



Security Industry Authority

## **SCHEDULE 2**

### **MODEL CONTRACT**

**Security Industry Authority**

**- and -**

**British Telecommunications plc**

### **CONTRACT**

**relating to**

**the supply of**

**ICT Goods and Associated Services**

**VERSION FINAL 1.0**

**CONTENTS**

| <b>Clause</b> |   | <b>Page No</b> |
|---------------|---|----------------|
| <b>1.</b>     | <b>INTERPRETATIONS</b>                                | <b>4</b>       |
| <b>2.</b>     | <b>THE GOODS AND ASSOCIATED SERVICES</b>              | <b>5</b>       |
| <b>3.</b>     | <b>STANDARDS AND REGULATIONS</b>                      | <b>6</b>       |
| <b>4.</b>     | <b>DELIVERY, TITLE AND RISK AND ACCEPTANCE</b>        | <b>6</b>       |
| <b>5.</b>     | <b>CHARGES FOR ORDERED GOODS AND ORDERED SERVICES</b> | <b>6</b>       |
| <b>6.</b>     | <b>CONTRACT MANAGEMENT</b>                            | <b>7</b>       |
| <b>7.</b>     | <b>ALTERNATIVE CLAUSES AND ADDITIONAL CLAUSES</b>     | <b>7</b>       |
| <b>8.</b>     | <b>AMENDMENTS TO THIS CONTRACT</b>                    | <b>7</b>       |
| <b>9.</b>     | <b>COMMUNICATIONS</b>                                 | <b>7</b>       |
| <b>10.</b>    | <b>TERM AND TERMINATION</b>                           | <b>7</b>       |
| <b>11.</b>    | <b>CONSEQUENCES OF TERMINATION AND EXPIRY</b>         | <b>9</b>       |
| <b>12.</b>    | <b>WARRANTIES AND REPRESENTATIONS</b>                 | <b>10</b>      |
| <b>13.</b>    | <b>LIMITATION OF LIABILITY</b>                        | <b>11</b>      |
| <b>14.</b>    | <b>DATA PROTECTION</b>                                | <b>12</b>      |
| <b>15.</b>    | <b>INTELLECTUAL PROPERTY RIGHTS</b>                   | <b>14</b>      |
| <b>16.</b>    | <b>CONFIDENTIALITY</b>                                | <b>17</b>      |
| <b>17.</b>    | <b>PUBLICITY</b>                                      | <b>18</b>      |
| <b>18.</b>    | <b>DISPUTE RESOLUTION</b>                             | <b>18</b>      |
| <b>19.</b>    | <b>RECOVERY OF SUMS DUE</b>                           | <b>19</b>      |
| <b>20.</b>    | <b>STATUTORY REQUIREMENTS</b>                         | <b>19</b>      |
| <b>21.</b>    | <b>STATUTORY INVALIDITY</b>                           | <b>20</b>      |
| <b>22.</b>    | <b>ENVIRONMENTAL REQUIREMENTS</b>                     | <b>20</b>      |
| <b>23.</b>    | <b>DISCRIMINATION</b>                                 | <b>20</b>      |
| <b>24.</b>    | <b>“Not used”</b>                                     | <b>20</b>      |
| <b>25.</b>    | <b>CORRUPT GIFTS AND PAYMENTS OF COMMISSION</b>       | <b>20</b>      |
| <b>26.</b>    | <b>TRANSFER AND SUB-CONTRACTING</b>                   | <b>21</b>      |
| <b>27.</b>    | <b>RIGHTS OF THIRD PARTIES</b>                        | <b>22</b>      |
| <b>28.</b>    | <b>SEVERABILITY</b>                                   | <b>23</b>      |
| <b>29.</b>    | <b>FREEDOM OF INFORMATION</b>                         | <b>23</b>      |
| <b>30.</b>    | <b>FORCE MAJEURE</b>                                  | <b>23</b>      |
| <b>31.</b>    | <b>LEGISLATIVE CHANGE</b>                             | <b>24</b>      |
| <b>32.</b>    | <b>WAIVER</b>   | <b>25</b>      |
| <b>33.</b>    | <b>LAW AND JURISDICTION</b>                           | <b>25</b>      |
| <b>34.</b>    | <b>ENTIRE AGREEMENT</b>                               | <b>25</b>      |
| <b>36.</b>    | <b>SECURITY MEASURES</b>                              | <b>26</b>      |
| <b>37.</b>    | <b>AUDIT</b>  | <b>31</b>      |
| <b>38.</b>    | <b>ANNEX A TO THE CONTRACT CLAUSES</b>                | <b>35</b>      |

**CONTRACT SCHEDULES**

Schedule

- 2-1. Interpretations
- 2-2. The Ordered Goods, Service Levels and Service Credits
- 2-3. The Charges and Charges Variation Procedure
- 2-4. Invoicing Procedure
- 2-5. Acceptance Procedures
- 2-6. Contract & Service Management
- 2-7. Contract Change Procedure
- 2-8. Sub-Contractors
- 2-9. Dispute Resolution Procedure
- 2-10. Standards and Regulations
- 2-11. Liquidated Damages – Not used
- 2-12. Model Confidentiality Agreement
- 2-13. Security Procedures
- 2-14. Exit and Service Transfer
- 2-15. Business Continuity and Disaster Recovery

Appendices

- Appendix 1: Service Credit Calculator
- Appendix 2: Key Personnel
- Appendix 3: Outline Security Plan

THIS CONTRACT is made on the 23<sup>rd</sup> day of December 2009

**BETWEEN**

- (1) **Security Industry Authority of 90 High Holborn, London WC1V 6LJ** (“CUSTOMER”); and
- (2) **British Telecommunications plc**, a company registered in England under company number 1800000, and whose registered office is at 81 Newgate Street, London, EC1A 7AJ (the “CONTRACTOR”).

**WHEREAS**

- a) the Lords Commissioners of Her Majesty’s Treasury as represented by OGcbuying.solutions being a separate Trading Fund of Her Majesty’s Treasury without separate legal personality (“the AUTHORITY”) selected Contractors, including the CONTRACTOR, to supply ICT Goods and associated services;
- b) the CONTRACTOR undertook to supply the same on the terms set out in a framework agreement number A217833/L2 dated 1<sup>st</sup> May 2006 (the Framework Agreement);
- c) the AUTHORITY established a set of framework agreements, including the Framework Agreement, in consultation with and for the benefit of public sector bodies. The AUTHORITY has overall responsibility for management of those framework agreements;
- d) the AUTHORITY and the CONTRACTOR agree that public sector bodies within the UK may enter into Contracts under the Framework Agreement;
- e) the CUSTOMER is granted rights by the AUTHORITY in accordance with the Contracts (Rights of Third Parties) Act 1999 to enter into a Contract under the Framework Agreement pursuant to an Order served by the CUSTOMER on the CONTRACTOR;
- f) the CUSTOMER served an Order for Goods on the CONTRACTOR on 23<sup>rd</sup> December 2009; and
- g) the CONTRACTOR confirmed its agreement to the terms of the Order and its acceptance of the Order and hereby duly executes this Contract.

**IT IS AGREED AS FOLLOWS:**

**1. INTERPRETATIONS**

1.1 As used in this Contract:

- 1.1.1 the terms and expressions set out in Schedule 2-1 shall have the meanings ascribed therein;
- 1.1.2 the masculine includes the feminine and the neuter;
- 1.1.3 the singular includes the plural and vice versa; and
- 1.1.4 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”.

- 1.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

- 1.3 A reference to any document other than as specified in Clause 1.2 shall be construed as a reference to the document as at the date of execution of this Contract.
- 1.4 Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 1.5 References to “Clauses” and “Schedules” are, unless otherwise provided, references to the Clauses of and Schedules to this Contract.
- 1.6 Terms or expressions contained in this Contract which are capitalised but which do not have an interpretation in Schedule 2-1 shall be interpreted in accordance with the common interpretation within the information technology industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning.
- 1.7 In the event and to the extent only of any conflict or inconsistency in the provisions of the Clauses of this Contract and the provisions of the Schedules, the following order of precedence shall prevail:
  - 1.7.1 the Clauses, including Annex A thereto;
  - 1.7.2 Schedule 2-1; and
  - 1.7.3 the remaining Schedules.

## **2. THE GOODS AND ASSOCIATED SERVICES**

- 2.1 This Contract governs the overall relationship of the CONTRACTOR and the CUSTOMER with respect to the supply of the Ordered Goods and the provision of the Ordered Services. The CUSTOMER has ordered the Ordered Goods and provision of the Ordered Services specified in Schedule 2-2 and the CONTRACTOR shall supply those Ordered Goods and Ordered Services:
  - 2.1.1 in accordance with the provisions of this Contract if those Ordered Goods are to be sold by the CONTRACTOR and purchased by the CUSTOMER; and
  - 2.1.2 in accordance with the provisions of this Contract and any other terms and conditions as are agreed between the CUSTOMER and the CONTRACTOR and any third party (if any) if those Ordered Goods are to be leased to the CUSTOMER.
- 2.2 The CONTRACTOR shall supply the Ordered Goods and provide Ordered Services in accordance with the provisions of this Contract. Any failure so to do shall entitle the CUSTOMER to Credits calculated in accordance with the provisions of Schedule 2-2.
- 2.3 The CONTRACTOR accepts responsibility for damage, shortage or loss in transit to the Ordered Goods if:
  - the same is notified to the CONTRACTOR within ninety (90) Working Days of receipt of the Ordered Goods by the CUSTOMER; and
  - the Ordered Goods have been handled by the CUSTOMER in accordance with the CONTRACTOR’s instructions.

- 2.4 Where the CONTRACTOR accepts responsibility under Clause 2.3 it shall, at its sole option, replace or repair the Ordered Goods (or part thereof) which have been proven to the CONTRACTOR's reasonable satisfaction, to have been lost or damaged in transit.

### **3. STANDARDS AND REGULATIONS**

- 3.1 The CONTRACTOR shall supply the Ordered Goods and provide the Ordered Services and meet its responsibilities and obligations hereunder in accordance with the Standards and Regulations as set out in Schedule 2-10.

### **4. DELIVERY, TITLE AND RISK AND ACCEPTANCE**

- 4.1 Not used see alternative Special Term clause 36

### **5. CHARGES FOR ORDERED GOODS AND ORDERED SERVICES**

#### **5.1 Charges**

- 5.1.1 The Charges for the Ordered Goods and Ordered Services are set out in Schedule 2-3.
- 5.1.2 In consideration of the CONTRACTOR's supply of the Ordered Goods and provision of the Ordered Services as set out in the Order and in accordance with the terms and conditions of this Contract, the CUSTOMER shall pay the Charges to the CONTRACTOR.
- 5.1.3 The CONTRACTOR shall invoice the CUSTOMER for the Charges in accordance with the provisions of Schedule 2-4. All such invoices shall be payable by the CUSTOMER within twenty eight (28) days of the date of issue of the invoice.
- 5.1.4 The Charges are exclusive of Value Added Tax. The CUSTOMER shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by law from time to time.
- 5.1.5 The CONTRACTOR shall continuously indemnify the CUSTOMER against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the CUSTOMER at any time in respect of the CONTRACTOR's failure to account for or to pay any Value Added Tax relating to payments made to the CONTRACTOR under this Contract. Any amounts due under this Clause 5.1.5 shall be paid in cleared funds by the CONTRACTOR to the relevant authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the CUSTOMER.
- 5.1.6 Interest shall be payable on any late payments of the Charges under this Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.1.7 The CONTRACTOR shall accept the Government Procurement Card (GPC) as a means of payment for Ordered Goods and Ordered Services where GPC is agreed with the CUSTOMER to be a suitable means of payment.
- 5.1.8 The CONTRACTOR shall accept payment electronically via the Banks Automated Clearing Service (BACS).

#### **5.2 Euro**

5.2.1 In the event that the United Kingdom joins the Economic and Monetary Union (and provided always that the exchange rate for conversion between Sterling and the Euro has been fixed), the CUSTOMER shall at any time thereafter upon three (3) Months notice to the CONTRACTOR, be entitled to require the CONTRACTOR at no additional charge to convert the Charges from Sterling into Euros (in accordance with EC Regulation number 1103/97). The CONTRACTOR shall thereafter submit valid invoices denominated in Euros.

**5.3 Charges Variation**

5.3.1 The Charges may only be varied in accordance with the provisions of the Charges Variation Procedure.

**6. CONTRACT MANAGEMENT**

6.1 The CONTRACTOR and the CUSTOMER shall comply with their respective contract management obligations set out in Schedule 2-6.

**7. ALTERNATIVE CLAUSES AND ADDITIONAL CLAUSES**

7.1 The Alternative and/or Additional Clauses specified in Annex A to the Clauses shall apply.

**8. AMENDMENTS TO THIS CONTRACT**

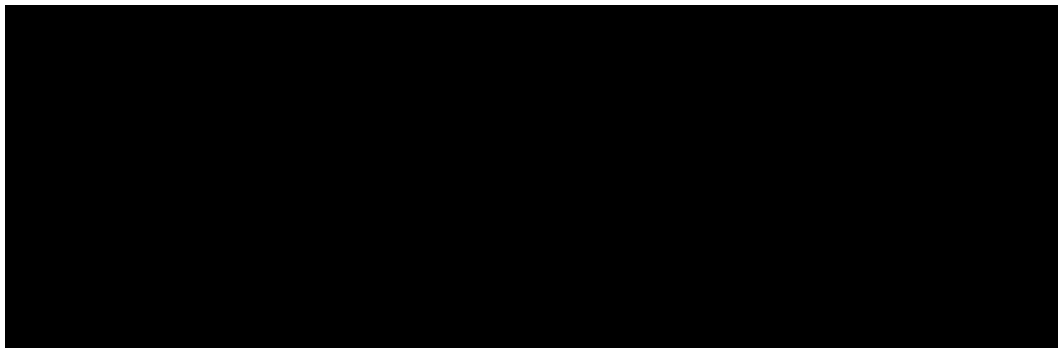
8.1 No amendment to the provisions of this Contract, other than a variation of the Charges pursuant to the provisions of Schedule 2-3, shall be effective unless made in accordance with the Contract Change Procedures specified in Schedule 2-7.

**9. COMMUNICATIONS**

9.1 Except as otherwise expressly provided, no communication from one party to the other shall have any validity under this Contract unless made in writing by or on behalf of the party sending such communication.

9.2 Except as otherwise expressly provided, any notice or other communication whatsoever which either the CUSTOMER or the CONTRACTOR is required or authorised by this Contract to give or make to the other shall be given or made by first class post in a prepaid letter, addressed to the other at the address specified in Clause 9.3. If that letter is not returned as being undelivered, that notice or communication shall be deemed, for the purposes of this Contract, to have been given or made two (2) Working Days after dispatch by the sender.

9.3 For the purposes of Clause 9.2 the address of each party shall be:



**10. TERM AND TERMINATION**

10.1 This Contract shall take effect on the date hereof and shall expire on:

10.1.1 the date specified in the Order; or

10.1.2 five (5) years after the date hereof; whichever is the earlier, unless terminated earlier pursuant to this Clause 10.

10.2 The CUSTOMER may at any time by notice in writing terminate this Contract as from the date of service of such notice, or a later date specified in such notice, if any of the Termination Events specified in Clause 10.3 occur:

10.3 Termination Events

10.3.1 A change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the CONTRACTOR or its Parent Company where the proposed new owner has:

been convicted of a criminal offence relating to the conduct of its business or profession; or

committed an act of grave misconduct in the course of its business or profession; or

failed to comply with any obligations relating to the payment of any taxes or social security contributions; or

made any serious misrepresentations in the tendering process for any project or matter in which the public sector has or had a significant participation; or

failed to obtain any necessary licences or membership of any relevant body.

10.3.2 A change of control, as defined in Clause 10.3.1 and there are reasonable grounds for the CUSTOMER to withhold its consent, relating to the financial standing of the new owner, any security concerns arising from the new ownership or issues relating to the supply of the Ordered Goods by the new owner.

10.3.3 Any of the events listed in Clauses 10.3.1 to 10.3.1.5 occur in relation to or in respect of the CONTRACTOR itself, or if the CUSTOMER has reasonable grounds to object to the CONTRACTOR arising from security concerns in respect of the CONTRACTOR.

10.3.4 The CONTRACTOR:

being an individual, or where the CONTRACTOR is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport so to do, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986, or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993, or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him on behalf of his creditors, or any similar event occurs under the law of any other jurisdiction; or



being a company, passes a resolution, or the Court makes an order that the CONTRACTOR or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the CONTRACTOR or the Parent Company (or an application for the appointment of an administrator is made or notice to appoint an administrator is given in relation to the CONTRACTOR or the Parent Company), or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the CONTRACTOR or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (except where the claim is made under Section 123(1)(a) and is for an amount of less than ten thousand pounds (£10,000)) or any similar event occurs under the law of any other jurisdiction; or

10.3.5 Where the circumstances detailed in paragraph 2.7.2 of Schedule 2-5, Clause 10.5, Clause 15.14.1, Clause 24.2, Clause 36.11 or Clause 36.15 arise.

10.4 For the purposes of Clause 10.3.1 the following shall be disregarded:

10.4.1 any change in beneficial or legal ownership of any shares that are listed on a stock exchange resulting in the relevant shareholding being less than or equal to five per cent (5%) of the total issued share capital; and

10.4.2 any transfer of shares or of any interest in shares by a person to its Affiliate where such transfer forms part of a bona fide reorganisation or restructuring.

10.5 Without prejudice to the provisions of Clause 10.2 the CUSTOMER may at any time by notice in writing terminate this Contract forthwith if the CONTRACTOR is in material Default of any obligation under this Contract and:

10.5.1 the material Default is capable of remedy and the CONTRACTOR shall have failed to remedy the material Default within thirty (30) Days of written notice to the CONTRACTOR specifying the material Default and requiring its remedy; or

10.5.2 the material Default is not capable of remedy.

10.6 The CONTRACTOR shall promptly notify the CUSTOMER in writing on each occasion of the occurrence of any of the events specified in Clause 10.3.

10.7 The CUSTOMER shall only be permitted to exercise its rights pursuant to Clause 10.2 for six (6) Months after service of a notice by the CONTRACTOR pursuant to Clause 10.6 relative to each such change of control and shall not be permitted to exercise such rights where the CUSTOMER has agreed in advance in writing to the particular change of control and such change of control takes place as proposed.

10.8 The termination of this Contract pursuant to this Clause 10 shall be without prejudice to any rights of either the CUSTOMER or the CONTRACTOR that shall have accrued before the date of such termination.

10.9 Save as aforesaid, the CONTRACTOR shall not be entitled to any payment from the CUSTOMER after the termination of this Contract.

## **11. CONSEQUENCES OF TERMINATION AND EXPIRY**

11.1 .Within ten (10) Working Days of the date of expiry or termination of this Contract, the CONTRACTOR shall return to the CUSTOMER any sums prepaid in respect of Ordered Goods not provided by the date of expiry or termination.

11.2 The provisions of Clauses 1, 12, 13, 14, 15, 18, 19, 22, 27, 29 33, 35 and 36 and the provisions of Schedule 2-1 shall survive the termination or expiry of this Contract.

## **12. WARRANTIES AND REPRESENTATIONS**

12.1 The CONTRACTOR warrants and represents that:

12.1.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform this Contract and that this Contract is executed by a duly authorised representative of the CONTRACTOR;

12.1.2 this Contract shall be performed in compliance with all applicable laws, enactments, orders, regulations and other similar instruments as amended from time to time;

12.1.3 the Ordered Services shall be provided and carried out by appropriately experienced, qualified and trained personnel with all due skill care and diligence.

12.1.4 it shall discharge its obligations hereunder with all due skill, care and diligence including good industry practice and (without limiting the generality of this Clause 12) in accordance with its own established internal procedures; and

12.1.5 it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary for the performance of this Contract and the use of the Ordered Goods and the Ordered Services by the CUSTOMER.

12.1.6 it has taken and shall continue to take all steps, in accordance with good industry practice, to prevent the introduction, creation or propagation of any disruptive element (including any virus, worm and/or Trojan horse) into the Ordered Service and into systems, data, software or Confidential Information (held in electronic form) owned by or under the control of, used by, the CUSTOMER;

12.1.7 it shall take all measures to avoid any and all data loss and data corruption during the provision of the Ordered Services in accordance with good industry practice;

12.1.8 it shall take all measures to avoid the failure or reduced performance (in whole or in part) of the Ordered Services; and

12.1.9 the Ordered Goods (and all components thereof) and the Ordered Services are:  
of satisfactory quality;

in conformance with the relevant specifications set out in this Contract, the relevant Order and the manufacturer's specifications and documentation; and

free from material programming errors and material defects in design, manufacture or materials throughout the applicable warranty period, as specified in the catalogue; and

12.1.10 where Ordered Goods are supplied by way of sale and purchase they shall be supplied with full title guarantee.

12.1.11 this Contract is established on the terms and conditions of Schedule 2 (Model Contract) of the Framework Agreement for ICT Goods and associated Services version 6.00 without amendment thereto save for the necessary information to complete that Model Contract as specified in the Order placed by the CUSTOMER. In the event and to the extent only of any conflicts between this Contract and the Model Contract for ICT Goods and associated Services version 6.00;

12.1.11.1 where the conflict is due to the addition of Special Terms, this Contract shall prevail over the Model Contract; otherwise

12.1.11.2 the Model Contract for ICT Goods and associated Services version 6.00 shall prevail over this Contract.

12.2 The CONTRACTOR acknowledges that any breach of the warranties in Clause 12.1 shall be remedied as a matter of urgency at no cost to the CUSTOMER. Failure to remedy (if capable of remedy) such to comply with Clause 12.1 within five (5) Working Days of notification by the CUSTOMER shall constitute a breach of this Contract entitling the CUSTOMER to terminate in accordance with Clause 10.

12.3 Except as expressly stated in this Contract, all warranties and conditions, whether express or implied by statute, common law or otherwise (including fitness for purpose) are hereby excluded to the extent permitted by law.

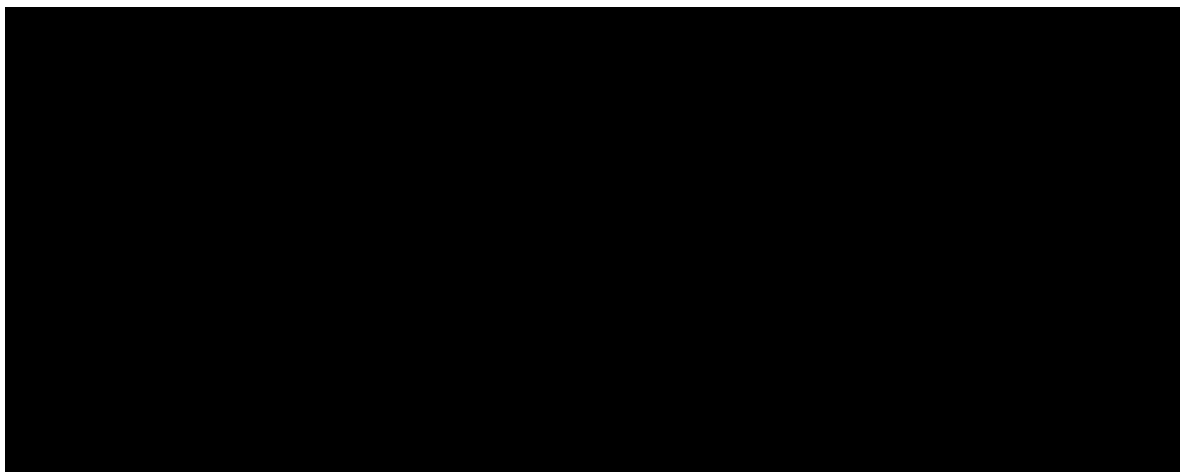
12.4 Both the CUSTOMER and the CONTRACTOR warrants to the other that it has undertaken all requisite corporate and other action to approve the entering into and performance of this Contract.

### **13. LIMITATION OF LIABILITY**

13.1 Neither the CUSTOMER nor the CONTRACTOR excludes or limits liability to the other for death or personal injury or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 or for fraud or fraudulent misrepresentation.

13.2 Nothing in this Clause 13 shall be taken as limiting the liability of the CONTRACTOR in respect of Clause 14 and Clause 15.

13.3 In respect of any claims of liability arising out of the wilful default of the CONTRACTOR, its employees, servants or agents, the CONTRACTOR will have unlimited liability for all reasonably foreseeable loss suffered by the CUSTOMER as a result of such act, omission or event giving rise to the claim.



13.6 Subject always to the provisions of Clauses 13.1, 13.2 and 13.3, in no event shall either the CUSTOMER or the CONTRACTOR be liable to the other for:

13.6.1 indirect or consequential loss or damage; and/or

13.6.2 loss of profits, business, revenue, goodwill or anticipated savings.

13.7 Subject always to the provisions of Clauses 13.1, 13.2, 13.3, 13.4, and 13.5, the provisions of Clause 13.6 shall not be taken as limiting the right of either the CUSTOMER or the CONTRACTOR to claim from the other for:

13.7.1 additional operational and administrative costs and expenses;

13.7.2 any costs or expenses rendered nugatory; and

13.7.3 damage due to the loss of data, but only to the extent that such losses relate to the costs of working around any loss of data and the direct costs of recovering or reconstructing such data, resulting directly from the Default of the other party.

13.8 The CUSTOMER and the CONTRACTOR expressly agree that should any limitation or provision contained in this Clause 13 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted, but if any either of them thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

#### **14. DATA PROTECTION**

14.1 The CONTRACTOR's attention is hereby drawn to the Data Protection Requirements. The CUSTOMER and the CONTRACTOR shall observe their obligations under the Data Protection Requirements.

14.2 Where the CONTRACTOR, pursuant to its obligations under this Contract, undertakes the Processing of Personal Data on behalf of the CUSTOMER, it shall:

14.2.1 carry out the Processing of Personal Data only in accordance with instructions from the CUSTOMER (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the CUSTOMER to the CONTRACTOR during the Term);

14.2.2 carry out the Processing of Personal Data only to the extent, and in such manner, as is necessary for the supply of the Ordered Goods and Ordered Services or as is required by Law or any Regulatory Body;

14.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

14.2.4 take reasonable steps to ensure the reliability of any CONTRACTOR personnel who have access to the Personal Data;

14.2.5 obtain prior written consent from the CUSTOMER in order to transfer the Personal Data to any Sub-Contractors for the supply of the Ordered Goods and Ordered Services;

14.2.6 ensure that any CONTRACTOR personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 14;

- 14.2.7 ensure that none of the CONTRACTOR personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the CUSTOMER;
- 14.2.8 notify the CUSTOMER (within five (5) Working Days) if it receives:  
a request from a Data Subject to have access to that person's Personal Data; or  
a complaint or request relating to the CUSTOMER's obligations under the Data Protection Requirements;
- 14.2.9 provide the CUSTOMER with full cooperation and assistance in relation to any complaint or request made, including by:  
providing the CUSTOMER with full details of the complaint or request;  
complying with a data access request within the relevant timescales set out in the Data Protection Requirements and in accordance with the CUSTOMER's instructions;  
providing the CUSTOMER with any Personal Data it holds in relation to a Data Subject (within the timescales required by the CUSTOMER); and  
providing the CUSTOMER with any information requested by the CUSTOMER;
- 14.2.10 permit the CUSTOMER or its representatives (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the CONTRACTOR's data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the CUSTOMER to enable the CUSTOMER to verify and/or procure that the CONTRACTOR is in full compliance with its obligations under this Contract;
- 14.2.11 provide a written description of the technical and organisational methods employed by the CONTRACTOR for Processing Personal Data (within the timescales required by the CUSTOMER); and
- 14.2.12 not undertake the Processing of Personal Data outside the European Economic Area without the prior written consent of the CUSTOMER and, where the CUSTOMER consents to a transfer, to comply with:  
the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and  
any reasonable instructions notified to it by the CUSTOMER.
- 14.3 The CONTRACTOR shall comply at all times with the Data Protection Requirements and shall not perform its obligations under this Contract in such a way as to cause the CUSTOMER to breach any of its applicable obligations under the Data Protection Requirements.
- 14.4 The CUSTOMER may from time to time serve on the CONTRACTOR an information notice requiring the CONTRACTOR within such time and in such form as is specified in the information notice, to furnish to the CUSTOMER such information as the CUSTOMER may reasonably require relating to:
- 14.4.1 compliance by the CONTRACTOR with the CONTRACTOR's obligations under this Contract in connection with the Processing of Personal Data; and/or
- 14.4.2 the rights of Data Subjects, including but not limited to subject access rights.

- 14.5 The CONTRACTOR will allow its data Processing facilities, procedures and documentation to be submitted for scrutiny by the CUSTOMER or its auditors in order to ascertain compliance with the relevant laws of the United Kingdom and the terms of this Contract.
- 14.6 With respect to the parties' rights and obligations under this Contract, the parties acknowledge that, except where otherwise agreed, the CUSTOMER is the Data Controller and the CONTRACTOR is the Data Processor. Where the CONTRACTOR wishes to appoint, in accordance with the provisions of Clause 26, a Sub-Contractor to assist it in providing the Ordered Goods and Ordered Services and such assistance includes the Processing of Personal Data on behalf of the CUSTOMER, then, subject always to compliance by the CONTRACTOR with the provisions of Clause 26 relating to the appointment of Sub-Contractors, the CUSTOMER hereby grants to the CONTRACTOR a delegated authority to appoint on the CUSTOMER's behalf such Sub-Contractor to undertake the Processing of Personal Data provided that the CONTRACTOR shall notify the AUTHORITY in writing of such appointment and the identity and location of such Sub-Contractor. The CONTRACTOR warrants that such appointment shall be on substantially the same terms with respect to Data Protection Requirements as are set out in this Contract, including the terms set out in Clause 14.2. Any Sub-Contractor appointed under the provisions of this Clause 14.6 shall, for the purposes of Schedule 2-8, be regarded as a principal Sub-Contractor and shall be specified in Table 1 of Schedule 2-8.
- 14.7 Save as set out in this Clause 14, any unauthorised Processing, use or disclosure of Personal Data by the CONTRACTOR is strictly prohibited.
- 14.8 The CONTRACTOR shall be liable for and shall indemnify (and keep indemnified) the CUSTOMER against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor and client basis) and demands incurred by the CUSTOMER which arise directly or in connection with the CONTRACTOR's data Processing activities under this Contract, including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Requirements by the CONTRACTOR or its employees, servants, agents or Sub-Contractors.

## **15. INTELLECTUAL PROPERTY RIGHTS**

- 15.1 Save as granted under this Contract, neither the CUSTOMER nor the CONTRACTOR shall acquire any right, title or interest in the CONTRACTOR's Pre-Existing Intellectual Property Rights nor in the CUSTOMER's Pre-Existing Intellectual Property Rights respectively.
- 15.2 All Contract Generated Intellectual Property Rights, other than rights in software described in Clause 15.3.2 shall be proprietary to and owned by the CUSTOMER. The CUSTOMER and the CONTRACTOR shall enter into such documentation and perform such acts as the CUSTOMER shall request to properly vest such Contract Generated Intellectual Property Rights in the CUSTOMER. Accordingly the CONTRACTOR hereby assigns (by way of present assignment of future Contract Generated Intellectual Property Rights) all such Intellectual Property Rights.
- 15.3 The CONTRACTOR:
- 15.3.1 hereby grants to the CUSTOMER a licence to use the CONTRACTOR's Software on its standard licence terms;

- 15.3.2 notwithstanding the provisions of Clause 15.2, hereby grants to the CUSTOMER a non exclusive perpetual licence to use any software created by or on behalf of the CONTRACTOR for the CUSTOMER as supplied to the CUSTOMER hereunder;
- 15.3.3 shall procure that the owners or the authorised licensors of any Third Party Software hereby grant a licence to the CUSTOMER on the Third Party Software owner's standard licence terms;
- 15.3.4 hereby grants to the CUSTOMER a non-exclusive licence to copy the descriptions of the Ordered Goods and Ordered Services, including technical specifications; user manuals; operating manuals; process definitions; and procedures, for any purpose that is connected with or otherwise incidental to the exercise of the rights granted to the CUSTOMER under this Clause 15.3.
- 15.4 To the extent that the CONTRACTOR creates any materials (in whatever form or media), including training, marketing, promotional or publicity materials, relating to the supply of the Ordered Goods and/or the provision of the Ordered Services ("Goods Materials") it shall provide copies of all Goods Materials to the CUSTOMER promptly and the CONTRACTOR hereby grants to the CUSTOMER a royalty free, irrevocable, non-exclusive licence for such term as the CUSTOMER shall require to use all and any Intellectual Property Rights in the Goods Materials as it shall reasonably require with the ability to sub-licence the same.
- 15.5 The CONTRACTOR shall procure that the Ordered Goods and Ordered Services shall not infringe any Intellectual Property Rights of any third party.
- 15.6 The CONTRACTOR shall indemnify the CUSTOMER against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the Ordered Goods and Ordered Services, except to the extent that such liabilities have resulted directly from the CUSTOMER's failure properly to observe its obligations under this Clause 15.
- 15.7 The CONTRACTOR shall promptly notify the CUSTOMER if any claim or demand is made or action brought against the CONTRACTOR for infringement or alleged infringement of any Intellectual Property Right that may affect the availability of the Ordered Goods and the Ordered Services hereunder.
- 15.8 The CUSTOMER shall promptly notify the CONTRACTOR if any claim or demand is made or action brought against the CUSTOMER to which Clause 15.6 or Clause 15.7 may apply. The CONTRACTOR shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and the CUSTOMER hereby agrees to grant to the CONTRACTOR exclusive control of any such litigation and such negotiations.
- 15.9 The CUSTOMER shall at the request of the CONTRACTOR afford to the CONTRACTOR all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the CUSTOMER to which Clause 15.6 may apply or any claim or demand made or action brought against the CONTRACTOR to which Clause 15.7 may apply. The CONTRACTOR shall reimburse the CUSTOMER for all costs and expenses (including legal costs and disbursements on a solicitor and client basis) incurred in so doing.

- 15.10 The CUSTOMER shall not make any admissions that may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right to which Clause 15.6 may apply or any claim or demand made or action brought against the CONTRACTOR to which Clause 15.7 may apply.
- 15.11 If a claim or demand is made or action brought to which Clause 15.6 may apply, or in the reasonable opinion of the CONTRACTOR is likely to be made or brought, the CONTRACTOR may at its own expense and within a reasonable time either:
- 15.11.1 modify any or all of the Ordered Goods or Ordered Services without reducing the performance and functionality of the same, or substitute alternative goods or services of equivalent performance and functionality for any or all of the Ordered Goods and Ordered Services, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted goods and services and such substitution shall not increase the burden on the CUSTOMER such modified or substituted items shall be acceptable to the CUSTOMER, such acceptance not to be unreasonably withheld; or
  - 15.11.2 procure a licence to use the Ordered Goods and Ordered Services on terms that are reasonably acceptable to the CUSTOMER.
- 15.12 The foregoing provisions of this Clause 15 shall not apply insofar as any such claim or demand or action is in respect of:
- 15.12.1 any use by the CUSTOMER of the Ordered Goods or the Ordered Services in combination with any item or service not supplied or approved by the CONTRACTOR where such use directly gives rise to the claim, demand or action; or
  - 15.12.2 any modification carried out by or on behalf of the CUSTOMER to any Ordered Goods or Ordered Service provided under this Contract if such modification is not authorised by the CONTRACTOR in writing; or
  - 15.12.3 any use by the CUSTOMER of the Ordered Goods or Ordered Services in a manner not reasonably to be inferred from the specification or requirements of the CUSTOMER.
- 15.13 In the event that the CONTRACTOR has availed itself of its rights to modify the Ordered Goods or Ordered Services or to supply substitute goods or services pursuant to Clause 15.11.1 or to procure a licence under Clause 15.11.2 and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, then the CONTRACTOR shall have no further liability thereafter under this Clause 15 in respect of the said claim, demand or action.
- 15.14 In the event that a modification or substitution in accordance with Clause 15.11.1 above is not possible so as to avoid the infringement, or the CONTRACTOR has been unable to procure a licence in accordance with Clause 15.11.2:
- 15.14.1 the CUSTOMER shall be entitled to terminate this Contract pursuant to Clause 10.3; and
  - 15.14.2 the CONTRACTOR shall be liable for the value of replacement goods and/or services or the affected parts thereof together with additional costs incurred in implementing and maintaining such replacements.



15.15 This Clause 15 sets out the entire financial liability of the CONTRACTOR with regard to the infringement of any Intellectual Property Right by the availability of the Ordered Goods and Ordered Services hereunder. This shall not affect the CONTRACTOR's financial liability for other Defaults or causes of action that may arise hereunder.

15.16 The CUSTOMER warrants that the CONTRACTOR's use of any third party item supplied directly or indirectly by the CUSTOMER in accordance with any instructions given by the CUSTOMER in connection with the use of such item shall not cause the CONTRACTOR to infringe any third party's Intellectual Property Rights in such item.

## **16. CONFIDENTIALITY**

16.1 The CUSTOMER and the CONTRACTOR acknowledge that any Confidential Information originating from:

16.1.1 the CUSTOMER, its servants or agents is the property of the CUSTOMER; and

16.1.2 the CONTRACTOR, its employees, servants or agents is the property of the CONTRACTOR.

16.2 The CONTRACTOR and the CUSTOMER shall procure that:

16.2.1 any person employed or engaged by them (in connection with this Contract in the course of such employment or engagement) shall only use Confidential Information for the purposes of this Contract;

16.2.2 any person employed or engaged by them in connection with this Contract shall not, in the course of such employment or engagement, disclose any Confidential Information to any third party without the prior written consent of the other party;

16.2.3 they shall take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than for the purposes of this Contract by their employees, servants, agents or Sub-Contractors; and

16.2.4 without prejudice to the generality of the foregoing neither the CUSTOMER nor the CONTRACTOR nor any person engaged by them whether as a servant or a consultant or otherwise shall use the Confidential Information for the solicitation of business from the other or from any third party.

16.3 The provisions of Clause 16.1 and Clause 16.2 shall not apply to any information which:

16.3.1 is or becomes public knowledge other than by breach of this Clause 16; or

16.3.2 is in the possession of the recipient without restriction in relation to disclosure before the date of receipt from the disclosing party; or

16.3.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or

16.3.4 is independently developed without access to the Confidential Information; or

16.3.5 must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

16.4 Nothing in this Clause 16 shall be deemed or construed to prevent the CUSTOMER from disclosing any Confidential Information obtained from the CONTRACTOR:

16.4.1 to any department, office or agency of Her Majesty's Government ("Crown Bodies"), provided that the CUSTOMER has required that such information is treated as confidential by such Crown Bodies and their servants, including requiring servants to enter into a confidentiality agreement on substantially the same terms as the Model Confidentiality Agreement (1) set out in Schedule 2-12 prior to disclosure of the Confidential Information whereupon the CUSTOMER shall have no further liability for breach of confidentiality in respect of the departments, offices and agencies. All Crown Bodies in receipt of such Confidential Information shall be considered as parties to this Contract within Section 1(1) of the Contracts (Rights of Third Parties) Act 1999 for the purpose only of being entitled to further disclose the Confidential Information to other Crown Bodies on such terms; and

16.4.2 to any consultant, contractor or other person engaged by the CUSTOMER in connection herewith, provided that the CUSTOMER shall have required that such information be treated as confidential by such consultant, contractor or other person, together with their servants, including requiring servants to enter into a confidentiality agreement on substantially the same terms as the Model Confidentiality Agreement (2) set out in Schedule 2-12 prior to disclosure of the Confidential Information whereupon the CUSTOMER shall have no further liability for breach of confidentiality in respect of consultants, service providers or other people.

16.5 Nothing in this Clause 16 shall prevent the CONTRACTOR or the CUSTOMER from using data processing techniques, ideas and know-how gained during the performance of this Contract in the furtherance of its normal business, to the extent that this does not relate to a disclosure of Confidential Information or an infringement by the CUSTOMER or the CONTRACTOR of any Intellectual Property Rights.

## **17. PUBLICITY**

17.1 The CONTRACTOR shall not make any press announcements or publicise this Contract in any way without the CUSTOMER's prior written consent. The CONTRACTOR shall ensure the observance of the provisions of this Clause 16 by all their employees, servants, agents and Sub-Contractors.

17.2 The CUSTOMER shall be entitled to publicise this Contract in accordance with any legal obligation upon the CUSTOMER, including any examination of this Contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

## **18. DISPUTE RESOLUTION**

18.1 Subject to the provisions of Clause 18.2, any dispute arising under, or in connection with this Contract shall be dealt with in accordance with this Clause 18, and neither the CUSTOMER nor the CONTRACTOR shall be entitled to commence or pursue any legal proceedings under the jurisdiction of the courts in connection with any such dispute, until the procedures set out in this Clause 18 have been exhausted.

18.2 Clause 18.1 shall be without prejudice to the rights of termination stated in Clause 10 and in addition shall not prevent the CUSTOMER or the CONTRACTOR from applying for injunctive relief in the case of:

18.2.1 breach or threatened breach of confidentiality;

18.2.2 infringement or threatened infringement of its Intellectual Property Rights; or

18.2.3 infringement or threatened infringement of the Intellectual Property Rights of a third party, where such infringement could expose the CUSTOMER or the CONTRACTOR to liability.

18.3 All disputes between the CUSTOMER and the CONTRACTOR arising out of or relating to this Contract shall be referred by the CUSTOMER's contract manager as first point of contact or the CONTRACTOR's contract manager as first point of contact to the other for resolution.

18.4 If any dispute cannot be resolved pursuant to the provisions of Clause 18.3 within ten (10) Working Days, that dispute shall be referred to the the CUSTOMER's second point of contact Director of Service Delivery and the CONTRACTOR's second point of contact Service Delivery Manager for resolution.

18.5 If any dispute cannot be resolved pursuant to the provisions of Clause 18.4 within ten (10) Working Days, that dispute shall be referred to mediation and, if necessary thereafter, to either arbitration or litigation in accordance with the provisions of Schedule 2-9.

## **19. RECOVERY OF SUMS DUE**

19.1 The CUSTOMER shall be permitted to deduct and withhold from any sum due to the CONTRACTOR under this Contract any sum of money due from the CONTRACTOR under either:

this Contract;

any other agreement between the CONTRACTOR and the CUSTOMER;

any other agreement between the CONTRACTOR and OGCbuying.solutions; or

any other department, office, or agency of the Crown,

provided that the terms of such other agreement provide for sums of money due from the CONTRACTOR under that agreement to be recovered by way of a deduction from sums of money due to the CONTRACTOR under this Contract (albeit that this Contract may not be referenced specifically under that agreement).

## **20. STATUTORY REQUIREMENTS**

20.1 The CONTRACTOR shall notify the CUSTOMER of all statutory provisions and approved safety standards applicable to the Ordered Goods and Ordered Services and their supply and shall be responsible for obtaining all licences, consents or permits required for the performance of this Contract.

20.2 The CONTRACTOR shall inform the CUSTOMER if the Ordered Goods or Ordered Services are hazardous to health or safety and of the precautions that should be taken in respect thereto.

20.3 The CONTRACTOR shall, and shall ensure that its personnel, agents and Sub-Contractors, take all measures necessary to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to those involved in the performance of this Contract.

**21. STATUTORY INVALIDITY**

- 21.1 The CUSTOMER and the CONTRACTOR expressly agree that should any limitation or provision contained in this Contract be held to be invalid under any particular statute or law, or any rule, regulation or bye-law having the force of law, it shall to that extent be deemed to be omitted but, if either the CUSTOMER or the CONTRACTOR thereby becomes liable for loss or damage which would have otherwise been excluded, such liability shall be subject to the other limitations and provisions set out herein.

**22. ENVIRONMENTAL REQUIREMENTS**

- 22.1 The CONTRACTOR shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in relation to the Ordered Goods and Ordered Services. Without prejudice to the generality of the foregoing, the CONTRACTOR shall promptly provide all such information regarding the environmental impact of the Ordered Goods and Ordered Services as may reasonably be requested by the CUSTOMER.
- 22.2 The CONTRACTOR shall meet all reasonable requests by the CUSTOMER for information evidencing compliance with the provisions of this Clause 22 by the CONTRACTOR.

**23. DISCRIMINATION**

- 23.1 The CONTRACTOR shall not unlawfully discriminate within the meaning and scope of the provisions of the Sex Discriminations Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003 or any statutory modification or re-enactment thereof or any other Law relating to discrimination in employment.
- 23.2 The CONTRACTOR shall take all reasonable steps to secure the observance of the provisions of Clause 23.1 by the Sub-Contractors employed in the execution of this Contract.

**24. “Not used”**

**25. CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

- 25.1 The CONTRACTOR shall not:
- 25.1.1 offer or give or agree to give any person in Her Majesty’s Service any gift or consideration of any kind as an inducement or reward for doing, forbearing to do, or for having done or forborne to do any act in relation to the obtaining or execution of this Contract or any other contract for Her Majesty’s Service or for showing favour or disfavour to any person in relation to this or any other contract for Her Majesty’s Service;
  - 25.1.2 enter into this Contract or any other contract with Her Majesty’s Service in connection with which commission has been paid or agreed to be paid by him or on his behalf, or to his knowledge, unless before this Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the CUSTOMER.

- 25.2 Any breach of Clause 25.1.1 by the CONTRACTOR or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the CONTRACTOR) or the commission of any offence by the CONTRACTOR or by anyone employed by him or acting on his behalf under the Prevention of Corruption Acts 1889 to 1916, in relation to this Contract or any other contract with Her Majesty's Service shall entitle the CUSTOMER to terminate this Contract and recover from the CONTRACTOR the amount of any loss resulting from such termination and/or to recover from the CONTRACTOR the amount or value of any such gift, consideration or commission.
- 25.3 Any dispute, difference or question arising in respect of the interpretation of this Clause 25, the right of the CUSTOMER to terminate this Contract or the amount or value of any such gift, consideration or commission shall be decided by the CUSTOMER, whose decision shall be final and conclusive.

## **26. TRANSFER AND SUB-CONTRACTING**

- 26.1 This Contract is personal to the CONTRACTOR. Subject to the provisions of Clause 26.2, the CONTRACTOR shall not assign, novate, sub-contract or otherwise dispose of this Contract or any part thereof without the previous consent in writing of the CUSTOMER.
- 26.2 The CONTRACTOR shall be entitled to Sub-Contract its obligations hereunder to the Sub-Contractors listed in Schedule 2-8; however this shall not affect the CONTRACTOR's obligations to the CUSTOMER and any liabilities under this Contract.
- 26.3 The CONTRACTOR in selecting, appointing and managing Sub-Contractors shall do so in accordance with the procedure specified in Schedule 2-8.
- 26.4 In the event that the CONTRACTOR, in accordance with the terms of this Contract, enters into a Sub-Contract in connection with this Contract, the CONTRACTOR shall ensure that a term is included in the Sub-Contract which requires the CONTRACTOR to pay all sums due thereunder to the Sub-Contractor within a specified period, not to exceed thirty (30) days, from the date of receipt of a valid invoice as defined by the terms of the Sub-Contract.
- 26.5 Subject to the provisions of Clause 26.8, the CUSTOMER shall be entitled to:
- 26.5.1 assign or otherwise dispose of its rights and obligations under this Contract or any part thereof to any Contracting Authority; or
- 26.5.2 assign or otherwise dispose of its rights and obligations under this Contract to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the CUSTOMER; provided that where such assignment or other disposal increases the burden of the CONTRACTOR's obligations pursuant to this Contract, the CONTRACTOR shall be entitled to such charges as may be agreed between the CUSTOMER and the CONTRACTOR to compensate for such additional burdens.
- 26.6 Subject to the provisions of Clause 26.8, the CUSTOMER shall be entitled, without the need to obtain the CONTRACTOR's consent, to seek to:
- 26.6.1 novate this Contract or any part thereof to any Contracting Authority; or
- 26.6.2 novate its rights and obligations under this Contract to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the CUSTOMER;

upon such terms as the CUSTOMER shall propose provided that where such novation increases the burden of the CONTRACTOR's obligations pursuant to this Contract, the CONTRACTOR shall be entitled to such charges as may be agreed between the CUSTOMER and the CONTRACTOR to compensate for such additional burdens.

- 26.7 Subject to the provisions of Clause 26.8, any change in the legal status of the CUSTOMER such that it ceases to be a Contracting Authority shall not affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the CUSTOMER.
- 26.8 If this Contract is novated to a body which is not a Contracting Authority pursuant to Clause 26.6.1, or if a successor body which is not a Contracting Authority becomes the CUSTOMER pursuant to Clause 26.7 (in the remainder of this Clause 26 both such bodies are referred to as the "transferee"):
- 26.8.1 the rights of termination of the CUSTOMER in Clause 10.3.4, Clause 10.3.4.2, and Clause 10.5 shall be available, mutatis mutandis, to the CONTRACTOR in the event of the bankruptcy, insolvency or Default of the transferee;
- 26.8.2 the transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the previous consent in writing of the CONTRACTOR; and
- 26.8.3 the following Clauses shall be varied from the date of the novation or the date of the change of status (as appropriate) as set out below as if this Contract had been amended by the CUSTOMER and the CONTRACTOR in accordance with Clause 8:
- 26.8.3.1 in Clause 25.1.1, the first reference to "in Her Majesty's Service" shall be replaced with "employed by the CUSTOMER or acting on its behalf" and the second and third references to "Her Majesty's Service" shall be replaced with "the CUSTOMER";
- 26.8.3.2 in Clause 25.1.2, the words "with Her Majesty's Service" shall be replaced with "CUSTOMER or acting on its behalf";
- 26.8.3.3 in Clause 25.2, the words "Her Majesty's Service" shall be replaced with "the CUSTOMER"; and
- 26.8.3.4 Clause 19 shall be deleted.
- 26.9 Unless otherwise stated to the contrary, any reference to the CONTRACTOR's personnel within this Contract shall include the Sub-Contractor's personnel, and where applicable any reference to the CONTRACTOR shall include the Sub-Contractor. Notwithstanding any Sub-Contracting permitted hereunder, the CONTRACTOR shall remain primarily responsible for the acts and omissions of its Sub-Contractors as though they were its own.
- 26.10 The CUSTOMER shall not be liable for any payment whatsoever to Sub-Contractors, the burden of which shall be solely with the CONTRACTOR.

## **27. RIGHTS OF THIRD PARTIES**

- 27.1 To the extent that this Contract is expressed to confer rights or benefits on a party who is not a party to this Contract, that party shall by virtue of the Contracts (Rights of Third Parties) Act 1999, be entitled to enforce those rights as if it was a party to this Contract. For the avoidance of doubt the consent of any person other than the CUSTOMER (or the CONTRACTOR, as the case may be) is not required to vary or terminate this Contract.

- 27.2 Except as provided in Clause 27.1, a person who is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This Clause 27.2 does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.

## **28. SEVERABILITY**

- 28.1 Subject to the provisions of Clause 21, if any provision of this Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Contract had been executed with the invalid provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Contract, the CUSTOMER and the CONTRACTOR shall immediately commence good faith negotiations to remedy such invalidity.

## **29. FREEDOM OF INFORMATION**

- 29.1 The CONTRACTOR acknowledges that the CUSTOMER is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations and shall assist and cooperate with the CUSTOMER to enable the CUSTOMER to comply with its Information disclosure obligations.
- 29.2 CONTRACTOR shall and shall procure that its Sub-Contractors shall:
- 29.2.1 transfer to the CUSTOMER all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
  - 29.2.2 provide the CUSTOMER with a copy of all Information in its possession, or power in the form that the CUSTOMER requires within five (5) Working Days (or such other period as the CUSTOMER may specify) of the CUSTOMER's request; and
  - 29.2.3 provide all necessary assistance as reasonably requested by the CUSTOMER to enable the CUSTOMER to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 29.3 The CUSTOMER shall be responsible for determining in its absolute discretion whether any Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.
- 29.4 In no event shall the CONTRACTOR respond directly to a Request for Information unless expressly authorised to do so by the CUSTOMER.
- 29.5 The CONTRACTOR acknowledges that the CUSTOMER may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, be obliged to disclose Information without consulting or obtaining consent from the CONTRACTOR, or despite having taken the CONTRACTOR's views into account.
- 29.6 The CONTRACTOR shall ensure that all Information is retained for disclosure and shall permit the CUSTOMER to inspect such records as requested from time to time.

## **30. FORCE MAJEURE**

- 30.1 For the purposes of this Contract the expression "Force Majeure" shall mean any cause affecting the performance by either the CUSTOMER or the CONTRACTOR of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its employees, servants or agents or the failure of either the CUSTOMER or the CONTRACTOR to perform its obligations under this Contract.
- 30.2 It is expressly agreed that any failure by the CONTRACTOR to perform or any delay by the CONTRACTOR in performing its obligations under this Contract which results from any failure or delay in the performance of its obligations by any person, firm or company with which the CONTRACTOR shall have entered into any contract, supply arrangement or Sub-Contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or Sub-Contract or otherwise as a result of circumstances of Force Majeure.
- 30.3 Both the CUSTOMER and the CONTRACTOR agree that any acts, events, omissions, happenings or non-happenings resulting from the adoption of the Euro by the United Kingdom government shall not be considered to constitute Force Majeure under this Contract.
- 30.4 Neither the CUSTOMER nor the CONTRACTOR shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, both the CUSTOMER and the CONTRACTOR shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.
- 30.5 If either the CUSTOMER or the CONTRACTOR become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue. In the event that such failure or delay shall exceed a period of 90 (ninety) Days either party shall have the right to terminate the Contract without penalty, subject to payment for any Ordered Goods or Services already delivered or performed.
- 30.6 It is hereby expressly declared that the only events that shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

### **31. LEGISLATIVE CHANGE**

- 31.1 The CONTRACTOR shall bear the cost of ensuring that the Ordered Goods and Ordered Services shall comply with all applicable statutes, enactments, orders, regulations or other similar instruments and any amendments thereto, except where any such amendment could not reasonably have been foreseen by the CONTRACTOR at the date hereof.



- 31.2 Where such reasonably unforeseeable amendments are necessary, the CUSTOMER and the CONTRACTOR shall use all reasonable endeavours to agree upon reasonable adjustments to the Charges as may be necessary to compensate the CONTRACTOR for such additional costs as are both reasonably and necessarily incurred by the CONTRACTOR in accommodating such amendments.

## **32. WAIVER**

- 32.1 The failure of the CONTRACTOR or the CUSTOMER to insist upon strict performance of any provision of this Contract or to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Contract.
- 32.2 A waiver of any default shall not constitute a waiver of any other default.
- 32.3 No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver communicated by notice, in accordance with the provisions of Clause 9.

## **33. LAW AND JURISDICTION**

- 33.1 Subject to the provisions of Clause 18, the CUSTOMER and the CONTRACTOR accept the exclusive jurisdiction of the English courts and agree that this Contract is to be governed by and construed according to English law.

## **34. ENTIRE AGREEMENT**

- 34.1 This Contract constitutes the entire understanding between the CUSTOMER and the CONTRACTOR relating to the subject matter.
- 34.2 Neither the CUSTOMER nor the CONTRACTOR has relied upon any representation or promise except as expressly set out in this Contract.
- 34.3 Both the CUSTOMER and the CONTRACTOR unconditionally waives any rights it may have to claim damages against the other on the basis of any statement made by the other (whether made carelessly or not) not set out or referred to in this Contract (or for breach of any warranty given by the other not so set out or referred to) unless such statement or warranty was made or given fraudulently.
- 34.4 Both the CUSTOMER and the CONTRACTOR unconditionally waives any rights it may have to seek to rescind this Contract on the basis of any statement made by the other (whether made carelessly or not) whether or not such statement is set out or referred to in this Contract unless such statement was made fraudulently.

## **35. DELIVERY TITLE RISK AND ACCEPTANCE**

- 35.1 The procedures for delivery and acceptance of the Ordered Goods and Ordered Services are set out in Schedule 2-5.
- 35.2 Title to and risk in all Assets used by the CONTRACTOR for the provision of the Ordered Services or provided to the CUSTOMER in connection with the provision of the Ordered Services shall remain with the CONTRACTOR unless otherwise agreed between the parties.
- 35.3 In the event of the exercise by the CUSTOMER, on either the expiry or termination of this Contract, the CUSTOMER or the new contractor (as applicable) shall acquire title to any Assets requested to be transferred, assigned, licensed or novated in their favour free from all encumbrances.
- 35.4 The CONTRACTOR will maintain the Assets until point of Service Transfer so that they will be in good working order on termination or expiry.

- 35.5 Any residual warranty from the supplier of the Assets will be novated or transferred to the CUSTOMER or the new contractor (as applicable). No other warranties or representations are provided by the CONTRACTOR in respect of the Assets.
- 35.6 The CUSTOMER or the new contractor (as applicable) shall have the quiet possession of such Assets.
- 35.7 The CONTRACTOR shall use all reasonable endeavours to ensure that all Sub-Contracts, equipment rental or lease agreements, licences of Intellectual Property Rights, and all other non-employment contracts which are necessary or desirable for the performance of the Ordered Services, are assignable to the CUSTOMER upon the termination or expiry of this Contract.
- 35.8 The CONTRACTOR will dispose of those Assets that the CUSTOMER or the new contractor (as applicable) does not identify as Assets that they wish to acquire.
- 35.9 The Consideration payable by the CUSTOMER for the transfer of the Assets on the expiry of the Contract shall be zero.
- 35.10 The matters referred to in Clauses 36.7.2 to 36.7.4 shall take effect in accordance with the Service Transfer Plan to be prepared pursuant to Schedule 2-14 which will agree method of transfer and any agreed Handover Period).

## **36. SECURITY MEASURES**

### **36.1 In this Clause 36:**

- 36.1.1 “secret matter” means any matter connected with or arising out of the performance of this Contract which has been, or may hereafter be, by a notice in writing given by the CUSTOMER to the CONTRACTOR be designated ‘top secret’, ‘secret’, or ‘confidential’;
- 36.1.2 “document” includes specifications, plans, drawings, photographs and books;
- 36.1.3 references to a person employed by the CONTRACTOR shall be construed as references to any person employed or engaged by the CONTRACTOR to do anything in connection with this Contract, whether under a contract of service with the CONTRACTOR or under any other contract or arrangement whatsoever; and
- 36.1.4 “servant” where the CONTRACTOR is a body corporate shall include a director of that body and any person occupying in relation to that body the position of director by whatever name called.

### **36.2 The CONTRACTOR shall not, either before or after the completion or termination of this Contract, do or permit to be done anything which it knows or ought reasonably to know may result in information about a Protectively Marked document being:**

- 36.2.1 without the prior consent in writing of the CUSTOMER, disclosed to or acquired by a person who is an alien or who is a British subject by virtue only of a certificate of naturalisation in which his name was included;
- 36.2.2 disclosed to or acquired by a person as respects whom the CUSTOMER has given to the CONTRACTOR a notice in writing which has not been cancelled stating that the CUSTOMER requires that Protectively Marked shall not be disclosed to that person;

- 36.2.3 without the prior consent in writing of the CUSTOMER, disclosed to or acquired by any person who is not a servant of the CONTRACTOR; or
- 36.2.4 disclosed to or acquired by a person who is an employee of the CONTRACTOR except in a case where it is necessary for the proper performance of this Contract that such person shall have the information.
- 36.3 Without prejudice to the provisions of Clause 36.2, the CONTRACTOR shall, both before and after the completion or termination of this Contract, take all reasonable steps to ensure:
  - 36.3.1 that no such person as is mentioned in Clauses 36.2.1, 36.2.2 or 36.2.3 hereof shall have access to any item or document under the control of the CONTRACTOR containing information about a secret matter except with the prior consent in writing of the CUSTOMER;
  - 36.3.2 that no visitor to any premises in which there is any item to be supplied under this Contract or where Ordered Goods are being supplied shall see or discuss with the CONTRACTOR or any person employed by him any secret matter unless the visitor is authorised in writing by the CUSTOMER so to do;
  - 36.3.3 that no photograph of any item to be supplied under this Contract or any portions of the Ordered Goods shall be taken except insofar as may be necessary for the proper performance of this Contract or with the prior consent in writing of the CUSTOMER, and that no such photograph shall, without such consent, be published or otherwise circulated;
  - 36.3.4 that all information about any secret matter and every document model or other item which contains or may reveal any such information is at all times strictly safeguarded, and that, except insofar as may be necessary for the proper performance of this Contract or with the prior consent in writing of the CUSTOMER, no copies of or extracts from any such document, model or item shall be made or used and no designation of description which may reveal information about the nature or contents of any such document, model or item shall be placed thereon; and
  - 36.3.5 that if the CUSTOMER gives notice in writing to the CONTRACTOR at any time requiring the delivery to the CUSTOMER of any such document, model or item as is mentioned in Clause 36.3.4, that document, model or item (including all copies of or extracts therefrom) shall forthwith be delivered to the CUSTOMER who shall be deemed to be the owner thereof and accordingly entitled to retain the same.
  - 36.3.6 The decision of the CUSTOMER on the question whether the CONTRACTOR has taken or is taking all reasonable steps as required by the foregoing provisions of this Clause 36.3 shall be final and conclusive.
- 36.4 If and when directed by the CUSTOMER, the CONTRACTOR shall furnish full particulars of all people who are at any time concerned with any secret matter.
- 36.5 If and when directed by the CUSTOMER, the CONTRACTOR shall secure that any person employed by it who is specified in the direction, or is one of a class of people who may be so specified, shall sign a statement that he understands that the Official Secrets Act, 1911 to 1989 and, where applicable, the Atomic Energy Act, 1946, apply to the person signing the statement both during the carrying out and after expiry or termination of a Contract.

- 36.6 If at any time either before or after the expiry or termination of this Contract it comes to the notice of the CONTRACTOR that any person acting without lawful authority is seeking or has sought to obtain information concerning this Contract or any thing done or to be done in pursuance thereof, the matter shall be forthwith reported by the CONTRACTOR to the CUSTOMER and the report shall, in each case, be accompanied by a statement of the facts, including, if possible, the name, address and occupation of that person, and the CONTRACTOR shall be responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by it, that person shall forthwith report the matter to the CONTRACTOR with a statement of the facts as aforesaid.
- 36.7 The CONTRACTOR shall place every person employed by it, other than a Sub-Contractor, who in its opinion has or will have such knowledge of any secret matter as to appreciate its significance, under a duty to the CONTRACTOR to observe the same obligations in relation to that matter as are imposed on the CONTRACTOR by Clauses 36.2 and 36.3, and shall, if directed by the CUSTOMER, place every person who is specified in the direction or is one of a class of people so specified, under the like duty in relation to any secret matter which may be specified in the direction, and shall at all times use its best endeavours to ensure that every person upon whom obligations are imposed by virtue of this Clause 36.7 observes the said obligations, and the CONTRACTOR shall give such instructions and information to every such person as may be necessary for that purpose, and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to the CUSTOMER with all necessary particulars.
- 36.8 The CONTRACTOR shall, if directed by the CUSTOMER, include in the Sub-Contract provisions in such terms as the CUSTOMER may consider appropriate for placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to those placed on the CONTRACTOR by this Clause 36, but with such variations (if any) as the CUSTOMER may consider necessary. Further the CONTRACTOR shall:
- 36.8.1 give such notices, directions, requirements and decisions to its Sub-Contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-Contracts under this Clause 36.8 into operation in such cases and to such extent as the CUSTOMER may direct;
  - 36.8.2 if there comes to its notice any breach by the Sub-Contractor of the obligations of secrecy and security included in their Sub-Contracts in pursuance of this Clause 36, notify such breach forthwith to the CUSTOMER; and
  - 36.8.3 if and when so required by the CUSTOMER, exercise its power to determine the Sub-Contract under the provision in that Sub-Contract which corresponds to Clause 36.11.

- 36.9 The CONTRACTOR shall give the CUSTOMER such information and particulars as the CUSTOMER may from time to time require for the purposes of satisfying the CUSTOMER that the obligations imposed by or under the foregoing provisions of this Clause 36 have been and are being observed and as to what the CONTRACTOR has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof, and the CONTRACTOR shall secure that a representative of the CUSTOMER duly authorised in writing shall be entitled at reasonable times to enter and inspect any premises in which any thing is being done or is to be done under this Contract or in which there is or will be any item to be supplied under this Contract, and also to inspect any document or item in any such premises or which is being made or used for the purposes of this Contract and that any such representative shall be given all such information as he may require on the occasion of, or arising out of, any such inspection.
- 36.10 Nothing in this Clause 36 shall prevent any person from giving any information or doing any thing on any occasion when it is, by virtue of any enactment, the duty of that person to give that information or do that thing.
- 36.11 If the CUSTOMER shall consider that any of the following events has occurred:
- 36.11.1 that the CONTRACTOR has committed a breach of, or failed to comply with any of, the foregoing provisions of this Clause 36; or
  - 36.11.2 that the CONTRACTOR has committed a breach of any obligations in relation to secrecy or security imposed upon it by any other contract with the CUSTOMER, or with any department or person acting on behalf of the Crown; or
  - 36.11.3 that by reason of an act or omission on the part of the CONTRACTOR, or of a person employed by the CONTRACTOR, which does not constitute such a breach or failure as is mentioned in Clause 36.11.1, information about a secret matter has been or is likely to be acquired by a person who, in the opinion of the CUSTOMER, ought not to have such information, and shall also decide that the interests of the State require the termination of this Contract, the CUSTOMER may by notice in writing terminate this Contract forthwith.
- 36.12 A decision of the CUSTOMER to terminate this Contract in accordance with the provisions of Clause 36.11 shall be final and conclusive and it shall not be necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which the CUSTOMER's decision is based.
- 36.13 The CONTRACTOR may within five (5) Working Days of the termination of this Contract in accordance with the provisions of Clause 36.11, give the CUSTOMER notice in writing requesting the CUSTOMER to state whether the event upon which the CUSTOMER's decision to terminate was based is an event mentioned in Clauses 36.11.1, 36.11.2 or 36.11.3 and to give particulars of that event; and
- 36.13.1 the CUSTOMER shall within ten (10) Working Days of the receipt of such a request give notice in writing to the CONTRACTOR containing such a statement and particulars as are required by the request.
  - 36.13.2 the termination of this Contract pursuant to Clause 36.11 shall be without prejudice to any rights of either party which shall have accrued before the date of such termination;

- 36.13.3 the CONTRACTOR shall be entitled to be paid for any work or thing done under this Contract and accepted but not paid for by the CUSTOMER at the date of such termination either at the price which would have been payable under this Contract if the Contract had not been terminated, or at a reasonable price;
- 36.13.4 the CUSTOMER may take over any work or thing done or made under this Contract (whether completed or not) and not accepted at the date of such termination which the CUSTOMER may by notice in writing to the CONTRACTOR given within thirty (30) Days from the time when the provisions of this Clause 36 shall have effect, elect to take over, and the CONTRACTOR shall be entitled to be paid for any work or thing so taken over a price which, having regard to the stage which that work or thing has reached and its condition at the time it is taken over, is reasonable. The CONTRACTOR shall in accordance with directions given by the CUSTOMER, deliver any work or thing taken over under this Clause 36.13.3, and take all such other steps as may be reasonably necessary to enable the CUSTOMER to have the full benefit of any work or thing taken over under this Clause 36.13.4; and
- 36.13.5 save as aforesaid, the CONTRACTOR shall not be entitled to any payment from the CUSTOMER after the termination of this Contract.
- 36.14 If, after notice of termination of this Contract pursuant to the provisions of Clause 36.11:
- 36.14.1 the CUSTOMER shall not within ten (10) Working Days of the receipt of a request from the CONTRACTOR, furnish such a statement and particulars as are detailed in Clause 36.13.1; or
- 36.14.2 the CUSTOMER shall state in the statement and particulars detailed in Clause 36.13.1 that the event upon which the CUSTOMER's decision to terminate this Contract was based is an event mentioned in Clause 36.11, the respective rights and obligations of the CONTRACTOR and the CUSTOMER shall be terminated in accordance with the following provisions:
- 36.14.3 the CUSTOMER shall take over from the CONTRACTOR at a fair and reasonable price all unused and undamaged materials, bought-out parts and components and articles in course of manufacture in the possession of the CONTRACTOR upon the termination of this Contract under the provisions of Clause 36.11 and properly provided by or supplied to the CONTRACTOR for the performance of this Contract, except such materials, bought-out parts and components and articles in course of manufacture as the CONTRACTOR shall, with the concurrence of the CUSTOMER, elect to retain;
- 36.14.4 the CONTRACTOR shall prepare and deliver to the CUSTOMER within an agreed period or in default of agreement within such period as the CUSTOMER may specify, a list of all such unused and undamaged materials, bought-out parts and components and articles in course of manufacture liable to be taken over by or previously belonging to the CUSTOMER and shall deliver such materials and items in accordance with the directions of the CUSTOMER who shall pay to the CONTRACTOR fair and reasonable handling and delivery charges incurred in complying with such directions;

36.14.5 the CUSTOMER shall indemnify the CONTRACTOR against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the CONTRACTOR in connection with this Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the CONTRACTOR by reason of the termination of this Contract;

36.14.6 if hardship to the CONTRACTOR should arise from the operation of this Clause 36.14 it shall be open to the CONTRACTOR to refer the circumstances to the CUSTOMER who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the CUSTOMER on any matter arising out of this Clause 36.14.6 shall be final and conclusive; and

36.14.7 subject to the operation of Clauses 36.14.3, 36.14.4, 36.14.5, and 36.14.6, termination of this Contract shall be without prejudice to any rights of either party that may have accrued before the date of such termination.

### **37. AUDIT**

37.1 The CONTRACTOR shall document, implement and comply with processes, and keep or cause to be kept full and accurate Records, such that the CUSTOMER or its statutory auditors may verify that the CONTRACTOR has complied and is complying with its obligations under this Contract.

37.2 The CONTRACTOR shall provide the CUSTOMER with a completed Cost Certificate in accordance with Schedule 2-3 clause 7 respect of each financial year of this Contract. The Cost Certificate shall be completed by the CONTRACTOR's auditor and provided to the CUSTOMER no later than two (2) Months after the end of the relevant financial year.

37.3 Without prejudice to the generality of the foregoing, the CONTRACTOR shall document, implement and comply with processes, and keep or cause to be kept full and accurate Records, such that (and such that the CUSTOMER or its statutory auditors may verify that):

37.3.1 the supply of Ordered Goods and the provision of Ordered Services under this Contract accurately reflect the Charges;

37.3.2 invoices are correct and issued in a timely manner;

37.3.3 Service Levels are monitored, corrective action is taken where necessary, and the CUSTOMER invoices are credited with the appropriate Service Credits to which they are entitled under Contracts;

37.3.4 Complaints are recorded, investigated and resolved;

37.3.5 Management Information is accurate and provided promptly to the CUSTOMER;

37.3.6 quality procedures are complied with; and

37.3.7 external security, quality, environmental management and similar accreditations are maintained where appropriate.

37.4 Except where an audit is imposed on the CUSTOMER by a Regulatory Body, the CUSTOMER may, not more than once in any Contract Year and for a period of 12 months following the Term, conduct an audit for the following purposes:

- 37.4.1 to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Contract), Service Credits and any cost reduction initiatives carried out and/or the costs of all suppliers (including Sub-contractors) of the Ordered Goods and Ordered Services at the level of detail agreed in schedule 2-3 clause 7 (The Charges and Charges Variation Procedure);
- 37.4.2 to review the integrity, confidentiality and security of the CUSTOMER Data;
- 37.4.3 to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the CUSTOMER has used its resources;
- 37.4.4 to inspect the Assets, including the CUSTOMER's IPRs, equipment, facilities and maintenance, for the purposes of ensuring that the Assets are secure and that any register of assets is up to date;
- 37.4.5 to ensure that the CONTRACTOR is complying with the Standards set out in this Contract;
- 37.4.6 any other audit that may be required by any Regulatory Body or to enable the CUSTOMER to fulfil any statutory obligations;
- 37.4.7 any other audit that may be required to enable the CUSTOMER to fulfil its obligations to supply information for parliamentary, governmental, judicial or other administrative purposes; and/or
- 37.4.8 The CUSTOMER shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the CONTRACTOR or delay the provision of the Ordered Goods and Ordered Services.
- 37.5 Subject to the CUSTOMER's obligations of confidentiality, the CONTRACTOR shall provide the CUSTOMER or its statutory auditors with all reasonable co-operation and assistance in relation to each audit, including:
  - 37.5.1 all information requested by the CUSTOMER within the permitted scope of the audit;
  - 37.5.2 reasonable access to any sites controlled by the CONTRACTOR or any CONTRACTOR Sub-Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Ordered Goods and Ordered Services; and
  - 37.5.3 access to CONTRACTOR personnel.
- 37.6 The CONTRACTOR shall implement all measurement and monitoring tools and procedures necessary to measure and report on the CONTRACTOR's performance of the Ordered Goods and Ordered Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.
- 37.7 The CUSTOMER shall provide at least 15 Working Days prior notice of its intention to conduct an audit.
- 37.8 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause.
- 37.9 If an audit identifies that:



- 37.9.1 the CONTRACTOR has failed to perform its obligations under this Contract in any material manner, the parties shall agree and implement a remedial plan. If the CONTRACTOR's failure relates to a failure to provide any information to the CUSTOMER about the Charges, proposed Charges or the CONTRACTOR's costs, then the remedial plan shall include a requirement for the provision of all such information;
  - 37.9.2 the CUSTOMER has overpaid any Charges, the CONTRACTOR shall pay to the CUSTOMER the amount overpaid within 20 Working Days. The CUSTOMER may deduct the relevant amount from the Charges if the CONTRACTOR fails to make this payment; and
  - 37.9.3 the CUSTOMER has underpaid any Charges, the CUSTOMER shall pay to the CONTRACTOR the amount of the under-payment within 20 Working Days.
- 37.10 The CONTRACTOR shall procure that any key Sub-contractor shall grant to the CUSTOMER and allow the CUSTOMER the same rights and access and accept the same obligations to provide information as are granted, allowed and/or accepted by the CONTRACTOR under this clause 37

For and on behalf of [the CUSTOMER]

Authorised signatory:

Name:

Title:

Date:

For and on behalf of [the  
CONTRACTOR]

Authorised signatory:

Name:

Title:

Date:

## **38. ANNEX A TO THE CONTRACT CLAUSES**

### **ALTERNATIVE AND ADDITIONAL CLAUSES**

#### **1. INTRODUCTION**

1.1. This Annex A to the Contract Clauses specifies the Alternative Clauses and Additional Clauses that were requested in the Order and that shall apply to this Contract.

#### **2. CLAUSES SELECTED**

2.1. The CUSTOMER, in the Order, requested that the following Alternative Clauses should apply:

2.1.1. Law and Jurisdiction:

2.1.1.1. “Not used”

2.1.2. [\*\*\* Non-Crown Bodies \*\*\*]

2.1.3. “Not used”;

2.1.4. “Not used”;

2.1.5. “Not used”; and

2.1.6. “Not used”

2.2. The CUSTOMER, in the Order, requested that the following Additional Clauses should apply:

2.2.1. [\*\*\* Security Measures \*\*\*]; and

2.2.2. “Not used”.

#### **3. IMPLEMENTATION**

3.1. The appropriate changes have been made in this Contract to implement the Alternative Clauses specified in paragraph 2.1 and the Additional Clauses specified in paragraph 2.2 shall be deemed to be incorporated into this Contract.