



**STANDARD TERMS AND CONDITIONS**

**FOR**

**IT SERVICES**

**PART A**  
**GENERAL TERMS AND CONDITIONS**

**RECITALS**

- (A) The Customer wishes to procure IT Services from the Service Provider following a tendering process.
- (B) The Service Provider having experience in providing the IT Services accepts the appointment on the terms and conditions of this Agreement.

**NOW IT IS AGREED** as follows:

**1 Definitions and Interpretation**

- 1.1 In this Agreement, unless the context otherwise requires, defined terms are described in **Part C (Definitions)**:
- 1.2 In this Agreement, unless the context otherwise requires:
  - 1.2.1 the singular includes the plural and vice versa;
  - 1.2.2 reference to a gender includes the other gender and the neuter;
  - 1.2.3 words importing persons include firms, companies and corporations and vice versa;
  - 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
  - 1.2.5 references to numbered clauses, Parts and Schedules are references to the relevant clause, Part or Schedule to this Agreement;
  - 1.2.6 references in any Part or Schedule to numbered paragraphs relate to the numbered paragraphs of that Part or Schedule;
  - 1.2.7 any obligation on a party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
  - 1.2.8 a party who agrees to do something shall be deemed to fulfil that obligation if that party procures that it is done.
- 1.3 The headings in this Agreement are for ease of reference only and shall not affect its interpretation.
- 1.4 In case of conflict or ambiguity between the Standard Terms and Conditions and the Special Terms and Conditions contained in the Order Form, the Special Terms and Conditions shall take precedence.

**2 Due Diligence**

- 2.1 The Service Provider acknowledges that it:
  - 2.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;
  - 2.1.2 has raised all relevant due diligence questions with the Customer before the

commencement date of this Agreement;

2.1.3 is confident it can fulfil its obligations according to these terms; and

2.1.4 has entered into this Agreement in reliance on its due diligence.

2.2 The Service Provider shall be deemed to have entered into this Agreement with full knowledge of the IT Services to be performed and the terms of this Agreement.

### **3 Duration**

3.1 This Agreement shall start on the Commencement Date and, unless terminated earlier, shall continue until the end of the Initial Term.

3.2 Unless the Agreement is terminated at the end of the Initial Term, the Customer may extend the Agreement for a Subsequent Term (up to the maximum number of extension periods described in the Order Form) by notice in writing served prior to the expiry of the Initial Term or relevant Subsequent Term.

### **4 IT Services**

4.1 The IT Services to be provided are described in **Part F (Tender Documents)**.

### **5 Implementation**

5.1 The Service Provider shall deliver an outline Implementation Plan to the Customer within fourteen (14) days of the Commencement Date.

5.2 A detailed Implementation Plan shall be agreed with the Customer, within fourteen (14) days of delivery of the outline Implementation Plan, with sufficient detail as is necessary to manage the implementation of the IT Services effectively.

5.3 Once the detailed Implementation Plan has been agreed with the Customer; performance shall be measured against the detailed Implementation Plan.

5.4 The Service Provider shall report weekly on progress. If any issues are raised on the quality, the Deliverables or any other matter related to the work done within the weekly reporting period, the Service Provider shall have five (5) working days to respond to the issues and make any changes required.

### **6 Implementation Delays**

#### Delays due to Service Provider

6.1 If at any time the Service Provider becomes aware that it shall not (or is unlikely to) achieve any Milestone by the Milestone Date it shall as soon as reasonably practicable (and not later than five (5) working days) notify the Customer in writing of the Delay, giving full details of:

6.1.1 the reasons for the Delay;

6.1.2 the consequences of the Delay and impact on other Milestones and Go-Live; and

6.1.3 a draft Correction Plan detailing the steps that the Service Provider proposes to take to achieve the Milestone.

6.2 The draft Correction Plan shall be submitted to the Customer for approval.

- 6.3 The Service Provider shall comply with the Correction Plan following its approval by the Customer.
- 6.4 The Customer may at its sole discretion (without waiving any rights in relation to other options) choose to:
  - 6.4.1 issue a Conditional Milestone Achievement Certificate with an agreed Correction Plan; and/or
  - 6.4.2 refuse to issue a Conditional Milestone Achievement Certificate and escalate the matter in accordance with the Dispute Resolution Procedure, and if the matter cannot be resolved, exercise any right it may have under this Agreement or at law.
- 6.5 Where the Customer issues a Conditional Milestone Achievement Certificate, the Customer can choose to (but is not obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

Delays due to Customer Cause

- 6.6 If the Service Provider would have been able to achieve a Milestone by its Milestone Date but has failed to do so as a result of a Customer Cause, the Service Provider shall:
  - 6.6.1 be allowed an extension of time equal to the Delay caused by the Customer Cause; and
  - 6.6.2 not be in breach of this Agreement as a result of the failure to achieve the relevant Milestone by its Milestone Date.
- 6.7 The Customer shall:
  - 6.7.1 consider the duration of the Delay, the nature of the Customer Cause, the effect of the Delay on the Service Provider's ability to comply with the Implementation Plan;
  - 6.7.2 consult with the Service Provider in determining the effect of the Delay;
  - 6.7.3 fix a revised Milestone Date, and
  - 6.7.4 if appropriate, make a consequential revision to subsequent Milestones and/or Milestone Dates in the Implementation Plan.
- 6.8 The Customer shall, at its absolute discretion, determine in prior consultation with the Service Provider if a CCN is required to be issued in accordance with the requirements of clause 26.
- 6.9 The Service Provider shall, and shall procure each sub-contractor to, take and continue to take all reasonable steps to eliminate or mitigate any losses and/or expenses that it incurs as a result of a Customer Cause.

Delays not due to one party alone

- 6.10 Where a Delay is attributable in part to the Service Provider and in part to a Customer Cause, the parties shall negotiate in good faith with a view to agreeing a fair and reasonable apportionment of responsibility for the Delay.
- 6.11 Whatever the reasons for the Delay (whether caused by the Customer or not), the Service Provider shall make all reasonable endeavours to eliminate or mitigate the consequences of the Delay.
- 6.12 Either the Customer or the Service Provider may request that a CCN be issued in accordance with clause 26, which covers the effects of the Delay.
- 6.13 Failing agreement on the issuing of a CCN as specified in clauses 6.8 and 6.12 herein, either party may escalate the matter in accordance with the Dispute Resolution Procedure.

## 7 Testing and Acceptance

- 7.1 The IT System shall be delivered through Milestones and Deliverables. As part of the implementation of each Milestone or Deliverable, the IT System shall be subject to a process of Acceptance Testing.
- 7.2 Acceptance Test criteria shall be prepared by the Customer to test that the IT System (or part thereof) conforms to requirements of the Deliverables in **Part F (Tender Documents)**. The Customer shall perform transactional and functional tests together with the results expected to be achieved by processing test data, transactional and functional test scripts and any other tests the Customer deems necessary to test the IT System. The Service Provider shall not be entitled to object to the test criteria or the expected results unless the Service Provider can demonstrate to the Customer that they are not suitable for testing the IT System as aforesaid, and if accepted, the Customer shall make reasonable amendments to the test criteria and expected results.
- 7.3 The Service Provider shall for each Deliverable submit details to the Customer for testing and the parties shall follow the applicable provisions of the testing procedures below.
- 7.4 The order for Acceptance Testing is as follows, unless the context of the TEST requires otherwise or the parties agree a different procedure for Acceptance Testing as part of the Implementation Plan:
- 7.4.1 one or more imports of test data into the TEST system leading to a successful import of test data into the TEST system; followed by
  - 7.4.2 TEST Acceptance Testing, followed when successful by the TRAIN system. Transfer configuration from TEST to TRAIN system, one or more imports of data into the TRAIN system leading to a successful import into the TRAIN system; followed by
  - 7.4.3 TRAIN Acceptance Testing, followed, when successful, by agreement to Go-Live; followed by
  - 7.4.4 implementation of the Deliverable in the LIVE environment; followed by
  - 7.4.5 transfer of configuration from TEST to LIVE system; followed by
  - 7.4.6 LIVE data import into LIVE, followed by
  - 7.4.7 LIVE Acceptance Tests, leading, when successful, to the acceptance of a Deliverable.
- 7.5 If the Customer successfully completes the requisite LIVE Acceptance Tests; the Customer shall issue a Milestone Achievement Certificate. Notwithstanding the issuing of a Milestone Achievement Certificate, the Service Provider shall remain solely responsible for ensuring that the Service Provider's solution is suitable for delivering the IT Services, and for ensuring that the IT System is implemented in accordance with the Deliverables in **Part F (Tender Documents)**. No rights of estoppel or waiver shall arise as a result of the issue of a Milestone Achievement Certificate (or Conditional Milestone Achievement Certificate).
- 7.6 The Customer shall carry out Acceptance Tests over the number of days described in the Implementation Plan.
- 7.7 If there are any failures in the Acceptance Tests, the Customer shall inform the Service Provider while the Acceptance Tests are in progress or promptly thereafter. The Service Provider shall not later than five (5) working days following notification of the relevant failure, at its own expense correct the errors and notify the Customer that it is ready to repeat the tests. The tests shall be repeated within one (1) month or such other mutually convenient time as may be agreed by both parties.
- 7.8 In the event the IT System fails to pass the repeat tests referred to in clause 7.7 the Customer shall be entitled to terminate this Agreement.

- 7.9 On agreement for a Deliverable to Go-Live, the Service Provider shall deliver to the Customer the Support Materials (if any) relating to that Deliverable on appropriate media and in an appropriate format to ensure that the Customer or a third party appointed by the Customer is able to maintain, enhance, modify and change the Customer Data or other Customer's information;
- 7.10 After the acceptance of a Deliverable from clause 7.4.6, the Service Provider shall provide a warranty that the Deliverable is fit for purpose and is of a satisfactory quality and fit for its intended use.
- 7.11 Six (6) months after the last Deliverable is delivered to the LIVE environment, the Customer shall carry out Final Performance Acceptance Tests and upon successful completion, deliver to the Service Provider a written Final Performance Acceptance Certificate.

## **8 Support Services**

- 8.1 The Service Provider shall provide the Support Services in **Part B** following each Go-Live.

## **9 Charges and Payment**

- 9.1 In consideration of the IT Services being delivered or performed by the Service Provider pursuant to this Agreement, the Customer shall pay the Charges or portions thereof as described in the Pricing Matrix at **Part F, 2a, Charges**. Where it is agreed that payment of Charges shall be aligned to Milestones or Deliverables, the payments shall be made on delivery at the intervals or on the dates described in the Implementation Plan.
- 9.2 The Charges, including hosting and cloud services & storage shall be fixed at the rate(s) given in **Part F, 2a, Charges** for the period of the Initial Term, and thereafter set for each Subsequent Term and any changes in price shall reflect the changes in the amount(s) paid by the Service Provider.
- 9.3 The Charges for the Support Services (except Charges for hosting and cloud services & storage) shall be fixed for the Initial Term and shall be inclusive of all costs and expenses incurred by the Service Provider in providing IT Services.
- 9.4 For Subsequent Terms, any increase in the Charges for Support Services (except Charges for hosting and cloud services & storage) may only be increased annually in line with inflation as measured by the Consumer Prices Index, up to a maximum of 1.5% of the total IT Support Service Charges.
- 9.5 The Service Provider shall invoice the Customer for the Charges in the amounts and at the rates and frequency set out in the Pricing Matrix at **Part F, 2a, Charges** or as agreed in the Implementation Plan. All invoices and payment communications must quote the Purchase Order number stated on the Order Form.
- 9.6 The Charges payable by the Customer shall be paid within thirty (30) days after receipt of a valid invoice by the Customer.
- 9.7 The Charges stated in this Agreement are exclusive of any applicable VAT or other sales tax which shall be payable by the Customer at the rate and in the manner prescribed by law on submission of a valid tax invoice.
- 9.8 All invoices shall be accompanied by supporting documentation and a breakdown of the costs.
- 9.9 Payment by the Customer shall be without prejudice to any claims or rights the Customer may have against the Service Provider and shall not constitute an admission by the Customer as to

the performance of the Service Provider's obligations under this Agreement.

## **10 Warranties**

- 10.1 The Service Provider warrants that the performance, and functionality of the Software will conform at all times with the Tender Documents.
- 10.2 The Service Provider warrants and undertakes to the Customer that:
- 10.2.1 it shall provide the IT Services with all reasonable skill and care, using suitably skilled personnel;
  - 10.2.2 it has sufficient experience of installing, developing and integrating IT systems;
  - 10.2.3 its employees, agents and sub-contractors shall be suitably experienced to perform their tasks/roles and conform to the standards, skill and ability to be reasonably expected of such performance;
  - 10.2.4 neither the execution nor the performance of this Agreement shall conflict with any agreement or arrangement to which the Service Provider is a party or any legal or administrative arrangement by which the Service Provider is bound;
  - 10.2.5 it is authorised to use the Third Party Software and any third party systems in connection with its obligations under this Agreement and shall remain so authorised for the duration of this Agreement and shall be authorised by the relevant licensors and owners to grant the rights for the Customer's use;
  - 10.2.6 none of the IT Services, Support Materials or the IT System provided by the Service Provider shall include:
    - 10.2.6.1 any executable code in the Live system which has not passed the Acceptance Tests by the Customer; or
    - 10.2.6.2 malware, such as computer viruses, worms, time bombs, or 'trojans' or any other such devices or mechanisms of misuse;
  - 10.2.7 From each Go-Live Date:
    - 10.2.7.1 the IT Services shall conform in all respects with the appropriate Deliverables in **Part F, 1, Deliverables**);
    - 10.2.7.2 the Support Materials shall provide adequate instructions to enable the Customer to make proper use of the facilities and functions; and
    - 10.2.7.3 the IT Services shall operate fully with the Software and Third-Party Software and third-party systems.
  - 10.2.8 the Support Services shall comply with the Service Levels in the Service Level Agreement at **Part B**;
  - 10.2.9 the capacity of the IT System is capable of meeting the transaction, connection, uptime and concurrent users' volumes described in **Part F, 1, Deliverables**;
  - 10.2.10 the Service Provider has and shall maintain in effect all necessary licences and any other authorisations and rights required in providing IT Services, including those to the enhancements, modifications and upgrades to Third Party Software;
  - 10.2.11 the Software, the IT Services and other materials designed or developed or produced by the Service Provider shall not infringe any third party's Intellectual Property Rights, shall not be obscene or defamatory, and shall comply with all applicable laws, regulations and codes of conduct;

- 10.2.12 each Deliverable shall meet the Customer's acceptance criteria as identified in the **Part F, Tender Documents**.
- 10.3 If the Service Provider receives written notice from the Customer at any time after any Go-Live Date of any breach of the warranties herein stipulated, the Service Provider shall immediately after receiving such notice remedy the defect or error in question.
- 10.4 The Customer warrants that all Intellectual Property Rights including but not limited to Customer's software, databases, graphics, diagrams, charts, sound and Customer Data which shall be used and/or which is necessary for the Service Provider to access and use, is either the Customer's property or is legally licensed to the Customer to permit access and use by the Service Provider.

## **11 Service Provider's Obligations**

- 11.1 The Service Provider shall provide IT Services:
  - 11.1.1 with skill and expertise to a professional standard;
  - 11.1.2 which are fit for their intended purpose;
  - 11.1.3 in a timely and efficient manner;
  - 11.1.4 using suitably experienced personnel;to meet the Customer's business requirements and in accordance with this Agreement.
- 11.2 In addition, the Service Provider shall:
  - 11.2.1 to the extent that a standard is not specifically described, ensure the Deliverables are of a satisfactory quality and fit for its intended use, whether expressly or by implication made known to the Service Provider;
  - 11.2.2 ensure continuing integration with the Customer's existing systems identified by the Customer, and seamlessly interfaces to the Customer's and third party systems as specified in the **Deliverables (Part F, 1, of Tender Documents)**;
  - 11.2.3 co-operate with the Customer's officers, employees and other independent consultants whenever necessary or desirable in the performance of IT Services;
  - 11.2.4 comply with all reasonable instructions given by the Customer's Representative and notify the Customer's Representative promptly if the Service Provider has any difficulty in complying with any instruction, or if there is any conflict, ambiguity or discrepancy in the Tender Documents which has not been identified before the award of the contract to the Service Provider;
  - 11.2.5 comply with all applicable UK and European laws, directives and regulations, and any amendments thereto, which apply to IT Services now or which come into force during this Agreement;
  - 11.2.6 comply with the Customer's financial and contractual standing orders, financial regulations, financial control standards, and policies and procedures, as notified to the Service Provider from time to time;
  - 11.2.7 ensure that IT Services are delivered respecting the Pricing Matrix at **Part F, 2a, Charges**;
  - 11.2.8 provide project management for the delivery of IT Services as described in the **Deliverables (Part F, 1, of Tender Documents)**;



- 11.2.9 provide the necessary personnel to work alongside the Customer and provide timely feedback and any necessary information;
  - 11.2.10 ensure that key personnel are not removed or replaced without prior agreement of the Customer from the performance of the IT Services during the dates they are required in this Agreement;
  - 11.2.11 ensure that the Service Provider's personnel comply with the Customer's requirements for the conduct of staff when on the Customer's premises.
- 11.3 The Service Provider shall appoint a Representative and Key Personnel (identified in **Part I**) who are assigned to oversee the performance and successful delivery of the IT Services. The Service Provider may change the Service Provider's Representative and Key Personnel with the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed.
- 11.4 Where the Service Provider has purchased Third Party Software, the Service Provider shall pay for the Third Party Software within the time allowed by the third party, and shall not put at risk the Customer's possession and use of the Third Party Software after delivery to the Customer.
- 11.5 The Service Provider undertakes to maintain the interface and interoperability between Third Party Software and Software developed or provided by the Service Provider.
- 11.6 The Service Provider shall take all appropriate steps to ensure that the Service Provider's personnel are not in a position where there is or may be a conflict of interests between the Service Provider's personnel and another contractor where both are providing IT Services to the Customer under this Agreement.
- 11.7 The Service Provider shall, as a continuing obligation throughout the term of this Agreement, where Software is used in the provision of IT Services or information uploaded, interfaced or exchanged with the Customer's systems, use the most up-to-date antivirus from an industry-accepted antivirus software vendor. The Service Provider shall check for, contain the spread of, and minimise the impact of malicious software.
- 11.8 If malicious software is found, the Service Provider shall co-operate with the Customer to reduce the effect of the malicious software. If malicious software causes loss of operational efficiency or loss or corruption of the Customer Data, the Service Provider shall use its best endeavours to help the Customer to mitigate any losses and restore the provision of IT Services to the desired operating efficiency as soon as possible.

## **12 Customer Obligations**

- 12.1 The Customer acknowledges that the Customer's close involvement is essential to ensure that the IT Services successfully meet the Customer's requirements.
- 12.2 The Customer agrees to provide guidance to the Service Provider on the Customer's business practices which affect IT Services.
- 12.3 The Customer shall pay for IT Services delivered under and in accordance with this Agreement.
- 12.4 The Customer shall appoint a Representative and Key Personnel (identified in **Part I**) who are assigned to oversee the successful performance and delivery of the IT Services. The Customer may change the identity of the Customer's Representative or any of the details of the Customer's Representative and Key Personnel on written notice to the Service Provider.
- 12.5 If requested by the Service Provider, the Customer shall provide a desk and wi-fi facilities for the use of the Customer on a licence-at-will basis.

## 13 Termination

### Termination for Convenience

- 13.1 Notwithstanding any other term, the Customer may terminate this Agreement by giving at least six (6) months' prior written notice to the Service Provider, notice to expire at the end of the Initial Term or, if later, a Subsequent Term.

### Termination for Material Breach

- 13.2 The Customer may terminate this Agreement forthwith on giving notice in writing:
- 13.2.1 if the Service Provider is in breach of:
- 13.2.1.1 clause 19 (Confidential Information);
  - 13.2.1.2 clause 20 (Customer Data and Data Protection);
  - 13.2.1.3 clause 21 (Freedom of Information);
  - 13.2.1.4 clause 22 (Security and Control);
  - 13.2.1.5 clause 23 (Compliance).
- 13.2.2 if the Service Provider fails to:
- 13.2.2.1 deliver a Deliverable by its associated delivery date;
  - 13.2.2.2 comply with a Correction Plan;
  - 13.2.2.3 meet a Service Level target;
  - 13.2.2.4 pass the repeat Acceptance Tests;
- 13.2.3 if the Service Provider's level of performance causes a Critical Fault as defined in **Part B**;
- 13.2.4 if the Service Provider commits a Material Breach, of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed within fourteen (14) days after the receipt of a request in writing from the Customer to do so, to remedy the breach (such request to contain a notice of the Customer's intention to terminate);
- 13.3 The Service Provider may terminate this Agreement forthwith on giving notice in writing if the Customer commits a breach of its obligation to pay undisputed Charges by giving the Customer ninety (90) days written notice specifying the breach and requiring its remedy (such request to contain a warning of the Service Provider's intention to terminate);

### Termination for Insolvency

- 13.4 Either party may terminate this Agreement forthwith on giving notice in writing if the other party is involved in any legal proceedings concerning its solvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation, whether compulsory or voluntary, other than for the purposes of an amalgamation or reconstruction, or makes an arrangement with its creditors or petitions for an administration order or if a receiver or manager is appointed over all or any part of its assets or if it generally becomes unable to pay its debts within the meaning of Section 123 or Section 268 of the Insolvency Act 1986;

### Termination for Change of Control

- 13.5 The Customer may terminate the Agreement forthwith on giving written notice (without penalty) if there is a change of control in the Service Provider to which the Customer objects, except where the Customer has given its prior written consent to the change of control, which subsequently takes place as proposed.

### Termination for a Force Majeure Event

13.6 Termination for a Force Majeure event (as described in clause 29).

Termination and Accrued Rights

13.7 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party.

**14 Consequences on Expiry or Termination**

14.1 Following the service of a termination notice for any reason, the Service Provider shall continue to be under an obligation to provide IT Services to the required Service Levels and to ensure that there is no degradation in the standards of IT Services until the date of termination.

14.2 On expiry or termination of this Agreement for any reason the Service Provider shall:

14.2.1 repay to the Customer any Charges or other sums paid in advance in respect of IT Services not provided as at the date of expiry or termination.

14.2.2 co-operate with the Customer's requirements to return, destroy or delete (or to procure the return, destruction or deletion thereof) all:

14.2.2.1 the Customer's Confidential Information under its control or in its possession;

14.2.2.2 the Customer Data, or media containing the Customer Data or other materials provided by the Customer; and

14.2.2.3 the Customer owned property in the possession or control of the Service Provider or its sub-contractors, to the Customer;

and to deliver to the Customer a Certificate of Return, Destruction or Deletion signed and dated by a board director.

Migration Services

14.3 The Service Provider shall work with the Customer and ensure an orderly transition of the IT Services to the replacement Service Provider.

14.4 On expiry or termination of this Agreement for any reason, the Customer may request the Service Provider to provide migration services to the Customer or to a third party service provider identified by the Customer at no charge to the Customer for thirty (30) days (and thereafter at a reasonable fee to be agreed with the Customer).

14.5 Where the Customer requests migration services, the Service Provider shall deliver the Customer Data in an agreed format to the Customer or to any successor ISP address(es) and location(s) designated by the Customer;

14.6 The Customer shall accept the migration services within 60 days after delivery of the Customer Data and the Software to the Customer or its nominee as provided for in this Agreement or on notice of acceptance to the Service Provider whichever is the earlier. On such acceptance, the Service Provider shall not be obliged to provide any further migration services to the Customer.

14.7 The Customer shall, on termination or at the end of the migration services (if later), return to the Service Provider any Software or media that is owned by the Service Provider or third party licensor if applicable, provided that the Customer may retain a copy for audit purposes.

**15 Liability, Indemnity and Limitations**

15.1 Notwithstanding any other provision in this Agreement, the Service Provider neither excludes nor limits liability to the Customer for any claims, losses (including regulatory losses and fines),

damages, costs or expenses, or acts or omissions arising from:

- 15.1.1 the negligence of the Service Provider, its officers, employees, agents and sub-contractors in the performance of their duties, resulting in death or personal injury;
  - 15.1.2 bribery, fraud or fraudulent misrepresentation;
  - 15.1.3 the Service Provider's Intellectual Property Rights indemnities;
  - 15.1.4 breaches of Data Protection Legislation; and
  - 15.1.5 any other liability which by law cannot be excluded or limited.
- 15.2 Except as provided in clause 15.1 above, the Service Provider's total liability to the Customer for any claims, losses, damages, costs and expenses arising under this Agreement or otherwise for any cause whatsoever shall be limited to the sum of the relevant insurance cover in clause 16 below.
- 15.3 The Service Provider shall, in addition, compensate the Customer for any additional operational or administrative costs and expenses resulting from a Material Breach of the Service Provider.
- 15.4 Except as otherwise prohibited by law, the Customer's total liability to the Service Provider for any claims, losses, damages, costs and expenses arising under this Agreement or otherwise for any cause whatsoever, shall be limited to the value of the monies paid to the Service Provider under this Agreement.
- 15.5 In no event shall either party be liable to the other for any loss of profits, business, revenue, damage to goodwill, savings or any indirect, special or consequential loss or damage.
- 15.6 The parties acknowledge and agree that the limitations contained in this clause 15 are commercially reasonable in the light of the nature of the IT Services, the identity of the Customer and all the relevant circumstances relating to delivery of the IT Services.

## **16 Insurance**

- 16.1 The Service Provider shall from the Commencement Date up to the end of the Limitation Period maintain, as a minimum, the insurance policies described in the Order Form with an insurance company of repute to cover its liabilities for each and every claim.
- 16.2 The Service Provider shall notify the Customer immediately if any such insurance policy at any time ceases to be in force and shall immediately take out replacement insurance.
- 16.3 The Service Provider shall on request of the Customer immediately supply copies of the relevant certificates of insurance at any time during the continuation of this Agreement.
- 16.4 The Service Provider shall ensure that all sub-contractors hold insurances (described in clause 16.1 above) of the same amounts that the Service Provider would be legally liable to pay as damages, including claimant's costs and expenses.
- 16.5 Holding insurance cover shall not relieve the Service Provider of any liabilities under this Agreement.
- 16.6 The Service Provider shall take all risk control measures relating to the IT Services as would be reasonable to expect from a contractor acting in accordance with Good Industry Practice;
- 16.7 The Service Provider shall promptly notify the insurers in writing of any relevant material fact under any insurances of which the Service Provider is, or becomes, aware;

## **17 Intellectual Property Rights and Licences**

### **OPTION 1**

#### Service Provider IPR and Licences for COTS and SaaS

- 17.1 The Intellectual Property Rights of the Service Provider's Software and any modifications created outside of this Agreement is the Background IPR of the Service Provider and/or its licensors.
- 17.2 All work created by the Service Provider for and under this Agreement is the Service Provider's Foreground IPR.
- 17.3 The Service Provider grants to the Customer a licence suitable for a commercial off-the-shelf software, as amended, modified and delivered to the Customer, in accordance with and for the duration and purposes of this Agreement.
- 17.4 The Service Provider shall obtain from its third-party providers all licences for the Customer to use throughout and for the purposes of this Agreement, any Third-Party Software or systems (including hosting and cloud services & storage services) that is recommended or provided by the Service Provider.

### **OPTION 2**

#### Service Provider IPR and Licences for Bespoke Work

- 17.5 The Intellectual Property Rights of the Service Provider's Software and any modifications created outside of this Agreement is the Background IPR of the Service Provider and/or its licensors.
- 17.6 All Bespoke Work created by the Service Provider for and under this Agreement vests in the Customer and is the Customer's Foreground IPR. The Service Provider grants to the Customer a perpetual, non-revocable licence in any of the Service Provider's Background IPR embedded in the Bespoke Work.
- 17.7 The Customer grants to the Service Provider a limited licence to use the Customer's Foreground IPR for the purposes of this Agreement.
- 17.8 Where the Order Form is silent on which Option applies, Option 2 shall apply in default.

#### Customer's IPR and Licences

- 17.9 The Intellectual Property Rights of the Customer in the Customer's software and Customer Data created outside this Agreement is the Background IPR of the Customer and/or its licensors.
- 17.10 All Intellectual Property Rights in the Customer's software and Customer Data created for and under this Agreement is the Customer's Foreground IPR.
- 17.11 The Service Provider shall have no rights to use the Customer's names, logos or trademarks without the Customer's prior written approval.
- 17.12 The Customer grants to the Service Provider a limited, non-transferable, non-exclusive, royalty-free licence to use only such of the Customer's Intellectual Property Rights as is required, solely to enable the Service Provider to deliver the IT System and to perform the Services.

#### Moral Rights

- 17.13 The Service Provider shall procure that all moral rights of its authors (including that of its sub-contractor's authors) arising from the performance of this Agreement are waived. The Service Provider shall indemnify the Customer in the event of any claims, actions or proceedings for any costs, losses, damages, or expenses brought by the author against the Customer.

## **18 Intellectual Property Infringement and Claim**

- 18.1 The Service Provider shall defend at its own expense any claim brought against the Customer alleging that the use of the IT System infringes the Intellectual Property Rights of a third party ('Intellectual Property Claim') and the Service Provider shall pay all costs and damages awarded or agreed to in settlement of an Intellectual Property Claim provided that the Customer:
- 18.1.1 furnishes the Service Provider with prompt written notice of the Intellectual Property Claim;
  - 18.1.2 provides the Service Provider with reasonable assistance in respect of the Intellectual Property Claim; and
  - 18.1.3 gives to the Service Provider the sole authority to defend or settle the Intellectual Property Claim.
- 18.2 If, in the Service Provider's reasonable opinion, the use of the IT System is or may become the subject of an Intellectual Property Claim then the Service Provider shall either:
- 18.2.1 obtain for the Customer the right to continue using the IT System which is the subject of the Intellectual Property Claim; or
  - 18.2.2 replace or, with the written consent of the Customer, modify the IT System, which is the subject of the Intellectual Property Claim, so it becomes non-infringing.
- 18.3 If the remedies set out in clause 18.2 above are not in the Service Provider's opinion reasonably available, the Customer shall cease using the IT System which is the subject of the Intellectual Property Claim, the Service Provider shall repay to the Customer all sums paid to the Service Provider and indemnify the Customer for all damages, losses, costs and expenses including reasonable legal expenses and third party claims suffered by the Customer.
- 18.4 Any replacement or modification made to the IT System under clause 18.2.2 shall be subject to the same warranties and terms of this Agreement and the Customer shall have the same rights as if they were made on the Commencement Date.
- 18.5 Each party recognises that the other party's business relies upon the protection of its IPR and that in the event of a breach or threatened breach of IPR, the other party shall be caused irreparable damage and such other party may therefore be entitled to injunctive or other equitable relief to prevent a breach or threatened breach of its IPR.
- 18.6 If a party learns of any claim of infringement of the Customer's Intellectual Property Rights in the Customer Data, it shall promptly notify the other party. The Service Provider shall do all such things as the Customer may reasonably require at the Customer's expense to assist the Customer in taking proceedings or any other actions the Customer may reasonably take to terminate or prevent any such claim.

## **19 Confidential Information**

- 19.1 Both parties to this Agreement undertake, except as provided below, to treat as confidential and keep secret all information marked 'confidential' or which may reasonably be supposed to be confidential, including, without limitation, information contained or embodied in the Deliverables in **Part F, 1 of the Tender Documents** and other information supplied by the Customer or Service Provider (in this Agreement collectively referred to as '**Confidential Information**') with the same degree of care as it employs with regard to its own confidential information of a like nature and in any event in accordance with best current commercial security practices, provided that, this clause shall not extend to any information which was rightfully in the possession of either party prior to the commencement of the negotiations

leading to this Agreement or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause).

- 19.2 A party shall not without the prior written consent of the other party divulge any part of the Confidential Information to any person except:
- 19.2.1 to their own directors, officers, employees, sub-contractors and agents and then only to those persons who need to know the same;
  - 19.2.2 to either party's auditors, an officer of Inland Revenue, an officer of HM Revenue and Customs, a court of competent jurisdiction, governmental body or applicable regulatory authority and any other persons or bodies having a right duty or obligation to know the business of the other party and then only in pursuance of such right duty or obligation; or
  - 19.2.3 where it must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure by the Customer under the Freedom of Information Act 2000, save where an exemption applies, or the Code of Practice on Access to Government Information or the Environmental Information Regulations apply.
  - 19.2.4 to any person who is for the time being appointed by either party to maintain the equipment on which the Software is for the time being used (in accordance with the terms of the Agreement) and then only to the extent necessary to enable such person to properly maintain the equipment.
- 19.3 Both parties undertake to ensure that persons and bodies referred to in clause 19.2 are made aware before the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the other party.
- 19.4 Each party to this Agreement shall promptly notify the other party if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the Confidential Information and shall give the other party all reasonable assistance in connection with any proceedings which the other party may institute against such person for breach of confidence.

## **20 Customer Data and Data Protection**

- 20.1 The Customer shall own (or shall have the right to use) all right, title and interest in and to all of the Customer Data.
- 20.2 The Service Provider shall comply with its Privacy and Security Policy (described in the Order Form) relating to the privacy and security of the Customer Data.
- 20.3 In respect of Personal Data, both parties undertake to comply with the provisions of the Data Protection Legislation, more fully described in **Part D**.

## **21 Freedom of Information**

- 21.1 The Service Provider acknowledges that the Customer is subject to the requirements of the Code of Practice on Access to Government Information, the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR").
- 21.2 The Service Provider shall assist and co-operate with the Customer in a timely and efficient manner, and provide a copy of all information in its possession or power, in the form that the Customer requires, to enable the Customer to respond to a request for information within the time for compliance set out in Section 10 of the FOIA.

- 21.3 The Service Provider may request in **Part F, 2c of the Tender Documents** that certain information arising out of the execution of the works be classified as reserved information under the Freedom of Information Act 2000 (“FoIA”) and the Environmental Information Regulations and not disclosable by the Customer to third parties.
- 21.4 **Part F, 2c** shall list the class or category of information or the information itself and shall specify which exemptions under the FoIA apply to each specified class category or specific information. Each case shall indicate when it is likely that the information can be made available under the FoIA or if the information is unlikely ever to be made so available that this is the case. Where such information is exempt under the rules governing commercial matters (s.43(2) FoIA) then unless special circumstances apply it shall not be withheld under the FoIA for more than seven (7) years after the expiry or termination of this Agreement.
- 21.5 Information relating to the overall value performance or completion of this Agreement, or relating to contract records and administration, shall not be accepted as reserved information. The Customer may however withhold access to such information under the FoIA in appropriate cases.
- 21.6 The Service Provider acknowledges that the Customer may, acting in accordance with the Department of Constitutional Affairs’ Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information 2000, be obliged under the Code of Practice on Access to Government Information, the FOIA, or the Environmental Information Regulations to disclose information without consulting with the Service Provider, or following consultation with the Supplier and having taken its views into account.
- 21.7 Should it subsequently transpire that any information has been incorrectly classified as reserved information by the Service Provider or any competent public authority orders the information to be released, the Service Provider shall immediately deliver such information to the Customer and reimburse all the costs incurred by the Customer as a result of the Service Provider seeking to classify the information as reserved information.
- 21.8 The Service Provider shall ensure that all information produced in the course of the Agreement or relating to this Agreement is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time. The Service Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Customer may nevertheless be obliged to disclose Confidential Information in accordance with clause 19.2.3.

## **22 Security and Control**

- 22.1 The Customer may, during the continuance of this Agreement refuse admission to the Customer’s premises of any of the Service Provider’s personnel whom the Customer believes represents a security risk, or require the Service Provider to exclude such personnel from working on the IT Services or IT Services under this Agreement or does not have the required levels of training and expertise or where the Service Provider has other grounds for doing so. The decision of the Customer shall be final, and it shall not be obliged to provide any reasons.
- 22.2 The Service Provider shall:
- 22.2.1 use its best endeavours to keep confidential the passwords or other security information relating to the IT Services or any equipment of the Customer;
  - 22.2.2 ensure compliance with the Customer’s security requirements to protect the authenticity and integrity of the IT Services, and pro-actively provide security for the IT Services, ensuring that adequate security protections are in place;



- 22.2.3 regularly review its security policies and the actual security of the IT Services, and inform the Customer of any additional measures necessary to maximise security of the IT Services and integrity of the Customer Data, and other Customer's information;
  - 22.2.4 notify the Customer promptly of any unauthorised access or use of the Customer Data or other security incident affecting its network and information systems that could potentially affect the Customer, and respond without delay to all queries and requests for information from the Customer, whether discovered by the Service Provider or the Customer, in particular bearing in mind the extent of the Customer's reporting obligations under applicable network and information security legislation and that the Customer may be required to comply with statutory or other regulatory timescales;
  - 22.2.5 comply with the staffing and remote working requirements of the Customer, as required;
  - 22.2.6 have in place a comprehensive Business Continuity and Disaster Recovery Policy and Procedures approved by the Customer (described in the Order Form) which are reviewed at least annually and meet the contractual RTO and RPO.
  - 22.2.7 ensure that any sub-contractor or third-party provider of any of IT Services shall have similar Business Continuity and Disaster Recovery policy and procedures in place.
  - 22.2.8 use all reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of IT Services is at least as good as at the prevailing industry norm for similar services.
  - 22.2.9 promptly replace any key personnel that the Customer considers unsatisfactory at no extra charge.
  - 22.2.10 promptly replace any Key Personnel (**Part I**) who leaves the project team working on the IT Services under this Agreement with someone who is of equivalent skills and experience in consultation with the Customer.
  - 22.2.11 at the Service Provider's cost, carry out penetration tests at least once annually or sooner if required and anytime there is a significant infrastructure or application upgrade or modification.
  - 22.2.12 co-operate with the Customer in all aspects of its compliance with the Network and Information Systems Regulations including, without limitation, any requests for information in the event of a suspected or actual security incident and any inspections by regulators.
- 22.3 The Service Provider and its staff shall also adhere to the Customer's business continuity and disaster recovery procedures as required.
- 22.4 The Service Provider shall comply with the Customer's Health & Safety policies and procedures while on the Customer's premises.
- 22.5 The Service Provider shall follow Good Industry Practice for storage procedures for Customer Data and shall have in place a back-up policy approved by the Customer described in the Order Form). The Service Provider shall notify the Customer of any changes that substantially or significantly differ from that which has been disclosed to the Customer at the date of this Agreement. In the event of any damage to the Customer Data, the Service Provider shall use all best endeavours to restore the lost or damaged Customer Data from the latest back-up maintained by the Service Provider.

## **23 Compliance**

- 23.1 The Service Provider shall in the performance of the IT Services take account of any statute, statutory instrument, byelaw, relevant British Standard (or equivalent EU standard) or other mandatory requirement or code of practice and the Customer's policies, which may be in force, or come into force, during the performance of the IT Services.
- 23.2 Without limitation to clause 23.1, the Service Provider must:
- 23.2.1 comply with the provisions of the Bribery Act 2010 and, in particular, section 7 of that Act in relation to the conduct of its employees, or persons associated with it;
  - 23.2.2 not unlawfully discriminate within the meaning and scope of the Equality Act 2010;
  - 23.2.3 comply with applicable requirements of the Modern Slavery Act 2015;
  - 23.2.4 comply with the Customer's Living Wage Provisions;
  - 23.2.5 ensure that any third party to whom it sub-contracts any part of the IT Services, must comply with this clause 23.2.
- 23.3 The Service Provider warrants that it has and will maintain in place adequate procedures designed to prevent acts of bribery from being committed by its employees or persons associated with it, and must provide to the Customer at its request, within a reasonable time, proof of the existence and implementation of those procedures.
- 23.4 The Service Provider shall take all necessary steps to secure the observance of the provisions of clause 23.2 by all its employees, agents, sub-contractors and suppliers engaged in the execution of the IT Services.
- 23.5 The Customer is entitled by notice to the Service Provider to terminate this Agreement or any other contract with the Service Provider if the Service Provider or any person employed by it or acting on its behalf fails to comply with the requirements set out in clause 23.2.

## **24 Survivorship**

- 24.1 The provisions of any clause which by implication intended to come into or continue in force on or after termination shall by its nature be deemed to survive the termination of this Agreement.

## **25 Agency, Partnership**

- 25.1 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.

## **26 Amendments**

- 26.1 This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except in writing signed by a duly authorised officer or Representative of each of the parties.
- 26.2 If the Customer or the Service Provider wishes to request a change to the terms of its Call-Off Contract (a "**Change**"), it shall give written notice of the requested Change to the other.
- 26.3 If the Customer or the Service Provider requests a Change in accordance with clause 26.2, the Service Provider shall prepare within a reasonable time two copies of a change control notice ("**CCN**").

- 26.4 Each CCN shall contain:
- 26.4.1 the title of the Change;
  - 26.4.2 the originator and date of the request for the Change;
  - 26.4.3 the reason for the Change;
  - 26.4.4 details of the Change;
  - 26.4.5 the change in capital costs, if any, of the Change;
  - 26.4.6 the change in revenue costs, if any, of the Change;
  - 26.4.7 a timetable for implementation of the Change;
  - 26.4.8 details of the impact, if any, of the Change on other aspects of the relevant Call-Off Contract and the provision of the IT Services;
  - 26.4.9 the date of expiry of validity of the CCN; and
  - 26.4.10 provision for signature by the Customer and by the Service Provider.

An example of such a Change Control Notice is set out in **Part G**.

- 26.5 Following receipt by the Customer of the CCN, the Customer and the Service Provider shall discuss the CCN. Neither the Customer nor the Service Provider shall unreasonably withhold its agreement to any Change.
- 26.6 No Change shall be effective unless and until the relevant CCN is signed by or on behalf of the Customer and the Service Provider.
- 26.7 If a CCN is not signed by or on behalf of the Customer and the Service Provider on or before the date of expiry of validity of that CCN then it shall automatically expire.
- 26.8 If a CCN is signed by or on behalf of the Customer and the Service Provider on or before the date of expiry of validity of that CCN then the Service Provider shall implement the Change in accordance with the terms of the CCN and the Customer shall perform any obligations imposed on it in the CCN in accordance with the terms of the CCN or (if applicable) the relevant provisions of the Call-Off Contract, including the payment of any charges.
- 26.9 Until such time as a Change is agreed in accordance with this clause 26, the Customer and the Service Provider shall continue to perform their respective obligations under the relevant Call-Off Contract in compliance with the terms and conditions of that Call-Off Contract without taking account of the requested Change.

## **27 Announcements**

- 27.1 The Service Provider shall not issue or make any public announcement or disclose any information regarding this Agreement unless prior written consent has been obtained from the Customer.

## **28 Entire Agreement**

- 28.1 Except for fraud and fraudulent misrepresentation, this Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Agreement. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated herein.

28.2 For the avoidance of doubt, any terms and conditions of the Service Provider which are included or referred to in any purchase order shall not apply or take precedence unless specifically accepted in writing by the Customer and referred to in this Agreement.

## **29 Force Majeure**

29.1 Notwithstanding anything else contained in this Agreement, a party affected by Force Majeure shall not be liable to the other for any loss of any kind which is directly or indirectly caused by reason of any failure or delay in the performance of its obligations under this Agreement which is due to Force Majeure.

29.2 A party affected by Force Majeure shall:

29.2.1 notify the other party in writing within five (5) days of the occurrence of the event constituting Force Majeure; and

29.2.2 use its reasonable endeavours to continue to perform, or resume performance of, its obligations under this Agreement for the duration of the event constituting Force Majeure.

29.3 If either party becomes aware of circumstances of Force Majeure which are likely to give rise to a failure or delay on its part it shall forthwith notify the other as to the circumstances and the period for which it is estimated that such failure or delay is likely to continue.

29.4 If a party is prevented from performance of its obligations under this Agreement for a continuous period of more than six (6) weeks by reason of Force Majeure, the other party may terminate this Agreement immediately on service of written notice upon the party so prevent.

29.5 Any costs arising from such delay shall be borne by the party incurring the same.

## **30 Notices**

30.1 All notices under this Agreement shall be in writing.

30.2 Notices shall be deemed to have been duly given:

30.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

30.2.2 when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or

30.2.3 on the fifth (5<sup>th</sup>) business day following mailing, if mailed by national ordinary mail, postage prepaid; or

30.2.4 each case addressed to the most recent address, e-mail address, or facsimile number notified to the other party.

## **31 Severance**

31.1 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

## **32 Assignment**

- 32.1 This Agreement is personal to the Service Provider and neither this Agreement nor any rights, licences or obligations under it, may be assigned by the Service Provider, without the prior written approval of the Customer.

## **33 Waiver**

- 33.1 No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement. No right, power or remedy in this Agreement conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.

## **34 Duplicates**

- 34.1 This Agreement shall be executed in duplicate, each of which shall be an original, and the duplicates shall together constitute one and the same agreement.

## **35 Sub-Contracting**

- 35.1 With the prior written consent of the Customer (which consent shall be at the sole discretion of the Customer) the Service Provider may perform any or all of its obligations under this Agreement through agents or sub-contractors, provided always that the Service Provider shall remain fully liable for the performance and Deliverables of the sub-contractor, agent or any third party appointed by the Service Provider.
- 35.2 The Service Provider shall make its sub-contractors, agents and third parties aware of the Customer's Living Wage Provisions, and the need for the sub-contractor, agent or third party to complete (if requested by the Customer) any documentation to ensure compliance of the City's Living Wage Provisions by any third party in respect of any part of the IT Services which shall be sub-contracted by the Service Provider to any third party.
- 35.3 Sub-contracting the IT Services shall not entitle the Service Provider to charge an administration fee nor require the Customer to enter into an agreement with the third-party. All requisite third-party licences shall be held by the Service Provider for the benefit of the Customer.
- 35.4 The Service Provider shall indemnify the Customer against any loss or damage suffered by the Customer arising from any act or omission of such agents or sub-contractors.

## **36 Language**

- 36.1 This Agreement is made only in the English language. If there is any conflict in the meaning between the English language version of this Agreement and any version or translation of it in any other language, the English language version shall prevail.

## **37 Costs and Expenses**

- 37.1 Each party shall bear its own legal costs and other costs and expenses arising in connection with the drafting, negotiation, execution and registration (if applicable) of this Agreement.

### **38 Set-Off**

- 38.1 Neither party may set off any liability against any sum that would otherwise be due to the other party under this Agreement.

### **39 Third Parties**

- 39.1 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

### **40 Non-Poaching of Staff**

- 40.1 Each party covenants with the other party that it shall not either during the term of this Agreement or within a period of twelve (12) months thereafter directly or indirectly entice away or endeavour to entice away from the other party any person who has during the previous twelve (12) months been employed by the other party involved in the performance of this Agreement.

### **41 Parent Company Guarantee**

- 41.1 If required by the Particulars, the Service Provider shall deliver to the Customer a Deed of Guarantee (in the form set out in **Part E**) executed by its parent company, or where the Service Provider is part of a group of companies, then the ultimate parent holding company agreed by the Customer. The issuing of a valid parent company Deed of Guarantee shall be a condition precedent to the execution of this Agreement.

### **42 Limitation Period**

- 42.1 The Limitation Period is six (6) years if the Agreement signed under hand, and twelve (12) years if the Agreement executed as a Deed, commencing from either the date of completion of the IT Services, or (if earlier) the date upon which the Service Provider's engagement is terminated.

### **43 Alternative Dispute Resolution Procedure**

- 43.1 If any dispute arises in connection with this Agreement, a director or other senior representative of the parties with authority to settle the dispute shall, within 14 days of a written request from one party to the other, meet in good faith to resolve the dispute.
- 43.2 If the dispute is not wholly resolved at that meeting, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties within fourteen (14) days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give an Alternative Dispute Resolution notice in writing ('ADR Notice') to the other party, referring the dispute to mediation. A copy of the referral should be sent to CEDR.
- 43.3 Unless otherwise agreed, the mediation will start not later than twenty-eight (28) days after the date of the ADR Notice.
- 43.4 No party may commence any arbitration or legal proceedings in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the

mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

**44 Law and jurisdiction**

44.1 This Agreement and all matters arising from it, including dispute resolutions, shall be governed by and construed in accordance with the Laws of England, and the parties submit to the exclusive jurisdiction of the English Courts.

## PART B

### SUPPORT AND MAINTENANCE SERVICE LEVEL AGREEMENT (SLA)

1 This SLA describes the minimum level of support and maintenance services to be provided by the Service Provider to the Customer and the respective obligations of the parties.

#### 2 SLA Definitions

2.1 The definitions in this **Part B** shall supplement the definitions in **Part C**, as follows:

<b>24x7 Support Hours</b>	is as stated in the Order Form;
<b>Core Support Hours</b>	is as stated in the Order Form;
<b>'Downtime'</b>	means any service interruption of one (1) minute or more in the availability to the IT System, but shall not include any planned Outage or any service interruption where the Fault lies with the Customer;
<b>'Extended Support Hours'</b>	is as stated in the Order Form;
<b>'Fault'</b>	Any failure of the Software or IT System to operate in any material respect in accordance with the Specification and Response in <b>Part F (Tender Documents)</b> and Agreement, including any failure or error referred to in the Service Level Table. Fault is categorised in paragraph 3.13 below;
<b>'Help Desk Support'</b>	Support provided by help desk technicians sufficiently qualified and experienced to identify and resolve the support issues relating to the Software or the IT System;
<b>'Higher-Level Support'</b>	Support provided by persons who are more qualified or experienced to provide support at a higher level than the previous level of support given;
<b>'Outage(s)'</b>	includes emergency and previously scheduled windows for maintenance of the IT System;
<b>'Permitted Purpose'</b>	in the case of reverse analysis where permitted by applicable law, the Customer may decompile the Software if it is essential to do so in order to achieve interoperability of the IT System with another software program or media;
<b>'Release'</b>	means any improved, modified or corrected version or upgrade, whether major or minor, of any of the IT System, Software or media or Support Materials from time to time issued by the Service Provider;
<b>'Service Credits'</b>	the sum of money paid or services-in-kind provided by the Service Provider to the Customer where the Service Provider has failed to reach a Service Level target;



<b>‘Service Level Table’</b>	The table in paragraph 9.1 below;
<b>‘SLA’</b>	This Service Level Agreement;
<b>‘Support Period’</b>	The period from Go-Live until expiry or termination of the Agreement and any period thereafter during which the Customer has requested the Service Provider to provide migration services;
<b>‘Support Request’</b>	A request made by the Customer for support of the Software or IT System, including the correction of a Fault;
<b>‘Support Services’</b>	Maintenance of the Software and IT System, including Help Desk Support and Higher-Level Support, if required
<b>‘Support Hours’</b>	means any one or more of the Core Support Hours, the Extended Support Hours and the 24x7 Support Hours, elected by the Customer in the Order Form, for the support of the IT Services.
<b>‘Uptime’</b>	is all time that is not Downtime.

### **3 Support Services:**

- 3.1 The Service Provider shall provide the following Support Services, comprising:
- 3.1.1 software support and maintenance;
  - 3.1.2 hosting support and maintenance;
  - 3.1.3 technical support;
  - 3.1.4 service recovery;
  - 3.1.5 Help Desk Support, including the provision of Higher-Level Support;
  - 3.1.6 training;
  - 3.1.7 Support Materials; and
  - 3.1.8 such other support services as a reasonable service provider would be expected to provide from time to time.
- 3.2 During the Support Period, the Service Provider shall perform the Support Services to ensure that the IT System is maintained and operating efficiently and effectively to meet the Customer’s requirements during the Support Hours in accordance with the Service Levels.
- 3.3 In the event the IT System becomes unavailable, the Service Provider shall remedy the Fault, in accordance with this SLA.
- 3.4 The Service Provider shall give the Customer notice in accordance with the specification of any planned maintenance work which shall affect the availability of the IT System and shall plan and carry out such work at such times so as to minimise disruption to the availability of the IT System.
- 3.5 This SLA shall be read in conjunction with the other terms and conditions of the Agreement relating to the delivery of the IT Services.

- 3.6 As part of the Support Services, the Service Provider shall:
- 3.6.1 Monitor the system for availability and Faults
  - 3.6.2 Use all reasonable efforts to correct Faults notified to or identified by the Service Provider;
- 3.7 The Support Services shall include:
- 3.7.1 information and advice by telephone, email or via the Service Provider’s support website;
  - 3.7.2 information and advice by telephone, email or via the Service Provider’s support website on Releases;
  - 3.7.3 upon request by the Customer, the diagnosis of Faults in the IT System, Software or media and the rectification (in accordance with paragraph 12.5 below) of such Faults remotely (or if the Customer considers necessary, by attendance on the Customer’s site) by the issue of fixes in respect of the IT System, Software or media and the making of all necessary consequential amendments (if any) to the Support Materials;
  - 3.7.4 the creation and despatch to the Customer from time to time of patches and fixes;
- 3.8 The Customer may request Support Services by way of a Support Request. The Support Request shall contain a detailed description of the problem or Fault and where known the start time of the incident. The Customer shall telephone or document to the Service Provider a detailed description of any Fault requiring Support Services and the circumstances in which it arose, forthwith upon becoming aware of the same, so that it can be replicated. The Customer shall provide such additional information as may be reasonably requested by the Service Provider to enable the Fault to be classified in accordance with paragraph 3.13 below.
- 3.9 The Service Provider shall:
- 3.9.1 Prioritise all Support Requests based on its reasonable assessment of the severity level of the problem reported; and
  - 3.9.2 Respond to all Support Requests in accordance with the responses and response times specified in the table set out below.
- 3.10 Where Help Desk Support is not provided within the relevant Service Level response
- 3.11 time, the Service Provider shall escalate the Support Request to Higher Level Support;
- 3.12 Support Services shall be provided during the Support Hours. Out of hours emergency support for Critical Faults will be provided on a best endeavours basis and to meet the resolution times of the table in paragraph 3.13 below.
- 3.13 Support Services shall be provided in accordance with the following procedure and timescales:

<b>‘Critical Fault’</b>	means any fault which is fatal, or disables major functions of the Customer’s business or marketability of its services or products which results in the IT System, Software or media being non-operational for business critical delivery;
<b>‘Major Fault’</b>	means a Fault which has a severe impact in any part of the IT System, Software or media which does not constitute a Critical Fault but which prevents the Customer operating a material part of its business for which it for which it purchased the IT System;

<b>'Important Fault'</b>	means a Fault which has degraded operations or errors disabling only certain non-essential functions and which is agreed to be important by the Service Provider and the Customer but does not constitute a Critical Fault or a Major Fault;
<b>'Minor Fault'</b>	means a Fault which has minimal impact and is agreed to be minor by the Service Provider and the Customer, but which does not constitute a Critical Fault, Major Fault or Important Fault (for example errors in documentation and spelling errors in non-public facing forms/screens);

**The following response targets are the Customer's guideline requirements:**

**(a) Faults reported to the Service Provider during Core Support Hours**

*(all times relate to times in Core Hours)*

<b>Classification of Fault</b>	<b>Maximum Response Time*</b>	<b>Progress Update Frequency</b>	<b>Maximum Resolution Times**</b>
Critical Fault	10 minutes	Every 1 (ONE) hour	30 minutes
Major Fault	30 minutes	Every 2 hours	2 hours
Important Fault	2 hours	Every 2 days	8 hours
Minor Fault	8 hours	Every 7 days or as otherwise mutually agreed between the parties	1 week***

**(b) Faults reported to the Service Provider during Extended Support Hours**

*[all times related to times in Extended Support Hours]*

<b>Classification of Fault</b>	<b>Maximum Response Time*</b>	<b>Progress Update Frequency</b>	<b>Maximum Resolution Times**</b>
Critical Fault	30 minutes	Every 1 (ONE) hour	1 hour
Major Fault	1 hour	Every 4 hours	4 hours
Important Fault	4 hours	Every 2 days	End of next business day

Minor Fault	End of next business day	Every 5 days or as otherwise mutually agreed between the parties	1 week***
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*\* The first response from the Service Provider by telephone or email generated by a human being (as opposed to an automated “we have received your report and will deal with it” response).*

*\*\* A Fault is resolved when the full functionality of the system is restored. A Fault may be resolved though application of a workaround.*

#### Workarounds

*The Service Provider will within the Maximum Resolution Time agree with the Customer an acceptable workaround that can be used until such a time that the Service Provider is able to implement a permanent fix and agree with the Customer a timescale for the implementation of a permanent fix. While the permanent fix is pending the Service Provider shall include in all performance review documents progress towards implementation and either confirm the expected implementation date or propose for the agreement of the Customer a revised implementation date.*

- 3.14 If the parties agree a Fault classification, the Service Provider shall use all reasonable endeavours within the Resolution Times of such agreement (or sooner if reasonably practicable) to fix the Fault and/or supply instructions to the Customer, which are intended to provide a work around acceptable to the Customer for the Fault or provide a correction.
- 3.15 If the parties, acting with due diligence, are unable to agree on the designation of a Fault reported by the Customer pursuant to paragraph 3.4 above, the Service Provider shall, acting reasonably, designate the level of Fault and references to “agree” and “agreement” in paragraph 3.14 above shall be deemed to refer to the designation of the Fault by the Service Provider; and
- 3.16 In the event that the Customer disagrees with the designation of the Service Provider pursuant to paragraph 3.15, it shall be entitled to escalate the designation in accordance with the provisions of paragraph 6 below.
- 3.17 In order for the Service Provider to be able to provide the Support Services to the Customer, the Customer shall:
- 3.17.1 ensure that appropriate arrangements are put into place to allow remote access to the IT System, acceptable to the parties, or where remote access is not possible, to provide physical access to such premises of the Customer as the Service Provider shall reasonably require, unless the instruction or requirement can be performed by the Customer at the direction of the Service Provider;
- 3.17.2 to continue to maintain any IT System requirement in accordance with the minimum operating requirements from time to time as notified by the Service Provider or the owner thereof.
- 3.18 The Customer shall ensure that staff are properly and adequately trained to a level of competence in relation to the IT System, in accordance with Service Provider’s guidelines on training.
- 3.19 The Service Provider shall give the Customer regular updates of the nature and status of its efforts to correct any Fault and monthly reports as to achievement of Service Levels and Service Credits to which the Customer has become entitled.
- 3.20 The Service Provider shall in respect of Critical and Major Faults report to the Customer and the Service Provider shall provide an update of work being undertaken to circumvent or provide a

correction to the Fault at least once a day, the first such update to be provided within one (1) Hour of the designation of the Fault as a Critical Fault, or such other frequency as shall be agreed between the parties from time to time.

#### **4 Downtime and Outages**

- 4.1 The Service Provider shall investigate all Downtime events by using suitably qualified personnel after becoming aware of it and shall remedy the Downtime event as soon as reasonably practicable.
- 4.2 The Service Provider shall within 2 working days provide to the Customer a report of the outcome of all Downtime investigations together with details of the actions taken, or to be taken, to prevent a repeat event. Where the report contains actions to be taken the Service Provider shall within 2 working days provide to the Customer a revised report when those actions have been undertaken. So long as actions remain to be taken the Service Provider shall provide a revised report to the Customer at intervals of not more than a week.
- 4.3 The Service Provider shall make all commercially reasonable efforts to provide the Customer with prior email notification of all scheduled and emergency Outages in accordance with the Specification.

#### **5 Business Continuity & Disaster Recovery**

##### **5.1 Invocation**

Either the Service Provider or the Customer may invoke the Business Continuity / Disaster Recovery Plan when there is either (a) a Critical Failure which has lasted, or is reasonably expected to last, longer than 1 day and the other party agrees to the invocation; or (b) a Critical Failure has lasted, or is expected to last, more than 3 days.

Where appropriate there may be a partial invocation of the Business Continuity / Disaster Recovery Plan in the event of a Major Fault (e.g. for the Public Access element of the system).

##### **5.2 Standards**

The Service Provider shall achieve the Recovery Time Objective of 24 (elapsed) hours and the Recovery Point Objective of 15 (elapsed) minutes.

#### **6 Escalation and Reporting**

- 6.1 The Customer shall be entitled to escalate any disagreement as to a designated Fault level by the Service Provider (as referred to in paragraph 3.13 above) to the Service Provider's Help Desk Supervisor and thereafter if the Customer remains dissatisfied with the designated Fault level, it shall be entitled to escalate the dispute to the following employees of the Service Provider:

- 6.1.1 to the Support Manager; and

- 6.1.2 to the Customer Services Director, or equivalent, thereafter;

the above process shall not preclude the Customer from contacting the account manager at any point during the escalation process to discuss the disagreement and, for the purposes of this paragraph 6.1, the Service Provider shall on request from the Customer notify the Customer of the identity of the individuals holding each of those positions. If resolution is not reached, the parties can escalate the matter under the Dispute Resolution Procedure.

6.2 Notwithstanding the Customer exercising its right to escalate the dispute in accordance with paragraph 6.1 above, the Service Provider shall continue to work towards the provision of a work around or correction of such Fault.

**7 Service Credits**

7.1 Where, at the end of each month, the Service Provider fails to provide a Solution within the relevant response/resolution times, the Customer shall become entitled to the Service Credits specified in the Performance Measuring Table (in paragraph 9.1 below) corresponding to the relevant severity level of Fault, and the Service Provider shall pay the relevant Service Credits to the Customer.

**8 Performance Monitoring**

8.1 The Service Provider shall put in place and accurately document all processes for the identification of performance against the Service Levels against the Key Performance Indicators.

8.2 The Service Provider’s performance in meeting the Service Levels shall be reported, monitored and assessed quarterly.

8.3 In addition to providing Service Level reports, the Service Provider shall measure and provide such data as is reasonably required by Customer for the purposes of monitoring the Service Provider’s performance in meeting the Service Levels and any other contract obligations.

8.4 The Service Provider shall be responsible for ensuring that all Service Level reports are accurately prepared, using up to date and accurate data. Any absence of performance data from said reports may at Customer’s discretion be deemed a maximum accrual of Service Credits to which the inaccurate and/or unavailable performance data relates.

8.5 Where the Service Provider believes there are mitigating circumstances for the inaccurate and/or unavailable performance data, the Service Provider may present to Customer within 5 Working Days of the date the performance data or report was due:

- A. Reasons why this performance data is inaccurate and/or unavailable;
- B. What actions will be taken to ensure it will be accurate and/or available in the future; and
- C. Provide reasonable evidence that the relevant Service elements were not adversely affected during the period of unavailable/inaccurate performance data, then:

The Customer may, at its absolute discretion and without prejudice consider all reasonable requests and agree a reduced level of required performance in relation to such performance data for the duration that it was missing, or the Customer may reject such requests.

**9 Performance reporting**

9.1 The Service Provider shall, at no charge to the Customer, submit the following reports:

Type of report	Frequency	Information to be included in the report
Service and Service Levels performance	Monthly (and within 5 Working Days of the month end)	Service performance per KPI for each month of the previous month.

		<p>Full details of any Critical Fault and Major Fault incidents occurring wholly or partially within the previous month.</p> <p>Number of Root Cause Analysis issued with details</p> <p>Service Credits calculations</p> <p>Highlight any recurrent issues which have become problems and describe problem management actions</p> <p>Any recommendations to assist performance improvement</p>
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**10 Measurement Procedures and Tools**

- 10.1 The Service Provider shall within 1 (ONE) month of the Commencement Date provide to the Customer full details of its measurement and monitoring tools and procedures used to:
  - 10.1.1 measure and report Service Provider’s performance of the Services against applicable Service Levels; and
  - 10.1.2 verify performance of the Services and the carrying out its obligations of this Agreement.

**11 Key Performance Indicators**

11.1 Availability during Support Hours

**"Downtime"** means the total time during the Support Hours in the calendar month during which the service is not available excluding (i) permitted downtime during the same hours and (ii) time during the same hours during which the service is not available due to a Fault which lies with the Customer. ("X")

**"Measured Period"** means the total time during the Support Hours in the calendar month. ("Y")

**"Supported Hours Uptime percentage"** means uptime expressed as a percentage, calculated in accordance with the following formula:

$$\text{Supported Hours Uptime Percentage} = (Y - X) / Y \times 100$$

11.2 Availability outside Support Hours

**"Downtime"** means the total time outside the Support Hours in the calendar month during which the service is not available excluding (i) permitted downtime during the same hours and (ii) time during the same hours during which the service is not available due to a Fault which lies with the Customer. ("X")

**"Measured Period"** means the total time outside the Support Hours in the calendar month. ("Y")

**"Non-Supported Hours Uptime percentage"** means uptime expressed as a percentage, calculated in accordance with the following formula:

$$\text{Non-Supported Hours Uptime Percentage} = (Y - X) / Y \times 100$$

KPI1	Service Availability during Support Hours does not fall below the contractual availability	<b>99.9%</b>
KPI2	Service Availability other than in Support Hours does not fall below the contractual availability	<b>99.5%</b>
KPI3	Resolution of Critical Faults within the contractual time	<b>100%</b>
KPI4	Resolution of Major Faults within the contractual time	<b>99%</b>
KPI5	Resolution of Important Faults within the contractual time	<b>95%</b>
KPI6	Resolution of Minor Faults within the contractual time	<b>90%</b>

## **12 Service Credits:**

- 12.1 The Service Provider acknowledges and agrees that payment of a Service Credit by the Service Provider is a price adjustment and not an estimate of the loss or damage that may be suffered by the Customer as a result of the Service Provider's failure to meet any Service Level.
- 12.2 The Customer's right to Service Credits is in addition to, and not in substitution for, any other rights arising from the Service Provider's failure to meet the Service Levels.
- 12.3 If the actual loss incurred by the Customer, as a result of the Service Provider's failure to supply the IT Services in accordance with the Service Levels, exceeds the relevant Service Credit, the Customer shall have a right to claim damages for losses, costs and expenses suffered (subject to the provisions of clause 15 of **Part A**).

### **12.4 Service Credit Values: Availability SLA**

- 12.4.1 If Availability during Support Hours is below the agreed Availability, the Customer is entitled to a price reduction, applied as a percentage of the monthly fee for the Service.
- 12.4.2 The maximum price reduction per month that can be credited to the Customer in the event of failure to meet Availability is 100% of the monthly charge for the Service. Where several Availability failures occur in the same calendar month, they shall be accumulated into one SLA breach for the purpose of Service Credit Calculation, but each Outage shall be reported separately for the purpose of Performance Reporting.
- 12.4.3 Service Credits shall be paid to the Customer quarterly.
- 12.5 The Service Provider shall provide a rectification plan for agreement by the Customer whenever it fails to meet a Service Level for the Support Services.
- 12.6 The Service Provider shall make all reasonable endeavours to meet a Service Level target within one (1) month following any failure to meet the target.
- 12.7 Failure to comply with paragraphs 4.1, 12.5 and 12.6 shall be a breach of contract.
- 12.8 If requested, the Service Provider shall deliver to the Customer a service report and management report on queries.
- 12.9 The Customer's right to receive Service Credits shall be in addition to, and not in substitution for, any other rights arising from the Service Provider's failure to provide the Services in accordance with the terms of the Agreement.



### **13 Releases**

- 13.1 Releases shall be applied to the TEST and TRAIN systems and the Customer informed of the changes and be given a reasonable time in the circumstances to test and where necessary retrain staff before the Release is applied to the LIVE system.
- 13.2 The process for applying a Release shall include a roll-back plan capable of returning the system to the same state as before the Release was applied. Any changes to Customer Data made during the Release process shall not be lost.
- 13.3 The Service Provider shall notify the Customer in advance of any Releases that require Downtime or service interruption and such Releases will be applied to the LIVE system at times agreed by the Service Provider and the Customer. In the event that such advance notice coincides with significant activity periods of the Customer then the parties will agree an alternative time for applying the Release (acting reasonably).

### **14 Audit**

- 14.1 The Service Provider shall give the Customer access to carry out an audit(s) at least once a year on the Services giving to the Service Provider reasonable notice in writing.
- 14.2 The audit(s) carried out pursuant to paragraph 14.1 shall be subject to the following restrictions:
  - 14.2.1 the audit shall be carried out during standard office working hours, as agreed between the parties;
  - 14.2.2 access will be provided to relevant records necessary to determine compliance with this Agreement and no access shall be provided to information relating to other customers of the Service Provider;
  - 14.2.3 the Customer will reimburse the Service Provider's reasonable costs, for any unreasonable inconvenience caused in relation to any such audit; and
  - 14.2.4 the Customer will take all steps necessary to minimise the disruption to the Service Provider's business and services to other customers.

**PART C**  
**Definitions**

<b>‘Acceptance Certificate’</b>	the certificate or confirmation issued by the Customer to the Service Provider upon successful completion of the Acceptance Tests;
<b>‘Acceptance Tests’</b>	the tests for acceptance of the IT Services;
<b>‘Agreement’</b>	the Agreement for the IT Services described in the Order Form comprising the Particulars, the Standard Terms and Conditions and the Special Terms and Conditions, if any;
<b>‘Background IPR’</b>	the Intellectual Property Rights of a party which existed prior to the date of the Agreement or which has been created outside the scope or contemplation of the Agreement;
<b>‘Bespoke Work’</b>	Work which is created solely for the Customer;
<b>‘Business Continuity and Disaster Recovery’</b>	Described in clause 22 of <b>Part A</b> , and paragraph 5 of <b>Part B</b> ;
<b>‘Change’</b>	Defined in Clause 26.2 of <b>Part A</b> ;
<b>‘Charges’</b>	the charges payable by the Customer to the Service Provider for the IT Services are described in the Order Form and the Tender Documents;
<b>‘Commencement Date’</b>	the date of commencement of the Agreement, described in the Order Form;
<b>‘Conditional Milestone Achievement Certificate’</b>	A Milestone Achievement Certificate that is conditional on remediation of the test issues or non-conformities of the deliverables where no testing has taken place;
<b>‘Correction Plan’</b>	a plan of steps to be taken by the Service Provider to achieve a Milestone;
<b>‘COTS Software’</b>	Commercial Off-the-Shelf Software;
<b>‘Customer Cause’</b>	where a Delay to a Milestone is caused either wholly or partly by the Customer’s actions or omissions;
<b>‘Customer Data’</b>	the data, information, text, media content, features, products, services, advertisements, promotions, ontology, Links, pointers, technology, software and databases for publication (including without limitation, literary, artistic, audio and visual content), including any publication or information created by or for the Customer, for the IT Services;
<b>‘Data Protection Legislation’</b>	is defined in <b>Part D</b> ;
<b>‘Deed of Guarantee’</b>	a parent company guarantee, as described in <b>Part E</b> ;

<b>'Delay'</b>	a Service Provider's inability to achieve a Milestone by a Milestone Date or any other delay impacting on the Implementation Plan;
<b>'Deliverable'</b>	that which is required to be delivered, as described in the Specification and Implementation Plan or elsewhere in this Agreement;
<b>'Dispute Resolution Procedure'</b>	is described in clause 43 of <b>Part A</b> ;
<b>'Final Acceptance Certificate'</b>	the final sign-off by the Customer of the final Acceptance Tests;
<b>"Force Majeure"</b>	any event or circumstance materially and adversely affecting the performance by a party of its obligations arising beyond its reasonable control including without limitation fires, floods, acts of war, acts of terrorism and natural disasters but excluding default of suppliers or third parties (unless caused by events which would constitute Force Majeure), events and circumstances attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees;
<b>'Foreground IPR'</b>	the Intellectual Property Rights created pursuant to and in contemplation of the Agreement as part of the project;
<b>'Good Industry Practice'</b>	the reasonable skill and care expected from a competent information technology and telecommunications provider carrying out its obligations;
<b>'Go-Live'</b>	the date specified in the Implementation Plan, or such other date agreed by the parties in writing, which is the date on which a Deliverable is uploaded into the live environment and is first made operational;
<b>'Implementation Plan'</b>	the implementation plan for the IT Services describing the performance of the IT Services in accordance with the timetable agreed between the parties;
<b>'Initial Term'</b>	The period described in the Order Form starting from the Commencement Date;
<b>'Intellectual Property Claim'</b>	is defined in clause 18.1 of <b>Part A</b> ;
<b>'Intellectual Property Rights' or 'IPR'</b>	any copyright, database rights, design rights, domain name rights, patents, trademarks or service marks and all other intellectual property rights whether registered or not, and applications for such rights;
<b>'IT Services'</b>	the services described in the Tender Documents (which includes the IT System), the Support Services and any other supplemental services provided by the Service Provider;
<b>'IT System'</b>	the IT System to be delivered as part of the IT Services;
<b>"Key Personnel"</b>	refers to the staff appointed by either the Customer or Service Provider to

	administer and monitor the Services generally as identified in <b>Part I</b> ;
<b>'Limitation Period'</b>	described in Clause 42 of <b>Part A</b> ;
<b>'LIVE'</b>	the live system;
<b>'Material Breach'</b>	a single serious breach or persistent failure to perform as required in the Agreement;
<b>'Milestone'</b>	A specifically agreed event that contributes either alone, or as part of a series of events, to a Deliverable described in the Implementation Plan;
<b>'Milestone Achievement Certificate'</b>	a certificate of completion of a Milestone, which can be either conditional or unconditional, issued by the Customer;
<b>'Milestone Date'</b>	the date a relevant Milestone must be completed by in the Implementation Plan;
<b>'Order Form'</b>	the Order Form with a Purchase Order No., forming part of the Agreement;
<b>'Part'</b>	a part or Schedule to this Agreement;
<b>'Purchase Order'</b>	The number given to the Order Form by the Customer;
<b>'Representative'</b>	the representative appointed by each party respectively, authorised to take decisions on behalf of such party, and named in <b>Part I</b> ;
<b>'Response'</b>	the Service Provider's Response to the Customer's Invitation to Tender together with any associated clarifications;
<b>'Retention'</b>	the percentage sum retained until the successful completion of the Final Performance Acceptance Tests;
<b>'RPO'</b>	Recovery Point Objective;
<b>'RTO'</b>	Recovery Time Objective;
<b>'SaaS'</b>	Software as a Service;
<b>'Service Level Agreement'</b>	the agreement in <b>Part B</b> which sets out the Support Services and Service Levels for the Support Services;
<b>'Schedule'</b>	a Part or schedule of the Agreement;
<b>'Service Levels'</b>	the performance standards for the Support Services in <b>Part B</b> ;
<b>'Software'</b>	the software provided or recommended by the Service Provider to be used which may be the Service Provider's proprietary software or a Third-Party Software;
<b>'Special Conditions'</b>	the terms which are particular to the Agreement and described in the Order Form;

<b>'Specification'</b>	the Customer's statement of requirements and specification of the technical and user requirements for the IT Services and Support Services identified in the <b>Tender Documents</b> in <b>Part F</b> and associated clarifications;
<b>'Standard Terms and Conditions'</b>	described in the Order Form;
<b>'Subsequent Term'</b>	the period(s) described in the Order Form commencing on an anniversary of the Commencement Date following expiry of the Initial Term or a previous Subsequent Term;
<b>'Support Materials'</b>	the operating manuals (including electronic), user instructions, technical literature and documentation provided to the Customer to facilitate the support of the IT Services;
<b>'Support Services'</b>	the activities undertaken by the Service Provider after a Deliverable has been uploaded into the Live environment to maintain and support the IT Services;
<b>Tender Documents</b>	the Specification, Response and Clarifications, and other information regarding the IT Services;
<b>'TEST'</b>	the Test system;
<b>'Third Party Software'</b>	software proprietary to third parties comprised in the IT Services supplied or recommended by the Service Provider;
<b>'TRAIN'</b>	the Training environment or Training system as the context refers;

**PART D**  
**DATA PROTECTION**

**GDPR CLAUSE DEFINITIONS:**

**Agreement:** means [describe Agreement] between [first Party] and [second Party] entered into on [date];

**Controller , Processor , Data Subject , Personal Data , Personal Data Breach , Data Protection Officer** take the meaning given in the GDPR;

**Customer:** means the Data Service Provider;

**GDPR:** the General Data Protection Regulation (*Regulation (EU) 2016/679*);

**Data Protection Legislation:** means (i) The General Data Protection Regulation (Regulation (EU) 2016/679), the Law Enforcement Directive (EU) 2016/680), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003), the Protection of Freedoms Act 2012, and any applicable implementing laws as amended from time to time; (ii) the DPA 2018; and (iii) all applicable law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Service Provider is bound to comply about the processing of personal data and privacy;

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

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

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

**DPA 2018:** Data Protection Act 2018;

**Parties:** means the parties to the Agreement;

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

**Sub-processor:** any third Party appointed to process Personal Data on behalf of the Service Provider related to this Agreement.

**Service Provider:** refers to the Service Provider named on the Order Form.

**Service Provider Personnel:** means all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or of any sub-contractor engaged in the performance of its obligations under this Agreement;

**Working Days:** means a day other than a public or bank holiday or weekends.

## GDPR CLAUSE:

### 1. DATA PROTECTION

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, Customer is the Controller and the Service Provider is the Processor. The only processing that the Service Provider is authorised to do is listed in **Annex 1** by Customer and may not be determined by the Service Provider.
- 1.2 The Service Provider shall notify Customer immediately if it considers that any of Customer's instructions infringe the Data Protection Legislation.
- 1.3 The Service Provider shall provide all reasonable assistance to Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of Customer, include:
  - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 The Service Provider shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
  - (a) process that Personal Data only in accordance with **Annex 1**, unless the Service Provider is required to do otherwise by law. If it is so required the Service Provider shall promptly notify Customer before processing the Personal Data unless prohibited by law;
  - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by Customer as appropriate to protect against a Data Loss Event having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (c) ensure that :
    - (i) the Service Provider Personnel do not process Personal Data except in accordance with this Agreement (and in particular **Annex 1**);
    - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Service Provider Personnel who have access to the Personal Data and ensure that they:
      - (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 any Sub-processor;
      - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party

unless directed in writing to do so by Customer or as otherwise permitted by this Agreement; and

- (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of Customer has been obtained and the following conditions are fulfilled:
  - (i) Customer or the Service Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46) as determined by Customer;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist Customer in meeting its obligations); and
  - (iv) the Service Provider complies with any reasonable instructions notified to it in advance by Customer with respect to the processing of the Personal Data;
- (e) at the written direction of Customer, delete or return Personal Data (and any copies of it) to Customer on termination of the Agreement unless the Service Provider is required by law to retain the Personal Data.

1.5 Subject to clause 1.6, the Service Provider shall notify Customer immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or
- (f) becomes aware of a Data Loss Event.

1.6 The Service Provider's obligation to notify under clause 1.5 shall include the provision of further information to Customer in phases, as details become available.

1.7 Taking into account the nature of the processing, the Service Provider shall provide Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by Customer) including by promptly providing:

- (a) Customer with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by Customer to enable Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by Customer following any Data Loss Event;



- (e) assistance as requested by Customer with respect to any request from the Information Commissioner's Office, or any consultation by Customer with the Information Commissioner's Office.
- 1.8 The Service Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Service Provider employs fewer than 250 staff, unless:
- (a) Customer determines that the processing is not occasional;
  - (b) Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - (c) Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Service Provider shall allow for audits of its Data Processing activity by Customer or Customer's designated auditor.
- 1.10 The Service Provider shall designate a data protection officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Service Provider must:
- (a) notify Customer in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of Customer;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this **Part D** such that they apply to the Sub-processor; and
  - (d) provide Customer with such information regarding the Sub-processor as Customer may reasonably require.
- 1.12 The Service Provider shall remain fully liable for all acts or omissions of any Sub-processor.
- 1.13 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Service Provider amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 1.15 Notwithstanding any other provision in the Order, the Service Provider shall indemnify the Customer in respect of any, fine, loss, claim, action, damages or demand imposed on or suffered by the Controller as a result of any breach by the Service Provider of this **Part D**.

**PART D - ANNEX**

**Processing, Personal Data and Data Subjects**

1. The Service Provider shall comply with any further written instructions with respect to processing by Customer.
2. Any such further instructions shall be incorporated into this Annex.

<b>Subject matter of the processing</b>	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
<b>Duration of the processing</b>	<i>[Clearly set out the duration of the processing including Dates]</i>
<b>Nature and purposes of the processing</b>	<i>[Please be as specific as possible, but make sure that you cover all intended purposes.  The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i>
<b>Type of Personal Data</b>	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]</i>
<b>Categories of Data Subject</b>	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, Service Providers, patients, students / pupils, members of the public, users of a particular website etc]</i>
<b>Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</b>	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>



novation is to another company within the same Group (as defined in clause 10 below) as the Service Provider) whether made with or without the Guarantor's consent and this Guarantee shall apply to any obligations and liabilities undertaken by the Service Provider pursuant to any such amendment, variation, extension or novation of the Contract (where such novation is to another company in the same Group as the Service Provider) and to any further or additional works to be carried out pursuant thereto; or

- 3.2. by any neglect, delay or forbearance on the part of the City in enforcing the performance or observance of the Contract nor by any time, consents, agreements or arrangements, which may be given by the City to the Service Provider or agreed between them.
4. The Guarantor represents and warrants to the City that:
  - 4.1. it is a duly organised, validly existing and in good standing under the laws of England and Wales and has the lawful power to engage in the business it presently conducts and contemplates conducting;
  - 4.2. it has the power to make and carry out this Guarantee and to perform its obligations hereunder and all such actions have been duly authorised by all necessary internal proceedings on its part;
  - 4.3. the execution, delivery and performance of this Guarantee as a Deed shall not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of its organisational or constituent documents; and
  - 4.4. this Guarantee has been duly and validly executed and delivered by it as a deed.
5. Any demand made by the City under or arising out of this Guarantee shall be given effectively, if sent by first class post by special delivery to, or delivered to the Guarantor at, its registered office and a demand sent by post shall be deemed served on the day after posting.
6. No action shall be commenced against the Guarantor under this Guarantee after the expiration of twelve (12) years from the expiry date of the Contract.
7. This Guarantee may only be assigned to a party to whom the benefit of the Contract has been assigned.
8. The Contracts (Rights of Third Parties) Act 1999 shall not apply to the provisions of this Guarantee.
9. The Guarantor agrees that this Guarantee shall be governed by and construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English Courts.
10. References to a 'Group' within this Guarantee shall mean in relation to the Service Provider any 'subsidiary' or subsidiary undertaking or 'holding' company or parent undertaking as the same are defined within section 1159 Companies Act 2006.
11. The Guarantor's liability under any provision of this Guarantee shall be no greater than the same liability of the Service Provider under the Contract.

**IN WITNESS** whereof the Guarantor has caused this Guarantee to be executed as a Deed the same day and year first above written.

**EXECUTED and DELIVERED as a DEED )**  
**by [Service Provider's parent company])**  
**by means of these signatures: )**

**Director**

**Director / Company Secretary**

**PART F**

**TENDER DOCUMENTS**

**[COMPLETE/INSERT the following]**

**1. DELIVERABLES**

**Customer's Requirements, Specification and Responses,**  
**including Clarifications**

**2. COMMERCIALS**

**a. Charges**

**[PRICING MATRIX]**

**b. Form of Tender**



**c. FOIA Restrictions**

#### **d. Technical Evaluation**

**PART G**

<b>CHANGE CONTROL NOTICE [No.    ]</b> <b>PO Number: [INSERT]</b>
--

**CHANGE REQUEST**

<b>Requested By:</b>	
<b>Date Requested:</b>	
<b>Description of Change:</b>	
<b>Reason for Change (full description):</b>	
<b>Details of any proposed alternatives:</b>	
<b>Benefits and disadvantages of requested change:</b>	
<b>Implications of No Action:</b>	
<b>Priority</b> (High = immediate attention required, Medium = schedule with next available iteration, Low = address when most economical)	

**Signed by Requester:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## CHANGE AUTHORISATION

<b>Detailed description of change and impact assessment:</b>	
<b>Proposed adjustment to the Charges resulting from the change</b>	
<b>Cost breakdown:</b>	
<b>Intended date for change:</b>	

**Signed by CUSTOMER:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Position:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Signed by SERVICE PROVIDER:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Position:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**PART H**

**[PRINT ON SERVICE PROVIDER'S COMPANY HEADED PAPER]**

**CERTIFICATE OF DECLARATION**

**PO Number [INSERT]**

We [INSERT SERVICE PROVIDER] certify that ALL of the following:

1. the Customer's Confidential Information under its control or in its possession;
2. the Customer Data, or media containing the Customer Data or other materials provided by the Customer; and
3. the Customer owned property in the possession or control of the Service Provider, to the Customer;

have been returned, destroyed or deleted in accordance with the Agreement dated

\_\_\_\_\_.

**Signed by**

\_\_\_\_\_

**Board Director**

**[SERVICE PROVIDER]**

\_\_\_\_\_

**Date**

**PART I  
CONTACTS LIST  
SERVICE PROVIDER**

NAME	TITLE/JOB DESCRIPTION	CONTACT DETAILS
	<b>[Representative]</b>	
	<b>[Key Personnel]</b>	
	<b>[Key Personnel]</b>	
	<b>[Help Desk Support]</b>	
	<b>[Higher-Level Support]</b>	

**CUSTOMER**

NAME	TITLE/JOB DESCRIPTION	CONTACT DETAILS
	<b>[Representative]</b>	
	<b>[Key Personnel]</b>	