

Subject to contract

Dated _____ **2018**

Beaumont Colson Limited

and

the Customer

Contract Number xxxxx

**Software Licence, Development, Implementation,
Support and Maintenance Agreement**

This Agreement is made the day of 201*n*

Between

1. **Beaumont Colson Limited** (Company Registration Number: 03324012) whose registered office is at 129 Newbridge Street, Newcastle upon Tyne ("**BCL**"); and
2. **xxx** ("**Customer**").

Background

- A. The Customer has been engaged by the Secretary of State for Justice, under the Transforming Rehabilitation programme, to provide probation and rehabilitation services for the xxx contract package areas.
- B. BCL holds rights to sub-licence, support and maintain certain probation case management software owned by the Secretary of State for Justice which is known as "Delius 2", for the benefit of Community Rehabilitation Companies, and also has the ability to develop and supply complementary software for use by Community Rehabilitation Companies.
- C. The Customer wishes to engage BCL, under the terms and conditions set out in this Agreement, to supply and licence the Delius 2 software and to develop, supply and licence certain other software, for use in connection with its activities mentioned in Recital A above and to provide implementation and support and maintenance services in connection with that software.

NOW IT IS HEREBY AGREED as follows:

1. **Definitions**

- 1.1. In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"**Acceptance**" means as described in clause 4.7;

"**Acceptance Tests**" means the tests to be carried out by BCL to test whether the Software complies with the Specification, as set out in the Implementation Plan, applicable Statement of Work or as otherwise agreed in writing between the parties;

"**Additional Services**" means any additional Services which BCL agrees to supply to the Customer from time to time pursuant to clause 9, as detailed in individual Statements of Work

"**Agreement**" means the terms and conditions of this agreement together with the schedules to this agreement and any Statements of Work concluded under it.

"**Authority**" means the Secretary of State for Justice or any successor body or entity from time to time;

"**Authorised Users**" means individuals who are either employed by the Customer or the Authority or engaged as contractors, suppliers, sub-contractors or agents to

the Customer or the Authority and who have a legitimate need to use the Software for the purposes described in clause 3.2.2;

"Benchmark Report" any report produced by a benchmarker pursuant to clause 18.1;

"BPSS Clearance" means Baseline Personnel Security Standard Clearance as set out by HMG and detailed in the link below:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/136041/baseline-personnel-security.pdf

"Commencement Date" means [TBC].

"Community Rehabilitation Company" or "CRC" means companies which have been engaged by the Authority under the Transforming Rehabilitation programme to provide probation and rehabilitation services for specific geographical areas known as "contract package areas";

"Commissioned Software" means any software which the Customer has commissioned BCL to develop for its own use under or in connection with this Agreement, as detailed in Part 2 of Schedule 1 or otherwise agreed between the parties in writing from time to time, including all Maintenance Releases, New Versions, upgrades and enhancements to any such software as may be supplied by BCL to the Customer pursuant to or in connection with this Agreement, but excluding the Standard Software;

"Critical MOJ Performance Dates" means any critical performance dates as may be specified by the Authority from time to time in connection with the Implementation Services and which are identified as Critical MOJ Performance Dates in the Implementation Plan;

"Documentation" means the specifications, operating manuals, user instructions, technical literature and all other related materials in eye-readable form supplied to the Customer by BCL for aiding the use and application of the Software;

"Escrow" means the deposit with, and retention by, the Escrow Agent of, the Source Code Materials;

"Escrow Agent" means [NCC Group Limited];

"Escrow Agreement" an escrow agreement on the Escrow Agent's standard terms and conditions which is to be entered into by the parties and the Escrow Agent in accordance with clause 22 (Escrow);

"Fees" the fees to be paid by the Customer to BCL in respect of the Licence and the provision of the Services, as specified in Schedule 2; **"Implementation Plan"** means the document appended to this Agreement at Schedule 5, which details the agreed scope of the Implementation Services and plan for their delivery;

"Implementation Services" means the provision by BCL of services to assist with the implementation of the Software on the Customer's equipment and systems in accordance with the provisions of clause 7 and the Implementation Plan;

"Intellectual Property Rights" means patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and

domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

“Licence” means the licence to use the Software granted by BCL to the Customer pursuant to clause 3;

“Maintenance Release” means a release of the Software which corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version;

“New Version” any new version of the Software which from time to time is publicly marketed and offered by BCL in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product;

“Probation Area” means the Probation Area(s) in respect of which the Customer is licensed to use the Software as detailed in Part 4 of Schedule 1;

“Service Credits” the sums attributable to a failure by BCL to deliver any part of the Support and Maintenance Services in accordance with the Service Levels, as set out in Schedule 3;

“Service Levels” means the service levels to which the Support and Maintenance Services are to be provided, as set out in Schedule 3;

SC Clearance” means as defined by HMG as follows:-
<https://www.gov.uk/guidance/security-vetting-and-clearance>“

Security Cleared” means for individuals that have access to live data, SC Clearance and for all other individuals, that do not have access to live data, BPSS Clearance;

“Services” means the development and supply of the Commissioned Software pursuant to clause 2.1.1, the provision of the Implementation Services, and the provision of Support and Maintenance Services and the provision of any Additional Services;

“Software” means the software to be delivered by BCL under this Agreement comprising Standard Software and the Commissioned Software;

“Source Code Materials” means the source code of the Software and all technical information and documents required to enable the customer to modify and operate the Software;

“Specification” means the agreed requirements and specifications for the Software to be supplied by BCL under this Agreement as detailed in Schedules 1 and 4 or otherwise agreed between the parties in writing from time to time;

"Standard Software" means the probation case management software owned by the Authority and known as Delius2 and sub-licensed to the Customer under this Agreement, in its standard form, as detailed in Part 1 of Schedule 1, including any Maintenance Releases, New Versions, upgrades and enhancements to that software which are released or made available to for use by all users of that software and supplied by BCL to the Customer pursuant to or in connection with this Agreement and all related Documentation, but excluding any Commissioned Software;

"Statement of Work" means a statement of work for Additional Services concluded between the parties pursuant to clause 9;

"Support and Maintenance Services" means the provision of support and maintenance services during the Term in relation to the Software, in accordance with the provisions of clause 8 and Schedule 3;

"Testing" means the Acceptance Testing and the User Acceptance Testing;

"Term" means the term of this Agreement as detailed in clause 19;

"Third Party Software" means any software or other materials comprised in the Software or supplied by BCL to the Customer pursuant to this Agreement which is proprietary to any third party, including the third party software components identified in Part 3 of Schedule 1;

"Trigger Event" means an event the occurrence of which shall entitle the Customer to apply to the Escrow Agent for release of the Source Code Materials from Escrow in accordance with the provisions of the Escrow Agreement;

"User Acceptance Testing" means the tests to be carried out by the Customer to test whether the Software complies in all material respects with the Specification, as set out in the Implementation Plan, applicable Statement of Work or as otherwise agreed in writing between the parties;

"Year" means each consecutive period of twelve (12) months commencing on the Commencement Date and each anniversary thereof

2. **Basis of Agreement**

2.1. In consideration of the Customer agreeing to pay the Fees, BCL hereby agrees as follows:

- 2.1.1. to develop the Commissioned Software and supply the same to the Customer in accordance with Part 2 of Schedule 1 and (to the extent applicable) the Specification and Implementation Plan;
- 2.1.2. to grant the Customer a sub-licence to use the Standard Software and a licence to use the Commissioned Software, in accordance with the provisions of clause 3;
- 2.1.3. to provide the Implementation Services in accordance with clause 7 and the Implementation Plan;
- 2.1.4. to provide the Support and Maintenance Services during the Term to meet the Service Levels; and

- 2.1.5. to provide any Additional Services agreed between the parties from time to time in accordance with clause 9.
- 2.2. BCL shall comply with the provisions of Schedule 6 (MOJ Flow Down Terms).
- 3. **Grant of Licence**
 - 3.1. BCL hereby grants to the Customer a non-exclusive licence to use the Software during the Term subject to the terms and conditions contained in this Agreement. For the avoidance of doubt, the Licence granted to the Customer under this Clause 3.1 shall take effect as a sub-licence with respect to the Standard Software and as a licence with respect to the Commissioned Software.
 - 3.2. The Licence granted under clause 3.1 permits the Customer to do the following:
 - 3.2.1. install that Software on computer systems in its possession or under its control (and as detailed in the Implementation Plan) and make a reasonable number of copies of the Software for back-up purposes; and
 - 3.2.2. permit Authorised Users to access and use the Software solely for purposes connected with the provision of probation and rehabilitation services for the Probation Areas; and
 - 3.2.3. use the Documentation in support of the use of the Software permitted under this clause 3.2 and make a reasonable number of copies of the Documentation as are necessary for its lawful use.
 - 3.3. The use which the Customer is permitted to make of the Software may be subject to specific restrictions and usage requirements which are detailed in Schedules 1 and 2 and the Customer undertakes and agrees to comply with and abide by any such restrictions.
 - 3.4. The Customer shall use the Software solely for its own internal purposes connected with the provision of probation and rehabilitation services in the Probation Area and not for any other purpose. In particular (but without limitation) the Customer shall not use the Software to provide consultancy services, bureau services, time-sharing services or any other kind of service which are unconnected with the Probation Area.
 - 3.5. The Customer shall procure that all Authorised Users comply with the terms and conditions of this Agreement and shall at all times remain directly responsible for any breach of the terms and conditions of this Agreement by any Authorised User.
 - 3.6. The Customer is permitted to use the Software only in accordance with the express terms of this Agreement and not further or otherwise.
 - 3.7. The Customer acknowledges and agrees that the Software may incorporate or be supplied or used together with Third Party Software as detailed in Schedule 1, or any applicable Statement of Work or as otherwise agreed between the parties from time to time. With respect to any such Third Party Software the Customer agrees that, provided that BCL has provided the Customer with details of the same, together with the terms on which the Customer is permitted to use the Third Party Software in advance and obtained the Customer's written consent to use such Third Party Software (such consent not to be unreasonably withheld), in addition to the terms and conditions contained in the body of this Agreement, it will

comply with any additional provisions affecting the use of such Third Party Software. In the event of any conflict or consistency between the terms and conditions of this Agreement and the terms and conditions of any licence terms affecting the use of any Third Party Software, the latter shall prevail with respect to the relevant Third Party Software.

4. **Acceptance Testing**

- 4.1. This clause shall apply where the parties have agreed that any part of the Software to be delivered under or pursuant to this Agreement shall undergo formal Testing and references in this clause to "Software" shall be construed as a reference to that part of the Software which is undergoing Testing.
- 4.2. Where Acceptance Testing is to be performed, the applicable acceptance criteria and test data to be used in the acceptance tests shall be agreed between the parties and detailed in the relevant Test Plan agreed between the parties. The criteria and data shall be such as are reasonably required to show that the Software complies with in all material respects with any agreed requirements or specifications for such Software.
- 4.3. The parties shall carry out the agreed Acceptance Tests for the Software as soon as reasonably practicable following delivery and installation of the same. BCL shall give the Customer reasonable advance warning of when the Software is ready for Acceptance Testing.
- 4.4. The Customer shall carry out the agreed User Acceptance Tests for the Software as set out in the Implementation Plan.
- 4.5. In the event that the Software fails to pass the Acceptance Tests or User Acceptance Tests, the Customer shall, within seven (7) days from the completion of the Acceptance Tests and User Acceptance Tests, provide a written notice to this effect, giving details of such failure(s). BCL shall then use reasonable endeavours to remedy the defects and/or deficiencies and the relevant Acceptance Tests and/or User Acceptance Tests shall then be repeated within a reasonable time to be agreed by both parties.
- 4.6. If the Software fails to pass the Acceptance Tests and/or User Acceptance Tests following its third (or any subsequent) submission to Acceptance Testing or User Acceptance Testing (as applicable), the Customer may, by written notice to BCL, elect at its sole option (but acting reasonably) to either:
 - 4.6.1. fix a new date for carrying out further tests on the Software on the same terms and conditions;
 - 4.6.2. accept the Software subject to such amendments to the Acceptance Test or User Acceptance Test criteria, Specification or other agreed requirements for the Software and/ or reduction of the Fees paid for the Software as the parties (acting reasonably) may agree, any such reduction to the Fees paid for the Software to be such amount as is reasonable, taking into account the circumstances; or
 - 4.6.3. if BCL is unable to correct any material defects causing the Software to fail the Acceptance Tests and/or the User Acceptance Tests (as applicable) within a period of three (3) months from commencement of the Acceptance Tests and/or the User Acceptance Tests, to reject the

Software as not being in conformity with this Agreement, in which event BCL shall forthwith refund to the Customer a reasonable proportion of any sums already paid to BCL under this Agreement in respect of that Software and the Customer shall have the option to terminate the Agreement with respect to such Software.

- 4.7. Acceptance of the Software shall be deemed to have occurred on whichever is the earliest of: (i) the Software passes the Acceptance Tests and User Acceptance Tests; (ii) the expiry of 20 working days after the completion of all the Acceptance Tests and User Acceptance Tests, unless the Customer has given any written notice under clause 4.5; (iii) the use of the Software by the Customer in the normal course of its business (other than for testing purposes).

5. **Copying, Restrictions and Alterations**

- 5.1. The Customer may make only so many copies of the Software as are reasonably necessary for operational security and use in accordance with the terms of this Agreement. Such copies shall be the property of BCL (or its licensors) and the Customer shall ensure that all such copies bear BCL's (or its licensor's) proprietary notices. This Agreement shall apply to all such copies as it applies to the Software.
- 5.2. The Customer undertakes not to translate, adapt, vary, arrange, alter, enhance, modify, disassemble, decompile or reverse engineer the Software without BCL's prior written consent or unless and until the occurrence of a Trigger Event.
- 5.3. Notwithstanding clause 5.2, in the case of reverse analysis where permitted by mandatory provisions of applicable law, the Customer may incidentally decompile the Software only if it is essential to do so in order to achieve interoperability of the Software with another software program or hardware (the “**Permitted Purpose**”) and provided the information obtained by the Customer during such decompilation is only used for the Permitted Purpose and is not disclosed or communicated to any third party without BCL's prior written consent and is not used to create any software which is substantially similar to the expression of the Software nor used in any manner which would be restricted by copyright.
- 5.4. Notwithstanding clause 5.3, the Customer undertakes to first consult BCL regarding any data the Customer requires in order to achieve interoperability or to deduce underlying ideas and principles so that BCL may consider making the same available (without the Customer having to rely on clause 5.3) subject to the restrictions on disclosure set out in clause 5.3.

6. **Security and Control**

- 6.1. The Customer shall during the Term:
- 6.1.1. effect and maintain adequate security measures to safeguard the Software from access or use by any unauthorised person;
 - 6.1.2. retain the Software and all copies thereof under its effective control;
 - 6.1.3. maintain a full and accurate record of their copying and disclosure of the Software and shall produce such record to BCL on request from time to time.

7. Implementation Services

- 7.1. Subject to clause 7.4, BCL shall perform the Implementation Services in accordance with the Implementation Plan to be jointly agreed, and using reasonable skill and care.
- 7.2. Subject to clause 7.4, in respect of all other performance dates specified in the Implementation Plan, BCL shall meet the performance dates specified in the Implementation Plan but (unless expressly agreed otherwise in writing between the parties) any such dates shall be estimates only and time shall not be of the essence.
- 7.3. The Customer shall (and shall use reasonable endeavours to procure that its other suppliers shall) co-operate with BCL in all matters relating to the performance of the Implementation Services and shall provide BCL in a timely manner with such access to the Customer's premises, systems and other facilities and such information and other assistance, as may reasonably be required by BCL from time to time, to perform the Implementation Services.
- 7.4. BCL shall have no liability for any failure or delay in performing its obligations under or pursuant to this Agreement or any failure or delay of Software to pass Testing, to the extent that such failure or delay was caused by any act or omission on the part of the Customer, or its contractors and suppliers including (without limitation) any failure of the Customer to comply with its obligations under clause 7.3, or by any other factor outside BCL's control. In the event that BCL is, or is likely to be, prevented, hindered or delayed in performing any of its obligations under this Agreement by any act or omission on the part of the Customer, or its contractors, or by any other factor beyond BCL's reasonable control, any agreed timeframes or deadlines for the performance of the relevant obligations shall be extended to take account of such factors.

8. Support and Maintenance Agreement

- 8.1. BCL agrees to provide the Support and Maintenance Services in order to meet the Service Levels in relation to the Software during the Term.
- 8.2. The Support and Maintenance Services shall be provided in accordance with the provisions of Schedule 3.

9. Additional Services

- 9.1. From time to time, the Customer may wish BCL to provide extra or additional services in connection with the Software, which are not already within the scope of the Services being provided under this Agreement ("**Additional Services**"). Accordingly, this Agreement shall operate as a framework agreement under which the parties can agree to the provision of Additional Services as detailed in individual Statements of Works agreed between the parties from time to time.
- 9.2. All Statements of Work concluded under this Agreement must be in writing and must reference this Agreement and shall either be in the form set out in Schedule 8 ("Template Statement of Work") or in such other form as the parties may agree. Any number of Statements of Work may be added to this Agreement at any time upon agreement of such Statements of Work by the parties and each Statement of Work shall be appended to this Agreement as an Exhibit.

- 9.3. Each Statement of Work, when executed by an authorised representative of both parties, shall constitute a separate agreement and, except for provisions in this Agreement which are specifically excluded or modified in such Statement of Work, each such Statement of Work shall incorporate therein all the terms and conditions of this Agreement. Unless the parties agree otherwise in writing, any software developed and supplied under a Statement of Work shall be Commissioned Software and shall be licensed to the Customer on the terms set out in this Agreement. .

10. **Change Control**

- 10.1. The parties shall meet:

- 10.1.1. fortnightly during the Implementation Period to discuss matters relating to this Agreement and the performance of the Services being provided under it;
- 10.1.2. monthly during the Implementation Period with respect to software demonstrations; and
- 10.1.3. following Acceptance of the Software, monthly to discuss matters relating to this Agreement and the performance of the Services being provided under it.

- 10.2. If either party wishes to change the scope of any Services being provided under this Agreement or to the agreed Specifications for the Software or to any other aspect of this Agreement (a "**Change**"), it shall submit details of the requested change to the other in writing.

- 10.3. If either party requests a Change, BCL shall, within a reasonable time, provide a written impact assessment giving an estimate to the Customer of:

- 10.3.1. the likely time required to implement the Change;
- 10.3.2. any variations to BCL's Fees arising from the Change;
- 10.3.3. the likely effect of the Change will have on the Implementation Plan and/ or Specifications (as applicable); and
- 10.3.4. any other impact of the Change on the terms of this Agreement.

- 10.4. Both parties must agree in writing to a Change before it is implemented. If either party requests a Change, the other party shall not unreasonably withhold or delay consent to it.

- 10.5. If the Customer wishes BCL to proceed with a Change, BCL has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its Fees, the Implementation Plan, Specifications and any other aspect of this Agreement (as applicable) which are reasonably required to take account of the Change.

11. **Payment**

- 11.1. In consideration of the Licence granted to the Customer under this Agreement and the provision of the Services, the Customer agrees to pay the Fees to BCL.

- 11.2. The Fees to be paid by the Customer to BCL shall be calculated in accordance with Schedule 2 and shall be invoiced as set out in Schedule 2.
- 11.3. The Fees and any other charges payable under this Agreement are exclusive of any applicable VAT which shall be payable by the Customer in addition at the applicable rate from time to time.
- 11.4. The Customer shall pay each invoice submitted to it by BCL in full, and in cleared funds, within 30 days from the end of the month in which the invoice was raised.
- 11.5. If the Customer fails to pay any amount payable by it under this Agreement BCL may charge the Customer interest on the overdue amount (payable by the Customer immediately on demand from the due date up to the date of actual payment, after as well as before judgment) at the rate of 3% per annum above the base rate for the time being of the Bank of England. Such interest shall accrue on a daily basis and be compounded monthly.
- 11.6. If the Customer fails to pay any amount payable by it under this Agreement by the due date for payment then, provided BCL has given the Customer at least 30 days' notice in writing, (without prejudice to any other rights and remedies which may be available to BCL) BCL shall additionally be entitled to withhold performance of its obligations under this Agreement as well as any Services which it is then providing under or in connection with this Agreement, until the outstanding sums are paid in full.

12. **Intellectual Property Rights**

- 12.1. Subject to clause 12.4 and 12.5, the Customer acknowledges and agrees that the Standard Software and all Intellectual Property Rights therein shall at all times remain the property of the Authority.
- 12.2. BCL warrants that it has been granted by the Authority the right to sub-licence the use of the Standard Software to the Customer in accordance with the terms of this Agreement.
- 12.3. The Customer shall have a sub-licence to use the Standard Software under clause 3.1, in accordance with the express terms of this Agreement, but shall not claim any other right, title or interest in the Standard Software.
- 12.4. Subject to clause 12.1, 12.2, 12.3 and 12.5, the Customer acknowledges and agrees that, unless the Customer and BCL otherwise agree in writing, the Commissioned Software and all Intellectual Property Rights therein shall at all times be and remain the property of BCL. The Customer shall have a limited licence as specified in clause 3.2 to use the Commissioned Software in accordance with the express terms and conditions of this Agreement, but shall not claim any other right, title or interest therein.
- 12.5. Notwithstanding clause 12.1 and 12.4, the parties acknowledge and agree that the Intellectual Property Rights in any Third Party Software shall belong to the relevant third party supplier of that software (or their licensors).
- 12.6. The Customer shall notify BCL immediately if it becomes aware of any unauthorised use of the whole or any part of the Software by any person.

12.7. Subject always to the provisions of clause 3.7, the Customer acknowledges and agrees that the Software shall be made available to the Customer in object code form only and (unless expressly agreed in writing with BCL) the Customer shall not be entitled to receive or access the software (or any part of it) in source code form unless and until the occurrence of a Trigger Event.

12.8. The parties hereby acknowledge and agree that the provisions of this clause 12 shall prevail over any conflicting or contradictory provisions or statements contained elsewhere in this Agreement, including in any Schedule, Flow Downs or Statement of Work. The provisions of this clause 12 may only be varied by the parties entering into an express written variation to this clause in a form which references this clause.

13. **Intellectual Property Claims**

13.1. Subject to clause 15, BCL shall indemnify and keep indemnified, in full and on demand, the Customer against any liabilities, losses, costs or expenses incurred by the Customer as a result of (and shall defend at its own expense) any claim brought against the Customer alleging that the use of the Software or Third Party Software in accordance with the terms of this Agreement infringes the Intellectual Property Rights of a third party (and for the purposes of this clause 13.1, the Authority shall be treated as a third party) (an “**Intellectual Property Claim**”) and BCL shall pay all costs and damages awarded or agreed to in settlement of an Intellectual Property Claim provided that the Customer:

13.1.1. furnishes BCL with prompt written notice of the Intellectual Property Claim;

13.1.2. provides BCL with reasonable assistance in respect of the Intellectual Property Claim;

13.1.3. gives to BCL the sole authority to defend or settle the Intellectual Property Claim.

13.2. If, in BCL's reasonable opinion, the use of the Software or Third Party Software is or may become the subject of an Intellectual Property Claim then BCL may either:

13.2.1. obtain for the Customer the right to continue using the Software or Third Party Software which are the subject of the Intellectual Property Claim; or

13.2.2. replace or, modify the Software or Third Party Software which are the subject of the Intellectual Property Claim so they become non-infringing, provided that the relevant Software or Third Party Software does not materially change from the Specification and has the same, equivalent or improved functionality.

13.3. If the remedies set out in clause 13.2 above are not reasonably available, then the Customer may terminate this Agreement in which event the Customer shall return the Software and Third Party Software and BCL shall refund to the Customer any Fees paid in advance by the Customer in respect of the Software and Third Party Software which are attributable to any period after the effective date of termination of this Agreement.

13.4. BCL shall have no liability for any Intellectual Property Claim resulting from

- 13.4.1. the use of the Software in combination with any equipment or programs not supplied or approved by BCL; or
- 13.4.2. any modification of any item of the Software by the Customer or its authorised agent; or
- 13.4.3. BCL using or following any specifications, requirements, instructions, software or materials supplied by the Customer to BCL for the purposes of this Agreement; or
- 13.4.4. the use of any Third Party Software not in accordance with the terms of this Agreement or any additional obligations as notified by BCL to the Customer prior to use of the Third Party Software (in respect of which BCL's sole obligation shall be as set out in clause 14.7).

14. **Warranties**

14.1. BCL warrants that:

- 14.1.1. it will perform the Services using reasonable skill and care; and
- 14.1.2. for a period of forty five (45) days following implementation of the Software (or any relevant part thereof) (the "**Warranty Period**") the Software (or relevant part thereof) shall in all material respects provide the facilities and functions described in the applicable Specifications.

- 14.2. Without prejudice to any other rights or remedies that the Customer may have in respect of such breach, if BCL is notified of any breach of the warranties set out in clause 14.1 then BCL shall use reasonable endeavours to remedy the defect or error in question as soon as reasonably possible.
- 14.3. BCL shall not be liable for breach of the warranties set out in Clause 14.1 where such breach directly results from a breach by the Customer of the terms of this Agreement.
- 14.4. BCL shall use reasonable endeavours to ensure that the Software, or the Customer's use thereof will be uninterrupted and error free and to remedy any errors or interruptions pursuant to clause 14.2 or (following the Warranty Period) clause 8. However, BCL does not warrant or guarantee to that the Software, or the Customer's use of it, will be uninterrupted or error free.
- 14.5. BCL will ensure the Support and Maintenance Services shall meet or exceed the Service Levels at all times following Acceptance of the Software.
- 14.6. BCL shall automatically credit the Customer with any applicable Service Credits. Service Credits shall either be shown as a deduction from the amount due from the Customer to BCL in the next invoice then due to be issued under this agreement, or BCL shall issue a credit note against a previous invoice and the amount of the Service Credits shall be repayable by BCL within 30 days of issue of the credit note. The parties agree that any such Service Credits have been calculated as, and are, a genuine pre-estimate of the loss likely to be suffered by the Customer.

14.7. Notwithstanding anything else contained in this Agreement, the Customer acknowledges and agrees that BCL does not give any warranty, guarantee or indemnity in respect of any Third Party Software comprised in or used alongside the Software. BCL shall procure licences (or sub-licences) for the benefit of the Customer of the Third Party Software identified in Schedule 1. These will be recharged at cost within thirty days of purchase. With respect to any such Third Party Software, BCL will (where possible/ appropriate) use reasonable endeavours to pass on to the Customer the benefit of any warranties, guarantees and indemnities which may be given by the relevant third party supplier.

15. **Liability**

15.1. Neither party excludes or limits liability to the other party:

15.1.1. for any breach of any obligations implied by section 12 of the Sale of Goods Act 1979; or

15.1.2. for fraud or fraudulent misrepresentation;

15.1.3. to the extent such limitation or exclusion is unlawful;

15.1.4. for fraud, theft or any similar dishonesty offence or conduct which would amount to such an offence or conduct;

15.1.5. for death or personal injury caused by its negligence or that of its employees or agents, any subcontractor or its employees or agents;

15.2. Aggregate cap across the Term

Subject to Clause 15.1, the aggregate liability of BCL to the Customer under or in connection with this Agreement, for any and all claims, whether arising in tort (including negligence), for breach of contract or otherwise (including restitution) shall be limited to £1,000,000.

15.3. Annual cap

Subject to Clauses 15.1 and 15.2, the aggregate liability of BCL to the Customer under or in connection with this Agreement, whether arising in tort (including negligence), for breach of contract or otherwise (including any claim for restitution) in respect any claims arising in any Year, shall be limited to 125% of the total Fees paid to BCL under this Agreement in that Year.

15.4. Nothing in this Clause 15 shall in any way reduce or affect each party's general duty at law (if any) to mitigate loss suffered by it.

15.5. Without prejudice to the Customer's obligation to pay the Fees and except where liability arises under Clauses 15.1 or from the Customer making unauthorised use of Intellectual Property or Confidential Information belonging to BCL, the Customer's total aggregate liability in or for breach of contract, negligence (as defined in Section 1(1) Unfair Contract Terms Act 1977), misrepresentation (excluding fraudulent misrepresentation), tortious claim (including breach of statutory duty), restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement (including performance, non-

performance or partial performance), including liability under any indemnity and including liability expressly provided for under this Agreement shall not exceed the price paid or payable under this agreement during the Year in which the claim arose.

- 15.6. Subject to clause 15.1, neither party shall in any circumstances have any liability for any losses or damages which may be suffered by the other (or any person claiming under or through the same), whether the same are suffered directly or indirectly or are immediate or consequential, which fall within any of the following categories:

- 15.6.1. special damage even though that party was aware of the circumstances in which such special damage could arise;
- 15.6.2. loss of profits;
- 15.6.3. loss of anticipated savings;
- 15.6.4. loss of business opportunity and management time; or
- 15.6.5. loss of goodwill.

16. **Confidential Information**

- 16.1. Both parties to this Agreement undertake, except as provided below, to treat as confidential and keep secret all information marked 'confidential' or which may reasonably be supposed to be confidential, which is disclosed to it by the other party pursuant to this Agreement (in this Agreement collectively referred to as the "**Confidential Information**") with the same degree of care as it employs with regard to its own confidential information of a like nature and in any event in accordance with best current commercial security practices, provided that any information which was rightfully in the possession of either party prior to its disclosure by the other party or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause) shall not be regarded as Confidential Information. It is agreed, however, that the Software and Documentation, all copies of the Software and Documentation and all information comprised in the Software and Documentation or relating to the Software or Documentation, shall be regarded as the Confidential Information of BCL.

- 16.2. Each of the parties shall not without the prior written consent of the other party divulge any part of the other party's Confidential Information to any person except:

- 16.2.1. to their own employees, agents and contractors (and where applicable Authorised Users) and then only to those employees, agents and contractors (and Authorised Users) who need to know the same;
- 16.2.2. any person who is for the time being appointed by either party to maintain the equipment on which the Software is for the time being used (in accordance with the terms of this Agreement) and then only to the extent necessary to enable such person to properly maintain the equipment;

- 16.2.3. as required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it shall give the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 16.3. Both parties undertake to ensure that persons and bodies referred to in clause 16.2 are made aware before the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the other party in accordance with the provisions of this clause 16. Each party to this Agreement shall promptly notify the other party if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the Confidential Information and shall give the other party all reasonable assistance in connection with any proceedings which the other party may institute against such person for breach of confidence.
- 16.4. Each of the parties shall only use the Confidential Information of the other party (or permit it to be used) as is strictly necessary to exercise its rights and perform its obligations under this Agreement and shall not use the Confidential Information of the other party for any other purpose.
- 16.5. The Customer acknowledges and agrees that the Intellectual Property Rights in the Standard Software belongs to the Authority and that the Authority therefore has an interest in ensuring that the confidential information in or relating to such software is maintained. Accordingly, the Customer agrees that it shall (and shall procure that persons and bodies referred to in clause 16.2 shall) if requested to do so by BCL, promptly enter into such additional or further confidentiality agreements and obligations, directly with the Authority, with respect to the Software, on terms equivalent to those set out in this clause 16 or as the Authority may otherwise reasonably require from time to time.
- 16.6. The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of the Licence or this Agreement.
17. **Data Processing**
- 17.1. The following definitions apply:
- 17.1.1. the terms "data controller", "data processor", "data subject", "personal data" and "processing" bear the respective meanings given them in the Data Protection Act 1998, and "data protection principles" means the eight data protection principles set out in Schedule 1 to that Act;
- 17.1.2. data includes personal data; and
- 17.1.3. **"Customer Personal Data"** means any personal data provided by or on behalf of the Customer.
- 17.2. In the event that BCL processes any Customer Personal Data on behalf of the Customer in performing its obligations under this Agreement, BCL shall:

- 17.2.1. only carry out processing of such Customer Personal Data on the Customer's instructions;
- 17.2.2. implement appropriate technical and organisational measures to protect any such Customer Personal Data against unauthorised or unlawful processing and accidental loss or damage, including such appropriate technical and organisational measures as the Customer may reasonably require;
- 17.2.3. only transfer Customer Personal Data to countries outside the European Economic Area that ensure an adequate level of protection for the rights of the data subject after written authorisation by the Customer which may be granted subject to such conditions as the Customer deems necessary: and
- 17.2.4. take reasonable precautions to preserve the integrity of any data which it processes and to prevent any corruption or loss of such data.

18. **Financial Benchmarking**

- 18.1. Provided that it complies with its obligations under clause 16, the Customer shall be entitled at any time during the 6 month period prior to the end of the Initial Period and/ or during the Renewal Term, with such support from BCL as it may reasonably require, to financially benchmark the overall solution (including the Services and the Software).

19. **Term and Termination**

- 19.1. Subject to earlier termination in accordance with this Agreement, this Agreement shall run from the Commencement Date until xx/xx/xxxx (the "**Initial Term**").
- 19.2. The Customer shall be entitled to terminate this Agreement for convenience with effect from the end of the Initial Term by giving BCL not less than three (3) months prior notice in writing. For the avoidance of doubt, the Customer may require the partial termination of a Statement of Work.
- 19.3. BCL shall be entitled to terminate this Agreement for convenience with effect from the end of the **Initial Term** or the **First Renewal Term** by giving the Customer not less than six (6) months prior notice in writing.
- 19.4. Either party may terminate this Agreement forthwith on giving notice in writing to the other party if:
 - 19.4.1. The other party commits any serious breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from the other to do so, to remedy the breach; or
 - 19.4.2. The other party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an

administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding to the foregoing in any applicable jurisdiction in consequence of debt.

- 19.5. Forthwith upon the termination of this Agreement (or where applicable any Exit Period applying under Schedule 6), the Customer shall return to BCL the Software and all copies of the whole or any part thereof or, if requested by BCL, shall destroy the same (in the case of the Software by erasing them from the magnetic media on which they are stored) and certify in writing to BCL that they have been destroyed, provided always that the Customer may extract and store any Customer or Probation Area data upon a separate media for continuity purposes.
- 19.6. Any termination of the Licence or this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision in this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- 19.7. For the avoidance of doubt, on termination or expiry of this Agreement all Statements of Work then in force shall also terminate, unless the parties agree otherwise in writing.
- 19.8. For the avoidance of doubt, partial termination of a Statement of Work shall not also automatically terminate this Agreement or any other Statement of Work, unless the parties agree otherwise in writing.

20. **Interpretation**

20.1. In this Agreement unless the context otherwise requires:

- 20.1.1. words importing any gender include every gender;
- 20.1.2. words importing the singular number include the plural number and vice versa;
- 20.1.3. words importing persons include firms, companies and corporations and vice versa;
- 20.1.4. the headings to the clauses, schedules and paragraphs of this Agreement will not affect the interpretation;
- 20.1.5. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
- 20.1.6. any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- 20.1.7. any party who agrees to do something will be deemed to fulfil that obligation if that party procures that it is done.

21. **Schedules and Order of Precedence**

21.1. The following Schedules (together with any Statements of Work which the parties may enter into from time to time) shall be deemed to form part of this Agreement and references to this Agreement shall be construed accordingly:

- 21.1.1. Schedule 1 – The Software (Overview)
- 21.1.2. Schedule 2 – The Fees
- 21.1.3. Schedule 3 – Support and Maintenance Services
- 21.1.4. Schedule 4 – The Specification
- 21.1.5. Schedule 5 – The Implementation Plan
- 21.1.6. Schedule 6 – MOJ Flow Down Terms
- 21.1.7. Schedule 7 – Authority ICT Policies
- 21.1.8. Schedule 8 – Template Statement of Work

21.2. In the event of any conflict or ambiguity between any part of this Agreement the conflict or ambiguity shall be resolved in accordance with the following order of precedence;

- 21.2.1. Clause 12 shall always prevail as regards the issue of ownership of and rights to use Intellectual Property in the Software, unless the parties expressly agree to vary that clause in writing in a form which references that clause; then
- 21.2.2. Schedule 6 – MOJ Flow-Downs shall take precedence; then
- 21.2.3. The terms and conditions contained in the main body of this Agreement shall take precedence; then
- 21.2.4. The other Schedules to this Agreement shall take precedence; then
- 21.2.5. Any other Exhibits or Statements of Work or other documents referenced in this Agreement shall take precedence.

22. **Escrow**

22.1. BCL and the Customer mutually undertake to sign the Escrow Agreement promptly following signature of this licence. The Customer will meet all costs associated with the ESCROW Agreement.

22.2. BCL and the Customer mutually undertake to abide by the terms of the Escrow Agreement and acknowledge that for the purposes of the Escrow Agreement:

- 22.2.1. the Source Code Materials shall constitute the Material;
- 22.2.2. this licence shall constitute the Licence Agreement; and
- 22.2.3. the Software shall constitute the Package.

23. **Miscellaneous**

- 23.1. This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.
- 23.2. This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties.
- 23.3. No party shall issue or make any public announcement or disclose any information regarding this Agreement unless prior written consent has been obtained from the other party.
- 23.4. This Agreement is personal to the parties and, subject to clause 23.5 below, neither this Agreement nor any rights, licences or obligations under it, may be assigned by either party without the prior written approval of the other party.
- 23.5. Notwithstanding the foregoing, either party may assign this Agreement to any acquirer of all or of substantially all of such party's equity securities, assets or business relating to the subject matter of this Agreement or to any entity controlled by, that controls, or is under common control with a party to this Agreement. Any attempted assignment in violation of this clause will be void and without effect.
- 23.6. This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and this Agreement constitutes the entire agreement between the parties relating to their subject matter. However the obligations of the parties under any pre-existing non-disclosure agreement shall remain in full force and effect in so far as there is no conflict between the same. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.
- 23.7. Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party, ("**Force Majeure Event**"). A delay or failure caused by the acts or omissions of a party's suppliers or sub-contractors shall not be regarded as a Force Majeure Event unless it also results from circumstances beyond the reasonable control of the supplier or sub-contractor in question. If any Force Majeure Event affecting BCL's ability to perform this Agreement to a substantial extent, continues for a continuous period of more than 30 days, the Customer may terminate this Agreement by written notice to the other party.
- 23.8. All notices under this Agreement shall be in writing. Notices shall be deemed to have been duly given: (i) when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or (ii) when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or (iii) on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or (iv) on the tenth business day following mailing, if mailed by airmail, postage prepaid, in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other party.
- 23.9. If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be

severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

- 23.10. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assignees, and references to a party in this Agreement shall include its successors and permitted assignees.
- 23.11. No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement. No right, power or remedy in this Agreement conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.
- 23.12. This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.
- 23.13. Provided that BCL has the express consent of the Customer to do so (such consent not to be unreasonably withheld), BCL may perform any or all of its obligations under this Agreement through agents or sub-contractors, provided that BCL shall remain liable for such performance. Notwithstanding the previous sentence it is agreed that BCL may without obtaining the Customer's consent, use as part of its personnel engaged in performing the Services individuals who are operating as self-employed or freelance contractors and who may be engaged by BCL directly or via service companies and agencies, provided always that (i) BCL shall be responsible and liable for the performance of such personnel; and (ii) BCL shall ensure that any such personnel who may have access to live data are Security Cleared.
- 23.14. Except as expressly provided in this Agreement in respect of the rights of the Authority, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 23.15. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person (including, without limitation, the Authority).
- 23.16. This Agreement shall be governed by and construed in accordance with the laws of England and Wales and each party agrees to submit to the exclusive jurisdiction of the English Courts.

As witness the hands of the parties or their duly authorised representatives on the date set out above:

Authorised to sign for and on behalf of **Beaumont Colson Limited**:

Signed:

Name:

Position:

Authorised to sign for and on behalf of the **Customer**:

Signed:

Name:

Position:

Schedule 1

The Software (Overview)

The Software to be delivered by BCL to the Customer under this Agreement is detailed in the Specification appended to this Agreement at Schedule 4, and will comprise Standard Software, Commissioned Software and Third Party Software as outlined in Part 1, 2 and 3 below.

Part 1 - The Standard Software

The Standard Software comprises the probation case management software known as "Delius 2". Delius 2 was developed by BCL based on the probation case management software used by the Authority ("nDelius") which BCL also developed. Delius 2 is a general probation service case management system originally developed for use by the Authority and was not developed to meet the particular needs and requirements of CRCs.

Since April 2015 the Intellectual Property Rights in both Delius 2 and nDelius have been owned by the Authority. However, BCL has retained rights to sub-licence, develop, support and maintain Delius 2 for use by CRCs.

Part 2 - The Commissioned Software

The Commissioned Software shall comprise any other software, or enhancements, customisations, add-ons and additional modules to the Standard Software, which the Customer has commissioned or may hereafter commission BCL to develop or supply specifically for its use as a CRC under this Agreement. This may include software previously commissioned by other customers.

On entering into this Agreement it is agreed that this shall include (without limitation) additional link software which will allow the Customer's version of Delius 2 to communicate with the Authority's Strategic Partner Gateway ("SPG"). The SPG is the conduit through which all data exchanged between individual CRC and the Authority systems is facilitated. This software will be developed/ configured specifically for the Customer's use.

Unless the parties otherwise agree, BCL will retain ownership of all Intellectual Property Rights in the Commissioned Software and licence the same to Customer, as is permitted under the terms of BCL's agreement with the Authority.

Other Commissioned Software may be developed where requested by the Customer pursuant to Clause 9 (Additional Services) or Clause 10 (Change Control) or as the parties may otherwise agree in writing from time to time.

Part 3 - Third Party Software

Delius 2 makes use of the following Third Party Software:

- EDB Postgres Advanced Server;
- JBoss Application Server;
- Aspose

For the avoidance of doubt, any licences required for the above referenced Third Party Software, shall be obtained by the BCL and charged to the Customer at cost in addition to the Fees due under Schedule 2. BCL shall obtain the Customer's prior approval before incurring such costs and obtaining such licences, such approval not to be unreasonably withheld, conditioned or delayed.

Part 4 - Probation Area(s)

The Customer acknowledges and agrees that it is only permitted under this Agreement to use (and to permit Authorised Users to use) the Software and Third Party Software in connection with its operation of the xxxx Community Rehabilitation Companies and the provision of probation and rehabilitation services for the xxxx contract package areas. The Customer must not use the Software or Third Party Software (or permit it to be used) for any other purpose or in relation to any other function, without obtaining BCL's prior written consent.

Schedule 2: The Fees

In return for BCL granting the Customer the Licence and agreeing to provide the Services, the Customer agrees to pay BCL fees as follows:

Part 1 – The Licence Fee

The licence fee will be set at £5,000 per month, plus VAT.

Part 2 – Monthly Fees

Please consult the CRC Delius Pricing document.

Part 3 – Price Reviews

BCL may modify its fees and charges by an amount equal to the percentage increase (if any) of the United Kingdom GDP deflator on 1st April of each calendar year

Part 4 – Implementation Fees

Please consult the CRC Delius Pricing document.

All such invoices shall be paid in accordance with the provisions of clause 11.4.

It is agreed that the fixed price detailed above is based on the Authority's statements and designs as of May 1st 2018. It is agreed that the fixed fee may need to be adjusted to take account of any revisions to those statements, requirements and the DER made by or on behalf of the Authority. Any such increase to the Implementation Fee shall be negotiated and agreed between the parties in accordance with the change control procedure set out in clause 10. However, the Customer agrees that it will not unreasonably withhold its consent to any Change which may be requested in this regard.

Part 5 – Training Fees

A single training instance of the Software will be made available, the use of which will be included in the fees detailed above, along with a single, five day training course for the Customer's own trainers. Further training courses and additional support required are extra and would be considered separately and agreed on a case by case basis. Note: hosting costs are excluded and are dependant on the chosen option taken by the Customer.

Part 6 – Expenses

In all cases of training or other Services provided by BCL under this Agreement otherwise than at BCL's premises, the Customer shall reimburse BCL for agreed travel in line with its current Expenses Policy as follows;

- mileage at prevailing HMRC rate,
- evening meal £25 inclusive of drinks (£30 ZONE 1 London),
- non road travel second class only;

- hotel accommodation outside London £70 per night and inside London £100 per night

Part 7 – Fees for Additional Services

The Fees for any Additional Services agreed to be provided by BCL under this Agreement shall be as set out in the applicable Statement of Work and shall be invoiced in accordance with the payment terms set out in the applicable Statement of Work.

Part 8 – Fees for Delivery Management

Negotiable.

Part 9 – Fees for Hosting and Infrastructure Support

BCL do not anticipate a pivotal role in the hosting and infrastructure underpinning this delivery, however, we can help if required. Costs to be negotiated.

Part 10 – Fees for MI/BI Support and Implementation

In normal, BAU circumstances, it is envisaged that BCL will not be required to support reporting and routine support calls will be covered through the support and maintenance arrangements as set out at Schedule 3. Should additional activities be required, these would be subject to an agreed, additional Statement of Work.

Schedule 3: Support and Maintenance Services

1. Introduction

This Schedule sets out the terms on which BCL will provide Support and Maintenance Services in relation to the Software.

2. Interpretation

2.1. In this Schedule capitalised terms which are defined in the body of the Agreement shall have the meaning given there and the following terms shall have the following meanings:

2.2. **"Customer Cause"**: means any of the following causes: (i) any improper use, misuse or unauthorised alteration of the Software by the Customer or any third party; (ii) any use of the Software by the Customer or any third party in a manner inconsistent with the Documentation or the reasonable instructions of BCL; or (iii) the use of a non-current version or release of the Software.

2.3. **"Error"** means any failure of the Software to substantially conform to the specifications included in the Documentation.

2.4. **"First/ Second Line Support"** shall mean the provision of first and second line technical support to end-users of the Software in accordance with paragraph 3.2.

2.5. **First Level Support** is local user IT support and help desk. Provides advice and guidance on application and IT related user issues.

2.6. **"New Releases"** shall mean any new releases, updates, bug fixes and/ or Error corrections of or for the Software which are released or made available by BCL pursuant to Section 5 below.

2.7. **"Out-of-scope Services"**: means any services provided by BCL in connection with any apparent problem regarding the Software reasonably determined by BCL not to have been caused by an Error, but rather by a Customer Cause or a cause outside BCL's reasonable control (including any investigational work resulting in such a determination).

2.8. **Second Level Support** is the consideration of support calls for the purpose of triaging to the relevant third level support organisation. Examples of third level support to which calls / incidents should be directed are:

2.8.1. Hardware Issue – TBD;

2.8.2. Environment / Network issue – TBD;

2.8.3. CRC Delius Application Issue – Beaumont Colson Ltd:

2.8.4. SPG Messaging issue – Beaumont Colson Ltd.:

- 2.9. **"Support Service Levels"**: means the target service level responses and response times referred to in the table at Section 8.
- 2.10. **"Support Hours"**: means the hours during which the Technical Support Services shall be provided as detailed in Section 6.
- 2.11. **"Support Request"**: means a request made by the Customer in accordance with Section 7 for support in relation to the Software, including correction of an Error.
- 2.12. **'Technical Support Contacts'** means personnel appointed by the Customer who are trained and competent in all aspects of using and administering the Software and are named in Section 7 or agreed between the parties in writing in accordance with Section 7.
- 2.13. **"Third/ Fourth Line Support"** shall mean the provision of third and fourth line support in relation to the Software in accordance with paragraph 5.2.
- 2.14. **"Working Day"** means a day that is not Saturday, Sunday or a public or bank holiday in England and/or Wales.
- 2.15. **"Working Hour"** an hour between 8.00 am and 5.00 pm on a Working Day.

3. **Support and Maintenance Services**

- 3.1. It is agreed that BCL are not responsible for providing First/Second Line Support under this Agreement. Accordingly, the Customer shall be solely responsible for providing First and Second Line Support in accordance with Section 4 below.
- 3.2. BCL shall do the following:
 - 3.2.1. provide the Customer with New Releases for their use, in accordance with Section 5 below; and
 - 3.2.2. provide the Customer with Third and Fourth Line Support in accordance with Sections 6 to 8 (inclusive) below.
 - 3.2.3. BCL will engage with any third parties directly related to the development of CRC Delius where those third parties are not contractually connected to the Customer

4. **Customer's Support Obligations**

- 4.1. The Customer shall be solely responsible for providing (or arranging for the provision of) First/Second Line Support for the Software.
- 4.2. First/Second Line Support shall comprise the following:
 - 4.2.1. first line support will operate a user helpdesk, providing first contact with the application users. Each Error will be logged by this Helpdesk and possibly also solved at this point;

- 4.2.2. second line support will comprise a suitably qualified and trained functional/technical team who will attempt to solve Errors passed to them from first line support based on an intimate knowledge of the system and Software. They would be expected to solve 99% of the Errors raised.
- 4.3. The Customer shall ensure that the Software and equipment and hardware on which they are installed and used are managed in a proper and secure manner and that all persons with administrative authority over the Software shall be competent trained employees only or shall be persons under their supervision.
- 4.4. The Customer and their first and second line support agents shall provide co-operation and assistance to BCL in BCL's efforts to provide Third/Fourth Level Support under Sections 6 to 8 (inclusive) below. Such co-operation and assistance shall include but not be limited to:
 - 4.4.1. a reasonable level of responsiveness to BCL's requirements and communications;
 - 4.4.2. the timely transmittal and release to BCL of appropriate and accurate documentation and information;
 - 4.4.3. the prompt review and analysis of the work performed by BCL; and
 - 4.4.4. the making of facilities and personnel available to assist BCL when and to the extent as is reasonably requested.
 - 4.4.5. Identification and communication of developmental changes to CRC Delius to support the transformation of the customer's offender management business.

5. New Releases

- 5.1. BCL shall make available to the Customer such New Releases to the Software as BCL may develop from time to time and which it generally makes available to its other Customers of the Software for no additional charge or which it otherwise (in its discretion) wishes to make available to the Customer.
- 5.2. Any new releases of the Software which are made available to the Customer under paragraph 5.1 shall be deemed to be part of the Software and subject to the terms and conditions set out in this Agreement.
- 5.3. During the Term additional functionality may also be released by BCL as separate modules and BCL may make such available to the Customer at an additional charge to be mutually agreed by the parties. BCL shall at its sole discretion decide what constitutes a separate module.

6. BCL's Support Obligations

- 6.1. During the Term of this Agreement, BCL shall provide Third/ Fourth Line Support to the Customer during Working Hours on Working Days ("**Support Hours**") in accordance with the Support Service Levels.

- 6.2. Third/ Fourth Line Support services shall comprise the following:
- 6.2.1. third line support will operate the BCL helpdesk, providing contact with the Customer's second line support staff. Each Error will be logged by this Helpdesk and possibly also solved at this point;
 - 6.2.2. fourth line support will comprise of an expert users/developers /DBA team who will check the software operation, code and associated databases for possible resolutions to incidents raised.
- 6.3. As part of the Support services to be provided by BCL under paragraph 6.2, BCL shall: (i) provide help desk support by means of access to BCL's support portal; (ii) use commercially reasonable endeavours to correct all Errors notified to it under paragraph 7; (iii) provide technical support for the Software in accordance with the Support Service Levels; and (iv) provide emergency help desk support by telephone on 0845 805 2198.
- 6.4. Unless otherwise agreed between the parties all Support services to be provided by BCL under this Agreement shall be provided from BCL's premises.
- 6.5. The Customer acknowledges that BCL is not obliged to provide Out-of-Scope Services or to provide Support services otherwise than from BCL's own premises. In the event that BCL supplies Out-of-Scope Services or Support services otherwise than from BCL's premises, BCL reserves the right to charge in addition for those services in accordance with its applicable time and materials rates in force from time to time.
- 6.6. BCL will support, where required, the Customer with information such as downtime to enable ongoing support of the offender management business.

7. Submitting Support Requests

- 7.1. The Customer shall be responsible for providing (or arranging for the provision of) First/Second Level Support in accordance with Section 4 above. Accordingly, prior to making a Support Request to BCL the Customer shall use all reasonable efforts to identify and fix the Error itself. Thereafter the Customer may submit a Support Request in accordance with this clause.
- 7.2. In order to ensure the effective provision of the Support, only designated/ named Technical Support Contacts shall be entitled to submit Support Requests. The Customer's Technical Support Contacts shall be agreed between the parties in writing following supply of the Software. The Customer may change its Technical Support Contacts with the prior written consent of BCL (such consent not to be unreasonably withheld).
- 7.3. The Customer shall submit Support Requests via the BCL support portal. Each Support Request shall include: (i) a description of the Error; and (ii) the Customer's reasonable assessment of the priority designation of the

Error in accordance with the table in Section 8; and (iii) the start time of the Error; and (iv) any other relevant data or information.

- 7.4. The Customer shall provide BCL with: (i) prompt notice of any Errors; and (ii) such information (such as log files, configuration files, error messages and pertinent screen shots) and such other assistance, as may be reasonably requested by BCL to reproduce the Error and/ to respond to the relevant Support Request. BCL will require secure remote access to the software/ systems.
- 7.5. Upon receipt of a Support Request, BCL shall acknowledge receipt and assign the Support Request a unique support ID number. The Customer should refer to the ID number in all correspondence regarding the Support Request.
- 7.6. Upon receipt of a Support Request, BCL also reserves the right to change the severity rating given to the Support Request by the Customer if BCL believes that the severity rating is incorrect. If BCL changes the severity rating it shall notify the Customer in writing.
- 7.7. The Customer shall ensure that BCL's support personnel are provided with the appropriate approvals, access information and (if required by BCL) remote electronic access, for the purpose of investigating or rectifying reported Errors. The Customer will indemnify BCL against any loss or damages resulting from the specified access not having adequate approval. BCL shall not be obliged to continue to provide Third/Fourth Level Support services in respect of the relevant Error if the Customer cannot provide or obtain such approvals, information and access set out in this clause.
- 7.8. The Customer shall promptly implement corrective actions and workaround procedures recommended by BCL in order to resolve an Error. The Customer also agrees to cooperate fully with BCL and to provide all reasonable assistance in connection with the resolution of any Error.
- 7.9. BCL shall be entitled to close any Support Request in the event the Customer fails to: (i) appropriately engage with BCL support personnel; (ii) respond to BCL within 30 days if it has provided any corrective action, recommended action or a workaround; or (iii) respond to a request for additional information.

8. Support Service Levels

- 8.1 BCL shall use reasonable endeavours to provide the Support Services in accordance with the following Performance Indicators and Response Times:

TTO Performance Indicator	Response Time
Severity Level 1	1 support hour
Severity Level 2	1 support hour
Severity Level 3	1 support hour
Severity Level 4	1 support hour

TTR Performance Indicator	Resolution Time
Severity Level 1	4 support hours
Severity Level 2	8 support hours
Severity Level 3	16 support hours
Severity Level 4	48 support hours

- 8.2 The Response Times set out in sub-Clause 8.1 refer to the TTO or Time to Own and TTR or Time to Resolve. The TTO is the times elapsed between the creation of the ticket in the BCL system and its assignation by BCL to someone to own. The TTR is the elapsed time between the creation of the ticket in the system and the “resolution” of the ticket (when the ticket is set to “resolved”).
- 8.3 In the event that the Service Provider exceeds the TTR Time for the relevant Performance Indicator when responding to a Support Request, the Service Provider shall be required to pay to the Client a Penalty Fee in accordance with the agreed SLA charges.
- 8.4 In the event that the Service Provider requires access to the Client's Premises for the purposes of providing the Support Services, the Service Provider shall not be liable for any failure to comply with the relevant Response Time if it is unable to access the Premises through any fault of the Client.
- 8.5 For the purposes of monitoring and managing performance under this Agreement the Parties shall respectively appoint the Client's Performance Representative and the Service Provider's Performance Representative (each a “Performance Representative” for the purposes of this Clause 8). It shall be the responsibility of the Performance Representatives to ensure that the Support Services are provided in accordance with the Service

Levels and the terms and conditions of this Agreement.

- 8.6 The provision of the Support Services in accordance with the Service Levels shall be monitored by the Client's Performance Representative and the Service Provider's Performance Representative.
- 8.7 All data collected by the Performance Representative(s) pursuant to this Clause 8 shall be presented in monthly Performance Reports to be prepared by the Client and the Service Provider.

9. Severity Levels

The agreed performance measurements between the Service Provider and Client are:

Priority	Description	Example	Target Response
1 Catastrophic	No Business Activity can be carried out on the System	Product not usable for any purpose - Error prevents uninterrupted and fault free live operation of the product.	90% of Support Requests resolved within 4 Support Hour
2 Major without workaround	A business process cannot be finished that will result in a suspension of business operations, where there is no workaround available for the defect. The defect has a critical impact on business continuity and/or business results.	Major degradation of the Product performance - Error causes major inconvenience and no work-around exists.	90% of Support Requests resolved within 8 Support Hours
3 – Major with workaround	A business process cannot be finished that will result in a suspension of business operations, where there is a workaround available for the defect. The defect has a critical impact on business continuity and/or	Minor degradation of the Product performance - Error causes major inconvenience but some alternative work-around exists.	80% of Support Requests resolved within 16 Support Hours

	business results.		
4 - Minor	A business process is affected by the defect but can be finished via a workaround. The defect has minor impact on business continuity, business results or employee satisfaction.	Error causes minor inconvenience - Less frequent Product Error.	80% of Support Requests resolved within 48 Support Hours
5 - Cosmetic	The system can be used without limitation. The defect only has a cosmetic relevance and does not affect a business process in a negative way.	Mis-alignment of on-screen components.	70% of Support Requests resolved within 48 Support Hours .

- 9.1. Resolve, Resolution or Resolved refers to the identification of the probable cause of the product failure together with a suggested solution or work around being given if one exists. Product change solutions will be recorded within a problem record and presented to the appropriate Change Control Board for consideration.
- 9.2. Resolution time refers to the number of Support Hours which elapse from when BCL receives the Support Request to when a resolution is returned by BCL.
- 9.3. The parties may, on a case-by-case basis, agree in writing to a reasonable extension of the Service Level times.
- 9.4. The Customer acknowledges that the Support Service Levels relate to Incident resolution times. BCL does not guarantee such resolution will provide corrective action, recommended action or a workaround in the resolution times or at all.
- 9.5. BCL shall nevertheless give the Customer's own second line support personnel regular updates of the nature and status of its efforts to provide the resolution of any Error and shall use commercially reasonable endeavours during Support Hours to correct errors outside Problem Management.

Schedule 4: Specification

A full functional specification is available on request.

Schedule 5: Implementation Plan

Reference the Customer owned, joint plan.

Reference the BCL Proposal for Implementation.

Schedule 6: MOJ Flow Down Terms

10. Definitions

- 10.1. In this Schedule the following definitions shall apply:
- 10.2. **Agreement:** means the Software Licence, Development, Implementation, Support and Maintenance Agreement between the Sub-contractor and the Customer to which these MOJ Flow Down Terms have been appended at Schedule 6;
- 10.3. **Authority:** means the Secretary of State for Justice or any successor body or entity from time to time;
- 10.4. **Business Continuity Management System:** means the business continuity management system developed by the Customer, as amended from time to time;
- 10.5. **Business Days:** means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;
- 10.6. **Customer** means xxxx Community Rehabilitation Companies Limited;
- 10.7. **EIRs:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
- 10.8. **FOIA:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
- 10.9. **MOJ Agreement:** means the Agreement concluded between the Customer and the Authority on [INSERT DATE] under which the Authority engaged the Customer to provide probation and rehabilitation services for the xxxx contract package area;
- 10.10. **New Contractor:** means the person who has entered or who will enter into an agreement with the Authority for the provision of services the same as or substantially the same as the services provided by the Customer to the Authority under the MOJ Agreement;
- 10.11. **Prohibited Act:** means
- 10.11.1. committing any offence:
- 10.11.1.1. under the Bribery Act 2010;
- 10.11.1.2. under legislation creating offences in respect of fraudulent acts; or

10.11.1.3. at common law in respect of fraudulent acts in relation to this Agreement or any contract with the Crown; or

10.11.2. defrauding or attempting to defraud or conspiring to defraud the Crown;

10.12. **Subcontractor:** means Beaumont Colson Limited;

10.13. **Services:** the services provided by the Subcontractor to the Customer under this Agreement; and

10.14. **Software:** means the software provided by the Subcontractor to the Customer under this Agreement.

11. Additional Termination Rights

11.1. If the MOJ Agreement terminates or expires for any reason, this Agreement shall terminate automatically on the date the MoJ Agreement terminates. The Customer shall consult with the Subcontractor in good faith and give the Subcontractor as much prior notice as is reasonably practicable under the circumstances, in the event that the Agreement terminates pursuant to this clause. In the event of termination of this Agreement under this clause, the Customer shall pay the Subcontractor for all Software and Services supplied and performed up to the effective date of termination of this Agreement.

11.2. If the Subcontractor (or anyone employed by or acting on behalf of any of it) or any of its shareholders commits any Prohibited Act, the Customer shall be entitled to terminate this Agreement immediately on written notice to the Subcontractor.

11.3. On termination of this Agreement for any reason, the Subcontractor shall return to the Customer all Confidential Information belonging to the Customer or the Authority and any data provided to it by the Customer, in its possession, custody or control.

12. Services

12.1. The Subcontractor shall at all times ensure that the Services comply with, and meet all the requirements of, and perform all its other obligations arising under or in connection with, this Agreement, in accordance with good industry practice.

13. Continuous Improvement

13.1. The Subcontractor shall adopt a continuous improvement approach to the provision of the Services, and shall work with the Customer as the Customer may reasonably requires to identify opportunities for improving the performance, efficiency and effectiveness of the Services.

14. Additional Terms

14.1. The Subcontractor shall use its reasonable endeavours to ensure that the Services are sufficiently flexible to interface with and capable of

interworking with new technology and systems that are or may be employed during the Initial Term by the Customer.

- 14.2. The Subcontractor shall comply at all times with good industry practice.
- 14.3. The Subcontractor may not assign, transfer or subcontract any or all of its rights or obligations under this Agreement without the prior written consent of the Customer (such consent not to be unreasonably withheld). However, it is agreed that the use of freelance or self-employed personnel as outlined in clause 23.14 shall not be regarded as a sub-contracting arrangement for the purposes of this clause.
- 14.4. The Customer may assign or transfer any or all of its rights or obligations under this Agreement to the Authority or as directed by the Authority (including, without limitation, to a New Contractor).
- 14.5. The Subcontractor shall make such changes to the Services and/ or the Software as required in order to ensure that the Services and/ or the Software are sufficiently flexible in accordance with paragraph 5.1 above
- 14.6. In the event of a security breach or other incident, the Subcontractor shall provide such assistance or cooperation in any investigation or remedial activity that the Customer may reasonably require.

15. Personnel

- 15.1. The Subcontractor shall ensure that all personnel employed or utilised by the Subcontractor under this Agreement, where relevant:
 - 15.1.1. are competent and efficient;
 - 15.1.2. have the right to live and work in the United Kingdom;
 - 15.1.3. have appropriate and relevant qualifications, training and experience to the extent required for their role or employment relating to the provision of the Services;
 - 15.1.4. to the extent required for their role or employment, are fully conversant with the technologies used by the Subcontractor in its provision of the Services
- 15.2. The Subcontractor shall comply with any applicable anti-discrimination legislation in undertaking its obligations under this Agreement.
- 15.3. The Subcontractor acknowledges that it has a duty to promote equality of opportunity for and good relations between all persons irrespective of race, gender, gender reassignment, disability, age, sexual orientation or religious belief and will comply with its equality and diversity policy in the workplace

16. Authority Premises

- 16.1. Whilst on any Authority's premises, Subcontractor shall comply with all security measures implemented by the Authority (or in the case of a private prison, the measures applied by that prison) in respect of persons attending the Authority's premises to the extent those security measures

have been notified to or ought reasonably to have been known by the Subcontractor.

- 16.2. The Subcontractor personnel of a Subcontractor who cannot produce a pass issued by the Authority when required to do so by any appropriate personnel or agent of the Authority, or who contravene any conditions on the basis of which a pass is issued, may be refused admission to the Authority's premises or be required to leave the Authority's premises.
- 16.3. The Subcontractor shall return any pass within four Business Days after the Authority's Relationship Manager requires it to be returned or if the person for whom the pass was issued ceases to be involved in the performance of the Services. The Subcontractor shall return all passes on or before the effective date of termination of this agreement or (where applicable) the end of any Exit Period.
- 16.4. Whilst on the Authority Premises, the Subcontractor shall comply with all rules, regulations and other requirements as may be in force in respect of the conduct of persons attending and working at the Authority's Premises, to the extent that those rules, regulations and other requirements have been notified to or ought reasonably to have been known by the Subcontractor.

17. Publicity

- 17.1. The Subcontractor shall not by itself, its employees or agents communicate with representatives of the press, television, radio or other communications media on any matter concerning the Agreement without the prior written approval of the Customer.

18. Business Continuity Management System

- 18.1. The Subcontractor shall use reasonable endeavours to comply with any relevant parts of the Business Continuity Management System as relate to the Services and/ or the Software and have been notified and approved by the Subcontractor in advance (such approval not be unreasonably withheld).
- 18.2. The Subcontractor shall provide the Customer with such support and assistance that it may reasonably require in respect of disaster recovery or testing of the Customer's disaster recovery plan.
- 18.3. On request from the Customer, the Subcontractor shall promptly provide the Customer with a copy of its policies and procedures relating to:
 - 18.3.1. IT backup;
 - 18.3.2. disaster recovery; and
 - 18.3.3. incident management.
- 18.4. The Authority may, at its option, on giving reasonable notice to the Subcontractor visit, inspect and audit any facilities of the Subcontractor (or any third party) at which the Services or performed or the Software is provided and the Subcontractor shall grant, or procure the grant to the

Authority of such access to the Subcontractor's or third party's premises that it may require for that purpose. The Subcontractor shall provide such information and reasonable assistance that the Authority may reasonably require under this clause.

19. Exit Plan

- 19.1. Where requested to do so by the Customer, the Subcontractor shall continue to provide the Software and Services following termination or expiry of this Agreement for a period of up to twelve (12) months as may be specified by the Customer in writing (the "**Exit Period**") provided that the Customer continues to pay all Fees due in respect of the Software and Services at the rates set out in Schedule 2 or as otherwise agreed between the parties in writing.
- 19.2. During any such Exit Period the Software and Services and the provision and use thereof, shall continue to be governed by the terms and conditions of this Agreement.
- 19.3. It is agreed that the Subcontractor shall be under no obligation to continue to provide the Software and Services during any Exit Period in the event that the Subcontractor has terminated the Agreement under clause 19.4 due to the Customer's breach or insolvency.
- 19.4. The Subcontractor shall have the right to require that any Fees due in respect of the continued provision of the Software and/ or Services during the Exit Period (together with any other outstanding Fees) be paid in advance before Software and/ or Services are provided during the Exit Period.

20. Intellectual Property

- 20.1. The ownership of Intellectual Property in the Software shall be governed by clause 12 of the Agreement and the Customer is licensed to use the Software in connection with the provision of probation services in the Probation Are in accordance with the terms of the Agreement. It is acknowledged that the licence granted to the Customer to use the Software under the Agreement shall extend to the Authority as well as personnel and contractors of the Authority as "Authorised Users" under the Agreement.
- 20.2. The Subcontractor warrants that, pursuant to an agreement concluded between the Subcontractor and Authority in April 2015, the Subcontractor has the right to license the Customer to use the Software on the terms set out in the Agreement.

21. Data Protection

- 21.1. This clause shall apply to the extent that the Subcontractor processes any personal data on behalf of the Customer and/ or the Authority ("**Relevant Personal Data**") in performing its obligations under the Agreement. The Subcontractor shall:
 - 21.1.1. only undertake processing of "Relevant Personal Data as reasonably required in connection with the Services or the

performance of its other obligations under this Agreement and not process the Relevant Personal Data for any other purpose;

21.1.2. not process or transfer any Relevant Personal Data outside the European Economic Area without the prior written consent of the Customer;

21.1.3. not disclose Relevant Personal Data to any third parties other than to employees and subcontractors to whom disclosure is reasonably necessary for the Subcontractor to carry out the Services provided that that disclosure is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this paragraph 12.1;

21.1.4. Notify the Customer of any complaint, notice or communication from a data subject which relates directly or indirectly to its processing of the Relevant Personal Data;

21.1.5. bring into effect and maintain appropriate technical and organisational measures to prevent unauthorised or unlawful processing of Relevant Personal Data and accidental loss or destruction of, or damage to, Relevant Personal Data including taking reasonable steps to ensure the reliability of any person having access to the Relevant Personal Data.

21.2. The Customer may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Subcontractor. Within 20 Business Days after a request, the Subcontractor shall at its own cost and expense supply written particulars of the measures detailed to a reasonable level to enable the Customer to determine whether or not any Relevant Personal Data has been, or will be, processed in compliance with the Data Protection Act 1998.

22. Information Assurance

22.1. The Subcontractor shall obtain and maintain during the Term of this Agreement UKAS certification for its information security management system (ISMS) against ISO 27001:2013, the scope of which must include any systems used to process the information relevant to the provision of the Services.

22.2. The Subcontractor shall throughout the Term of the Agreement ensure that all employees, agents, consultants, contractors and volunteers with access to information of the Customer or Authority will be vetted as appropriate in relation to the level of data access required by that person pursuant to PSIU 07/2014 Security Vetting.

23. General ICT Obligations

23.1. The Subcontractor shall comply with and provide all cooperation or assistance as the Customer may reasonably require in relation to:

23.1.1. HMG Security Policy Framework, as amended from time to time;

- 23.1.2. (to the extent relevant to the Services) Authority ICT Policies, as amended from time to time, including those set out in Schedule 7;
- 23.2. The Subcontractor shall provide the Customer with such cooperation, assistance and support that the Customer may reasonably require in relation to the Authority undertaking and independent information technology health check as detailed at www.cesq.gov.uk (as amended from time to time) (ITHC) on the Customer's ICT systems.
- 23.3. The Subcontractor shall provide the Customer with such cooperation, assistance and support that the Customer may reasonably require in relation to the implementation of a security awareness training programme for all Contractor Personnel (including, for the avoidance of doubt, the Subcontractor).
- 23.4. The Subcontractor shall not transfer, store or process any HMG Data outside of an Accredited Environment without the prior written consent of the Authority at any time during the term of this Agreement.

24. Freedom of Information

- 24.1. The Subcontractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Subcontractor shall:
 - 24.1.1. provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
 - 24.1.2. transfer to the Authority all requests for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs ("Request for Information") relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 24.1.3. provide the Authority with a copy of all information (within the meaning of section 84 of FOIA) belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such information; and
 - 24.1.4. not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 24.2. The Subcontractor acknowledges that the Authority may be required under the FOIA and EIRs to disclose information (including commercially sensitive information) without consulting or obtaining consent from the Subcontractor. The Authority shall take reasonable steps to notify the Subcontractor of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that

it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any commercially sensitive information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

Schedule 7: Authority ICT Policies

BCL will use reasonable endeavours to comply with the following policies to the extent that they are relevant to the Services it is providing. It is however, agreed that, in the event that any requirement set out in these policies conflicts with any requirement set out elsewhere in this Agreement the latter shall take precedence.

ICT Accessibility and Assistive Technology Policy and Standards v1.0

Government Digital Service - Resources for Chief Technology Officers /Technology Code of Practice / Greening Government ICT

Sustainable Development in Government - Government Buying Standards/ Greening Government Commitments

MoJ Security Aspects Letter v1-0 plus annexes Authority Incident Management Policy v1.0 May 2013

HMG IA Standard No.1-2 Information Risk Management

HMG IA Standard No. 5 Secure Sanitisation of Protectively Marked or Sensitive Information HMG IA Standard No. 1-2 Supplement (Technical Risk Assessment and Risk Treatment) MoJ Open Standards Policy v1.0

CESG Good Practice Guides CESG Implementation Guide CESG Security Procedures CESG Cryptographic Standards

HMG Security Policy Framework v11

Security Notice - Handling Protectively Marked Information - January 2008

GSI Code of Connection originally established by the Office of Government Commerce (OGC) PSN Code of Connection originally established by the Office of Government Commerce (OGC) ICT Security Policy - Forensics Readiness Policy

ICT Security Policy - IT Disaster Recovery Policy

ICT Security Policy - Use of HMG Cryptography Policy

ICT Security - ICT Disaster Recovery Plan and Process Guide ICT Security -
Forensics Readiness Guide

ICT Security - Data Handling and Information Sharing Guide ICT Security - Incident
Management Plan and Process Guide

ICT Security - ICT Asset Disposal Guide ICT Service Management Procedures

ICT Security Policy - Information Assurance Strategy Statement ICT Security Policy
- Technical Controls Policy

ICT Security Policy - IT Incident Management Policy ICT Security Policy - IT
Acceptable Use Policy

ICT Security Policy - Information Classification and Handling Policy ICT Security -
System Backup Standard

ICT Security - System Test Standard

ICT Security - Malware Protection Guide ICT Security - Password Standard

ICT Security - Code of Connection Standard ICT Security - Protective Monitoring
Guide

ICT Security - System Lockdown and Hardening Standard ICT Security - Protective
Marking Guide

ICT Security - Access Control Standard ICT Security - Offshoring Guide

ICT Security - Patch Management Standard

ICT Security - HMG Cryptography Business Continuity Standard ICT Security
Awareness SyOPs Deck

ICT Security SyOPs - Blackberry users ICT Security SyOPs - Remote Working

ICT Security SyOPs - System Administrators

ICT Security SyOPs - Users & Application Administrators

Schedule 8 - Template Statement of Work

Statement of Work dated

20

Between:

- 1) **Beaumont Colson Limited** (CRN: 03224012) whose registered office is at 129 Newbridge Street, Newcastle upon Tyne ("**BCL**"); and
- 2) **xxx** ("**Customer**")

Introduction

- A. BCL and the Customer are parties to a Software Licence, Development, Implementation, Support and Maintenance Agreement dated [●] (the "**Main Agreement**").
- B. The parties have entered enter into this Statement of Work, pursuant to the terms of the Main Agreement, to document the terms upon which BCL will provide certain Additional Services (as defined in the Main Agreement) to the Customer.
- C. This Statement of Work shall be attached to and form part of the Main Agreement and except as expressly provided in this Statement of Work, this Statement or Work and all Services to be supplied under it shall be subject to the terms and conditions of the Main Agreement.
- D. Unless the context otherwise requires, all terms used in this Statement of Work, which are defined in the Main Agreement, shall have the meaning given in the Main Agreement.

25. **Scope**

25.1. [DRAFTING NOTE: Define purpose and scope of the Statement of Work].

25.2. [●]

26. **Services**

26.1. [●] [DRAFTING NOTE: Define the Services to be supplied by BCL under the Statement of Work including all services to be performed and all software to be supplied].

26.2. [●] [DRAFTING NOTE: Consider the application of Service Levels]

27. **Deliverables**

27.1. [●] [DRAFTING NOTE: Define any deliverables/ software which BCL is required to supply under the Statement of Work].

27.2. [●]

28. **Project Plan**

28.1. [●] [DRAFTING NOTE: Detail any project plan for the performance and delivery of the Services].

28.2. [●]

29. **Charges**

29.1. [●] [DRAFTING NOTE: Detail the charges which will be paid for the provision of the Services. Take care to specify whether charges are calculated on a time and materials or fixed price basis and any approved expenses.]

30. **Payment Terms**

30.1. [●] [DRAFTING NOTE: Detail the payment terms which have been agreed for the Charges due under this Statement of Work. For example will payment be made on achieving particular milestones or on a monthly basis].

30.2. [●]

31. **Additional Provisions**

31.1. [●] [DRAFTING NOTE: Detail any additional provisions that have been agreed in relation to the Statement of Work. In particular, have any variations to the terms and conditions set out in the Main Agreement been agreed].

31.2. [●]

The parties hereby agree to the provision of the Services in accordance with the terms and conditions set out in this Statement of Work and the Main Agreement.

Authorised to Sign for and on behalf of **Beaumont Colson Limited**

[Insert signature clause (i.e. Signed:... Name: ... Position...)]

Authorised to Sign for and on behalf of the **Customer**

[Insert signature clause (i.e. Signed:... Name: ... Position...)]