

Metropolitan Police Authority

Procurement of Pay and Pensions Administration Services

Invitation to Negotiate

Volume 2 of 5 : Form of Contract



**METROPOLITAN
POLICE**

Working for a safer London



MPA

Metropolitan Police Authority

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1. INTRODUCTION & GUIDE

Respondents should refer to section 5.2 of Volume 1 of this ITN regarding this Volume 2 and their response to it. Volume 2 summarises the key terms and provisions of the contract and schedules that will govern the provision of services.

Certain phrases and defined terms are used in this Volume 2. Their meanings are as follows:

Phrase/term	Meaning/interpretation
Compensation Event	<p>(a) a default by the MPA or authorised persons acting on its behalf (including a successor supplier, but excluding the Service Provider, a Service Provider subcontractor or any Service Provider personnel); or</p> <p>(b) any incorrect, wrongful or negligent act or omission by another supplier to the MPA (excluding suppliers for whose acts or services the Service Provider is responsible) which adversely affects the Service Provider's provision of the Contract Services.</p> <p>To avoid any doubt, "Compensation Event" does not include a default by the Service Provider or any Service Provider subcontractor or member of the Service Provider personnel.</p>
Contract Services	<p>(a) all services necessary to meet and fulfil the Services Requirements and the terms and conditions of the Contract;</p> <p>(b) any service, function or responsibility performed within the last 12 months by the exiting supplier (even if not specified in the Contract);</p> <p>(c) New Services; and</p> <p>(d) any service, function or responsibility not specified in the Contract as within the scope of the Service Provider's responsibilities but reasonably and necessarily required for the proper performance and provision of the services described above.</p>
Force Majeure Event	<p>any of the following occurring within Great Britain to the extent it directly affects the premises, facilities, systems, hardware or equipment of the party whose performance is affected:</p> <p>(a) war, civil war or armed conflict;</p> <p>(b) any act of terrorism causing natural physical damage;</p> <p>(c) nuclear, chemical or biological contamination (unless the source or cause of the contamination is brought to or near the premises, facilities, systems, hardware or equipment by the party whose performance is affected or by that party's agents or subcontractors);</p> <p>(d) the effect of pressure waves caused by devices travelling at supersonic speed; or</p> <p>(e) catastrophic accident in the air or on land, articles falling from aircraft or impact from satellites.</p> <p>To avoid any doubt, "Force Majeure Event" does not include:</p> <p>- an event within the scope and specification of the Service Provider's obligation to provide business continuity and/or disaster recovery services except to the extent that those services are themselves affected by such Force Majeure Event;</p>

	<ul style="list-style-type: none"> - a failure by a Service Provider subcontractor to perform any obligation owed to the Service Provider unless and to the extent that the failure is directly caused by a Force Majeure Event affecting that subcontractor; - an event caused by a default by the party whose performance is affected by the Force Majeure Event; or - (in the case of the Service Provider being the party whose performance is affected by the Force Majeure Event) an event whose effect is such that a prudent provider of these services, operating to the standards required by the Contract, could not have foreseen and prevented or avoided the consequences of such event.
IPR	includes patents, rights in designs, trade marks and service marks, copyright, database rights, moral rights and other intellectual property rights and rights in confidential information in software, manuals, specifications, materials and information.
New Services	any further or optional or additional services (which may be identified in the Statement of Service Requirements) agreed to be provided by the Service Provider in accordance with the terms and conditions of the Contract.
Services Requirements	the MPA's requirements for or in relation to the services to be provided by the Service Provider set out in the Statement of Service Requirements and the terms and conditions of the Contract.
Step-In Event	<p>(a) a Force Majeure Event, or a default or other action or omission by the Service Provider or a Service Provider subcontractor or Service Provider personnel, which:</p> <ul style="list-style-type: none"> (i) the MPA considers may create an immediate and serious threat to the business and operational effectiveness of the MPA or the MPS or is materially prejudicial to the ability of the MPA or the MPS to provide its services or functions; or (ii) creates a material interruption or delay in the provision of the Contract Services; <p>(b) a circumstance which entitles the MPA to terminate all or part of the Contract;</p> <p>(c) a circumstance where, in the reasonable opinion of the MPA, it appears necessary in the interests of carrying out its business or in order to carry out a statutory function or obligation; or</p> <p>(d) a circumstance reasonably considered by the MPA to be an emergency (otherwise than caused by a default by the Service Provider).</p>

2. PRELIMINARY

2.1 Duration of the Contract

2.1.1 The Contract is for 7 years starting from 1 April 2006.

2.1.2 Extensions of the Contract

- (a) The MPA may extend the Contract by one or more periods that do not exceed 3 years in aggregate. Any such extension will be on not less than 12 months' notice.
- (b) In circumstances beyond the MPA's control, the MPA may:
 - (i) extend the Contract by giving a shorter notice period (but not less than 6 months); and/or
 - (ii) extend the Contract for a further 12 months beyond the 3 year maximum extension period described above.
- (c) Service Charges payable during an extension will be calculated in accordance with the governing financial model and the open book accounting requirements.

2.2 Due diligence

2.2.1 The Service Provider is responsible for carrying out such due diligence as is necessary to ensure it can provide and perform the Contract Services, both before initial provision of the Contract Services and before provision of any later New Services. Except in respect of those New Services, there will be no due diligence or verification post-Contract signature.

2.2.2 The Service Provider is not relieved from its obligations, nor able to adjust Service Charges or bring a claim against the MPA, because of:

- (a) the Service Provider's failure to carry out due diligence; or
- (b) inaccurate, erroneous or inadequate information provided by the MPA before Contract signature.

2.3 Exclusivity

2.3.1 The Service Provider is not given any rights of exclusivity in relation to the Services Requirements or the provision of the Contract Services (or, for the avoidance of doubt, in relation to any New Services).

3. SERVICES

3.1 Provision of the services

3.1.1 The Service Provider will provide the Contract Services.

3.1.2 The Contract Services will be provided in accordance with agreed detailed transition plan(s) and schedule(s) that specify activities, responsibilities and milestones. The MPA will apply liquidated damages to delays in transition (see section 2.3 of volume 4 of this ITN).

3.1.3 The Service Provider is responsible for ensuring that the introduction, implementation and delivery of Contract Services (and any New Services) does not impair or harm the effectiveness and operational integrity of the business of the MPA and/or the MPS. A detailed agreed testing and acceptance regime will be a schedule to the Contract (see also volume 3 of this ITN).

3.2 Service Provider's solution

- 3.2.1 The Service Provider will maintain, upgrade and refresh systems, equipment, hardware, software, facilities and technical infrastructure appropriate for the continued provision of the Service Provider's solution (and the continued provision of the Contract Services) in accordance with the requirements, standards and terms and conditions of the Contract.
- 3.2.2 Unless with the MPA's prior consent, the Service Provider will not (and will ensure that the Service Provider subcontractors will not) use proprietary technologies that could disadvantage or prevent a third party taking over provision of the Contract Services on expiry or a termination.
- 3.2.3 The MPA's prior consent is required for:
- (a) use by the Service Provider, or a Service Provider subcontractor, of any assets (including systems, equipment, hardware, software, facilities and technical infrastructure) not exclusively dedicated to the provision of the Contract Services;
 - (b) the use of Service Provider's IPR, or a third party's IPR, in the Service Provider's solution (the MPA will require the Service Provider to demonstrate that the use does not prejudice the MPA's requirements as to security, avoidance of lock-in, ease of exit etc);
 - (c) the delivery of any of the Contract Services (including the location of any systems, equipment, hardware, software, facilities, technical infrastructure and employees) from outside Great Britain; and
 - (d) any development of software or other IPR for the Contract Services outside Great Britain.
- 3.2.4 The Service Provider is responsible for ensuring that the systems, equipment, hardware, software, facilities and technical infrastructure used for the provision of the Contract Services are date-compliant and Euro-compliant.

3.3 Change to services

- 3.3.1 The Contract will schedule a process for agreeing and implementing changes.
- 3.3.2 The Service Provider will be obliged to implement changes proposed by the MPA unless:
- (a) the change is prevented by law or would cause the Service Provider to be in contravention of a law; or
 - (b) the Service Provider demonstrates to the MPA's reasonable satisfaction that the Service Provider is not technologically capable of providing or implementing the change and such change cannot be sourced from a third party.

3.4 Scope of the services

- 3.4.1 The MPA may at any time itself provide any of the Contract Services or appoint a third party to do so, or remove some of the Contract Services from the Contract. In those circumstances the Service Charges will be reduced equitably (using the governing financial model) to reflect the costs of providing the remaining Contract Services, and the impacts will be assessed and effected through the change control procedure.

3.5 MPA responsibilities

- 3.5.1 The MPA will perform its obligations and responsibilities as specified in the Statement of Services Requirements.

4. PERFORMANCE

4.1 Service Levels

- 4.1.1 The Service Provider will ensure that the Contract Services:
- (a) are provided promptly, professionally and diligently, in accordance with good industry practice, and in an appropriate cost-effective manner consistent with the quality and performance requirements of the Contract; and
 - (b) accord with the best value obligations in the Local Government Act 1999 (and the Service Provider will assist the MPA so as to enable the MPA to comply with its best value duties and obligations) (see also volume 4 of this ITN).
- 4.1.2 Without limiting the above obligation, the Service Provider will provide the Contract Services so that at all times the specified service levels are achieved or exceeded (see also volume 4 of this ITN).

4.2 Failure to meet service levels

- 4.2.1 Where a service level is not met the Service Provider must investigate and minimise the effects of the failure, take remedial steps and correct the failure (see also volume 4 of this ITN).
- 4.2.2 Without limiting the above obligation, where a service level is not met service credits may be applied. Service credits are not an estimate of the MPA's loss, nor are they an exclusive remedy for the MPA. They are without prejudice to the MPA's rights to claim damages.

5. CONDUCT AND OPERATION OF THE SERVICES

5.1 Compliance with laws, policies and procedures

- 5.1.1 The MPA and the Service Provider will perform their respective obligations in compliance with all applicable laws.
- 5.1.2 The Service Provider is responsible for:
- (a) ensuring that the Contract Services are provided in compliance with all applicable laws (including following any change of law) including:
 - (i) human rights and equal opportunities legislation;
 - (ii) health and safety legislation;
 - (iii) the Official Secrets Acts;
 - (iv) freedom of information legislation;
 - (v) computer misuse legislation;
 - (vi) (see also the laws, regulations and policies described in volume 3 of this ITN);
 - (b) supporting and assisting the MPA in its compliance with all applicable laws;
 - (c) bearing its own costs in respect of any changes in law (and the Service Provider will not be entitled to any increase in Service Charges as a result of any change of law); and
 - (d) making, procuring and maintaining all notifications, registrations, permits, licences, rights, approvals and inspections as are necessary for the performance of its obligations and the provision of the Contract Services.
- 5.1.3 Laws to be complied with include binding codes, policies, standards, directives, directions, orders etc (for example from the Inland Revenue).

- 5.1.4 Without limiting the above, the Service Provider will ensure (at no extra cost or charge to the MPA) that the Contract Services are provided in compliance with MPA policies, procedures and standards (as they may change during the Contract).

5.2 Conflicts of interest

- 5.2.1 The Service Provider is responsible for taking appropriate steps to ensure that neither it nor any of the Service Provider subcontractors or Service Provider personnel are placed in a position where there may be a conflict between the interest of it and/or them and the obligations and duties owed to the MPA under the Contract.

5.3 Prohibited Acts and corrupt gifts

- 5.3.1 The MPA is entitled to terminate the Contract if the Service Provider or one of the Service Provider subcontractors or Service Provider personnel commits a "Prohibited Act" (and the decision of the MPA as to whether a Prohibited Act has occurred will be final and conclusive).
- 5.3.2 A "Prohibited Act" is, broadly, offering a gift or inducement to MPA personnel in relation to this Contract, or to government employees in respect of another contract, committing a fraud or committing an offence under fraud and/or anti-corruption laws.

5.4 Service Provider Personnel

- 5.4.1 The Service Provider will ensure that the Contract Services are provided using sufficient personnel who are appropriately qualified, trained and experienced, and who provide the Contract Services with reasonable skill, care and diligence.
- 5.4.2 The Service Provider is liable at all times for all acts or omissions of those personnel.
- 5.4.3 Regarding those personnel:
- (a) none will be appointed in relation to the provision of the Contract Services unless previously identified to, and approved by, the MPA;
 - (b) key personnel will be identified by the MPA and maintained (and not replaced) without the MPA's prior consent;
 - (c) on request by the MPA, the Service Provider will provide CVs and other reasonably requested information; and
 - (d) the MPA may at any time (and at its discretion) require the removal and/or replacement of a member of the personnel.
- 5.4.4 See also section 6 of volume 3 of this ITN

5.5 Service Provider Subcontractors

- 5.5.1 The Service Provider is liable at all times for all acts or omissions of its subcontractors.
- 5.5.2 In respect of those Service Provider subcontractors who are considered by the MPA to be material to the delivery of the Contract Services:
- (a) the Service Provider will not terminate the material subcontract without the MPA's prior consent;
 - (b) the Service Provider will ensure that the material subcontract may be terminated at the MPA's instruction on grounds equivalent to those set out or referred to in paragraphs 10.1.1 and 10.1.2 below; and
 - (c) the MPA may require the Service Provider to procure that the material subcontractor enters into a direct agreement with the MPA where:
 - (i) the material subcontractor must notify the MPA if it intends to terminate the material subcontract (and will not do so for a period after giving the notice);

- (ii) the MPA may step in if the material subcontractor intends to terminate the material subcontract; and
- (iii) the MPA may require the material subcontract to be novated away from the Service Provider in favour of the MPA.

5.5.3 In respect of all Service Provider subcontractors:

- (a) the MPA's prior consent is required for the appointment of any Service Provider subcontractor;
- (b) the Service Provider will notify the MPA immediately about any acts or omissions by a Service Provider subcontractor which materially impact the provision of the Contract Services;
- (c) the Service Provider will replace a Service Provider subcontractor (with a subcontractor approved by the MPA) where the MPA has concerns as to the Service Provider subcontractor which the MPA considers the Service Provider is unable to remedy;
- (d) the Service Provider will ensure that the Service Provider subcontracts reflect the terms and conditions of the Contract to the extent they apply to the services provided by that subcontractor, including:
 - (i) the right for the Service Provider to terminate the subcontract for convenience if the Contract (or the relevant part of the Contract) is terminated by the MPA for convenience;
 - (ii) the right for the MPA (or a nominated third party) to take an assignment or novation of the subcontract (or part of it) upon termination of the Contract;
 - (iii) at least equivalent obligations in respect of confidentiality, privacy, data security, data protection and intellectual property rights;
 - (iv) an assignment to the MPA of all rights in work output created or developed by the Service Provider subcontractor in providing the subcontract services (including IPR);
 - (v) a prohibition on the Service Provider subcontractor subcontracting or assigning its rights under the subcontract without the prior consent of the Service Provider and the MPA; and
 - (vi) no term or condition the effect of which would limit the ability of a subcontractor to contract directly with the MPA or a successor supplier.

5.6 Other suppliers and representatives

5.6.1 The Service Provider will co-operate fully with other relevant MPA suppliers and service providers, and provide information and assistance as reasonably required.

5.6.2 The MPA is entitled, at any time, to appoint a third party to perform its obligations, or to exercise its rights, under the Contract. The MPA will advise the Service Provider of the nature and scope of any such appointment at the time of appointment.

5.7 Assistance to the MPA

5.7.1 At no additional charge to the MPA, the Service Provider will provide (and will ensure that the Service Provider subcontractors and Service Provider personnel provide) such information, assistance, access, attendance of personnel and co-operation as the MPA may reasonably require:

- (a) to enable the MPA to provide reports and returns;
- (b) to answer enquiries; and
- (c) for any investigation or inquiry by any relevant agency, body or ombudsman.

5.8 MPA's operations and reputation

- 5.8.1 The Service Provider will (and will ensure that its subcontractors and personnel will):
- (a) take all reasonable care to ensure that the provision of the Contract Services does not interfere with the operations of the MPA or the MPS or any other police force or emergency service; and
 - (b) not take (or omit to take) any action which might bring the MPA or the MPS into disrepute, or which might harm or be prejudicial to the public confidence in the MPA or the MPS or to their public image.

6. MANAGEMENT AND ADMINISTRATION

6.1 Management and governance

- 6.1.1 See section 5 of volume 3 of this ITN.

6.2 Key document deliverables

- 6.2.1 The Service Provider will provide to the MPA (and regularly update):
- (a) a services manual – covering all aspects of the provision of the Contract Services, including descriptions of functions and processes, infrastructure, organisation and management teams, BC/DR plans, VFM plans, staff, audit/open book procedures, security, assets inventory (see below) etc;
 - (b) an assets inventory – describing the components of the Service Provider's solution, including systems, assets, facilities, equipment, IPR of the Service Provider and 3rd parties, support and maintenance agreements, 3rd party contracts etc; and
 - (c) an exit plan – covering the activities required for a smooth and orderly transition from the Service Provider, including re-tendering and supporting a successor supplier, exit transition services, transfer of staff, assets and contracts, provisions of service and performance information etc.
- 6.2.2 The MPA will own the IPR in the above deliverables.

7. CHARGES AND PAYMENT

7.1 Charges

- 7.1.1 Generally, see volume 4 of this ITN.
- 7.1.2 Where any charges are made to the MPA on a 'pass-through expense' basis for any services, materials, goods or items:
- (a) the MPA may obtain those things itself directly from a third party, nominate the third party who is to provide them, and/or review and approve them before they are contracted for; and
 - (b) the Service Provider will pay to the MPA any refund, credit or other rebate it receives from a third party for those things paid for on a pass-through basis.
- 7.1.3 Value for money measures and processes will be applied to the provision of the Contract Services. See section 5 of volume 4 of this ITN.

7.2 Payment

- 7.2.1 The Service Provider is not entitled to set off any amount due to the MPA by the Service Provider. The MPA may set off any sums due to the Service Provider against any other sums owed to the MPA.

- 7.2.2 The Service Provider will ensure that its subcontracts require the Service Provider to pay sums due under that subcontract within a period not exceeding 30 days from proper invoices from the subcontractor.
- 7.2.3 The MPA may withhold moneys it disputes in good faith. Any such dispute will be referred to the dispute resolution process.
- 7.2.4 Consistent with OGC and government guidance, the MPA will be entitled to a share of any refinancing gain by the Service Provider (the Contract will set out clauses corresponding to the OGC Guidance recommended terms and conditions).

8. EMPLOYEES, RIGHTS, INFORMATION AND DATA

8.1 Transfer of employees

- 8.1.1 See section 6 of volume 3 of this ITN

8.2 Intellectual property

- 8.2.1 The Contract does not assign to any party any IPR existing prior to the Contract or developed independently of the Contract.
- 8.2.2 MPA's IPR
 - (a) The MPA will retain its rights in all its IPR. The MPA grants a licence to the Service Provider to use the MPA's IPR for the purposes of fulfilling its obligations under the Contract (including the right to sub-licence to Service Provider subcontractors where necessary).
 - (b) On termination or expiry of the Contract, the Service Provider will procure that all use of the MPA's IPR by the Service Provider or a Service Provider subcontractor ceases (except as necessary to provide termination assistance).
- 8.2.3 Service Provider's IPR
 - (a) The Service Provider will retain its rights in all its IPR. The Service Provider grants:
 - (i) a licence to the MPA to use the Service Provider's IPR during, and for the purposes of, the Contract; and
 - (ii) a licence to the MPA and a successor supplier to use the Service Provider's IPR after termination or expiry for a period of not less than 18 months for the MPA to receive services similar to those provided by the Service Provider under the Contract (and the Service Provider will provide support and maintenance for that IPR during that period).
- 8.2.4 Third Party IPR
 - (a) The Service Provider will ensure that all Third Party IPR used for the provision of the Contract Services is acquired in the Service Provider's name (or, if requested by the MPA, in the MPA's name).
 - (b) Before using any Third Party IPR, the Service Provider must use its best endeavours to obtain the right to grant a licence of that Third Party IPR (on the same terms) to the MPA or a successor supplier on termination or expiry. If the Service Provider is unable to obtain a licence on those terms, the Service Provider must notify the MPA of that and provide details of the cost and viability of an alternative solution.
- 8.2.5 Newly-developed IPR
 - (a) The MPA will own all rights, title and interest in all IPR created or developed by the Service Provider or a Service Provider subcontractor under or for the purposes of the Contract.

- (b) The MPA will grant to the Service Provider a licence to use that IPR, and the MPA will consider (on a case by case basis) any proposal by the Service Provider that the Service Provider should own all rights, title and interest in specific items of that IPR (it being understood that the MPA's consideration would be influenced by the Service Provider's proposals to compensate the MPA for such ownership by the Service Provider).

8.2.6 The Service Provider will ensure that all source code of Service Provider IPR is deposited in escrow with the National Computing Centre.

8.2.7 The Service Provider will ensure that all software and materials (other than the MPA's IPR) used in the provision of the Contract Services does not infringe any IPR of any third party.

8.3 Audit and records

8.3.1 The Service Provider will (and will ensure that the Service Provider subcontractors will):

- (a) keep full and accurate records regarding the provision of products and services under the Contract;
- (b) grant the MPA and its representatives access to all relevant facilities, systems, personnel and records (on reasonable notice except in circumstances of suspected default, fraud or breach of security); and
- (c) correct any fault, defect or irregularity (including the repayment of any sums overpaid by the MPA and payment of sums underpaid to the MPA) shown by the audit.

8.3.2 See also section 5.3 of volume 3 of this ITN and section 5 of volume 4 of this ITN.

8.4 MPA's Data

8.4.1 Neither the Service Provider nor any of the Service Provider subcontractors or Service Provider personnel will acquire any IPR or other ownership rights in any of the MPA's data; nor will any of them acquire any right to use that data except and to the extent permitted under the terms of the Contract.

8.4.2 The Service Provider is responsible for ensuring and preserving the integrity of the MPA data that it (or a Service Provider subcontractor) holds or processes, and for preventing any misuse, corruption, destruction or loss of that data. The Service Provider will ensure that no malicious software (eg viruses, disabling programs etc) is introduced into the Service Provider's solution.

8.4.3 If an act or omission of the Service Provider (or a Service Provider subcontractor or member of the Service Provider personnel) causes any of the MPA's data to be lost or degraded in its use:

- (a) the MPA may require the Service Provider (at the Service Provider's expense) to restore or procure the restoration or re-constitution of such data; and
- (b) the Service Provider is liable for the costs of the restoration or re-constitution of such data that the MPA may incur or suffer.

8.5 Data protection

8.5.1 The Service Provider will (and will procure that all Service Provider subcontractors will):

- (a) comply with data protection laws and any other laws relating to processing of personal data; and
- (b) take whatever steps the MPA requires to assist the MPA to comply with those laws.

- 8.5.2 The Service Provider will not (and will procure that all Service Provider subcontractors will not):
- (a) do anything to cause the MPA to contravene any of those laws;
 - (b) use or disclose personal data except as permitted by this Contract or the MPA's instructions;
 - (c) without the MPA's prior consent, transfer or enable receipt of any personal data outside Great Britain;
 - (d) process personal data or other MPA data except in accordance with the MPA's directions and only at locations pre-approved by the MPA.
- 8.5.3 Further obligations will be set out in the Contract to reflect detailed requirements and provisions of the Data Protection Act.

8.6 Confidentiality

- 8.6.1 The Service Provider will (and will procure that the Service Provider subcontractors and Service Provider personnel will) keep confidential the MPA's confidential information.
- 8.6.2 The MPA will keep confidential the Service Provider's confidential information.
- 8.6.3 If requested by the MPA the Service Provider will obtain (before commencement of their work in the provision of the Contract Services) confidentiality undertakings from Service Provider subcontractors and/or Service Provider personnel.
- 8.6.4 Restrictions on disclosure will not apply to information disclosed:
- (a) to employees or subcontractors (where, and only to the extent, necessary);
 - (b) by legal or judicial requirement;
 - (c) to the extent the information has become publicly available or generally known (otherwise than by breach of a confidentiality obligation);
 - (d) where the information has already been acquired or held without breaching confidentiality obligations; or
 - (e) by the MPA under its public body duties or to enable continued provision of services.
- 8.6.5 The MPA's confidential information is only to be used or retained for the purposes of the Contract and for the provision of the Contract Services.

9. WARRANTIES AND INDEMNITIES

9.1 Warranties

- 9.1.1 The Service Provider warrants to the MPA that:
- (a) its signature and performance of the Contract will not contravene any law or other binding contract;
 - (b) the Service Provider has the necessary power, consents, licences and permits to enter into the Contract and perform its obligations;
 - (c) as at the date of Contract signature the Service Provider is not aware of anything (including threatened or pending proceedings) which would have a material adverse affect on the ability of the Service Provider or the Service Provider subcontractors to perform their respective obligations;
 - (d) the Service Provider's solution is capable of meeting and fulfilling the Services Requirements and delivering the Contract Services;

- (e) its pre-Contract proposals and responses (including its responses to the ITQ, the ITN and any request for BAFO) were true, complete and accurate at the time that they were made or given (and that the Service Provider has advised the MPA of any fact or circumstance of which it is aware that would make any of such proposals or responses inaccurate or misleading);
- (f) all information it supplies during the Contract will be true, complete and accurate at the time it is given (and, to the extent that the information is not superseded by subsequent information, the Service Provider will advise the MPA of any fact or circumstance of which it becomes aware that would make any of such information inaccurate or misleading);
- (g) it has not committed (and will not commit) any offence under any laws relating to money laundering (including those set out in Part 7 of the Proceeds of Crime Act 2002);
- (h) the financial model specified in the Contract (as may be amended in accordance with the Contract) is a true and accurate reflection of the Service Provider's costs and forecast profits associated with the provision of the Contract Services and the Service Provider does not have or use any other financial model in relation to the provision of the Contract Services.

9.1.2 The MPA warrants to the Service Provider that:

- (a) its signature and performance of the Contract will not contravene any law or other binding contract;
- (b) the MPA has the necessary power, consents, licences and permits to enter into the Contract and perform its obligations.

9.1.3 To the extent permitted by law and except as expressly set out in the Contract, all implied warranties and conditions are excluded by the parties under the Contract.

9.2 Indemnities

9.2.1 In addition to any other specific indemnity in the Contract or in one of its schedules, the Service Provider indemnifies the MPA (and its officers, employees, agents and successors) from any loss, liability, cost or expense arising from:

- (a) any claim by a third party:
 - (i) that the performance or receipt of the Contract Services (or anything used by the Service Provider or the Service Provider subcontractors or the Service Provider personnel in their supply) infringes the third party's IPR or rights in confidential information;
 - (ii) arising from a failure by the Service Provider (or a Service Provider subcontractor or Service Provider personnel) to comply with data protection legislation;
 - (iii) arising from the loss or corruption of data by reason of the Service Provider's default;
 - (iv) arising from a default by the Service Provider which causes the MPA to be in breach of any of its statutory duties;
- (b) any fine or penalty imposed as a result of the Service Provider's default;
- (c) any failure by the Service Provider, a Service Provider subcontractor or the Service Provider personnel to comply with the confidentiality obligations under the Contract;
- (d) death or personal injury or damage to property caused by the Service Provider, a Service Provider subcontractor or Service Provider personnel;
- (e) any unrecovered overpayment made to a third party (or any unrecovered underpayment made by a third party) by reason of the Service Provider's default;

- (f) any compensation paid to a third party due to a default by the Service Provider.

9.2.2 In addition to any other specific indemnity in the Contract or in one of its schedules, the MPA indemnifies the Service Provider (and its officers, employees, agents and successors) from any loss, liability, cost or expense arising from:

- (a) any claim by a third party that software, material or data provided by the MPA to the Service Provider in accordance with the Contract (and used by the Service Provider in the intended manner) infringes the third party's IPR or rights in confidential information;
- (b) any fine or penalty imposed as a result of the MPA's default;
- (c) any failure by the MPA to comply with its confidentiality obligations under the Contract;
- (d) death or personal injury or damage to property caused by the MPA.

9.2.3 Each party will use its best endeavours to mitigate all losses, liabilities, costs and expenses under any indemnity claim it may make under the Contract (and such efforts shall include mitigation up to but not beyond the point where it ceases to be cost effective). Any costs incurred in such mitigation are recoverable as direct losses under the indemnity claim.

10. LIABILITY AND REMEDY

10.1 Timescales and delays

- 10.1.1 The Service Provider will ensure that the implementation and delivery of the Contract Services is achieved by the relevant milestone dates. The Service Provider is responsible for managing transition.
- 10.1.2 Plans (including the transition plan) which have delivery or milestone dates may only be amended with the MPA's prior agreement.
- 10.1.3 Each party will notify the other if and when it becomes aware of anything which may cause an impediment or delay to the implementation or delivery of the Contract Services.
- 10.1.4 Without limiting its other rights and remedies, the MPA may apply liquidated damages:
 - (a) in respect of any delay (including trials/acceptance failure) in the transition as described in section 2.3 of volume 4 of this ITN; or
 - (b) in respect of any delay (including trials/acceptance failure) in the implementation of any New Services.

10.2 Compensation Events

- 10.2.1 The Service Provider is entitled to apply for relief from its obligations and/or claim compensation if (as a direct result of a Compensation Event):
 - (a) the Service Provider is unable to comply with its obligations under the Contract (including achieving a milestone date); or
 - (b) the Service Provider incurs additional costs or expenses.
- 10.2.2 To apply for such relief and/or compensation the Service Provider must give notice to the MPA as soon as reasonably practicable (but in any event within 15 business days) after the Service Provider becomes aware of the occurrence and impact of the Compensation Event. Within 15 business days of giving this notice, the Service Provider must provide to the MPA full details of the Compensation Event and the relief and/or compensation being claimed.

- 10.2.3 The Service Provider will use its best endeavours to mitigate any claimed costs and expenses and/or the impact of any claimed delay.
- 10.2.4 Subject to the Service Provider complying with the above then in relation to the Compensation Event:
- (a) the Service Provider will not be in default in respect of the relevant failure to comply with its obligations, nor will the MPA be entitled to exercise its rights of termination (or claim liquidated damages) in respect of the failure; and
 - (b) the MPA will compensate the Service Provider for the costs and/or expenses claimed by the Service Provider that are supported by evidence or such other information as reasonably required by the MPA.
- 10.2.5 The Compensation Event regime as set out above is the exclusive means by which the Service Provider is entitled to claim (and the MPA required to pay) any additional costs or expenses incurred by the Service Provider due to a Compensation Event.

10.3 Force Majeure

- 10.3.1 Neither party will be in default under the Contract (nor liable for breach or delay regarding its obligations) if and to the extent that:
- (a) the default, breach or delay is directly caused by a Force Majeure Event; and
 - (b) the party whose performance is affected by the Force Majeure Event gives notice of the circumstances of the event by the most expeditious method possible.
- If these conditions are satisfied then that party's obligation to perform its obligations under the Contract will (during the period of the Force Majeure Event) be read and construed as an obligation to perform such obligations to the best level reasonably achievable in the circumstances of the Force Majeure Event.
- 10.3.2 As soon as possible after the occurrence of a Force Majeure Event:
- (a) the party whose performance is affected will use its best endeavours to perform (or recommence performing) its obligations; and
 - (b) the parties will consult at regular intervals to agree steps to be taken.
- 10.3.3 Without limiting any other rights of the MPA, if a Force Majeure Event substantially prevents or delays the provision of Contract Services necessary for the performance of a critical MPA or MPS function for more than 10 consecutive business days, the MPA may terminate all or part of the Contract without liability to the Service Provider as of a date specified by the MPA in its termination notice.
- 10.3.4 If a Force Majeure Event substantially prevents or delays performance by the Service Provider of Contract Services, the Service Provider is only entitled to receive the Service Charges in respect of any Contract Services that it continues to provide during the period of that event.
- 10.3.5 The parties will at all times following the occurrence of a Force Majeure Event use their respective best endeavours to prevent and mitigate the effect of any delay and, at all times during that period, take all steps in accordance with good industry practice to overcome or minimise the consequences of the event.

10.4 Step-in by MPA

- 10.4.1 If a Step-In Event occurs, the MPA may give notice to the Service Provider requiring the Service Provider to take such reasonable steps as the MPA considers necessary or expedient in the circumstances to mitigate or preclude the Step-In Event forthwith. If the Service Provider fails to take such steps within such reasonable time as the MPA thinks fit, the MPA may take such steps itself or engage others to take those steps.

- 10.4.2 Subject to 9.4.3 below, the Service Provider will reimburse the MPA for all costs reasonably incurred by the MPA in that exercise.
- 10.4.3 The MPA will reimburse the Service Provider for those additional costs reasonably incurred by the Service Provider (and which are not recovered as part of the Service Charges) as a consequence of the MPA exercising its step-in rights by reason of the Step-In Event being:
- (a) a circumstance where, in the reasonable opinion of the MPA, it appears necessary in the interests of carrying out its business or in order to carry out a statutory function or obligation; or
 - (b) a circumstance reasonably considered by the MPA to be an emergency (otherwise than caused by a default by the Service Provider).
- 10.4.4 If the Service Provider demonstrates (to the MPA's reasonable satisfaction) that it can resume performance of its obligations and/or the relevant circumstances of the Step-In Event no longer apply, the parties will agree a plan for that resumption as soon as reasonably practicable.

10.5 Limits of liability

- 10.5.1 The Service Provider's liability to the MPA arising out of its failure to perform its obligations under the Contract will not exceed in aggregate £20,000,000.
- 10.5.2 The MPA's liability to the Service Provider arising out of its failure to perform its obligations under the Contract (excluding undisputed unpaid Service Charges properly due and payable by the MPA) will not exceed in aggregate £10,000,000.
- 10.5.3 The above limits will be increased yearly by the rate of indexation and do not apply to any liability:
- (a) under the indemnities specified or referred to in 8.2 above;
 - (b) for wrongful termination, repudiation or abandonment of all or part of the Contract;
 - (c) for fraud; or
 - (d) to the extent that any such exclusion or limitation is not permitted by law.
- 10.5.4 Except as specified above or below, neither party will be liable for loss of profits or goodwill, or for indirect losses or damage.
- 10.5.5 The above 9.5.4 will not limit the right of the MPA to claim from the Service Provider for:
- (a) any loss, liability, cost or expense under an indemnity under the Contract;
 - (b) additional operational and/or administrative costs and expenses;
 - (c) expenditure or charges rendered unnecessary as a result of the Service Provider failing to comply with its obligations; or
 - (d) reasonable costs and expenses incurred by the MPA in rectifying a failure by the Service Provider to comply with its obligations, or in acquiring new or replacement services or systems or assets/equipment.

10.6 Insurance

- 10.6.1 The Service Provider will acquire and maintain insurance sufficient to cover its liabilities to the MPA under the Contract (and any other insurances required by law).
- 10.6.2 Each year the Service Provider will provide to the MPA evidence of the insurances held by the Service Provider.

11. TERMINATION

11.1 MPA's rights of termination

- 11.1.1 The MPA may terminate all or part of the Contract if any of the following circumstances occur or exist:
- (a) the Service Provider commits a material default which, if capable of remedy, is not remedied within 30 days;
 - (b) the Service Provider commits repeated defaults the cumulative effect of which is a material default (irrespective of whether those breaches are remedied);
 - (c) any act or omission by the Service Provider which brings the MPA or the MPS into disrepute or material political embarrassment;
 - (d) there is a change of control of the Service Provider and in the opinion of the MPA:
 - (i) there is a significant risk that the change of control will or might have a material adverse impact on the delivery of the Contract Services;
 - (ii) the person who acquires control:
 - (A) is a foreign government;
 - (B) could pose a threat to the safety or security of the UK and/or the public; or
 - (C) the change of control would or might cause harm or prejudice, compromise the integrity of the MPA or the MPS, or be against the public interest;
 - (e) where the other provisions of the Contract permit termination by the MPA (for example under 4.3 and 9.3.3 above);
 - (f) where a consent or licence which is material to the delivery of the Contract Services is or will be no longer available to (or held by) the Service Provider or a Service Provider subcontractor;
 - (g) where there is a change in the credit rating of the Service Provider or its guarantor or a material Service Provider subcontractor which the MPA reasonably considers to be materially adverse; or
 - (h) where the MPA terminates another contract between the MPA and the Service Provider (otherwise than for convenience).
- 11.1.2 The MPA may terminate the Contract if an insolvency event occurs in relation to the Service Provider or its guarantor or a material subcontractor. "Insolvency event" includes winding up, the appointment of an administrator, administrative receiver or manager, the proposal for a voluntary arrangement, entering any arrangement with creditors, failing to pay debts when due, or taking any step to appoint an insolvency practitioner (or anything analogous in a relevant other jurisdiction).
- 11.1.3 The MPA may by giving notice to the Service Provider terminate all or part of the Contract for convenience. If a purported termination by the MPA under 10.1.1 or 10.1.2 above is determined by a court not to be a termination properly under those provisions, the termination will instead be deemed to be a termination for convenience.
- 11.1.4 Where the MPA exercises its rights to terminate part of the Contract:
- (a) the Contract will remain in full force and effect in respect of the remaining Contract Services;
 - (b) the Service Provider will at the MPA's request provide termination assistance in respect of the terminated services; and
 - (c) the Service Charges will be reduced equitably (using the governing financial model) to reflect the costs of providing the remaining Contract Services.

- 11.1.5 The MPA's rights of termination do not prejudice any other right it may have to claim loss or damage.

11.2 Service Provider's rights of termination

- 11.2.1 If, after 90 days' notice to do so, the MPA fails to pay to the Service Provider undisputed and due Service Charges which in aggregate exceed a sum equal to 3 months' Service Charges, the Service Provider may terminate the Contract by further notice to the MPA.
- 11.2.2 The circumstances set out in 10.2.1 above are the only grounds upon which the Service Provider may terminate the Contract or treat itself as discharged from its obligations under the Contract.

11.3 Consequences of termination and/or expiry

- 11.3.1 Expiry or termination of the Contract will not affect either party's accrued rights. Terms and conditions of the Contract will continue to have full force and effect for as long as necessary.
- 11.3.2 If the Contract is terminated under 10.1.3 or 10.2 above, the MPA will pay the Service Provider a sum equal to the aggregate of:
- (a) 25% of the present value of the projected Service Provider profits (as shown in the governing financial model) discounted back to the date of termination;
 - (b) redundancy payments for Service Provider personnel reasonably incurred by the Service Provider as a result of the termination;
 - (c) termination payments reasonably and necessarily made to Service Provider subcontractors as a direct result of such termination; and
 - (d) shutdown expenses properly and necessarily incurred by the Service Provider in relation to the Contract as a direct result of such termination.
- No compensation will be payable by the MPA for expiry or any other termination of this Contract.
- 11.3.3 Where part of the Contract is terminated under 10.1.3 above, the MPA will pay the Service Provider the amount specified in 10.3.2 reduced equitably (using the governing financial model).
- 11.3.4 The Service Provider will at all times use its best endeavours to mitigate the amount of any costs and expenses payable by the MPA under this 10.3.

12. TERMINATION AND EXPIRY OBLIGATIONS

12.1 General obligations

- 12.1.1 Both parties will take all necessary steps to ensure the smooth transfer of services:
- (a) upon expiry or a termination of all or part of the Contract; and
 - (b) upon any removal of services from the Service Provider under the Contract, and the exit obligations will apply in all such circumstances of termination, expiry or removal.
- 12.1.2 The parties will comply with the initial and detailed exit plans until transfer of services is achieved.
- 12.1.3 During any procurement process or exit period, the Service Provider will (and will procure that the Service Provider subcontractors will):
- (a) not without the MPA's consent act outside the ordinary course of business;

- (b) continue to provide the Contract Services to the required levels and standards; and
- (c) notify the MPA of any matter which adversely affects any thing required to provide the Contract Services before and after termination/expiry.

12.2 Support for a procurement process and termination assistance

- 12.2.1 The Service Provider will support the process for re-procurement of the Contract Services fully and in good faith, including when requested by the MPA the provision of co-operation and information to include:
- (a) lists of job titles, descriptions and positions relating to the provision of the Contract Services;
 - (b) cost information for Service Provider personnel (including salaries, costs and pension entitlements);
 - (c) lists of 3rd party contracts (including key contract terms); and
 - (d) IPR, assets and premises used in the provision of the Contract Services.
- 12.2.2 The MPA may use all of such information and any other information obtained during the Contract for itself and any successor supplier in supporting the re-procurement (subject to appropriate confidentiality undertakings from the successor supplier).
- 12.2.3 The Service Provider will provide the Contract Services, assist with exit management and provide termination assistance during the exit period, including:
- (a) providing to the MPA a detailed exit plan (based on the initial exit plan) and detailed services transition plans to the successor supplier;
 - (b) using its best endeavours to minimise the time and costs associated with the termination or removal;
 - (c) co-operating with the successor supplier including:
 - (i) permitting access by the successor supplier and, where required, shadowing by the successor supplier; and
 - (ii) providing information and documentation relating to the Contract Services and their performance;
 - (d) during the exit period not (without the MPA's prior consent) varying the Service Provider personnel or their conditions of employment, or changing their involvement or dismissing them;
 - (e) providing lists of all relevant employees and detailed information about them.

12.3 Exit

- 12.3.1 The parties will co-operate with each other and the successor supplier to enable each other and the successor supplier to comply fully with their respective obligations under TUPE. The Service Provider will co-operate fully with the MPA's reasonable requests to procure the smooth transfer of employees and personnel.
- 12.3.2 The Service Provider will indemnify the MPA and any successor supplier against all loss, liability, cost and expenses arising out of any claim:
- (a) by transferring employees arising from acts or omissions prior to the date of transfer;
 - (b) from a failure by the Service Provider to comply with any of its TUPE obligations;
 - (c) from any person claiming to be a transferring employee that the Service Provider has not identified to the MPA; or
 - (d) that the Service Provider has made detrimental changes to employment terms prior to the date of transfer.

- 12.3.3 The MPA will indemnify the Service Provider against all loss, liability, cost and expenses arising out of any claim:
- (a) by transferring employees arising from acts or omissions after the date of transfer; or
 - (b) from a failure by the MPA or a successor supplier to comply with any of its TUPE obligations.
- 12.3.4 The MPA or the successor supplier will have the option to acquire assets, hardware and equipment used for the provision of the Contract Services at fair market value or net book value as shown in the governing financial model, whichever is lower.
- 12.3.5 If required by the MPA, the Service Provider will provide services and resources to the MPA and/or the successor supplier for a period not exceeding 18 months following the transfer.
- 12.3.6 No extra charges or costs will be payable by the MPA in respect of the Service Provider meeting its obligations to support and assist on expiry of the Contract or a termination (see also section 2.4 of volume 4 of this ITN).

13. GENERAL / MISCELLANEOUS

13.1 Dispute resolution

- 13.1.1 Except where the Contract specifies the decision of the MPA to be final and conclusive, any dispute between the parties:
- (a) will in the first instance be referred to escalating levels of management within the parties' organisations;
 - (b) (if not resolved) may be referred to mediation by the parties; and
 - (c) (if not resolved by mediation or if mediation is not used) be referred to arbitration.
- 13.1.2 The dispute process described above will not at any time restrict:
- (a) either party's freedom to commence court proceedings to preserve any legal right or remedy, or to obtain any equitable relief: or
 - (b) the MPA's right to take whatever step reasonably necessary in the carrying out of statutory duties or in the case of any failure to comply with obligations as to security.

13.2 Assignment

- 13.2.1 The Service Provider will not assign, novate or transfer its rights under the Contract without the MPA's prior consent. That consent may be withheld at the MPA's entire discretion.
- 13.2.2 The MPA may assign, novate or transfer its rights under the Contract at any time to any person. If the assignment, novation or transfer by the MPA is not to a public sector body, the rights of termination of the MPA as to default, insolvency, and change of control shall be available to the Service Provider as regards the private sector novatee or transferee.

13.3 Miscellaneous

- 13.3.1 Making or releasing press or public announcements or publicity material (or media contact) by the Service Provider regarding the Contract Services will only be with prior consent of the MPA.
- 13.3.2 During the Contract and for 6 months after expiry or termination, neither party will solicit those employees of the other who have been engaged in the delivery or receipt of the Contract Services.

- 13.3.3 The Service Provider will not give any security interest in any of its rights to receive payment from the MPA under the Contract without the MPA's prior consent.
- 13.3.4 The Service Provider will procure a payment and performance guarantee in favour of the MPA in the form set out in Appendix B of volume 1 of this ITN.
- 13.3.5 The Contract is governed by English law and the English courts will have exclusive jurisdiction.