

Order Schedule 6 (ICT Services)

1. Definitions

- 1.1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

"AI Technologies"	Technologies that allow systems to learn directly from examples, data, and experience.
"Buyer Content"	any data (including any personal data relating to the staff, customers or suppliers of the Buyer), documents, text, drawings, diagrams, images or sounds (together with any database made up of any of those), embodied in any medium, that are supplied to the Supplier by or on behalf of the Buyer, or which the Supplier is required to generate, process, store or transmit pursuant to this Contract.
"Buyer Software"	any software which is owned by or licensed to the Buyer and which is or will be used by the Supplier for the purposes of providing the Deliverables;
"Buyer System"	the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Deliverables;
"Commissioned Software"	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) identified as such in the Order Form which has been specifically commissioned by the Buyer and created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) for the purposes of this Contract, including any modifications or enhancements but excluding the Supplier's Existing IPR;

"Commissioned Software Supporting Materials"	means all build instructions, test instructions, test scripts, test data, operating instructions, methodologies and schedules for training the AI Technologies, configuration notes and other documents and tools necessary for maintaining and supporting the Commissioned Software and/or the Emergent Commissioned Software;
"Emergency Maintenance"	ad hoc and unplanned maintenance provided by the Supplier where either Party reasonably suspects that the ICT Environment or the Services, or any part of the ICT Environment or the Services, has or may have developed a fault;
"Emergent Content"	Means any content including any Documentation which is supplied to the Buyer as part of the Services and/or Deliverables, including for the avoidance of doubt where such content arises from the use of Emergent Software;
"Emergent Software"	Means any new software created through use of the Supplier Software (including through the use of AI Technologies) in order to deliver the Services and/or Deliverables;
"Emergent Commissioned Software"	means any new software arising from the deployment by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) of AI Technologies in the provision of the Deliverables and/or the Services where the Software is Commissioned Software;
"Emergent Supplier Software"	means any new software arising from the deployment by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) of AI Technologies in the provision of the Deliverables and/or the Services where the Software is not Commissioned Software;
"ICT Environment"	the Buyer System and the Supplier System;
"Licensed Software"	all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Buyer for the purposes of or pursuant to this Order Contract;

"Maintenance Schedule"	has the meaning given to it in paragraph 8 of this Schedule;
"Malicious Software"	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"New Release"	an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
"Open Source Software"	computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;
"Operating Environment"	<p>means the Buyer System and any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which:</p> <ul style="list-style-type: none">a) the Deliverables are (or are to be) provided; orb) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables; orc) where any part of the Supplier System is situated;
"Permitted Maintenance"	has the meaning given to it in paragraph 8.2 of this Schedule;
"Quality Plans"	Means quality plans that ensure that all aspects of the Deliverables are the subject of quality management systems and are consistent with

	BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it;
"Software"	means the Commissioned Software, Emergent Software, Supplier Software and third party Software;
"Source Code"	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
"Supplier Software"	Means the software which is owned by the Supplier, or any member of the Supplier's Group, or licensed to the Supplier by a third party and which is to be used by the Supplier in the context of the provision or receipt of the Services and which includes the Supplier's Existing IPR and the Emergent Supplier Software;
"Supplier System"	the information and communications technology system used by the Supplier in supplying the Deliverables, including the Supplier Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System).

2. When this Schedule should be used

- 2.1. This Schedule is designed to provide additional provisions necessary to facilitate the provision of ICT Services which deploy AI Technologies which are part of the Deliverables.

3. Buyer due diligence requirements

- 3.1. The Supplier shall satisfy itself of all relevant details, including but not limited to, details relating to the following;
- 3.1.1. suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Start Date) future Operating Environment;

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- 3.1.2. operating processes and procedures and the working methods of the Buyer;
 - 3.1.3. ownership, functionality, capacity, condition and suitability for use in the provision of the Deliverables of the Buyer Assets; and
 - 3.1.4. existing contracts (including any licences, support, maintenance and other contracts relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the Deliverables.
- 3.2. The Supplier confirms that it has advised the Buyer in writing of:
- 3.2.1. each aspect, if any, of the Operating Environment that is not suitable for the provision of the ICT Services;
 - 3.2.2. the actions needed to remedy each such unsuitable aspect; and
 - 3.2.3. a timetable for and the costs of those actions.

4. Supplier warranties

- 4.1. The Supplier represents and warrants that:
- 4.1.1. it has and shall continue to have all necessary rights in and to the Licensed Software made available by the Supplier (and/or any Sub-Contractor) to the Buyer which are necessary for the performance of the Supplier's obligations under this Contract including the receipt of the Deliverables by the Buyer;
 - 4.1.2. all components of the Commissioned Software and the Emergent Commissioned Software shall:
 - 4.1.2.1. perform in all material respects in accordance with the relevant specifications contained in the Order Contract and Documentation; and
 - 4.1.2.2. not infringe any IPR.
 - 4.1.3. the Emergent Content shall not infringe any IPR.

5. Provision of ICT Services

- 5.1. The Supplier shall:

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- 5.1.1. ensure that the release of, or upgrade to, any new Supplier Software that will be used by the Supplier to provide the Services, any Commissioned Software or any Emergent Commissioned Software, complies with the interface requirements of the Buyer and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Buyer three (3) Months before any new release or upgrade;
- 5.1.2. ensure that the Supplier Software, the Commissioned Software and the Emergent Commissioned Software including upgrades, updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
- 5.1.3. ensure that the Supplier System will be free of all encumbrances;
- 5.1.4. ensure that the Deliverables are fully compatible with any Buyer Software, Buyer System, or otherwise used by the Supplier in connection with this Contract;
- 5.1.5. minimise any disruption to the Services and the ICT Environment and/or the Buyer's operations when providing the Deliverables.

6. Standards and Quality Requirements

- 6.1. The Supplier shall develop, in the timescales specified in the Order Form, the Quality Plans.
- 6.2. The Supplier shall seek Approval from the Buyer (not be unreasonably withheld or delayed) of the Quality Plans before implementing them. Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Deliverables are provided to the standard required by this Contract.
- 6.3. Following the approval of the Quality Plans, the Supplier shall provide all Deliverables in accordance with the Quality Plans.
- 6.4. The Supplier shall ensure that the Supplier Personnel shall at all times during the Order Contract Period:
 - 6.4.1. be appropriately experienced, qualified and trained to supply the Deliverables in accordance with this Contract;
 - 6.4.2. apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Deliverables; and

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- 6.4.3. obey all lawful instructions and reasonable directions of the Buyer (including, if so required by the Buyer, the ICT Policy) and provide the Deliverables in accordance with requirements identified in the Order Form.

7. ICT Audit

- 7.1. The Supplier shall allow any auditor access to the Supplier premises to:
 - 7.1.1. inspect the ICT Environment and the wider service delivery environment (or any part of them);
 - 7.1.2. review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing; and
 - 7.1.3. review the Supplier's quality management systems including all relevant Quality Plans.

8. Maintenance of the ICT Environment

- 8.1. If specified by the Buyer in the Order Form, the Supplier shall create and maintain a rolling schedule of planned maintenance to the ICT Environment ("**Maintenance Schedule**") and make it available to the Buyer for Approval in accordance with the timetable and instructions specified by the Buyer.
- 8.2. Once the Maintenance Schedule has been Approved, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.
- 8.3. The Supplier shall give as much notice as is reasonably practicable to the Buyer prior to carrying out any Emergency Maintenance.
- 8.4. The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the ICT Environment and/or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the ICT Environment and the provision of the Deliverables.

9. Intellectual Property Rights in ICT

9.1. IPR Ownership

- 9.1.1. Nothing in this Agreement shall change the ownership of any Existing IPR.
- 9.1.2. The Buyer shall own the IPR in:

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- 9.1.2.1. the Buyer Content and Emergent Content;
- 9.1.2.2. any Commissioned Software and the Commissioned Software Supporting Materials; and
- 9.1.2.3. any Commissioned Emergent Software .
- 9.1.3. The Supplier (or its Third Party IPR Licensors as the case may be) shall own the IPR in:
 - 9.1.3.1. any updates to the Supplier Software;
 - 9.1.3.2. any Emergent Supplier Software;
 - 9.1.3.3. subject always to clauses 9.1.1 and 9.1.2, any other New IPR.

9.2. Assignments granted by the Supplier: Commissioned Software, Emergent Commissioned Software and the Emergent Content

- 9.2.1. The Supplier assigns (by present assignment of future rights to take effect immediately on it coming into existence) to the Buyer with full guarantee (or shall procure assignment to the Buyer), title to and all rights and interest in the Commissioned Software, the Emergent Commissioned Software and the Emergent Content together with and including:
 - 9.2.1.1. the Documentation, Source Code and the Object Code of the Commissioned Software and the Emergent Commissioned Software; and
 - 9.2.1.2. the Commissioned Software Supporting Materials.
- 9.2.2. The Supplier shall:
 - 9.2.2.1. deliver to the Buyer the Commissioned Software and the Emergent Commissioned Software in both Source Code and Object Code forms together with relevant Documentation, the Emergent Content and all Commissioned Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone and shall provide updates of them promptly following each new release of the Commissioned Software, in each case on media that is reasonably acceptable to the Buyer and the Buyer shall become the owner of such media upon receipt; and
 - 9.2.2.2. without prejudice to paragraph 9.2.2.1, provide full details to the Buyer of any of the Supplier's Software or Third Party IPRs which are embedded or which are an integral part of

the Commissioned Software or the Emergent Commissioned Software and the Supplier hereby grants to the Buyer and shall procure that any relevant third party licensor shall grant to the Buyer a perpetual, worldwide, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit such Supplier's Software and Third Party IPRs to the extent that it is necessary to enable the Buyer to obtain the full benefits of ownership of the Commissioned Software and the Emergent Commissioned Software.

- 9.2.3. The Supplier shall promptly execute all such assignments as are required to ensure that any rights in the Commissioned Software, the Emergent Commissioned Software and the Emergent Content are properly transferred to the Buyer.

9.3. Licences for Supplier Software, and any other New IPR from the Supplier and third parties to the Buyer

- 9.3.1. The Supplier grants to the Buyer a royalty-free, worldwide, and non-exclusive licence (including by way of sub-licence where applicable) to use, adapt, and sub-license the same:

9.3.1.1. the Supplier Software; and

9.3.1.2. any other New IPR owned by the Supplier;

for any purpose relating to the Deliverables (or substantially equivalent deliverables) and/or the Services, or for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Central Government Body, any other Central Government Body's) business or function including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) for the Order Contract Period and after expiry of the Contract to the extent necessary to ensure continuity of service and an effective transition of Services to a Replacement Supplier.

- 9.3.2. The Supplier shall procure that the owners or the authorised licensors of any Third Party IPRs in the Supplier Software grant a direct licence to the Buyer on terms at least equivalent to those set out in Paragraph 9.3.2. If the Supplier cannot obtain such a licence for the Buyer it shall:

9.3.2.1. notify the Buyer in writing giving details of what licence terms can be obtained and whether there are alternative

software providers which the Supplier could seek to use;
and

9.3.2.2. only use such Third Party IPR as referred to at paragraph 9.3.3.1 if the Buyer Approves the terms of the licence from the relevant third party.

9.3.3. The Supplier may terminate a licence granted under paragraph 9.3.2 by giving at least thirty (30) days' notice in writing if there is an Authority Cause which constitutes a material Default which, if capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.

9.4. Buyer's right to assign/novate licences

9.4.1. The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to paragraph 9.3 to:

9.4.1.1. a Central Government Body; or

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

9.4.2. If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licences granted in paragraph 9.3.

9.5. Licence granted by the Buyer

9.5.1. The Buyer grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Buyer Software, the Buyer Content, the Commissioned Software, the Emergent Commissioned Software and the Emergent Content solely to the extent necessary for providing the Deliverables and/or Services in accordance with this Contract, including the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 15 (Confidentiality).

9.6. Open Source Publication

9.6.1. Unless the Buyer otherwise agrees in advance in writing (and subject to paragraph 9.6.3 all Commissioned Software and Emergent Commissioned Software shall be created in a format, or able to be converted (in which case the Supplier shall also provide the converted format to the Buyer) into a format, which is:

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9.6.1.1. suitable for publication by the Buyer as Open Source; and

9.6.1.2. based on Open Standards (where applicable);

and the Buyer may, at its sole discretion, publish the same as Open Source.

9.6.2. The Supplier hereby warrants that the Commissioned Software and the Emergent Commissioned Software:

9.6.2.1. are suitable for release as Open Source and that the Supplier has used reasonable endeavours when developing the same to ensure that publication by the Buyer will not enable a third party to use them in any way which could reasonably be foreseen to compromise the operation, running or security of the Commissioned Software, the Emergent Commissioned Software or the Buyer System;

9.6.2.2. have been developed using reasonable endeavours to ensure that their publication by the Buyer shall not cause any harm or damage to any party using them;

9.6.2.3. do not contain any material which would bring the Buyer into disrepute;

9.6.2.4. can be published as Open Source without breaching the rights of any third party;

9.6.2.5. will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the date notified by the Buyer to the Supplier; and

9.6.2.6. do not contain any Malicious Software.

9.6.3. Where the Buyer has Approved a request by the Supplier for any part of the Commissioned Software to be excluded from the requirement to be in an Open Source format due to the intention to embed or integrate Supplier Software and/or Third Party IPRs (and where the Parties agree that such Supplier Software and/or Third Party IPR are not intended to be published as Open Source), the Supplier shall:

9.6.3.1. as soon as reasonably practicable, provide written details of the nature of the Supplier Software and/or Third Party IPR and items or related Deliverables which are to be excluded from Open Source publication; and

9.6.3.2. include in the written details any information about the impact that inclusion of such Supplier Software and/or Third Party IPR or related Deliverables, will have on any other Commissioned Software or Emergent Commissioned Software and the Buyer's ability to publish such other items or Deliverables as Open Source.

9.7. Malicious Software

- 9.7.1. The Supplier shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.
- 9.7.2. If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the Deliverables to its desired operating efficiency.
- 9.7.3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of paragraph 9.7.2 shall be borne by the Parties as follows:
 - 9.7.3.1. by the Supplier, where the Malicious Software originates from the Supplier Software or the Government Data (whilst the Government Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier; and
 - 9.7.3.2. by the Buyer, if the Malicious Software originates from the Buyer Software or the Government Data (whilst the Government Data was under the control of the Buyer).