICES CONTRACT
BETWEEN [THE SCOTTISH MINISTERS ACTING THROUGH [] [AMEND AS APPROPRIATE]]
AND [NAME OF SERVICE PROVIDER]**

**SCHEDULE 11
EXIT MANAGEMENT**

Guidance note: The separate Guidance on the Model ICT Services Contract contains more detailed commentary on 0 (*Exit Management*). If this Schedule does not reflect how exit arrangements will be carried out in practice, the Purchaser should amend as required.

23. OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

23.1 During the Term, the Service Provider shall:

23.1.1 create and maintain:

- (a) a register of all Assets, detailing their:
 - (i) make, model and asset number;
 - (ii) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
 - (iii) Net Book Value;
 - (iv) condition and physical location; and
 - (v) use (including technical specifications);
- (b) a register of all 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; and
- (c) a configuration database detailing the technical infrastructure and operating procedures through which the Service Provider provides the Services, which shall contain sufficient detail to permit the Purchaser and/or Replacement Service Provider to understand how the Service Provider provides the Services and to enable the smooth transition of the Services with the minimum of disruption,

(together the "**Registers**");

23.1.2 agree the format of the Registers with the Purchaser as part of the process of agreeing the Exit Plan; and

23.1.3 at all times keep the Registers up to date, in particular in the event that Sub-contracts or other relevant agreements are added to or removed from the Services.

23.2 The Service Provider shall ensure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services.

23.3 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 three (3) months of the Commencement Date. The Service Provider's Exit Manager shall be responsible for ensuring that the Service Provider and the Service Provider Representatives comply with this Schedule. The Service Provider shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Service Provider as are reasonably necessary to enable the Service Provider 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 or expiry of this Contract and all matters connected with this Schedule and each Party's compliance with it.

24. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 24.1 On reasonable notice at any point during the Term, the Service Provider shall provide to the Purchaser and/or its potential Replacement Service Providers (subject to the potential Replacement Service Providers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Purchaser of any invitation to tender and/or to facilitate any potential Replacement Service Providers undertaking due diligence:
- 24.1.1 details of the Service(s);
 - 24.1.2 a copy of the Registers, updated by the Service Provider up to the date of delivery of such Registers;
 - 24.1.3 an inventory of Purchaser Data in the Service Provider's possession or control;
 - 24.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - 24.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
 - 24.1.6 to the extent permitted by applicable Law, all information relating to Outgoing Employees required to be provided by the Service Provider under this Contract; and
 - 24.1.7 such other material and information as the Purchaser shall reasonably require, (together, the "**Exit Information**").
- 24.2 The Service Provider acknowledges that the Purchaser may disclose the Service Provider's Confidential Information to an actual or prospective Replacement Service Provider or any third party whom the Purchaser is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Purchaser may not under this paragraph 2.2 disclose any Service Provider's Confidential Information which is information relating to the Service Provider's or its Sub-contractors' prices or costs).
- 24.3 The Service Provider shall:
- 24.3.1 notify the Purchaser within five (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 Purchaser regarding such proposed material changes; and
 - 24.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Purchaser.
- 24.4 The Service Provider may charge the Purchaser for its reasonable additional costs to the extent the Purchaser requests more than four (4) updates in any six (6) month period.
- 24.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Service Provider shall be such as would be reasonably necessary to enable a third party to:
- 24.5.1 prepare an informed offer for those Services; and
 - 24.5.2 not be disadvantaged in any subsequent procurement process compared to the Service Provider (if the Service Provider is invited to participate).

25. EXIT PLAN

- 25.1 The Service Provider shall, within three (3) months after the Commencement Date, deliver to the Purchaser an Exit Plan which:
- 25.1.1 sets out the Service Provider's proposed methodology for achieving an orderly transition of the Services (the "Transferring Services") from the Service Provider to the Purchaser and/or its Replacement Service Provider on the expiry or termination of this Contract;
 - 25.1.2 complies with the requirements set out in paragraph 3.3; and
 - 25.1.3 is otherwise reasonably satisfactory to the Purchaser.
- 25.2 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 twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the procedure set out in clause 61 (*Dispute Resolution*).
- 25.3 The Exit Plan shall set out, as a minimum:
- 25.3.1 how the Exit Information is obtained;
 - 25.3.2 separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Service Provider 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 Service Provider of all such reasonable assistance as the Purchaser shall require to enable the Purchaser or its Sub-contractors to provide the Services;
 - 25.3.3 the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
 - 25.3.4 the management structure to be employed during the Termination Assistance Period;
 - 25.3.5 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;
 - 25.3.6 how the Services will transfer to the Replacement Service Provider and/or the Purchaser, including details of the activities (and areas of responsibility), processes, documentation, data transfer, systems migration, security (where applicable);
 - 25.3.7 the scope of the Exit Management Services that may be required for the benefit of the Purchaser (including such of the services set out in Annex 1 as are applicable);
 - 25.3.8 a timetable and critical issues for providing the Exit Management Services;
 - 25.3.9 any Exit Management Service Charges that would be payable for the provision of the Exit Management Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a total estimate of such charges;
 - 25.3.10 how the Exit Management Services would be provided (if required) during the Termination Assistance Period;
 - 25.3.11 procedures to deal with requests made by the Purchaser and/or a Replacement Service Provider for Staffing Information pursuant to clause 32 **Error! Reference source not found.** (*Staff transfer on expiry or termination*);
 - 25.3.12 how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Service Provider to the Replacement Service Provider and/or the Purchaser with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period (this will include the maintenance of a 'business as usual' environment for the Purchaser during the Termination Assistance Period); and

- 25.3.13 the procedure that would be put in place for the Service Provider to provide Purchaser Data, exported in a meaningful format, including staged reports, to a Replacement Service Provider for testing purposes prior to the expiry or termination of this Contract.
- 25.4 The Parties acknowledge that the migration of the Services from the Service Provider to the Purchaser and/or its Replacement Service Provider may be phased, such that certain of the Services are handed over before others.
- 25.5 The Service Provider 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 Service Provider shall submit the revised Exit Plan to the Purchaser for review. Within twenty (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 twenty (20) Working Day period, such dispute shall be resolved in accordance with the procedure set out in clause 6461 (*Dispute Resolution*).

Finalisation of the Exit Plan

- 25.6 Within twenty (20) Working Days after service of a Termination Notice or nine (9) months prior to the expiry of this Contract, the Service Provider will submit for the Purchaser'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.
- 25.7 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 twenty (20) Working Days following its delivery to the Purchaser then such dispute shall be resolved in accordance with the procedure set out in clause 61 (*Dispute Resolution*). Until the agreement of the final form of the Exit Plan, the Service Provider shall provide the Exit Management Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

26. EXIT MANAGEMENT SERVICES

Notification of Requirements for Exit Management Services

- 26.1 The Purchaser shall be entitled to require the provision of Exit Management Services at any time during the Term by giving written notice to the Service Provider following the service of a Termination Notice, or at the same time as serving a Termination Notice (a "**Termination Assistance Notice**"). The Termination Assistance Notice shall specify:
- 26.1.1 the date from which Exit Management Services are required;
- 26.1.2 the nature of the Exit Management Services required; and
- 26.1.3 the period during which it is anticipated that Exit Management Services will be required, which shall continue no longer than twenty four (24) months after the date that the Service Provider ceases to provide the Services.
- 26.2 The Purchaser shall have an option to extend the period of assistance beyond the Termination Assistance Period provided that such extension shall not extend for more than six (6) months beyond the expiry of the original Termination Assistance Period and provided that it shall notify the Service Provider to such effect no later than twenty (20) Working Days prior to the expiry of the Termination Assistance Period. The Purchaser shall have the right to terminate its requirement for Exit Management Services by serving not less than twenty (20) Working Days' written notice upon the Service Provider to such effect.

Termination Assistance Period

- 26.3 Throughout the Termination Assistance Period, or such shorter period as the Purchaser may require, the Service Provider shall:
- 26.3.1 continue to provide the Services (as applicable) and, if required by the Purchaser pursuant to paragraph 4.1, provide the Exit Management Services;
 - 26.3.2 in addition to providing the Services and the Exit Management Services, provide to the Purchaser any reasonable assistance requested by the Purchaser to allow the Services to continue without interruption following the termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Purchaser and/or its Replacement Service Provider;
 - 26.3.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 4.3.2 without additional costs to the Purchaser;
 - 26.3.4 provide the Services and the Exit Management Services at no detriment to the Service Levels (if applicable), save to the extent that the Parties agree otherwise in accordance with paragraph 4.5; and
 - 26.3.5 at the Purchaser's request and on reasonable notice, deliver up-to-date Registers to the Purchaser.
- 26.4 Without prejudice to the Service Provider's obligations under paragraph 4.3.3, if it is not possible for the Service Provider to reallocate resources to provide such assistance as is referred to in paragraph 4.3.2 without additional costs to the Purchaser, any additional costs incurred by the Service Provider in providing such reasonable assistance which is not already in the scope of the Exit Management Services or the Exit Plan shall be subject to the Change Control Procedure.
- 26.5 If the Service Provider demonstrates to the Purchaser's reasonable satisfaction that transition of the Services and provision of the Exit Management Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Service Provider's ability to meet one or more particular Service Level(s), the Parties shall by mutual agreement vary the relevant Service Level(s) and/or the applicable Service Credits to take account of such adverse effect. If the Parties are unable to agree the necessary changes the dispute shall be resolved in accordance with the procedure set out in clause 61 (*Dispute Resolution*).

Termination Obligations

- 26.6 The Service Provider shall comply with all of its obligations contained in the Exit Plan.
- 26.7 Upon termination or expiry of this Contract or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Service Provider's performance of the Services and the Exit Management Services and its compliance with the other provisions of this Schedule), the Service Provider shall:
- 26.7.1 cease to use the Purchaser Data;
 - 26.7.2 provide the Purchaser and/or the Replacement Service Provider with a complete and uncorrupted version of the Purchaser Data in electronic form (or such other format as reasonably required by the Purchaser);
 - 26.7.3 erase from any computers, storage devices and storage media that are to be retained by the Service Provider after the end of the Termination Assistance Period all Purchaser Data and promptly certify to the Purchaser that it has completed such deletion;
 - 26.7.4 return to the Purchaser such of the following as is in the Service Provider's possession or control: (i) all copies of the Purchaser Software if applicable and any other software licensed by the Purchaser to the Service Provider under this Contract; (ii) all materials created by the Service Provider under this Contract in which the Intellectual Property Rights are owned by the Purchaser; (iii) any parts of the IT Environment and any other

equipment which belongs to the Purchaser; and (iv) any items that have been on-charged to the Purchaser, such as consumables;

- 26.7.5 vacate any Purchaser premises;
- 26.7.6 provide access during normal working hours to the Purchaser and/or the Replacement Service Provider for up to six (6) months after the expiry or termination of this Contract, or if later the end of the Termination Assistance Period to:
- (a) such information relating to the Services as remains in the possession or control of the Service Provider; and
 - (b) such members of the Service Provider Representatives as have been involved in the design, development and provision of the Services and who are still employed by the Service Provider, provided that the Purchaser and/or the Replacement Service Provider shall pay the reasonable costs of the Service Provider actually incurred in responding to requests for access under this paragraph.
- 26.8 Upon termination or expiry of this Contract or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Service Provider's performance of the Services and the Exit Management 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 Exit Management Services or for statutory compliance purposes.
- 26.9 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Purchaser to the Service Provider in relation to the Services shall be terminated with effect from the expiry or termination of this Contract, or if later the end of the Termination Assistance Period.

27. ASSETS, SUB-CONTRACTS AND SOFTWARE

- 27.1 Following notice of termination of this Contract and during the Termination Assistance Period, the Service Provider shall not, without the Purchaser's prior written consent:
- 27.1.1 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 Exit Management Service Charges;
 - 27.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
 - 27.1.3 terminate, enter into or vary any licence for software in connection with the Services.
- 27.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Service Provider pursuant to paragraph 4.3.5, the Purchaser shall provide written notice to the Service Provider setting out:
- 27.2.1 which, if any, of the Transferable Contracts the Purchaser requires to be assigned or novated to the Purchaser and/or the Replacement Service Provider (the "Transferring Contracts");
 - 27.2.2 which, if any, of the Transferable Assets the Purchaser requires to be transferred to the Purchaser and or the Replacement Service Provider (the "Transferring Assets"); and
 - 27.2.3 which, if any, of the Exclusive Assets that are not Transferable Assets and the Non-Exclusive Assets, the Purchaser and/or the Replacement Service Provider requires the continued use of,

in order for the Purchaser and/or its Replacement Service Provider to provide the Services from the expiry of the Termination Assistance Period, or the expiry or termination of this Contract (as applicable). Where requested by the Purchaser and/or its Replacement Service Provider, the Service Provider shall provide all reasonable assistance to the Purchaser and/or its Replacement Service Provider to enable it to determine which Transferable Contracts and Transferable Assets the Purchaser and/or its Replacement Service Provider requires to provide the Services or Replacement Services.

- 27.3 With effect from the expiry of the Termination Assistance Period, on the expiry or termination of this Contract (as applicable) the Service Provider shall sell the Transferring Assets to the Purchaser and/or its nominated Replacement Service Provider for a consideration equal to their Net Book Value, except where the cost of the Transferring Asset has been partially or fully paid for through the Exit Management Service Charges at the time of expiry or termination of this Contract in which case the Purchaser shall pay the Service Provider the Net Book Value of the Transferring Asset less the amount already paid through the Exit Management Service Charges.
- 27.4 Risk in the Transferring Assets shall pass to the Purchaser or the Replacement Service Provider (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Purchaser or the Replacement Service Provider (as appropriate) on payment for the same.
- 27.5 Where the Service Provider is notified in accordance with paragraph 5.2.3 that the Purchaser and/or the Replacement Service Provider requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Service Provider shall as soon as reasonably practicable;
- 27.5.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Purchaser) for the Purchaser and/or the Replacement Service Provider to use such assets (with a right of sublicense or assignation on the same terms); or
- 27.5.2 failing which procure a suitable alternative to such assets and the Purchaser or the Replacement Service Provider shall bear the reasonable proven costs of the same.
- 27.6 The Service Provider shall as soon as reasonably practicable assign or procure the novation to the Purchaser and/or the Replacement Service Provider of the Transferring Contracts (as requested by the Purchaser). The Service Provider shall execute such documents and provide such other assistance as the Purchaser and/or the Replacement Service Provider reasonably requires to effect the novations or assignations.
- 27.7 The Purchaser shall:
- 27.7.1 accept and/or as applicable procure the acceptance by the Replacement Service Provider of assignations from the Service Provider or join and/or as applicable procure that the Replacement Service Provider join with the Service Provider in procuring a novation of each Transferring Contract; and
- 27.7.2 once a Transferring Contract is novated or assigned to the Purchaser and/or the Replacement Service Provider, 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 Service Provider does the same.
- 27.8 The Service Provider shall hold any Transferring Contracts on trust for the Purchaser until such time as the transfer of the relevant Transferring Contract to the Purchaser and/or the Replacement Service Provider has been effected.
- 27.9 The Service Provider shall indemnify the Purchaser (and/or the Replacement Service Provider, 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 Purchaser (and/or Replacement Service Provider) pursuant to paragraph 5.7 in relation to any matters arising prior to the date of assignation or novation of such Sub-contract.

28. SERVICE PROVIDER PERSONNEL

- 28.1 The Purchaser and Service Provider agree and acknowledge that in the event of the Service Provider ceasing to provide the Services or part of them for any reason, clause 32 (*Staff transfer on expiry or termination*) may apply.
- 28.2 The Service Provider 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 Purchaser and/or the Replacement Service Provider.
- 28.3 During the Termination Assistance Period, the Service Provider shall give the Purchaser and/or the Replacement Service Provider reasonable access to the Service Provider's personnel to present the case for transferring their employment to the Purchaser and/or the Replacement Service Provider.
- 28.4 The Service Provider shall immediately notify the Purchaser or, at the direction of the Purchaser, the Replacement Service Provider of any period of notice given by the Service Provider or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 28.5 The Service Provider shall not for a period of twelve (12) months from the date of transfer reemploy or re-engage or entice any employees, service providers or Sub-contractors whose employment or engagement is transferred to the Purchaser and/or the Replacement Service Provider, except that this paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

29. CHARGES

- 29.1 During the Termination Assistance Period (or for such shorter period as the Purchaser may require the Service Provider to provide the Exit Management Services), the Purchaser shall pay the Exit Management Service Charges to the Service Provider in respect of the Exit Management 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 Exit Management Services is changed and this results in a change to the Exit Management Service Charges, the estimate may be varied in accordance with the Change Control Procedure.
- 29.2 For the purpose of calculating the costs of providing the Exit Management Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Exit Management Services shall be determined in accordance with the Change Control Procedure.
- 29.3 Except as otherwise expressly specified in this Contract, the Service Provider shall not make any Charges for the Services provided by the Service Provider pursuant to, and the Purchaser shall not be obliged to pay for costs incurred by the Service Provider 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.

30. APPORTIONMENTS

- 30.1 All outgoing and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Contracts shall be apportioned between the Purchaser and the Service Provider and/or the Replacement Service Provider and the Service Provider (as applicable) as follows:
- 30.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
- 30.1.2 the Purchaser shall be responsible for (or shall procure that the Replacement Service Provider 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

- 30.1.3 the Service Provider shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 30.2 Each Party shall pay (and/or the Purchaser shall procure that the Replacement Service Provider shall pay) any monies due under paragraph 8.1 as soon as reasonably practicable.

ANNEX 1: SCOPE OF THE EXIT MANAGEMENT SERVICES

1. SCOPE

- 1.1 The Exit Management Services to be provided by the Service Provider shall include such of the following services as the Purchaser may specify:
- 1.1.1 ceasing all non-critical Software changes (except where agreed in writing with the Purchaser);
 - 1.1.2 notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
 - 1.1.3 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 Purchaser and/or the Replacement Service Provider after the end of the Termination Assistance Period;
 - 1.1.4 delivering to the Purchaser the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the twelve (12) month period immediately prior to the commencement of the Exit Management Services);
 - 1.1.5 providing details of work volumes and staffing requirements over the twelve (12) month period immediately prior to the commencement of the Exit Management Services;
 - 1.1.6 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;
 - 1.1.7 providing the Purchaser with any problem logs which have not previously been provided to the Purchaser;
 - 1.1.8 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 twelve (12) months after the Termination Assistance Period;
 - 1.1.9 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;
 - 1.1.10 reviewing all Software libraries used in connection with the Services and providing details of these to the Purchaser and/or the Replacement Service Provider;
 - 1.1.11 making available to the Purchaser and/or the Replacement Service Provider expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Purchaser (acting reasonably) at the time of termination or expiry;
 - 1.1.12 assisting in establishing naming conventions for any new production site;
 - 1.1.13 analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
 - 1.1.14 agreeing with the Purchaser a handover plan for all of the Service Provider's responsibilities as set out in the Security Plan;
 - 1.1.15 delivering copies of the production databases (with content listings) in line with appropriate security practices, to the Purchaser's and/or the Replacement Service

Provider's operations staff (on appropriate media) as reasonably requested by the Purchaser;

- 1.1.16 assisting with the loading, testing and implementation of the production databases;
- 1.1.17 assisting in the execution of a parallel operation until the expiry of the Term;
- 1.1.18 in respect of the maintenance and support of the Service Provider System, providing historical performance data for the previous twelve (12) months;
- 1.1.19 assisting in the execution of a parallel operation of the maintenance and support of the Service Provider System until the end of the Termination Assistance Period or as otherwise specified by the Purchaser (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
- 1.1.20 providing an information pack listing and describing the Services for use by the Purchaser in the procurement of the Replacement Services;
- 1.1.21 answering all reasonable questions from the Purchaser and/or the Replacement Service Provider regarding the Services;
- 1.1.22 agreeing with the Purchaser and/or the Replacement Service Provider a plan for the migration of the Purchaser Data to the Purchaser and/or the Replacement Service Provider;
- 1.1.23 providing access to the Purchaser and/or the Replacement Service Provider during the Termination Assistance Period and for a period not exceeding six (6) months afterwards for the purpose of the smooth transfer of the Services to the Purchaser and/or the Replacement Service Provider:
 - (a) to information and documentation relating to the Replacement Services that is in the possession or control of the Service Provider or its Sub-contractors (and the Service Provider 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
 - (b) following reasonable notice and during the Service Provider's normal business hours, to members of the Service Provider Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Service Provider or its Sub-contractors; and
- 1.1.24 knowledge transfer services, including:
 - (a) transferring all training material and providing appropriate training to those Purchaser and/or Replacement Service Provider staff responsible for internal training in connection with the provision of the Services;
 - (b) providing for transfer to the Purchaser and/or the Replacement Service Provider of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
 - (c) providing the Service Provider and/or the Replacement Service Provider with access to such members of the Service Provider'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 Service Provider or its Sub-contractors.

1.2 The Service Provider shall:

- 1.2.1 provide a documented plan relating to the training matters referred to in paragraph 1.1.11 for agreement by the Purchaser at the time of termination or expiry of this Contract;

- 1.2.2 co-operate fully in the execution of the handover plan agreed pursuant to paragraph 1.1.14, providing skills and expertise of a suitable standard; and
 - 1.2.3 fully co-operate in the execution of the Purchaser Data migration plan agreed pursuant to paragraph 1.1.22, providing skills and expertise of a reasonably acceptable standard.
- 1.3 To facilitate the transfer of knowledge from the Service Provider to the Purchaser and/or its Replacement Service Provider, the Service Provider 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 Purchaser and/or the Replacement Service Provider.
- 1.4 The information which the Service Provider shall provide to the Purchaser and/or the Replacement Service Provider pursuant to paragraph 1.1.24 shall include:
- 1.4.1 copies of up-to-date procedures and operations manuals;
 - 1.4.2 product information;
 - 1.4.3 agreements with third party suppliers of goods and services which are to be transferred to the Purchaser and/or the Replacement Service Provider;
 - 1.4.4 key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Purchaser pursuant to this Schedule;
 - 1.4.5 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;
 - 1.4.6 details of physical and logical security processes and tools which will be available to the Purchaser;
 - 1.4.7 any relevant interface information;
 - 1.4.8 support in dealing with the transfer of single sign on to services that are being maintained after the termination or expiry of this Contract;
 - 1.4.9 details of and migration of all domain names and certificates held;
 - 1.4.10 details of scripts being run on the managed tenancies;
 - 1.4.11 all documentation relating to the managed tenancies;
 - 1.4.12 management reporting history; and
 - 1.4.13 the transfer of any administrative accounts held in any of the managed tenancies.
- 1.5 During the Termination Assistance Period the Service Provider shall grant any agent or personnel (including employees, consultants and service providers) of the Replacement Service Provider and/or the Purchaser access, during business hours and upon reasonable prior written notice, to any premises where the Services are being provided for the purpose of effecting a prompt knowledge transfer provided that:
- 1.5.1 any such agent or personnel (including employees, consultants and suppliers) having access to any such premises pursuant to this paragraph 1.5 shall:
 - (a) sign a confidentiality undertaking in favour of the Service Provider (in such form as the Service Provider shall reasonably require); and
 - (b) during each period of access comply with the security, systems and facilities operating procedures of the Service Provider relevant to such premises and that the Purchaser deems reasonable; and

- 1.5.2 the Purchaser and/or the Replacement Service Provider shall pay the reasonable, proven and proper costs of the Service Provider incurred in facilitating such access.

**THIS SCHEDULE COMPRISES SCHEDULE 12 TO THE FOREGOING SERVICES CONTRACT
BETWEEN [THE SCOTTISH MINISTERS ACTING THROUGH [] [AMEND AS APPROPRIATE]]
AND [NAME OF SERVICE PROVIDER]**

**SCHEDULE 12
CHANGE CONTROL PROCEDURE**

2. GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

- 2.1 This Schedule sets out the procedure for dealing with Contract Changes.
- 2.2 Operational Changes shall be processed in accordance with paragraph 8. If either Party is in doubt about whether a Change falls within the definition of an Operational Change then it will be processed as a Contract Change.
- 2.3 Under this Change Control Procedure:
- 2.3.1 either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with paragraph 3;
- 2.3.2 the Service Provider will assess and document the potential impact of a proposed Contract Change in accordance with paragraph 4 before the Contract Change can be either approved or implemented;
- 2.3.3 the Purchaser shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in paragraph 5;
- 2.3.4 the Service Provider shall have the right to reject a Change Request solely in the manner set out in paragraph 6;
- 2.3.5 no proposed Contract Change shall be implemented by the Service Provider until such time as a Change Authorisation Note has been signed and issued by the Purchaser in accordance with paragraph 5.2; and
- 2.3.6 if the circumstances or nature of a proposed Contract Change mean that it is a Fast-track Change then it shall be processed in accordance with paragraph 7.
- 2.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties will follow the procedures set out in 0 (*Testing Procedure*), and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify any Milestones and Milestone Dates in respect of such Contract Change for the purposes of such procedures.
- 2.5 Until such time as a Change Authorisation Note has been signed and issued by the Purchaser in accordance with paragraph 5.2, then:
- 2.5.1 unless the Purchaser expressly agrees otherwise in writing, the Service Provider shall continue to supply the Services in accordance with the existing terms of this Contract as if the proposed Contract Change did not apply; and
- 2.5.2 any discussions, negotiations or other communications which may take place between the Purchaser and the Service Provider 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 Contract.

3. COSTS

- 3.1 Subject to paragraph 2.3, each Party shall bear its own costs in relation to the preparation and agreement of each Change Request and Impact Assessment.
- 3.2 All Contract Changes shall be calculated and charged in accordance with the day rates set out in Schedule 3 (*Pricing*). The Service Provider will only be entitled to increase the Charges 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 Service Provider shall be paid for by the Service Provider.

4. CHANGE REQUEST

- 4.1 Either Party may issue a Change Request to the other Party at any time during the Term. The Change Request shall be substantially in the form of Annex 1 to this Schedule and must state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.

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

- 4.3 If the Purchaser issues the Change Request, then the Service Provider shall provide an Impact Assessment to the Purchaser as soon as is reasonably practicable but in any event within ten (10) Working Days of the date of receiving the Change Request from the Purchaser provided that if the Service Provider requires any clarifications in relation to the Change Request before it can deliver the Impact Assessment, then it will promptly notify the Purchaser and the time period shall be extended by the time taken by the Purchaser to provide those clarifications. The Purchaser shall respond to the request for clarifications as soon as is reasonably practicable and the Service Provider shall provide the Purchaser with sufficient information to enable it to understand fully the nature of the request for clarification.

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; and

5.1.2 details of the impact of the proposed Contract Change on the Services and the Service Provider's ability to meet its other obligations under this Contract and any variation to the terms of this Contract that will be required as a result of that impact and including changes to:

- (a) the Specification and the Service Levels (if applicable);
- (b) the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;
- (c) any changes required by the proposed Contract Change to Related Service Providers;
- (d) details of the cost of implementing the proposed Contract Change;
- (e) details of the on-going costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources, period of Contract and/or expenditure required by either Party, taking into consideration any other proposed contract changes and any alteration to the working practices of either Party;
- (f) a timetable for the implementation and if required, any proposals for the testing of the Contract Change;
- (g) details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and

- (h) such other information as the Purchaser may reasonably request in (or in response to) the Change Request.

5.2 Subject to the provisions of paragraph 4.3, the Purchaser shall review the Impact Assessment and, within fifteen (15) Working Days of receiving the Impact Assessment, it shall respond to the Service Provider in accordance with paragraph 5.

5.3 If the Purchaser receives a proposed Contract Change and the Purchaser 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 five (5) Working Days of receiving the Impact Assessment, it shall notify the Service Provider of this fact and detail the further information that it requires. The Service Provider shall then re-issue the relevant Impact Assessment to the Purchaser within ten (10) Working Days of receiving such notification. At the Purchaser's discretion, the Parties may repeat the process described in this paragraph until the Purchaser is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.

6. PURCHASER'S RIGHT OF APPROVAL

6.1 Within fifteen (15) Working Days of receiving the Impact Assessment from the Service Provider or within ten (10) Working Days of receiving the further information that it may request pursuant to paragraph 4.3, the Purchaser 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 5.2;

6.1.2 in its absolute discretion reject the Contract Change, in which case it shall notify the Service Provider of the rejection. The Purchaser shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Service Provider or the Services to comply with any Changes in Law. If the Purchaser does reject a Contract Change, then it shall explain its reasons in writing to the Service Provider 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 Service Provider to modify the document accordingly, in which event the Service Provider shall make such modifications within five (5) Working Days of such request. Subject to paragraph 4.3, on receiving the modified Change Request and/or Impact Assessment, the Purchaser shall approve or reject the proposed Contract Change within ten (10) Working Days.

6.2 If the Purchaser approves the proposed Contract Change pursuant to paragraph 5.1 and it has not been rejected by the Service Provider in accordance with paragraph 6, then it shall inform the Service Provider and the Service Provider shall prepare two (2) copies of a Change Authorisation Note which it shall sign and deliver to the Purchaser for its signature. Following receipt by the Purchaser of the Change Authorisation Note, and subject always to paragraph 9, it shall sign both copies and return one copy to the Service Provider. On the Purchaser's signature, the Change Authorisation Note shall constitute a binding variation to this Contract provided that the Change Authorisation Note is signed by:

6.2.1 the appropriate person(s) specified in paragraph 9.1 of this Schedule; and

6.2.2 the Purchaser within ten (10) Working Days of receiving the Service Provider's signed copy. If the Purchaser does not sign the Change Authorisation Note within this time period, then the Service Provider shall have the right to notify the Purchaser and if the Purchaser does not sign the Change Authorisation Note within five (5) Working Days of the date of such notification, then the Service Provider may refer the matter to the dispute resolution procedure outlined in clause 61 (*Dispute Resolution*).

7. SERVICE PROVIDER'S RIGHT OF APPROVAL

- 7.1 Following an Impact Assessment, if the Service Provider reasonably believes that any proposed Contract Change which is requested by the Purchaser:
- 7.1.1 would materially and adversely affect the risks to the health and safety of any person;
 - 7.1.2 would require the Services to be performed in a way that infringes any Law or is inconsistent with Good Industry Practice;
 - 7.1.3 would materially and adversely affect the Service Provider's ability to deliver the Services;
 - 7.1.4 would require the Service Provider to implement the Change in an unreasonable period of time;
 - 7.1.5 would (if implemented) materially and adversely change the nature of the Services (including the risk profile); and/or
 - 7.1.6 would (to implement) require the Purchaser to possess legal powers or capacity that it does not have

then the Service Provider shall be entitled to reject the proposed Contract Change and shall notify the Purchaser of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment in accordance with paragraph 3.3.

8. FAST-TRACK CHANGES

- 8.1 The Parties acknowledge to ensure operational efficiency that there may be circumstances where it is desirable to expedite the processes set out above.
- 8.2 If both Parties agree in relation to a proposed Contract Change that:
- 8.2.1 the Contract Change does not involve any alteration to, or deviation from the contractual principles set out in this Contract; and
 - 8.2.2 the total number of Contract Changes in relation to which this fast track procedure has been applied does not exceed four (4) in any twelve (12) month period (or such higher number as the Parties may from time to time agree in writing); and
 - 8.2.3 the proposed Contract Change is not significant (as determined by the Purchaser acting reasonably),

then the Parties shall confirm to each other in writing that they shall use the process set out in paragraphs 2, 3, 4, 5 and 6 above but with reduced timescales, such that any period of fifteen (15) Working Days is reduced to five (5) Working Days, any period of ten (10) Working Days is reduced to two (2) Working Days and any period of five (5) Working Days is reduced to one (1) Working Day.

- 8.3 The parameters set out in paragraph 7.2 may be revised from time to time by agreement between the Parties in writing.

9. OPERATIONAL CHANGE PROCEDURE

- 9.1 Any Operational Changes identified by the Service Provider to improve operational efficiency of the Services may be implemented by the Service Provider without following the Change Control Procedure for proposed Contract Changes provided they do not:
- 9.1.1 have an impact on the Purchaser;
 - 9.1.2 require a change to this Contract;
 - 9.1.3 have a direct impact on use of the Services; or
 - 9.1.4 involve the Purchaser in paying any additional Charges or other costs.

- 9.2 The Purchaser may request an Operational Change by submitting a written request for Operational Change ("**RFOC**") to the Service Provider Representative.
- 9.3 The RFOC shall include the following details:
- 9.3.1 the proposed Operational Change; and
 - 9.3.2 time-scale for completion of the Operational Change.
- 9.4 The Service Provider shall inform the Purchaser of any impact on the Services that may arise from the proposed Operational Change.
- 9.5 The Service Provider shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Purchaser when the Operational Change is completed.

10. CHANGE AUTHORISATION

- 10.1 Any proposed Contract Change processed in accordance with this Schedule will not be authorised and the Service Provider shall not implement any proposed Contract Change until the Change Authorisation Note is signed and executed by the Purchaser's authorised representative in accordance with the Purchaser's Contract Change authorisation and sign off procedure(s), as notified to the Service Provider in writing from time to time.

11. COMMUNICATIONS

- 11.1 For any Change Communication to be valid under this Schedule, it must be sent to either the Purchaser's Change Manager or the Service Provider's Change Manager, as applicable. The provisions of clause 9 (*Notices*) shall apply to a Change Communication as if it were a notice.

Annex 1
Change Request Form

CR NO.:	TITLE:	TYPE OF CHANGE:
PROJECT:	REQUIRED BY DATE:	
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED (<i>OPTIONAL FIELD</i>):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING ANY SPECIFICATIONS):		
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**Impact Assessment Form**

CR NO.:	TITLE:	DATE RAISED:
PROJECT:		REQUIRED BY DATE:
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING / HAS BEEN PREPARED AND DETAILS OF ANY RELATED CONTRACT CHANGES:		
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 OR COST-PLUS BASIS):		
DETAILS OF ANY PROPOSED CONTRACT AMENDMENTS:		
DETAILS OF ANY SERVICE LEVELS AFFECTED:		
DETAILS OF ANY OPERATIONAL SERVICE IMPACT:		
DETAILS OF ANY INTERFACES AFFECTED:		
DETAILED RISK ASSESSMENT:		
RECOMMENDATIONS:		

ANNEX 3**Change Authorisation Note**

CR NO.:	TITLE:	DATE RAISED:
PROJECT:	TYPE OF CHANGE:	REQUIRED BY DATE:
[MILESTONE DATES: <i>[if any]</i>]		
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND DETAILS OF ANY RELATED CONTRACT CHANGES:		
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 OR COST-PLUS BASIS):		
SIGNED ON BEHALF OF THE PURCHASER:		SIGNED ON BEHALF OF THE SERVICE PROVIDER:
Signature:_____		Signature:_____
Name:_____		Name:_____
Position:_____		Position:_____
Date:_____		Date:_____

**THIS SCHEDULE COMPRISES SCHEDULE 13 TO THE FOREGOING SERVICES CONTRACT
BETWEEN [THE SCOTTISH MINISTERS ACTING THROUGH [] [AMEND AS APPROPRIATE]]
AND [NAME OF SERVICE PROVIDER]**

SCHEDULE 13

SECURITY MANAGEMENT

Guidance notes: Text in **red** requires to be amended/updated by Purchaser to reflect the specific circumstances of this Contract.

12. DEFINITIONS

12.1 In this Schedule:

12.1.1 the following definitions shall apply:

“Cyber Implementation Plan” means the cyber implementation plan set out in Section B (*Cyber Implementation Plan*) of the Annex to this Schedule 13;

Guidance notes: where the Purchaser and the Service Provider have agreed a Cyber Implementation Plan, the above definition should be included. Otherwise it may be removed.

“Security Policy Framework” means the Security Policy Framework published by the Cabinet Office as updated from time to time including any details notified by the Purchaser to the Service Provider; and

“Security Tests” means both (a) tests carried out where relevant in accordance with the CHECK Scheme or to an equivalent standard to validate the Security Plan and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security and (b), if relevant, security tests required to be carried out under the Cyber Security Requirements; and

12.1.2 the Annex deals with cyber security requirements.

12.2 If there is any conflict or ambiguity between the Annex (*Cyber security requirements*) and the rest of this Schedule 13, the rest of this Schedule shall always prevail.

13. SECURITY ARRANGEMENTS

13.1 Both Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security in relation to the Services.

13.2 The Service Provider shall ensure the up-to-date maintenance of a suitable security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Purchaser.

13.3 The Service Provider shall comply with, implement and maintain all security measures (including Cyber Security Requirements):

- (a) as may be required under applicable laws (including the Network and Information Systems Regulations 2018);
- (b) to enable it to discharge its obligations under this Schedule 13; and
- (c) to ensure there are no Breaches of Security including Cyber Security Incidents;

in all cases to the Purchaser's reasonable satisfaction and in accordance with Good Industry Practice.

- 13.4 The Service Provider shall notify the Purchaser promptly of any changes in its ability to meet the requirements of this Schedule 13, including any changes to certifications and accreditations.
- 13.5 [The Service Provider shall assist the Purchaser to comply with any applicable security requirements, codes, policies and practices in connection with the Services and/or this Contract.]

Guidance notes: the Purchaser should consider whether paragraph 13.5 should be included in the Contract.

- 13.6 The Service Provider warrants and undertakes that it shall meet and comply with this Schedule 13 in connection with the provision of the Services and this Contract (including in respect of any certification or accreditation).
- 13.7 The Service Provider shall on demand indemnify the Purchaser and keep the Purchaser indemnified fully against all losses, liabilities, damages, costs and expenses (including legal and other professional fees) which may arise out of, or in consequence of, a breach of the warranty in paragraph 13.6 by the Service Provider or the Service Provider Representatives.

14. SECURITY PLAN

- 14.1 Within twenty (20) Working Days after the Commencement Date, the Service Provider shall prepare and submit to the Purchaser for approval in accordance with paragraph 3.3 a fully developed, complete and up-to-date Security Plan which shall comply with the requirements of paragraph 3.2.
- 14.2 The Security Plan shall:

14.2.1 meet the following requirements:

- (a) [ISO/IEC 27001 and ISO/IEC 27002];
- (b) the Cyber Security Requirements;;
- (c) Schedule 2 (*Specification [and Service Levels]*);
- (d) [set out here any other standard that the Service Provider is required to meet]

[and, where not specifically addressed by (a) to (d) above, ensure that controls are in place to combat common threats as described in the [Cyber Essentials scheme (such as the "5 technical controls").]]

Drafting note: The Purchaser should determine which standards the Service Provider is required to meet and amend paragraph 3.2.1 appropriately. This should be in line with the Purchaser's required Cyber Security Requirements set out in the Annex and/or any requirements set out in Schedule 2.

14.2.2 at all times provide a level of security which:

- (a) is in accordance with Law and this Contract;
- (b) as a minimum demonstrates Good Industry Practice;
- (c) addresses issues of incompatibility with the Service Provider's own organisational security policies;

- (d) meets any specific security threats of immediate relevance to the Services and/or the Purchaser Data;
 - (e) complies with the security requirements as set out in Schedule 2 (*Specification [and Service Levels]*);
 - (f) complies with the Purchaser's IT policies;
 - (g) is in accordance with the Security Policy Framework; and
 - (h) meets the requirements and standards specified at paragraph 14.2.1 of this Schedule 13;
- 14.2.3 document the security incident management processes and incident response plans applicable to the Services;
- 14.2.4 document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Services of any new threat, vulnerability or exploitation technique of which the Service Provider becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Purchaser approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy;
- 14.2.5 identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule is complied with by the Service Provider;
- 14.2.6 detail the process for managing any security risks from Sub-contractors and third parties authorised by the Purchaser with access to the Services, processes associated with the delivery of the Services, the Purchaser Property, the sites used by the Service Provider to deliver the Services, the Service Provider's System, the Purchaser's System (to the extent that it is under the control of the Service Provider) and any IT, information and data (including the Purchaser Confidential Information and the Purchaser Data) and any system that could directly or indirectly have an impact on that information, data and/or the Services;
- 14.2.7 unless otherwise specified by the Purchaser in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Purchaser Property, the sites used by the Service Provider to deliver the Services, the Service Provider's System, the Purchaser's System (to the extent that it is under the control of the Service Provider) and any IT, information and data (including the Purchaser Confidential Information and the Purchaser Data) to the extent used by the Purchaser or the Service Provider in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that information, data and/or the Services;
- 14.2.8 set out the security measures to be implemented and maintained by the Service Provider in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Schedule;
- 14.2.9 demonstrate that the solution has minimised the Purchaser and Service Provider effort required to comply with this Schedule through consideration of available, appropriate and practicable pan-government accredited services (for example, 'platform as a service' offerings from the G-Cloud catalogue);
- 14.2.10 cross reference, if necessary, other Schedules which cover specific areas included within security standards and requirements which the Service Provider is required to meet under this Contract;
- 14.2.11 be written in plain English in language which is readily comprehensible to the staff of the Service Provider and the Purchaser engaged in the Services and shall reference

only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule; and

14.2.12 be in accordance with the Security Policy Framework.

14.3 The Service Provider shall update the Security Plan in accordance with any comments from the Purchaser, and shall review and revise the Security Plan regularly (or as per such other time period as agreed between the Parties) all in accordance with Paragraph 4 (such updates shall incorporate any comments received from the Purchaser).

14.4 The Service Provider shall deliver all Services in accordance with the Security Plan.

15. AMENDMENT AND REVISION OF THE SECURITY PLAN

15.1 The Security Plan shall be fully reviewed and updated by the Service Provider regularly to reflect:

15.1.1 emerging changes in Good Industry Practice;

15.1.2 any change or proposed change to the IT Environment, the Services and/or associated processes;

15.1.3 any new perceived or changed security threats; and

15.1.4 any reasonable change in requirement requested by the Purchaser.

15.2 The Service Provider shall provide the Purchaser with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Purchaser. The results of the review shall include, without limitation:

15.2.1 suggested improvements to the effectiveness of the Security Plan;

15.2.2 updates to the risk assessments;

15.2.3 proposed modifications to respond to events that may impact on the Security Plan including the security incident management process, incident response plans and general procedures and controls that affect information security; and

15.2.4 suggested improvements in measuring the effectiveness of controls.

15.3 Subject to paragraph 4.4, any change which the Service Provider proposes to make to the Security Plan (as a result of a review carried out pursuant to paragraph 4.1, a Purchaser request, a change to Schedule 2 (*Specification [and Service Levels]*), the Cyber Security Requirements or otherwise) shall be subject to the Change Control Procedure and shall not be implemented until approved in writing by the Purchaser.

15.4 The Purchaser may, where it is reasonable to do so, approve and require changes or amendments to the Security Plan to be implemented on timescales faster than set out in the Change Control Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Contract.

16. SECURITY TESTING

16.1 The Service Provider shall: (a) conduct relevant Security Tests from time to time and (b) specifically conduct Security Tests required by the Cyber Security Requirements at such times as set out in the Cyber Security Requirements (and in both cases (a) and (b), not less frequently than annually). Security Tests shall be designed and implemented by the Service Provider so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Purchaser. Subject to compliance by the Service Provider with the foregoing requirements, if any Security Tests adversely affect the Service Provider's ability to deliver the Services so as to meet the Service

Levels, the Service Provider shall be granted relief against any resultant under-performance for the period of the Security Tests.

- 16.2 The Service Provider shall provide the Purchaser with the results of such tests (in a form approved by the Purchaser in advance) as soon as practicable after completion of each Security Test.
- 16.3 Where any Security Test carried out reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Service Provider shall promptly notify the Purchaser of any changes to the Security Plan (and the implementation thereof) which the Service Provider proposes to make in order to correct such failure or weakness. Subject to the Purchaser's prior written approval, the Service Provider shall implement such changes to the Security Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Purchaser or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan is to address a non-compliance with the security requirements (as set out in Schedule 2 (*Specification [and Service Levels]* and/or elsewhere in the Contract)) or the requirements of this Schedule, the change to the Security Plan shall be at no cost to the Purchaser.
- 16.4 If any repeat Security Test carried out pursuant to paragraph 5.3 reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall be deemed to constitute a material Default that is capable of remedy. It shall also be deemed to be a Delay for the purposes of clause 24.3 (*Rectification Plan*) and be dealt with accordingly in terms of clause 24.3 (*Rectification Plan*).

17. SECURITY PLAN COMPLIANCE, INFORMATION AND AUDIT

- 17.1 Promptly upon request, the Service Provider shall provide to the Purchaser such information and records in connection with the Service Provider's obligations under this Schedule 13 as the Purchaser may request.
- 17.2 The Purchaser shall be entitled to carry out such security audits as it may reasonably deem necessary in order to:
- 17.2.1 ensure that the Security Plan maintains compliance with the requirements and standards set out at paragraph 14.2 (*Security Plan*) of this Schedule 13 and the Baseline Security Requirements;
- 17.2.2 ascertain the impact of any Breach of Security;
- 17.2.3 review and verify the integrity, confidentiality and security of any data relating to this Contract; and/or
- 17.2.4 review the Service Provider's and/or any Sub-contractor's compliance with its obligations under this Schedule 13.
- 17.3 The Service Provider shall (and shall ensure that any Sub-contractor shall) provide the Purchaser, its agents and representatives with all reasonable co-operation and assistance in relation to audits, including but not limited to:
- 17.3.1 all data and/or records requested by the Purchaser;
- 17.3.2 access to any relevant premises and to any equipment owned/controlled by the Service Provider, any associated or group company and any Sub-contractor and, where such premises and/or equipment are outwith the control of the Service Provider, shall secure sufficient rights of access for the Purchaser, its agents and representatives as are necessary to allow audits to take place; and
- 17.3.3 access to any relevant individuals.

<p>Guidance notes: The Service Provider may not be able to facilitate an audit of its sub-contractors in all cases, (for example, this may not be possible if the contractor is using some major public cloud</p>
--

providers). In such circumstances, the Purchaser should consider carefully its requirements with regard to assurance.

- 17.4 If, on the basis of evidence provided by such audits, it is the Purchaser's reasonable opinion that compliance with the security requirements of this Schedule 13 and the rest of the Contract and/or the Baseline Security Requirements is not being achieved by the Service Provider, then the Purchaser shall notify the Service Provider of the same and give the Service Provider a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement any necessary remedy. If the Service Provider does not become compliant within the required time then the Purchaser shall have the right to obtain an independent audit against these requirements and standards in whole or in part.
- 17.5 If, as a result of any such independent audit as described in paragraph 6.2 the Service Provider is found to be non-compliant with the security requirements of this Schedule 13 and/or the rest of the Contract and/or the Baseline Security Requirements, then the Service Provider shall, at its own expense, immediately undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Purchaser in obtaining such audit.

18. BREACH OF SECURITY

- 18.1 Each Party shall promptly notify the other in accordance with the agreed security incident management process as defined by the Security Plan upon becoming aware that a Breach of Security or attempted or potential Breach of Security has or may have taken place.
- 18.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 18, the Service Provider shall:
- 18.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Purchaser) necessary to:
- (a) minimise the extent of actual or potential harm caused by any Breach of Security;
 - (b) remedy such Breach of Security to the extent possible and protect the integrity of the Purchaser's System and the Service Provider's System to the extent within its control against any such Breach of Security or attempted or potential Breach of Security and provide the Purchaser details of any mitigation measures recommended by the Service Provider to be taken by the Purchaser in respect of the Purchaser's System within the control of the Purchaser;
 - (c) apply a tested mitigation against any such Breach of Security or attempted or potential Breach of Security and, provided that reasonable testing has been undertaken by the Service Provider, if the mitigation adversely affects the Service Provider's ability to deliver the Services so as to meet the Service Levels (if applicable), the Service Provider shall be granted relief against any resultant under-performance for such period as the Purchaser, acting reasonably, may specify by written notice to the Service Provider;
 - (d) prevent a further Breach of Security or attempted or potential Breach of Security in the future exploiting the same root cause failure; and
 - (e) supply any requested data to the Purchaser within two (2) Working Days of the Purchaser's request and without charge (where such requests are reasonably related to a possible incident or compromise); and
- 18.2.2 investigate the Breach of Security or attempted or potential Breach of Security completely and promptly and as soon as reasonably practicable provide to the

Purchaser full details (using the reporting mechanism defined by the Security Plan) of the Breach of Security or attempted or potential Breach of Security, including a root cause analysis where required by the Purchaser.

- 18.3 If any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Plan with the Baseline Security Standards or the requirements of this Schedule, then any required change to the Security Plan shall be at no cost to the Purchaser.
- 18.4 Following any of the circumstances referred to in paragraph 18, the Service Provider shall:
- (a) where required to do so, inform any applicable regulator of the Breach of Security or attempted or potential Breach of Security; and
 - (b) take any action deemed necessary by the Purchaser in the circumstances, including complying with any additional security measures deemed appropriate by the Purchaser.

19. VULNERABILITES AND CORRECTIVE ACTION

- 19.1 The Purchaser and the Service Provider acknowledge that from time to time vulnerabilities in the Purchaser's System, the Service Provider's System and the Services will be discovered which unless mitigated will present an unacceptable risk to the Purchaser's information, including Purchaser Data.
- 19.2 The severity of threat vulnerabilities for the Services shall be categorised by using an appropriate vulnerability scoring systems including:
- 19.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST <http://nvd.nist.gov/cvss.cfm>); and/or
 - 19.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.
- 19.3 The Service Provider shall ensure the application of security patches to vulnerabilities in a timely and prioritised manner.
- 19.4 The Service Provider shall ensure all COTS Software is upgraded within six (6) months of the release of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the 'n-1 version') throughout the Term.
- 19.5 The Service Provider shall:
- 19.5.1 implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Government Body;
 - 19.5.2 ensure that the Purchaser's System and the Service Provider's System (to the extent within the control of the Service Provider) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise and in compliance with the Cyber Security Requirements;
 - 19.5.3 ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the Purchaser's System, the Service Provider's System and the Services by actively monitoring the threat landscape during the Term and in compliance with relevant Cyber Security Requirements;
 - 19.5.4 pro-actively scan the Purchaser's System and the Service Provider's System (to the extent within the control of the Service Provider) for vulnerable components and address discovered vulnerabilities through the processes described in the Security Plan as

developed under paragraph 3.2.1 and in compliance with relevant Cyber Security Requirements;

- 19.5.5 from the date specified in the Security Plan (and before the first Operational Service Commencement Date) provide a report to the Purchaser within five (5) Working Days of the end of each month detailing both patched and outstanding vulnerabilities in the Purchaser's System and the Service Provider's System (to the extent within the control of the Service Provider) and any elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;
 - 19.5.6 propose interim mitigation measures to vulnerabilities in the Purchaser's System, and the Service Provider's System known to be exploitable where a security patch is not immediately available, in compliance with relevant Cyber Security Requirements;
 - 19.5.7 remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Purchaser's System and the Service Provider's System) in compliance with relevant Cyber Security Requirements; and
 - 19.5.8 inform the Purchaser when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the Services, the Purchaser's System and the Service Provider's System and provide initial indications of possible mitigations.
- 19.6 If the Service Provider is unlikely to be able to mitigate the vulnerability within a timely manner under paragraph 8, the Service Provider shall immediately notify the Purchaser.

20. BREACH OF SECURITY REQUIREMENTS

- 20.1 A breach of this Schedule 13 by the Service Provider is a material breach for the purposes of clause 64.1.3 (*Termination Rights*).
- 20.2 If the Service Provider fails to comply with the provisions of this Schedule 13, the Purchaser may take any action it considers appropriate or necessary (and the Service Provider shall comply with the Purchaser's requests in this respect), including:
- (a) suspending the whole or any part of the Service Provider's obligations under this Contract;
 - (b) requiring that specific Sub-contractors connected with such breach be removed from their involvement with the Services and this Contract and cease to have any access to the Purchaser's Protected Information and any Personal Data Processed in connection with the Services under this Contract;
 - (c) requesting the Service Provider return and/or arrange the evidenced secure and permanent destruction of the Purchaser's Protected Information and any Personal Data Processed in connection with the Services under this Contract; and
 - (d) implementing additional or alternative measures, both technical and organisational, to protect and secure the Purchaser's Protected Information and any Personal Data Processed in connection with the Services under this Contract.

ANNEX

CYBER SECURITY REQUIREMENTS

The cyber security requirements applicable to this Contract are set out in this Annex. Section A (*Cyber Security Requirements*) includes the Purchaser’s requirements in connection with cyber security [and Section B (*Cyber Implementation Plan*) sets out further details on how the Service Provider will meet such requirements].

Guidance notes: The Purchaser should retain the reference to Section B above if:

- the Cyber Security Procurement Support Tool (CSPST) has been used in connection with this Contract; and
- the Service Provider and the Purchaser have agreed a Cyber Implementation Plan in conjunction with the SAQ report generated by the CSPST.

Section A: Cyber Security Requirements

Overview of requirements:

[Cyber risk profile	<ul style="list-style-type: none"> • [Low]
[Additional questions for management of specific cyber risks covering:]	<ul style="list-style-type: none"> • [Cloud security] • [Personal data security] • [Governance] • [Etc.]
[Certification requested for assurance purposes]	<ul style="list-style-type: none"> • [Cyber Essentials or equivalent] • [Cyber Essentials Plus or equivalent] • [IASME Gold or equivalent] • [ISO27001 or equivalent]
[Supporting evidence required]	<ul style="list-style-type: none"> • [Insert details of any supporting evidence required]
[Purchaser’s risk management approach]	<ul style="list-style-type: none"> • [Strict pass/fail] • [Cyber Implementation Plans accepted]

Guidance notes: If the CSPST is used, insert information in the above table that summarises the Purchaser’s cyber security requirements. Cyber security requirements set out in this Annex should not deviate from the requirements set out in any part of the tender documentation. An example is provided above. The Purchaser should check and amend fields and entries to fit its Contract.

The Service Provider shall meet the following requirements:

Guidance notes: If the CSPST is used, the Purchaser’s requirements from CSPST require to be incorporated into this Contract. Two options to achieve this include the following:

- OPTION 1: Either cut and paste or append the full “SAQ Responses” section of the Service Provider’s SAQ Report, which sets out all questions asked of bidding suppliers in the CSPST SAQ (i.e. the Purchaser’s requirements), and the Service Provider’s responses. Please also include details of subsequent clarifications with the Service Provider, if applicable.
- OPTION 2: provide the following information (as set out in the table below) from the CSPST.

The Purchaser should choose the option appropriate to this Contract, Option 1 being preferable from the point of view of clarity. In case of Option 2, the Purchaser should retain records of its requirements and the Service Provider’s responses. The Purchaser should also retain all metadata / other information (such as e-mail alerts) generated by CSPST relating to completion of SAQs by it and the relevant Service Provider.

The cyber security requirements for this Contract, and the Service Provider's responses, are set out in the Cyber Security Procurement Support Tool under the following reference number:	<ul style="list-style-type: none"> • [Insert reference number for contract]
Time that the Service Provider submitted its responses to the above cyber security requirements via CSPST:	<ul style="list-style-type: none"> • [Insert the time and date at which the Service Provider submitted its response to the SAQ via CSPST]
Details of any subsequent clarifications:	<ul style="list-style-type: none"> • [Insert details of any subsequent clarifications]

Guidance notes: If CSPST is NOT used, the Purchaser should insert applicable cyber security requirements here. This may include extracting / making reference to relevant parts of the Specification/Statement of Requirements. Cyber security requirements set out in this Annex should not deviate from the requirements set out in any part of the tender documentation.

Section B: Cyber Implementation Plan

Guidance notes: If CSPST is being used, and a Cyber Implementation Plan has been submitted by the Service Provider and agreed by the Purchaser, the Purchaser should include this section B and the text below (if not, this section B may be deleted). Ensure that the date or contract phase is amended to align with the requirements communicated in the Tender's Specification/Statement of Requirements and the CSPST.

The Purchaser should insert below the frequency of review of the Cyber Implementation Plan with the Service Provider. This should match any frequency indicated in the tender documentation.

The Service Provider shall follow the agreed Cyber Implementation Plan to meet the requirements of Section A by no later than the date(s) set out in the Cyber Implementation Plan. The parties shall review the Service Provider's progress on the Cyber Implementation Plan regularly every [4 weeks.] If the Service Provider fails to meet the commitments set out in the Cyber Implementation Plan, this shall be considered to be a material breach of this Contract for the purposes of paragraph 20.1 (*Breach of Cyber Security Requirements*) of this Schedule 13.

Guidance notes: Insert or append the agreed Cyber Implementation Plan below.

CYBER IMPLEMENTATION PLAN – TEMPLATE FORM

CYBER IMPLEMENTATION PLAN	
CONTRACT DETAILS	
1. Contract title	
2. Contract number	
3. Unique CSPST Cyber Risk Assessment Reference number	
4. CSPST Cyber Risk Profile	
5. Name of supplier, and details of authorised officer completing this CIP	
PROPOSED APPROACH TO AREAS WHERE MINIMUM BENCHMARK REQUIREMENTS ARE NOT CURRENTLY MET	
<p>6. Using the feedback from the CSPST SAQ Report, please provide:</p> <p>(i) details of areas where your organisation does <u>not</u> currently meet the benchmark minimum requirements for this contract; and</p> <p>(ii) for each such area identified, details of the actions you intend to take to achieve the minimum benchmark requirements, OR the alternative mitigations or controls you have in place, OR your reasoning as to why compliance with the minimum benchmark requirements is not necessary for this contract.</p>	

Details of minimum benchmark requirements not currently met <i>Please refer to the feedback in your CSPST SAQ Report in order to complete this section.</i>	Service Provider's alternative mitigations (effective from contract commencement)	Service Provider's reasoning as to why compliance is unnecessary for this contract.	Service Provider's proposed further action (to be implemented during the contract)	By which date(s) do you undertake to have implemented such further action?
<i>[Insert details here]</i>				
<i>[Delete this row if not required]</i>				
<i>[Delete this row if not required]</i>				
<i>[Delete this row if not required]</i>				
Purchaser Authorisation				
[For Purchaser only] In your assessment, does the information provided by the supplier provide sufficient assurance that the cyber risks associated with this contract will be appropriately mitigated?				

Does the Purchaser accept any cyber risks associated with appointment of the supplier if successful?	
Have you recorded your decision on acceptance of this CIP and any associated risks on CSPST?	
Name, Position and Date	

CYBER IMPLEMENTATION PLAN – EXAMPLE OF COMPLETED TEMPLATE

Drafting note: This is example is for the Purchaser's reference only and should be deleted.

CYBER IMPLEMENTATION PLAN	
CONTRACT DETAILS	
1. Contract title	Cyber Awareness Campaign Materials
2. Contract number	SG12345
3. Unique CSPST Cyber Risk Assessment Reference number	CSPST RA54321
4. CSPST Cyber Risk Profile	Low
5. Name of supplier, and details of authorised officer completing this CIP	<p><u>Organisation</u> ACME Cyber Wow Impact Campaigns</p> <p><u>Authorised officer name, position and contact details</u> Name: J Smith Position: Head of Information Technology Tel: 0131 XXX XXXX Email: jsmith@acmecyberwowimpactcampaigns547</p>

PROPOSED APPROACH TO AREAS WHERE MINIMUM BENCHMARK REQUIREMENTS ARE NOT CURRENTLY MET

6. Using the feedback from the CSPST SAQ Report, please provide:

(i) details of areas where your organisation does not currently meet the benchmark minimum requirements for this contract; and

(ii) for each such area identified, details of the actions you intend to take to achieve the minimum benchmark requirements, OR the alternative mitigations or controls you have in place, OR your reasoning as to why compliance with the minimum benchmark requirements is not necessary for this contract.

Details of minimum benchmark requirements not currently met <i>Please refer to the feedback in your CSPST SAQ Report in order to complete this section.</i>	Service Provider's alternative mitigations (effective from contract commencement)	Service Provider's reasoning as to why compliance is unnecessary for this contract.	Service Provider's proposed further action (to be implemented during the contract)	By which date(s) do you undertake to have implemented such further action?
Cyber Essentials Certification has been requested by the Purchaser but is not currently held.	<p>Acme Cyber Wow Impact Campaigns enforces the controls required under Cyber Essentials through compliance with ISO27001 and the firm's governance of Cyber Risk Management. Details of our approach are set out here:</p> <p>1. Boundary firewalls and internet gateways: The relevant ISO27001 controls are as follows:</p> <ul style="list-style-type: none"> • Network controls: Networks shall be adequately managed and controlled, in order to be protected from threats, and to maintain security for the systems and applications using the network, including information in transit. • Security of network services: Control Security features, service levels, and management requirements of all network services shall be identified and included in any network services agreement, whether these services are provided in-house or outsourced. 	N/a	N/a	While we believe the controls we have set out above mean that we currently effectively meet the requirements of the Cyber Essentials standard, to demonstrate our commitment to meeting the

	<p>Comment: The network upon which Scottish Public Services Information will be processed has boundary firewalls and Internet gateways which are managed by a third party. Regular audits check the state of these devices and an annual penetration test informs the vulnerability management process. Our third party supplier is responsible for software and hardware updates and these are routinely reviewed at the IT Security Working Group reporting up to the Executive Committee via the Head of IT.</p> <p>2. Secure configuration: The relevant ISO27001 controls are as follows:</p> <p>Network access control - Objective: To prevent unauthorized access to networked services.</p> <ol style="list-style-type: none"> 1. User authentication for external connections: Appropriate authentication methods shall be used to control access by remote users. 2. Equipment identification in networks: Automatic equipment identification shall be considered as a means to authenticate connections from specific locations and equipment. 3. Remote diagnostic and configuration port protection: Physical and logical access to diagnostic and configuration ports shall be controlled. 4. Segregation in networks: Groups of information services, users, and information systems shall be segregated on networks. 5. Network connection control: For shared networks, especially those extending across the organization's boundaries, the capability of users to connect to the network shall be restricted, in line with the access control policy and requirements of the business applications. 6. Network routing control: Routing controls shall be implemented for networks to ensure that computer connections and information flows do not breach the access control policy of the business applications. 7. Change control procedures: The implementation of changes shall be controlled by the use of formal change control procedures. 			<p>requirements of the Scottish public sector we intend to achieve Cyber Essentials certification by the end of the financial year.</p>
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	<p>Comment: The network upon which Scottish Public Services Information will be processed is configured in such a way as to ensure easy management and oversight. The relevant controls from ISO27001 are shown above, and these are included in the Information Security Management System which mandates routine checks of use of the network and boundary configuration. A Network Manager is employed within the IT department to ensure these controls are enforced. Furthermore, changes to the network are scheduled through the Change Advisory Board which has a security representative as a standing member.</p> <p>3. Access control: The relevant ISO27001 controls are as follows:</p> <ol style="list-style-type: none"> 1. Segregation of duties: Duties and areas of responsibility shall be segregated to reduce opportunities for unauthorized or unintentional modification or misuse of the organisation's assets. 2. User access management: To ensure authorised user access and to prevent unauthorised access to information systems. 3. User registration: There shall be a formal user registration and deregistration procedure in place for granting and revoking access to all information systems and services. 4. Privilege management: The allocation and use of privileges shall be restricted and controlled. 5. Review of user access rights: Management shall review users' access rights at regular intervals using a formal process. <p>Network access control: Objective: To prevent unauthorized access to networked services.</p> <ol style="list-style-type: none"> 1. Policy on use of network services: Users shall only be provided with access to the services that they have been specifically authorized to use. <p>Monitoring: Objective: To detect unauthorised information processing activities.</p> <ol style="list-style-type: none"> 2. Audit logging: Audit logs recording user activities, exceptions, and information security events shall be produced and kept for an 			
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	<p>agreed period to assist in future investigations and access control monitoring.</p> <p>3. Monitoring system use: Procedures for monitoring use of information processing facilities shall be established and the results of the monitoring activities reviewed regularly.</p> <p>Comment: The network upon which Scottish Public Services Information will be processed is configured in such a way as to ensure appropriate access permissions. The relevant controls from ISO27001 are shown above, and these are included in the Information Security Management System. The HR team also informs IT Admin of new joiners, those who have left and any changes in role which may affect user access.</p> <p>4. Malware protection: The relevant ISO27001 controls are as follows:</p> <p>Protection against malicious and mobile code – objective: To protect the integrity of software and information.</p> <ul style="list-style-type: none"> • Controls against malicious code: Detection, prevention, and recovery controls to protect against malicious code and appropriate user awareness procedures shall be implemented. <p>Security of system files – objective: To ensure the security of system files.</p> <ul style="list-style-type: none"> • Control of operational software: There shall be procedures in place to control the installation of software on operational systems. <p>Comment: The network upon which Scottish Public Services Information will be processed is managed in such a way as to ensure appropriate updates are installed in a reasonable timeframe. The relevant controls from ISO27001 are shown above, and these are included in the Information Security Management System. In addition, Cyber Wow Impact Campaigns uses a third party, PhishThem, to conduct quarterly Phishing tests, the results of which are reported to the Executive Committee. This is evidence of our commitment to ongoing education and employee awareness of developing threats.</p>			
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	<p>5. Patch management:</p> <p>Comment: The network upon which Scottish Public Services Information will be processed is managed in such a way as to ensure appropriate updates are installed in a reasonable timeframe. A software tool is employed by the IT Department to routinely scan the applications in use and to report on outdated and malicious software. An application inventory is held by the IT Department. Patch Management is a standing agenda item on the Change Advisory Board.</p>			
Purchaser Authorisation				
<p>[For Purchaser only] In your assessment, does the information provided by the supplier provide sufficient assurance that the cyber risks associated with this contract will be appropriately mitigated?</p>	Yes.			
<p>Does the Purchaser accept any cyber risks associated with appointment of the supplier if successful?</p>	Yes.			
<p>Have you recorded your decision on acceptance of this CIP and any associated risks on CSPST?</p>	Yes.			
<p>Name, Position and Date</p>	<p>J Bloggs, Senior Information Risk Adviser, Scottish Public Authority 23/12/2018</p>			

23. THIRD PARTY SOFTWARE

The Third Party Software shall include the following items:

Third Party Software	Service Provider	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS/ Non-COTS)

**THIS SCHEDULE COMPRISES SCHEDULE 15 TO THE FOREGOING SERVICES CONTRACT
BETWEEN [THE SCOTTISH MINISTERS ACTING THROUGH [] [AMEND AS APPROPRIATE]]
AND [NAME OF SERVICE PROVIDER]**

**SCHEDULE 15
IMPLEMENTATION PLAN**

24. INTRODUCTION

24.1 This 0 (*Implementation Plan*):

24.1.1 defines the process for the preparation and implementation of the Outline Implementation Plan and Detailed Implementation Plan; and

24.1.2 identifies the Milestones (and associated Deliverables) including the Milestones which trigger payment to the Service Provider of the applicable Milestone Payments following the issue of the applicable Milestone Achievement Certificate.

25. IMPLEMENTATION PERIOD

During the Implementation Period, the Service Provider shall provide the Implementation Services in accordance with the Implementation Plan to ensure the Services will be fully functional in order that the Operational Services will be ready to commence on the Operational Services Commencement Date.

26. OUTLINE IMPLEMENTATION PLAN

The Outline Implementation Plan is set out in Annex 1. All changes to the Outline Implementation Plan shall be subject to the Change Control Procedure provided that the Service Provider shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with clause 26 (*Purchaser Cause*)).

27. APPROVAL OF THE DETAILED IMPLEMENTATION PLAN

27.1 The Parties acknowledge the importance of detailed planning for the implementation of all of the Services under this Contract and the need to develop the Detailed Implementation Plan in accordance with this Schedule.

27.2 The Service Provider shall submit a draft of the Detailed Implementation Plan to the Purchaser for approval within twenty (20) Working Days of the Commencement Date.

27.3 The Service Provider shall ensure that the draft Detailed Implementation Plan:

27.3.1 incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;

27.3.2 includes (as a minimum) the Service Provider's proposed timescales in respect of the following for each of the Milestones:

- (a) the completion of each design document (where appropriate);
- (b) the completion of the build phase (where appropriate);
- (c) the completion of any Testing to be undertaken in accordance with 0 (*Testing Procedures*); and
- (d) the completion of training, support material and roll-out activities
- (e) clearly outlines all the steps required to implement the Milestones to be Achieved in the Implementation Period, together with a high level plan for the rest of the Services, in conformity with the Specification;

- (f) clearly outlines the required roles and responsibilities of both Parties, including staffing requirements and channels for communication including review meetings (attendees, frequency and proposed agenda items);
 - (g) clearly outlines the required roles and responsibilities of third parties; and
 - (h) is produced using a software tool as specified, or agreed by the Purchaser.
- 27.4 Prior to the submission of the draft Detailed Implementation Plan to the Purchaser in accordance with paragraph 27.2, the Purchaser shall have the right:
 - 27.4.1 to review any documentation produced by the Service Provider in relation to the development of the Detailed Implementation Plan, including:
 - (a) details of the Service Provider's intended approach to the Detailed Implementation Plan and its development;
 - (b) copies of any drafts of the Detailed Implementation Plan produced by the Service Provider; and
 - (c) any other work in progress in relation to the Detailed Implementation Plan; and
 - (d) to require the Service Provider to include any reasonable changes or provisions in the Detailed Implementation Plan.
- 27.5 Following receipt of the draft Detailed Implementation Plan from the Service Provider, the Purchaser shall:
 - 27.5.1 review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
 - 27.5.2 notify the Service Provider in writing that it approves or rejects the draft Detailed Implementation Plan no later than ten (10) Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Purchaser.
- 27.6 If the Purchaser rejects the draft Detailed Implementation Plan:
 - 27.6.1 the Purchaser shall inform the Service Provider in writing of its reasons for its rejection; and
 - 27.6.2 the Service Provider shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Purchaser's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Purchaser for Purchaser approval within ten (10) Working Days of the date of the Purchaser's notice of rejection. The provisions of paragraph 27.5 and this paragraph 27.6 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution in accordance with the procedure outlined in clause 61 (*Dispute Resolution*).
- 27.7 If the Purchaser approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of the Purchaser's notice of approval.

28. UPDATES TO AND MAINTENANCE OF THE DETAILED IMPLEMENTATION PLAN

- 28.1 Following the approval of the Detailed Implementation Plan by the Purchaser:
 - 28.1.1 the Service Provider shall submit a revised Detailed Implementation Plan to the Purchaser every two (2) months starting one (1) month from the Purchaser's approval of the Detailed Implementation Plan in accordance with paragraph 27.7;
 - 28.1.2 without prejudice to paragraph 28.1.1, the Purchaser shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the Service Provider and the Service Provider shall submit a draft revised Detailed Implementation

Plan to the Purchaser within ten (10) Working Days of receiving such a request from the Purchaser (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the dispute resolution procedure set out in clause 61 (*Dispute Resolution*));

- 28.1.3 any revised Detailed Implementation Plan shall (subject to paragraph 28.2) be submitted by the Service Provider for approval in accordance with the procedure set out in paragraph 27; and
 - 28.1.4 the Service Provider's performance against the Implementation Plan shall be monitored at Implementation Meetings (as defined in the Implementation Plan). In preparation for such meetings, the current Detailed Implementation Plan shall be provided by the Service Provider to the Purchaser not less than five (5) Working Days in advance of each Implementation Meeting.
- 28.2 Save for any amendments which are of a type identified and notified by the Purchaser (at the Purchaser's discretion) to the Service Provider in writing as not requiring approval, any material amendments to the Detailed Implementation Plan shall be subject to the Change Control Procedure provided that:
- 28.2.1 any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and
 - 28.2.2 in no circumstances shall the Service Provider be entitled to alter any Milestone Date except in accordance with clause 26 (*Purchaser Cause*).
- 28.3 Any proposed amendments to the Detailed Implementation Plan shall not come into force until they have been approved in writing by the Purchaser.

29. DELAYS

The terms of clause 24.3 (*Rectification Plan*) shall apply in respect of any Delay.

Annex 1: Outline Implementation Plan

This Annex 1 sets out the Purchaser's high level Milestones for the Services. However, all Deliverables will be agreed between both Parties by the Commencement Date.

Milestone	ATP Milestone / CPP Milestone	Deliverables	Duration (<i>Working Days</i>)	Latest Milestone Date	Purchaser Responsibilities (<i>if applicable</i>)
Concept Design		[Statement of Requirements System/Application Specifications Interface Specifications Systems Testing Strategy Implementation Strategy and Plan Risk and Issues Management Plan Outline Disaster Recovery Plan Project Schedule Service Management Plan]			
Full Development		[Design Verification Reports Design Validation Reports Change Management Plan System/Application Implementation Plan Risk and Issues Management Project Schedule Service Management Plan]			
System User Testing		System Test Report Risk and Issues Management Plan Project Schedule Service Management Plan Defects Log Final Inspection and Testing Report			
User Readiness for Service		Training Plan Risk and Issues Log Implementation Plan Operations Plan Data Conversion & Cutover Plan Project Schedule Service Management Plan			
Implementation		Implementation Plan Training Scripts			
In Service Support		Post Implementation Report Data Conversion and Cut-Over Plan Service Delivery Reports Risk and Issues Log Service Management Plan Defects Log			

**THIS SCHEDULE COMPRISES SCHEDULE 16 TO THE FOREGOING SERVICES CONTRACT
BETWEEN [THE SCOTTISH MINISTERS ACTING THROUGH [] [AMEND AS APPROPRIATE]]
AND [NAME OF SERVICE PROVIDER]**

**SCHEDULE 16
TESTING PROCEDURES**

Guidance note: The separate Guidance on the Model ICT Services Contract contains more detailed commentary on 0 (*Testing Procedures*). If this Schedule does not reflect how testing will be carried out in practice, the Purchaser should amend as required.

30. INTRODUCTION

- 30.1 This Schedule sets out the approach to Testing and the different Testing activities to be undertaken, including the preparation and agreement of the Test Success Criteria, Test Strategy, Test Plans and Test Specifications.
- 30.2 The Purchaser will issue a Test Certificate when a Deliverable satisfies the Test Success Criteria for the Tests related to that Deliverable. The Purchaser will grant a Milestone Achievement Certificate when all Tests relating to a Milestone have been completed and, subject to clause 24.3 (*Rectification Plan*), the Purchaser has issued Test Certificates in respect of all of the Tests relating to that Milestone.

31. RISK

- 31.1 The issue of a Test Certificate, a Milestone Achievement Certificate and/or a conditional Milestone Achievement Certificate shall not:
- 31.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Purchaser's requirements for that Deliverable or Milestone; or
 - 31.1.2 affect the Purchaser's right subsequently to reject:
 - (a) all or any element of the Deliverables to which a Test Certificate relates; or
 - (b) any Milestone to which the Milestone Achievement Certificate relates.
- 31.2 Notwithstanding the issuing of any Test Certificate, Milestone Achievement Certificate, and/or conditional Milestone Achievement Certificate (including the Milestone Achievement Certificate in respect of Authority to Proceed), the Service Provider shall remain solely responsible for ensuring that:
- 31.2.1 the Services meet the requirements of this Contract;
 - 31.2.2 the Services are implemented in accordance with this Contract; and
 - 31.2.3 each Service Level is met from the relevant Operational Service Commencement Date.

32. TESTING OVERVIEW

- 32.1 All Tests conducted by the Service Provider shall be conducted in accordance with the Test Strategy, the Test Plans and the Test Specifications.
- 32.2 The Service Provider shall not submit any Deliverable for Testing:
- 32.2.1 unless the Service Provider is confident that it will satisfy the relevant Test Success Criteria;
 - 32.2.2 until the Purchaser has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and

- 32.2.3 until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).
- 32.3 The Service Provider shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan, or for any post implementation deployments, for the commencement of Testing in respect of the relevant Deliverable.
- 32.4 Prior to the start of testing, both during the Implementation Period and during the Term, the Service Provider must provide the Purchaser with demonstrations/walkthroughs of the main functionality contained in each Deliverable.
- 32.5 Prior to the issue of a Test Certificate, the Purchaser shall be entitled to review the relevant Test Reports and the Test Issue Management Log.
- 32.6 The provisions of clause 22 (*Deliverables and Milestones*), clause 24 (*Implementation*) including 24.3 and 24.4 (*Rectification Plan*) and 24.5 (*Testing and Achievement of Milestones*) and clause 26 (*Purchaser Cause*), shall apply to Testing.
- 32.7 Any disputes between the Purchaser and the Service Provider regarding Testing shall be referred to clause 61 (*Dispute Resolution*).
- 32.8 The Purchaser shall issue Test Certificates and grant Milestone Achievement Certificates without unreasonable delay.

33. TEST STRATEGY

- 33.1 The Service Provider shall develop the final Test Strategy as soon as practicable after the Commencement Date but in any case no later than twenty (20) Working Days (or such other period as the Parties may agree in writing) after the Commencement Date.
- 33.2 The final Test Strategy shall include:
- 33.2.1 an overview of how Testing will be conducted in accordance with the Implementation Plan and in relation to the release of any additional software updates during the Term;
 - 33.2.2 the type of testing to be conducted, which will be based on the nature of the deliverable being tested, e.g. Integration, Regression, Performance, Functional and Non-functional testing;
 - 33.2.3 possible approaches to ensure full end to end testing;
 - 33.2.4 system provider and third party suppliers, where appropriate;
 - 33.2.5 test automation software, tools and procedures;
 - 33.2.6 the procedure for the Purchaser to develop acceptance tests to be signed off by both the Service Provider and the Purchaser, as required;
 - 33.2.7 the Purchaser to execute the agreed acceptance tests;
 - 33.2.8 the process to be used to capture and record Test results and the categorisation of Test Issues;
 - 33.2.9 the method for mapping the expected Test results to the Test Success Criteria;
 - 33.2.10 the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, to include the method used to raise, view and track defects during testing;
 - 33.2.11 the procedure for the resolution of Test Issues;
 - 33.2.12 the procedure to be followed to sign off each Test;

33.2.13 the process for the production and maintenance of Test Reports and reporting, including templates for the Test Reports and the Test Issue Management Log, and a sample plan for the resolution of Test Issues;

33.2.14 the names and contact details of the Purchaser's and the Service Provider's Test representatives;

33.2.15 a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and Purchaser and/or third party involvement in the conduct of the Tests;

33.2.16 the technical environment required to support the Tests; and

33.2.17 the procedure for managing the configuration of the Test environments.

34. TEST PLANS

34.1 The Service Provider shall develop Test Plans and submit these for the approval of the Purchaser as soon as practicable but in any case no later than twenty (20) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start date for the relevant Testing (as specified in the Implementation Plan).

34.2 The Purchaser shall define any additional Tests to be included in the Test Plan for the approval of the Service Provider, such approval not to be unreasonably withheld or delayed.

34.3 Each Test Plan shall include as a minimum:

34.3.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being tested and, for each Test, the specific Test Success Criteria (agreed by both Parties) to be satisfied;

34.3.2 a detailed procedure for the Tests to be carried out, including:

- (a) the timetable for the Tests, including start and end dates;
- (b) the Testing mechanism, including relevant tools and techniques being used;
- (c) dates and methods by which the Purchaser can execute its own Tests (where relevant), inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;
- (d) the mechanism for ensuring the quality, completeness and relevance of the Tests;
- (e) the format and an example of Test progress reports and the process with which the Purchaser accesses daily Test schedules;
- (f) the process which the Purchaser will use to review Test Issues and the Service Provider's progress in resolving these in a timely basis;
- (g) the Test schedule; and
- (h) the re-Test procedure, the timetable and the resources which would be required for re-Testing;

34.3.3 the process for escalating Test Issues from a re-test situation to the taking of specific remedial action to resolve the Test Issue.

34.4 The Purchaser shall not unreasonably withhold or delay its approval of the Test Plans provided that the Service Provider shall incorporate any reasonable requirements of the Purchaser in the Test Plans.

35. TEST SUCCESS CRITERIA

- 35.1 The Test Success Criteria for the Milestone Achievement Certificates have been agreed by the Parties prior to the Commencement Date and are set out in Annex 4 to this Schedule.
- 35.2 For each phase of the Implementation Period, the Test Success Criteria for:
 - 35.2.1 each Test that the Service Provider must Achieve for the ATP Milestone or a Contract Performance Point (“**CPP**”) Milestone, are set out in Annex 4; and
 - 35.2.2 all other Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to paragraph 5.

36. TEST SPECIFICATION

- 36.1 Following approval of a Test Plan, the Service Provider shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least ten (10) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start of the relevant Testing (as specified in the Implementation Plan).
- 36.2 Each Test Specification shall include as a minimum:
 - 36.2.1 a mechanism for tracking traceability of Tests being conducted to requirements;
 - 36.2.2 the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Purchaser and the extent to which it is equivalent to live operational data;
 - 36.2.3 a plan to make the resources available for Testing;
 - 36.2.4 Test scripts;
 - 36.2.5 Test pre-requisites and the mechanism for measuring them; and
 - 36.2.6 expected Test results, including:
 - (a) a mechanism to be used to capture and record Test results; and
 - (b) a method to process the Test results to establish their content.

37. TESTING

- 37.1 Before submitting any Deliverables for Testing the Service Provider shall subject the relevant Deliverables to its own internal quality control measures.
- 37.2 The Service Provider shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with paragraph 10.
- 37.3 The Service Provider shall notify the Purchaser at least ten (10) Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Tests and the Purchaser shall ensure that the Test Witnesses attend the Tests, except where the Purchaser has specified in writing that such attendance is not necessary.
- 37.4 The Purchaser may raise and close Test Issues during the Test witnessing process.
- 37.5 The Service Provider shall provide to the Purchaser in relation to each Test:
 - (a) a draft Test Report not less than two (2) Working Days (or such other period as the Parties may agree in writing) prior to the date on which the Test is planned to end; and
 - (b) the final Test Report within five (5) Working Days (or such other period as the Parties may agree in writing) of completion of Testing.

- 37.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
- 37.6.1 an overview of the Testing conducted;
 - 37.6.2 identification of the relevant Test Success Criteria that have been satisfied;
 - 37.6.3 identification of the relevant Test Success Criteria that have not been satisfied together with the Service Provider's explanation of why those criteria have not been met;
 - 37.6.4 the Tests that were not completed together with the Service Provider's explanation of why those Tests were not completed;
 - 37.6.5 the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with paragraph 9.1; and
 - 37.6.6 the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.

38. TEST ISSUES

- 38.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Service Provider shall log Test Issues reflecting the Severity Level allocated to each Test Issue.
- 38.2 The Service Provider shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Service Provider shall make the Test Issue Management Log available to the Purchaser upon request.
- 38.3 The Purchaser shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Service Provider. If the Parties are unable to agree the classification of any unresolved Test Issue, the dispute shall be dealt with in accordance with clause 61 (*Dispute Resolution*).

39. TEST WITNESSING

- 39.1 The Purchaser may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Purchaser, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 39.2 The Service Provider shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 39.3 The Test Witnesses:
- 39.3.1 shall actively review the Test documentation;
 - 39.3.2 will attend and engage in the performance of the Tests on behalf of the Purchaser so as to enable the Purchaser to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
 - 39.3.3 shall not be involved in the execution of any Test;
 - 39.3.4 shall be required to verify that the Service Provider conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
 - 39.3.5 may produce and deliver their own, independent reports on Testing, which may be used by the Purchaser to assess whether the Tests have been Achieved;

39.3.6 may raise Test Issues on the Test Issue Management Log in respect of any Testing; and

39.3.7 may require the Service Provider to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

40. TEST QUALITY AUDIT

40.1 Without prejudice to its rights pursuant to clause 18 (*Audit and Financial Reports*) and Schedule 4 (*Financial Reports and Model*), the Purchaser may perform on-going quality audits in respect of any part of the Testing (each a “**Testing Quality Audit**”) subject to the provisions set out below:

40.2 The focus of the Testing Quality Audits shall be on:

40.2.1 adherence to an agreed methodology, defined within the Test Strategy;

40.2.2 adherence to the agreed Testing process, defined within the Test Strategy;

40.2.3 adherence to the Quality Plan;

40.2.4 review of status and key development issues; and

40.2.5 identification of key risk areas.

40.3 The Service Provider shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.

40.4 The Purchaser will give the Service Provider at least five (5) Working Days' written notice of the Purchaser's intention to undertake a Testing Quality Audit and the Service Provider may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Service Provider's reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the Purchaser will materially and adversely impact the Implementation Plan or any post implementation deployments.

40.5 A Testing Quality Audit may involve document reviews, interviews with the Service Provider Representatives involved in or monitoring the activities being undertaken pursuant to this Schedule, the Purchaser witnessing Tests and demonstrations of the Deliverables to the Purchaser. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Service Provider and the Purchaser on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Service Provider shall provide all reasonable necessary assistance and access to all relevant documentation required by the Purchaser to enable it to carry out the Testing Quality Audit.

40.6 If the Testing Quality Audit gives the Purchaser concern in respect of the Testing Procedures or any Test, the Purchaser shall:

40.6.1 discuss the outcome of the Testing Quality Audit with the Service Provider, giving the Service Provider the opportunity to provide feedback in relation to specific activities; and

40.6.2 subsequently prepare a written report for the Service Provider detailing its concerns,

40.6.3 and the Service Provider shall, within a reasonable timeframe, respond in writing to the Purchaser's report.

40.7 In the event of an inadequate response to the Purchaser's report from the Service Provider, the Purchaser (acting reasonably) may withhold a Test Certificate (and consequently delay the grant of a Milestone Achievement Certificate) until the issues in the report have been addressed to the reasonable satisfaction of the Purchaser.

41. OUTCOME OF TESTING AND ISSUE OF TEST CERTIFICATES / MILESTONE ACHIEVEMENT CERTIFICATES

- 41.1 The Purchaser shall issue a Test Certificate as soon as reasonably practicable when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
- 41.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then:
 - 41.2.1 the Service Provider shall rectify the cause of the failure and re-submit the Deliverables (or the relevant part) to Testing, provided that the Parties agree that there is sufficient time for that action prior to the relevant Milestone Date; or
 - 41.2.2 the Purchaser may issue a Test Certificate conditional upon the remediation of the Test Issues; or
 - 41.2.3 the Parties shall treat the failure as a Service Provider Default.
- 41.3 The terms of clause 24.3 (*Rectification Plan*) shall apply in respect of any Delay.
- 41.4 When the Purchaser has issued Test Certificates and/or conditional Test Certificates in respect of all the Deliverables related to a Milestone it will also grant a Milestone Achievement Certificate.
- 41.5 The grant of a Milestone Achievement Certificate will entitle the Service Provider to the receipt of a payment in respect of that Milestone in accordance with the provisions of Schedule 3 (*Pricing*).
- 41.6 The Purchaser shall be entitled, without prejudice to any other rights and remedies that it has under this Contract, to recover from the Service Provider any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.
- 41.7 If a Milestone is not Achieved, the Purchaser shall promptly issue a report to the Service Provider setting out:
 - 41.7.1 the applicable Test Issues; and
 - 41.7.2 any other reasons for the relevant Milestone not being Achieved.

ANNEX 1: TEST ISSUES – SEVERITY LEVELS

Severity Level 1 Test Issue:	a Test Issue that causes non-recoverable conditions, e.g. it is not possible to continue using a Component, a Component crashes, there is database or file corruption, or data loss;
Severity Level 2 Test Issue:	a Test Issue for which, as reasonably determined by the Purchaser, there is no practicable workaround available, and which: <ul style="list-style-type: none"> • causes a Component to become unusable; • causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or • has an adverse impact on any other Component(s) or any other area of the Services;
Severity Level 3 Test Issue:	a Test Issue which: <ul style="list-style-type: none"> • causes a Component to become unusable; • causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or • has an impact on any other Component(s) or any other area of the Services; <p>but for which, as reasonably determined by the Purchaser, there is a practicable workaround available;</p>
Severity Level 4 Test Issue:	a Test Issue which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Services; and
Severity Level 5 Test Issue:	a Test Issue that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Services.

ANNEX 2: TEST CERTIFICATE

To: [**NAME OF SERVICE PROVIDER**]

FROM: [**NAME OF PURCHASER**]

[**Date**]

Dear Sirs,

TEST CERTIFICATE

Deliverables: [*insert description of Deliverables*]

We refer to the contract (the "**Contract**") relating to the provision of the Services between the [**name of Purchaser**] (the "**Purchaser**") and [**name of Service Provider**] (the "**Service Provider**") dated [**date**].

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (*Definitions*).

[We confirm that the Deliverables listed above have been tested successfully in accordance with the Test Plan relevant to those Deliverables.]

OR

[This Test Certificate is issued pursuant to paragraph 12.1 of 0 (*Testing Procedures*) of the Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

**delete as appropriate*

Yours faithfully

[**Name**]

[**Position**]

acting on behalf of [**name of Purchaser**]

ANNEX 3: MILESTONE ACHIEVEMENT CERTIFICATE

To: **[NAME OF SERVICE PROVIDER]**

FROM: **[NAME OF PURCHASER]**

[Date]

Dear Sirs,

MILESTONE ACHIEVEMENT CERTIFICATE

Milestone: **[insert description of Milestone]**

We refer to the contract (the “**Contract**”) relating to the provision of the Services between the **[name of Purchaser]** (the “**Purchaser**”) and **[name of Service Provider]** (the “**Service Provider**”) dated **[date]**.

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (*Definitions*).

[We confirm that all the Deliverables relating to Milestone **[number]** have been tested successfully in accordance with the Test Plan relevant to this Milestone [or that a conditional Test Certificate has been issued in respect of those Deliverables that have not satisfied the relevant Test Success Criteria.]]*

OR

[This Milestone Achievement Certificate is granted pursuant to paragraph 12.3 of Schedule 16 (*Testing Procedures*) of the Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with the provisions of Schedule 3 (*Pricing*)]*

**delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of **[Purchaser]**

ANNEX 4: TEST SUCCESS CRITERIA**1. Tests to be Achieved in order to Achieve the ATP Milestone**

Test	Pre-Conditions*	Test Success Criteria
[List all Tests relating to the ATP Milestone. To be agreed by the Purchaser and the Service Provider.]		

* Note: Pre-Conditions are that e.g. the Test Success Criteria for the previous Tests must be satisfied before the ATP Milestone tests are commenced

2. Tests to be Achieved in order to Achieve a CPP Milestone

CPP Milestone Charge No	Test	Test Success Criteria
	[List all Tests relating to CPP Milestone Charge No. To be agreed by the Purchaser and the Service Provider.]	

**THIS SCHEDULE COMPRISES SCHEDULE 17 TO THE FOREGOING SERVICES CONTRACT
BETWEEN [THE SCOTTISH MINISTERS ACTING THROUGH [] [AMEND AS APPROPRIATE]]
AND [NAME OF SERVICE PROVIDER]**

**SCHEDULE 17
BUSINESS CONTINUITY AND DISASTER RECOVERY**

3. BCDR PLAN

3.1 Within sixty (60) Working Days from the Commencement Date the Service Provider shall prepare and deliver to the Purchaser for the Purchaser's written approval a plan, which shall detail the processes and arrangements that the Service Provider shall follow to:

3.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and

3.1.2 the recovery of the Services in the event of a Disaster.

3.2 The BCDR Plan shall:

3.2.1 be divided into three parts:

(a) Part A which shall set out general principles applicable to the BCDR Plan;

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

(c) Part C which shall relate to disaster recovery (the "**Disaster Recovery Plan**"); and

3.2.2 unless otherwise required by the Purchaser in writing, be based upon and be consistent with the provisions of paragraphs 2, 3 and 4.

3.3 Following receipt of the draft BCDR Plan from the Service Provider, the Purchaser shall:

3.3.1 review and comment on the draft BCDR Plan as soon as reasonably practicable; and

3.3.2 notify the Service Provider in writing that it approves or rejects the draft BCDR Plan no later than twenty (20) Working Days after the date on which the draft BCDR Plan is first delivered to the Purchaser.

3.4 If the Purchaser rejects the draft BCDR Plan:

3.4.1 the Purchaser shall inform the Service Provider in writing of its reasons for its rejection; and

3.4.2 the Service Provider shall then revise the draft BCDR Plan (taking reasonable account of the Purchaser's comments) and shall re-submit a revised draft BCDR Plan to the Purchaser for the Purchaser's approval within twenty (20) Working Days of the date of the Purchaser's notice of rejection. The provisions of paragraph 1.3 and this paragraph 1.4 shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution in accordance with the procedure outlined in clause 61 (*Dispute Resolution*).

4. PART A OF THE BCDR PLAN AND GENERAL PRINCIPLES AND REQUIREMENTS

4.1 Part A of the BCDR Plan shall:

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

- 4.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the Services and any services provided to the Purchaser by a Related Service Provider;
 - 4.1.3 contain an obligation upon the Service Provider to liaise with the Purchaser and (at the Purchaser's request) any Related Service Provider with respect to issues concerning business continuity and disaster recovery where applicable;
 - 4.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Purchaser and any of its other Related Service Providers in each case as notified to the Service Provider by the Purchaser from time to time;
 - 4.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Purchaser;
 - 4.1.6 contain a risk analysis, including:
 - (a) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (b) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
 - (c) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider; and
 - (d) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
 - 4.1.7 provide for documentation of processes, including business processes, and procedures;
 - 4.1.8 set out key contact details (including roles and responsibilities) for the Service Provider (and any Sub-contractors) and for the Purchaser;
 - 4.1.9 identify the procedures for reverting to "normal service";
 - 4.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
 - 4.1.11 identify the responsibilities (if any) that the Purchaser has agreed in writing that it will assume in the event of the invocation of the BCDR Plan; and
 - 4.1.12 provide for the provision of technical advice and assistance to key contacts at the Purchaser as notified by the Purchaser from time to time to inform decisions in support of the Purchaser's business continuity plans.
- 4.2 The BCDR Plan shall be designed so as to ensure that:
- 4.2.1 the Services are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
 - 4.2.2 the adverse impact of any Disaster, service failure, or disruption on the operations of the Purchaser is minimal as far as reasonably possible;
 - 4.2.3 it complies with the relevant provisions of ISO/IEC 27002, ISO/IEC 22301 and all other industry standards from time to time in force; and
 - 4.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.

4.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.

4.4 The Service Provider shall not be entitled to any relief from its obligations under the Service Levels (if applicable) or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Service Provider of this Contract.

5. BUSINESS CONTINUITY PLAN – PRINCIPLES AND CONTENTS

5.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Purchaser expressly states otherwise in writing:

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

5.1.2 the steps to be taken by the Service Provider upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

5.2 The Business Continuity Plan shall:

5.2.1 address the various possible levels of failures of or disruptions to the Services;

5.2.2 set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the “**Business Continuity Services**”);

5.2.3 specify any applicable Service Levels with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Service Levels in respect of other Services during any period of invocation of the Business Continuity Plan; and

5.2.4 clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

6. DISASTER RECOVERY PLAN - PRINCIPLES AND CONTENTS

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

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

6.3 The Disaster Recovery Plan shall include the following:

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

6.3.2 details of the procedures and processes to be put in place by the Service Provider in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:

(a) backup methodology and details of the Service Provider's approach to data back-up and data verification;

(b) identification of all potential disaster scenarios;

(c) risk analysis;

(d) documentation of processes and procedures;

- (e) hardware/software configuration details;
 - (f) network planning including details of all relevant data networks and communication links;
 - (g) invocation rules;
 - (h) Services recovery procedures; and
 - (i) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
- 6.3.3 any applicable Service Levels with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Service Levels in respect of other Services during any period of invocation of the Disaster Recovery Plan;
- 6.3.4 details of how the Service Provider shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 6.3.5 access controls to any disaster recovery sites used by the Service Provider in relation to its obligations pursuant to this Schedule; and
- 6.3.6 testing and management arrangements.

7. REVIEW AND AMENDMENT OF THE BCDR PLAN

- 7.1 The Service Provider shall review the BCDR Plan (and the risk analysis on which it is based):
- 7.1.1 on a regular basis and as a minimum once every six (6) months or as part of a major reconfiguration of the Services or the Service Provider's supply chain;
 - 7.1.2 within three (3) calendar months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 7; and
 - 7.1.3 where the Purchaser requests any additional reviews (over and above those provided for in paragraphs 5.1.1 and 5.1.2 by notifying the Service Provider to such effect in writing, whereupon the Service Provider shall conduct such reviews in accordance with the Purchaser's written requirements. Prior to starting its review, the Service Provider shall provide an accurate written estimate of the total costs payable by the Purchaser for the Purchaser's approval. The costs of both Parties of any such additional reviews shall be met by the Purchaser except that the Service Provider shall not be entitled to charge the Purchaser for any costs that it may incur above any estimate without the Purchaser's prior written approval.
- 7.2 Each review of the BCDR Plan pursuant to paragraph 5.1 shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Service Provider within the period required by the BCDR Plan or, if no such period is required, within such period as the Purchaser shall reasonably require. The Service Provider shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Purchaser a report (a "Review Report") setting out:
- 7.2.1 the findings of the review;
 - (a) any changes in the risk profile associated with the Services; and
 - (b) the Service Provider's proposals (the "**Service Provider's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to

the BCDR Plan following the review detailing the impact (if any and to the extent that the Service Provider can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

- 7.3 Following receipt of the Review Report and the Service Provider's Proposals, the Purchaser shall:
- 7.3.1 review and comment on the Review Report and the Service Provider's Proposals as soon as reasonably practicable; and
 - 7.3.2 notify the Service Provider in writing that it approves or rejects the Review Report and the Service Provider's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Purchaser.
- 7.4 If the Purchaser rejects the Review Report and/or the Service Provider's Proposals:
- 7.4.1 the Purchaser shall inform the Service Provider in writing of its reasons for its rejection; and
 - 7.4.2 the Service Provider shall then revise the Review Report and/or the Service Provider's Proposals as the case may be (taking reasonable account of the Purchaser's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Service Provider's Proposals to the Purchaser for the Purchaser's approval within twenty (20) Working Days of the date of the Purchaser's notice of rejection. The provisions of paragraph 5.3 and this paragraph 5.4 shall apply again to any resubmitted Review Report and Service Provider's Proposals, provided that either Party may refer any disputed matters for resolution in accordance with the procedure outlined in clause 61 (*Dispute Resolution*).
- 7.5 The Service Provider shall as soon as is reasonably practicable after receiving the Purchaser's approval of the Service Provider's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Service Provider's Proposals. Any such change shall be at the Service Provider's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

8. TESTING OF THE BCDR PLAN

- 8.1 The Service Provider shall test the BCDR Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to paragraph 6.2, the Purchaser may require the Service Provider to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Purchaser considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
- 8.2 If the Purchaser requires an additional test of the BCDR Plan, it shall give the Service Provider written notice and the Service Provider shall conduct the test in accordance with the Purchaser's requirements and the relevant provisions of the BCDR Plan. The Service Provider's costs of the additional test shall be borne by the Purchaser unless the BCDR Plan fails the additional test in which case the Service Provider's costs of that failed test shall be borne by the Service Provider.
- 8.3 The Service Provider shall undertake and manage testing of the BCDR Plan in full consultation with the Purchaser and shall liaise with the Purchaser in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Purchaser in this regard. Each test shall be carried out under the supervision of the Purchaser or its nominee.
- 8.4 The Service Provider shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Purchaser. Copies of live test data used in any such testing

shall be (if so required by the Purchaser) destroyed or returned to the Purchaser on completion of the test.

- 8.5 The Service Provider shall, within twenty (20) Working Days of the conclusion of each test, provide to the Purchaser a report setting out:
- 8.5.1 the outcome of the test;
 - 8.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - 8.5.3 the Service Provider's proposals for remedying any such failures.
- 8.6 Following each test, the Service Provider shall take all measures requested by the Purchaser, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Service Provider, at no additional cost to the Purchaser, by the date reasonably required by the Purchaser and set out in such notice.
- 8.7 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Service Provider of any of its obligations under this Contract.
- 8.8 The Service Provider shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Purchaser.

9. INVOCATION OF THE BCDR PLAN

In the event of a complete loss of service or in the event of a Disaster, the Service Provider shall immediately invoke the BCDR Plan (and shall inform the Purchaser promptly of such invocation along with the anticipated maximum period of outage). In all other instances the Service Provider shall invoke or test the BCDR Plan only with the prior written consent of the Purchaser.



**Contract for the Provision of
Social Care Systems and Approaches Landscape Technology Review**

SPECIFICATION AND SERVICE LEVELS

SPECIFICATION

1. INTRODUCTION

The Scottish Government launched a [consultation on 9-August-21 on the creation of a National Care Service](#).

Following the [Independent Review of Adult Social Care](#) (IRASC) [Feb-21], the Scottish Government is consulting on the establishment of a National Care Service in Scotland. This re-design subject to the consultation is one of the most significant public service transformation agenda undertaken by the Scottish Government.

The Scottish Government is committed to delivering the recommendations of IRASC, staying true to the spirit of the report by building a system with human rights and living experience at the heart of it. While system and service reform is fundamental to the work that lies ahead, the paradigm shift in social care is the priority; as one contributor to IRASC said “social care should be a springboard not a safety net”.

Social care should no longer be seen as a service of crisis intervention but one which is there to help and support people at the earliest stage, preventing deterioration and people getting into crisis situations. Social care is an investment in our communities and our economy, so that everyone can take their part in society. A National Care Service will provide us with consistency, equity and fairness, and the accountability needed to deliver high quality services across Scotland.

A programme of social care reform is needed to achieve the full potential of human rights based approach to social care in Scotland, including the ongoing work of Care and Wellbeing Programmes. In the consultation, it is outlined that a National Care Service is needed to:

- Achieve consistency across the country.
- Drive national improvements.
- Ensure strategic integration with the NHS.
- Set national standards.
- Workforce(s) terms and conditions.
- Bring national oversight and accountability.

There is a need to transform the way social care is planned, commissioned and procured to enable:

- Building of trusting relationships.
- Collaboration rather than competition.
- Establishing partnerships not market places.
- Amplify the voice of living experience at every level of the redesign.
- There is a duty to co-design a new system with the people in social care.

IRASC was clear that social care transformation should include:

- Shifting the paradigm of care
 - move to new thinking
- Strengthen the foundations
 - Protect and reinforce what is working, e.g. Self-directed support
 - Adoption of science based improvement
 - Better support for unpaid carers
 - Invest in workforce
- Redesign the system
 - A new way of approaching social care delivery in Scotland
 - Person-centred service design
 - Robust and clear governance
 - Sustainable financial model
 - Support Scottish Ministers in accountability-visibility and insight-led change.

The National Care Service, subject to the conclusion of the consultation, will be the most significant change in public services since the establishment of the National Health Service. At its core will be human rights and person-led care and support that focuses on positive outcomes for individuals in Scotland. Target operating model design is required to understand how designs/options for the NCS national and local structures will impact outcomes for people in Scotland.

Any approach to a National Care Service should be person-centred and drive at reducing implementation gaps in service delivery in order to improve outcomes for people in Scotland as the Scottish Government embarks on delivering a human-rights based approach to social care in Scotland.

The programme seeks to begin developing an understanding of the technology landscape being utilised across the public, third and private sector organisations in Scotland involved in the delivery of Social Care. This tender will start that process of understanding and form an initial (but not exhaustive) list of stakeholders and organisations from a technology and architecture perspective.

2. REQUIREMENTS

Basis of this Review

The intended outcome of this review is a comprehensive map of the digital software systems that support care services in Scotland.

This work will inform the delivery of the National Care Service in Scotland.

The specific purpose of this review is establishing the breadth of the services, software systems and supporting organisations across Scotland. This information needs to be sufficient to identify the scale and commonality of services and systems to map patterns that can inform a digital delivery strategy.

Care in Scotland is delivered by thousands of organisations across the public, private and third sectors, and it is essential to understand the scope and variation of the services they deliver and the systems that underpin that work. At the same time, there

is wide recognition that the care sector is under considerable pressure at this time and this work needs to be proportionate and focused.

Selective deeper technical analysis guided by parallel work into service needs and priorities will ultimately inform the digital strategy for progressive and prioritised delivery of care data and service integration and the delivery of digital service support.

Scope / Statement of Requirement

Objectives and outcomes

This engagement will be split into 3 work packages looking at the:

- Public Sector
- Private Sector
- Third Sector

Each work package will require similar approaches and analysis but the successful bidder will have the opportunity to further develop the specification in Work package 2 and 3 in conjunction with and by agreement of the Contract Manager. This acknowledges that lessons will be learned in the delivery of this requirement and improvements may be applied to subsequent Work Packages. **Please note that Work Package 2 and 3 will be delivered concurrently.**

The outputs and analysis from each Work Package will feed into a **final unifying report** across all three sector. The report content is detailed below as Work Package 4.

Work package 1

Public Sector

Deliver a report (and all associated raw data) covering the following requirements:

- Identify every distinct Public Sector organisation currently delivering care in Scotland. This includes all regional authority care services.
- For each organisation not already listed in the [Care Commission data store](#), follow the structure of that data store to add general information about those organisations such as:
 - their names
 - service types
 - geographical location
 - contact details
 - staff count.
 - contact details of Service and Systems Owners (if possible)
- For each organisation obtain a list of software packages used to deliver each service and associated information such as:
 - the hosting of the software (on-premises, datacentre, or cloud)
 - the version in use
 - the manufacturer of the software

- the organisation providing ongoing maintenance and support.
- This information needs to be collected in a structured and consistent way so that it is possible to use this information for analysis such as group those organisations using the same software or receiving support from the same organisation. All raw data should be made available as CSV files documented with clearly explained fields and data types.
- For organisations with over 100 staff, we are looking to collect a high-level architectural overview of the system or systems used:
 - describing the components of those systems
 - providing the context of the external users and systems that use or integrate with those systems.
 - Identify any security and data standards supported by the systems and/or integration components where these relate to care or operational data.
- Note that the information gathered should exclude secondary system management infrastructure that may exist to support the core software e.g., IT system monitoring and alerting, IT system performance and capacity monitoring, back-ups, software deployment and Antivirus systems.
- All reports should be provided in Open Document Format (ODF) alongside any other formats such as Microsoft Word, PowerPoint or PDF.

Subsequent Work Packages

Bidders should note that the subsequent Work Packages (2 and 3) and therefore the final report will be subject to further development in conjunction with the Contract Manager. This will be to incorporate any lessons learned from the delivery of Work Package 1. They will be delivered concurrently.

Work Package 2

Private Sector Analysis

Deliver a report (and all associated raw data) covering the following requirements:

- Identify every distinct Private Sector organisation currently delivering care in Scotland.
- For each organisation not already listed in the Care Commission data store, follow the structure of that data store to add general information about those organisations such as:
 - their names
 - service types
 - geographical location
 - contact details
 - staff count.
 - contact details of Service and Systems Owners (if possible)
- For each organisation obtain a list of software packages used to deliver each service and associated information such as:

- the hosting of the software (on-premises, datacentre, or cloud)
- the version in use
- the manufacturer of the software
- the organisation providing ongoing maintenance and support.
- This information needs to be collected in a structured and consistent way so that it is possible to use this information for analysis such as group those organisations using the same software or receiving support from the same organisation. All raw data should be made available as CSV files documented with clearly explained fields and data types.
- For organisations with over 100 staff, we are looking to collect a high-level architectural overview of the system or systems used:
 - describing the components of those systems
 - providing the context of the external users and systems that use or integrate with those systems.
 - Identify any security and data standards supported by the systems and/or integration components where these relate to care or operational data.
- Note that the information gathered should exclude secondary system management infrastructure that may exist to support the core software e.g., IT system monitoring and alerting, IT system performance and capacity monitoring, back-ups, software deployment and Antivirus systems.
- All reports should be provided in Open Document Format (ODF) alongside any other formats such as Microsoft Word, PowerPoint or PDF.

Work Package 3

Third Sector Analysis

Deliver a report (and all associated raw data) covering the following requirements:

- Identify every distinct Third Sector organisation currently delivering care in Scotland. This includes all regional authority care services.
- For each organisation not already listed in the Care Commission data store, follow the structure of that data store to add general information about those organisations such as:
 - their names
 - service types
 - geographical location
 - contact details
 - staff count.
 - contact details of Service and Systems Owners (if possible)
- For each organisation obtain a list of software packages used to deliver each service and associated information such as:
 - the hosting of the software (on-premises, datacentre, or cloud)
 - the version in use
 - the manufacturer of the software

- the organisation providing ongoing maintenance and support.
- This information needs to be collected in a structured and consistent way so that it is possible to use this information for analysis such as group those organisations using the same software or receiving support from the same organisation. All raw data should be made available as CSV files documented with clearly explained fields and data types.
- For organisations with over 100 staff, we are looking to collect a high-level architectural overview of the system or systems used:
 - describing the components of those systems
 - providing the context of the external users and systems that use or integrate with those systems.
 - Identify any security and data standards supported by the systems and/or integration components where these relate to care or operational data.
- Note that the information gathered should exclude secondary system management infrastructure that may exist to support the core software e.g., IT system monitoring and alerting, IT system performance and capacity monitoring, back-ups, software deployment and Antivirus systems.
- All reports should be provided in Open Document Format (ODF) alongside any other formats such as Microsoft Word, PowerPoint or PDF

Work Package 4

Final Report

The outputs and analysis from each Work Package will feed into a **final unifying report** across all three sector. The report should:

- Categorise the types of services provided, naming and grouping the types of services in ways that help to understand the services themselves and the typical provision of individual or combined services by organisations or individuals.
 - For example, whilst the care commission's data store categorises every entry (organisation/individual) with a single type of service, it may be more appropriate to indicate that some organisations provide a combination of underlying services and some focus on a single service.
 - The shape of this categorisation will need to account for the outcomes of the National Care Service consultation, so that the data can be used to understand the scope and nature of the work within scope of the NCS.
- Group all the distinct software packages, the organisations that produce that software and the organisations that support and maintain that software for the care providers.
 - Note that this is focused around software packages that maintain or process care related data, whether that relates to care records or operational data. For example, software for accounting or the provision

of email would be out of scope, but software for capacity management or maintaining care records would be in scope.

- Provide analysis and breakdown of the distribution of software packages across service types, and health and social care partnerships.
 - This information should be presented in such a way as to aid decisions around the scheduling of work to integrate service data and systems into the NCS. To this end, it will be important to understand, across service types and regions, the dominance of particular software packages or particular software support providers.
- Provide recommendations on the prioritisation of integrating services with the NCS based on the data gathered and a broad understanding of the likely implications of staged delivery of a service. In preparing these recommendations, the report should comment upon the possible implications of strategies that focus first on particular regions, service types or software packages.
- Analysis should include the following methods where appropriate:
 - Value Chain Mapping
 - Wardley Mapping

All the underlying data and calculations behind the report and recommendations should be made available for subsequent analysis. All of the data on service providers across all three sectors should be categorised to align with the report, including, if necessary, a re-categorisation of organisations currently listed in the Care Commission data store.

Dates and delivery

The services will be delivered between the award of the contract and **30 September 2022**

Due to Covid-19 restrictions all work should be delivered remotely.

Delivery Timeline

- ITT publication – 13 January 2022
- Bidder questions submitted by 12:00 pm 21 January 2022
- Authority responses - 28 January 2022
- Tender Submission – 4 February 2022 at 12:00 pm
- Evaluation – w/c 7 February 2022
- Contract start and initiation meeting – w/c 14 February, Via Teams,
- Work Package 1 completion – no later than 22 April 2022
- Work Package 2 and 3 completion – no later than 26 August 2022
- Final report - no later than 30 September 2022

Ownership of Outputs

The ownership of any outputs such as reports and any data produced/collected as a result of awarding this contract lies with the Scottish Ministers and the information contained with the reports may or may not be made public at the sole discretion of the Scottish Ministers.

3. CONTRACT MANAGEMENT

3.1. Payment Schedule

The payment schedule for the project will be agreed during project initiation with the successful bidder.

Tenderers must provide a 'Tender Sum Total' for this work and may propose Milestone Payments. For example:

Milestone Payment One: Successful delivery of Work Package 1 report, signed off by Contract Manager

Milestone Payment Two: Successful delivery of Work Package 2 report and associated data, signed off by Contract Manager

Milestone Payment Three (Final Milestone): Successful delivery of Work Package 3 final report and associated data, signed off by Contract Manager

3.2. Timescales

The contract shall commence on 14th February for a period of 12 months.

3.4. Contract Management

The contract will be managed by the Contract Manager - **[Redacted: Exempt under 38(1)(b), FOISA]**, who will be responsible for the day-to-day liaison with the successful tenderer and for agreeing final versions of all outputs.

E-mail: **[Redacted: Exempt under 38(1)(b), FOISA]**

Business address: Scottish Government, St Andrew's House, 2 Regent Road, Edinburgh, EH1 3DG

Bidder Instructions

1. All fields in blue must be completed.
2. Bidders must break down costs in as much detail as possible, at least covering each of the headings and sub headings of this.
3. Bidders may insert additional rows into any of the tables to provide a more detailed breakdown of costs than indicated but must not alter or delete any of the table headings or column headings.
4. Bidders must include all costs required to successfully deliver the Services, including all and any costs related to Customer Responsibilities, or Third Party solutions not provided by the Bidder.
5. For the avoidance of doubt it has been presumed that all installation costs will happen in Yr1.
6. All bids shall be evaluated over the contract term.
7. Bidders must include all assumptions relevant to their financial model in the 'Bidder Assumptions' tab provided.
8. Please ensure cell D18 of "Financial Model - Summary" tab is showing 'Okay'. If showing 'Error- Please Check', the "Financial Model - Detail" does not reconcile to the "Financial Model - Summary". Please amend.