

Dated

2023

(1) THE DIRECTOR OF SAVINGS

and

(2) IBM UNITED KINGDOM LIMITED

CALL-OFF TERMS

relating to

DIGITAL EXPERIENCE AND DIGITAL ENABLEMENT

© Bevan Brittan LLP

Toronto Square – 7th Floor | Toronto Street | Leeds LS1 2HJ
T 0370 194 1000 F 0370 194 5465

Fleet Place House | 2 Fleet Place | Holborn Viaduct | London EC4M 7RF
T 0370 194 1000 F 0370 194 7800

Kings Orchard | 1 Queen Street | Bristol BS2 0HQ
T 0370 194 1000 F 0370 194 1001

Interchange Place | Edmund Street | Birmingham B3 2TA
T 0370 194 1000 F 0370 194 5001

www.bevanbrittan.com

FRAMEWORK SCHEDULE 4 – ANNEX 2
RM6100 TECHNOLOGY SERVICES 3
LOT 4 CALL OFF TERMS

Where an Order Form is issued by the Buyer that refers to the Framework and this Contract, this Contract is made between the Buyer and the Supplier on the date specified on that Order Form. This Contract is subject to the terms set out below.

The Buyer and the Supplier undertake to comply with the provisions of the Schedules and Attachments to the Order Form in the performance of this Contract.

The Supplier shall supply to the Buyer, and the Buyer shall receive and pay for, the Goods and/or Services on the terms of this Contract.

For the avoidance of doubt, any actions or work undertaken by the Supplier prior to the receipt of an Order Form covering the relevant Services and/or Goods shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Services and/or Goods covered by a valid Order Form.

The Definitions in Schedule 1 shall apply to the use of all capitalised terms in this Contract.

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IT IS AGREED as follows:

PART 1 - PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Contract, unless the context otherwise requires:
- 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 reference to a gender includes the other gender and the neuter;
 - 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
 - 1.2.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 1.2.5 Not Used;
 - 1.2.6 the words “including”, “other”, “in particular”, “for example” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
 - 1.2.7 references to “writing” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - 1.2.8 the headings are for ease of reference only and shall not affect the interpretation or construction of this Contract;
 - 1.2.9 unless otherwise provided and save for references in Annexes 1 to 2 of Schedule 5 (*Software and Trade Marks*) and in Schedule 10 (*Guarantee*), references to Clauses and Schedules are references to the clauses and schedules of this Contract and references in any Schedule or Attachment to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or Attachment or the Part of the Schedule or Attachment in which the references appear; and
 - 1.2.10 references to this Contract are references to this Contract as amended from time to time.
- 1.3 Where a standard, policy or document is referred to in this Contract by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Buyer and the Parties shall update this Contract with a reference to the replacement hyperlink.
- 1.4 If there is any conflict between the Order Form (including Attachments and any Annexes), these Call Off Terms (including Schedules and its Annexes) and the provisions of the Framework, the conflict shall be resolved in accordance with the following order of precedence:
- 1.4.1 the Framework, except Framework Schedule 18 (*Tender*);

- 1.4.2 the Order Form and its Attachments (other than Attachment 4.1 (*Supplier Solution*) and its Annexes) and Schedule 2.2 (*Performance Levels*) and its Annexes;
- 1.4.3 these Call-Off Terms (including the Schedules and their Annexes) (other than Schedule 2.2 (*Performance Levels*) and its Annexes which is dealt with above in 1.4.2);
- 1.4.4 Attachment 4.1 (*Supplier Solution*) and its Annexes (if any); and
- 1.4.5 Framework Schedule 18 (*Tender*).
- 1.5 The Schedules and their Annexes and Order Form (including Attachments and their Annexes) form part of this Contract.
- 1.6 In entering into this Contract the Buyer is acting as part of the Crown.

2 DUE DILIGENCE

2.1 The Supplier acknowledges that:

- 2.1.1 the Buyer has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Contract;
- 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
- 2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Buyer before the Effective Date) of all relevant details relating to:
 - (a) the Buyer Requirements;
 - (b) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;
 - (c) the operating processes and procedures and the working methods of the Buyer;
 - (d) the ownership, functionality, capacity, condition and suitability for use in the Services of the Buyer Assets; and
 - (e) the existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the Services; and
- 2.1.4 it has advised the Buyer in writing of:
 - (a) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
 - (b) the actions needed to remedy each such unsuitable aspect; and
 - (c) a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,
 - (d) and such actions, timetable and costs are fully reflected in this Contract, including the Services Description and/or Buyer Responsibilities as applicable.

- 2.2 The Supplier shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor, subject to Clause 2.3, shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:
- 2.2.1 any unsuitable aspects of the Operating Environment;
 - 2.2.2 any misinterpretation of the Buyer Requirements; and/or
 - 2.2.3 any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.
- 2.3 The Parties shall comply with the provisions of Paragraph 7 of Part C of Schedule 7.1 (*Charges and Invoicing*) in relation to the verification of any Allowable Assumptions.

3 WARRANTIES

- 3.1 The Buyer represents and warrants that:
- 3.1.1 it has full capacity and authority to enter into and to perform this Contract;
 - 3.1.2 this Contract is executed by its duly authorised representative;
 - 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract; and
 - 3.1.4 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).
- 3.2 The Supplier represents and warrants that:
- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
 - 3.2.2 it has full capacity and authority to enter into and to perform this Contract;
 - 3.2.3 this Contract is executed by its duly authorised representative;
 - 3.2.4 it has all necessary consents and regulatory approvals to enter into this Contract;
 - 3.2.5 it has notified the Buyer in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Contract;
 - 3.2.6 its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
 - 3.2.7 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);

- 3.2.8 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the selection questionnaire and ITT (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Supplier has otherwise disclosed to the Buyer in writing prior to the date of this Contract;
- 3.2.9 it has notified the Buyer in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- 3.2.10 it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Buyer which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Buyer;
- 3.2.11 the Contract Inception Report is a true and accurate reflection of the Costs and Supplier Profit Margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;
- 3.2.12 it is not subject to any contractual obligation, including in relation to any other contract it may have with the Buyer, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
- 3.2.13 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- 3.2.14 within the previous twelve (12) months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Contract had this Contract been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.
- 3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Contract) by reference to the facts then existing.
- 3.4 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.
- 3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.6 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the Buyer may have in respect of breach of that provision by the Supplier.
- 3.7 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

PART 2 – THE SERVICES

4 TERM

- 4.1 This Contract shall:

- 4.1.1 come into force on the Effective Date, save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 23 (*Confidentiality*), 24 (*Transparency and Freedom of Information*), 26 (*Publicity and Branding*), 27 (*Limitations on Liability*), 40 (*Waiver and Cumulative Remedies*), 41 (*Relationship of the Parties*), 43 (*Conflicts of Interest*), 44 (*Severance*), 46 (*Entire Agreement*), 47 (*Third Party Rights*), 48 (*Notices*), 49 (*Disputes*) and 50 (*Governing Law and Jurisdiction*), which shall be binding and enforceable as between the Parties from the date of signature; and
- 4.1.2 unless terminated at an earlier date by operation of Law or in accordance with Clause 36 (*Termination Rights*), terminate:
- (a) at the end of the Initial Term; or
 - (b) if the Buyer elects to extend the Initial Term by giving the Supplier at least sixty (60) Working Days' notice before the end of the Initial Term, at the end of the Extension Period.

4.2 Condition Precedent

- 4.2.1 Save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 23 (*Confidentiality*), 24 (*Transparency and Freedom of Information*), 26 (*Publicity and Branding*), 27 (*Limitations on Liability*), 40 (*Waiver and Cumulative Remedies*), 41 (*Relationship of the Parties*), 44 (*Severance*), 46 (*Entire Agreement*), 47 (*Third Party Rights*), 48 (*Notices*), 49 (*Disputes*) and 50 (*Governing Law and Jurisdiction*), this Contract is conditional upon the valid execution and delivery to the Buyer of the:

- (a) Guarantee; and
 - (b) the Collaboration Agreement,
- (the “**Condition Precedent**”).

The Buyer may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Supplier notice in writing.

- 4.2.2 The Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. In the event that the Condition Precedent is not satisfied within twenty (20) Working Days after the date of this Contract then, unless the Condition Precedent is waived by the Buyer in accordance with Clause 4.2:

- (a) this Contract shall automatically cease and shall not come into effect; and
- (b) neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.

- 4.2.3 The Supplier shall consult with the Buyer in relation to the steps it takes to satisfy the condition set out in Clause 4.2 and shall keep the Buyer fully informed of its progress in satisfying the condition and of any circumstances which are likely to result in the condition not being satisfied by the date set out in this Clause 4.2.3.

5 SERVICES

5.1 Standard of Services

- 5.1.1 The Supplier shall provide:

- (a) the Implementation Services from (and including) the Implementation Services Commencement Date; and

- (b) the Operational Services in each case from (and including) the relevant Operational Service Commencement Date.

5.1.2 The Supplier shall ensure that:

- (a) the Services:
 - (i) comply in all respects with the Services Description; and
 - (ii) are supplied in accordance with the Supplier Solution and the provisions of this Contract; and
- (b) where:
 - (i) the Operational Services to be provided from any Operational Service Commencement Date are similar to services that the Buyer was receiving immediately prior to that Operational Service Commencement Date (such similar services being “**Preceding Services**”); and
 - (ii) the standard and level of service received by the Buyer in respect of any of the Preceding Services in the twelve (12) month period immediately prior to that Operational Service Commencement Date have been disclosed to the Supplier in the Due Diligence Information (such preceding services being “**Relevant Preceding Services**”),

the Operational Services to be provided from the relevant Operational Service Commencement Date that are similar to the Relevant Preceding Services are in each case provided to a standard and level of service which is at least as good as the standard and level of service received by the Buyer in respect of the Relevant Preceding Services in the twelve (12) month period immediately prior to the relevant Operational Service Commencement Date.

5.1.3 The Supplier shall:

- (a) perform its obligations under this Contract and the Collaboration Agreement, including in relation to the supply of the Services and any Goods in accordance with:
 - (i) all applicable Law;
 - (ii) Good Industry Practice;
 - (iii) the Standards;
 - (iv) the Baseline Security Requirements;
 - (v) the Quality Plans;
 - (vi) the Buyer IT Strategy; and
 - (vii) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.1.3(a)(i) to (vi); and
- (b) deliver the Services using efficient business processes and ways of working having regard to the Buyer's obligation to ensure value for money.

5.1.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.1.3(a)(i) to 5.1.3(a)(vi), the Supplier shall immediately notify the Buyer Representative in writing of such inconsistency and the Buyer Representative shall,

as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

5.2 **Supplier covenants**

5.2.1 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Contract;
- (b) save to the extent that obtaining and maintaining the same are Buyer Responsibilities and subject to Clause 13 (*Change*), obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- (c) ensure that:
 - (i) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Buyer which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Buyer;
 - (ii) the release of any new Software or upgrade to any Software complies with the interface requirements in the Services Description and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 2.4 (*Security Management*)) shall notify the Buyer three (3) months before the release of any new Software or Upgrade;
 - (iii) subject to the requirements set out in Schedule 2.4 (*Security Management*), all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
 - (iv) any products or services recommended or otherwise specified by the Supplier for use by the Buyer in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Buyer Requirements; and
 - (v) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Buyer);
- (d) minimise any disruption to the Services, the IT Environment, Relevant Third Party Supplier services and/or the Buyer's operations when carrying out its obligations under this Contract;
- (e) ensure that any Documentation and training provided by the Supplier to the Buyer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) co-operate with any Relevant Third Party Supplier and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Relevant Third Party Supplier to enable such Relevant Third Party Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Services (or any of them) to the Buyer and/or to any Replacement Supplier;

- (g) to the extent it is legally able to do so, hold on trust for the sole benefit of the Buyer, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Buyer may notify from time to time to the Supplier;
- (h) unless it is unable to do so, assign to the Buyer on the Buyer's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause (g);
- (i) provide the Buyer with such assistance as the Buyer may reasonably require during the Term in respect of the supply of the Services;
- (j) gather, collate and provide such information and co-operation as the Buyer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Contract;
- (k) notify the Buyer in writing as soon as reasonably possible and in any event within one (1) month of any change of Control taking place;
- (l) notify the Buyer in writing within ten (10) Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract;
- (m) ensure that neither it, nor any of its Affiliates, embarrasses the Buyer or otherwise brings the Buyer into disrepute by engaging in any act or omission in relation to this Contract which is reasonably likely to diminish the trust that the public places in the Buyer; and
- (n) manage closure or termination of Services and end of life of Goods to take account of the Buyer's disposal requirements, including recycling and scope for re-use, and all applicable Standards.

5.2.2 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

5.2.3 Without prejudice to Clauses 20.2 and 20.3 (*IPRs Indemnity*) and any other rights and remedies of the Buyer howsoever arising, the Supplier shall:

- (a) remedy any breach of its obligations in Clauses 5.2.1(b) to 5.2.1(g) inclusive within three (3) Working Days of becoming aware of the breach or being notified of the breach by the Buyer where practicable or within such other time period as may be agreed with the Buyer (taking into account the nature of the breach that has occurred);
- (b) remedy any breach of its obligations in Clause 5.2.1(a) and Clauses 5.2.1(e) to 5.2.1(j) inclusive within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by the Buyer; and
- (c) meet all the costs of, and incidental to, the performance of such remedial work,

and any failure of the Supplier to comply with its obligations under Clause (a) or Clause (b) within the specified or agreed timeframe shall constitute a Notifiable Default.

5.3 Specially Written Software warranty

Without prejudice to Clauses 5.2 (*Supplier Covenants*) and Clause 5.2.3 (*Services*) and any other rights and remedies of the Buyer howsoever arising, the Supplier warrants to the Buyer that all components of the Specially Written Software shall:

- 5.3.1 be free from material design and programming errors;
- 5.3.2 perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution and Documentation; and
- 5.3.3 not infringe any Intellectual Property Rights.

5.4 **Continuing obligation to provide the Services**

The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the supply of the Services, notwithstanding:

- 5.4.1 any withholding of the Service Charges by the Buyer pursuant to Clause 7.2.1(d)(ii) (*Performance Failures*);
- 5.4.2 the existence of an unresolved Dispute; and/or
- 5.4.3 any failure by the Buyer to pay any Charges,

unless the Supplier is entitled to terminate this Contract under Clause 36.3.1 (*Termination by the Supplier*) for failure to pay undisputed Charges.

5.5 **Optional Services**

- 5.5.1 The Buyer may require the Supplier to provide any or all of the Optional Services at any time by giving notice to the Supplier in writing. The Supplier acknowledges that the Buyer is not obliged to take any Optional Services from the Supplier and that nothing shall prevent the Buyer from receiving services that are the same as or similar to the Optional Services from any third party.
- 5.5.2 If a Change Request is submitted, the Supplier shall, as part of the Impact Assessment provided by the Supplier in relation to such Change Request, provide details of the impact (if any) that the proposed Change will have on the relevant Optional Services. Notwithstanding Paragraph 3.2 of Schedule 8.2 (*Change Control Procedure*), the Supplier shall also provide details of whether such Change Request can be delivered as an Operational Change through the Agile Resource Pool.
- 5.5.3 Following receipt of the Buyer's notice pursuant to Clause 5.5:
 - (a) the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Change Control Procedure, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Optional Services have already been agreed;
 - (b) the Supplier shall implement and Test the relevant Optional Services in accordance with the Optional Services Implementation Plan;
 - (c) any additional charges for the Optional Services shall be incorporated in the Charges as specified in Paragraph 3 of Part B of Schedule 7.1 (*Charges and Invoicing*); and
 - (d) the Supplier shall, from the date agreed in the Optional Services Implementation Plan (or, if later, the date of Achievement of any Milestones associated with the commencement of the relevant Optional Services (if any)), provide the relevant Optional Services to meet or exceed the applicable Target Performance Level in respect of all Performance Indicators applicable to the Optional Services as set out

in Paragraphs 3 and 4 of Attachment 2.2 (*Key Performance Indicators and Subsidiary Performance Indicators Tables*) of the Order Form.

5.6 **Power of attorney**

By way of security for the performance of its obligations under Clauses 5.2.1(g) and 5.2.1(h) (*Supplier covenants*) the Supplier hereby irrevocably appoints the Buyer as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to delegate one or more of the powers conferred on it by this Clause 5.6 (other than the power to delegate) to officer(s) appointed for that purpose by the Buyer and may vary or revoke such delegation at any time.

5.7 **Buyer Responsibilities**

The Buyer shall comply with its responsibilities set out in Schedule 3 (*Buyer Responsibilities*).

6 **IMPLEMENTATION**

6.1 **Quality Plans**

6.1.1 The Supplier shall develop, within twenty (20) Working Days of the Effective Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").

6.1.2 The Supplier shall obtain the Buyer Representative's written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the Buyer's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Contract.

6.1.3 Following the approval by the Buyer of the Quality Plans:

- (a) the Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and
- (b) any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

6.2 **Implementation Plan and Delays**

6.2.1 The Parties shall comply with the provisions of Schedule 6.1 (*Implementation Plan*) in relation to the agreement and maintenance of the Detailed Implementation Plan.

6.2.2 The Supplier shall:

- (a) comply with the Implementation Plan; and
- (b) ensure that each Milestone is Achieved on or before its Milestone Date.

6.2.3 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:

- (a) it shall:
 - (i) notify the Buyer in accordance with Clause 30.1 (*Rectification Plan Process*); and

- (ii) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
- (iii) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

6.3 Testing and Achievement of Milestones

The Parties shall comply with the provisions of Schedule 6.2 (*Testing Procedures*) in relation to the procedures to determine whether a Milestone or Test has been Achieved.

7 PERFORMANCE INDICATORS

7.1 The Supplier shall:

- 7.1.1 provide the Operational Services in such a manner so as to meet or exceed the Target Performance Level for each Performance Indicator from the Milestone Date for each relevant CPP Milestone; and
- 7.1.2 comply with the provisions of Schedule 2.2 (*Performance Levels*) in relation to the monitoring and reporting on its performance against the Performance Indicators.

7.2 Performance Failures

7.2.1 If in any Service Period:

- (a) a KPI Failure occurs, Service Credits shall be deducted from the Service Charges in accordance with Paragraph 3 of Part C of Schedule 7.1 (*Charges and Invoicing*);
- (b) a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with Clause 7.2.1);
- (c) a PI Failure occurs, the Supplier shall notify the Buyer of the action (if any) it will take to rectify the PI Failure and/or to prevent the PI Failure from recurring; and/or
- (d) a Material PI Failure occurs:
 - (i) the Supplier shall comply with the Rectification Plan Process; and
 - (ii) the Buyer may withhold a proportionate amount of the Service Charges in accordance with the process set out in Clause 10.3 (*Set Off and Withholding*) until the relevant Material PI Failure is rectified to the reasonable satisfaction of the Buyer, at which point the Buyer shall pay the amount withheld.

7.3 Unacceptable KPI Failure

If in any Service Period an Unacceptable KPI Failure occurs:

- 7.3.1 the Buyer shall (subject to the Service Credit Cap set out in Clause 27.2.1(c) (*Financial and other limits*)) be entitled to withhold and retain as compensation for the Unacceptable KPI Failure a sum equal to any Service Charges which would otherwise have been due to the Supplier in respect of that Service Period (such sum being “**Compensation for Unacceptable KPI Failure**”); and
- 7.3.2 if the Buyer withholds and retains such Compensation for Unacceptable KPI Failure, any Service Points and Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue,

provided that the operation of this Clause 7.3 shall be without prejudice to any right which the Buyer may have to terminate this Contract and/or to claim damages from the Supplier as a result of such Unacceptable KPI Failure.

7.4 The Supplier:

7.4.1 agrees that the application of Clause 7.3 is commercially justifiable where an Unacceptable KPI Failure occurs; and

7.4.2 acknowledges that it has taken legal advice on the application of Clause 7.3 and has had the opportunity to price for that risk when calculating the Service Charges.

7.5 Critical Performance Failure

If a Critical Performance Failure occurs, the Buyer may exercise its rights to terminate this Contract in whole or in part pursuant to Clause 36.1.1 or 36.1.2 (*Termination by the Buyer*).

7.6 Changes to Performance Indicators and Service Credits

7.6.1 Not more than once in each Contract Year the Buyer may, on giving the Supplier at least three (3) months' notice:

- (a) change the weighting that applies in respect of one or more specific Key Performance Indicators; and/or
- (b) convert one or more:
 - (i) Key Performance Indicators into a Subsidiary Performance Indicator; and/or
 - (ii) Subsidiary Performance Indicators into a Key Performance Indicator (in which event the Buyer shall also set out in the notice details of what will constitute a Minor KPI Failure, a Serious KPI Failure and a Severe KPI Failure for the new Key Performance Indicator).

7.6.2 The Supplier shall not be entitled to object to any changes made by the Buyer under Clause 7.6.1, or increase the Service Charges as a result of such changes provided that:

- (a) the total number of Key Performance Indicators does not exceed twenty (20);
- (b) the principal purpose of the change is to reflect changes in the Buyer's business requirements and/or priorities or to reflect changing industry standards or performance improvement including improved collaboration pursuant to the Collaboration Agreement; and
- (c) there is no change to the Service Credit Cap.

8 SERVICES IMPROVEMENT

8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 8. As part of this obligation the Supplier shall identify and report to the Transformation Committee once every twelve (12) months on:

8.1.1 the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and the Buyer which the Parties may wish to adopt;

8.1.2 new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;

- 8.1.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Buyer which might result in efficiency or productivity gains or in reduction of operational risk;
 - 8.1.4 changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Buyer; and/or
 - 8.1.5 changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.
- 8.2 The Supplier shall ensure that the information that it provides to the Buyer shall be sufficient for the Buyer to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Buyer requests.
- 8.3 If the Buyer wishes to incorporate any improvement identified by the Supplier the Buyer shall send the Supplier a Change Request in accordance with the Change Control Procedure.

9 EQUIPMENT AND MAINTENANCE

9.1 Supplier Equipment

- 9.1.1 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Buyer Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Contract the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites, including that of the Relevant Third Party Suppliers, and the Buyer Premises, including the cost of packing, carriage and making good the Sites and/or the Buyer Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.
- 9.1.2 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Buyer shall be liable for loss of or damage to any of the Supplier's property located on Buyer Premises which is due to the negligent act or omission of the Buyer.
- 9.1.3 Subject to any express provision of the Service Continuity Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Contract, including the Target Performance Levels.

9.2 Maintenance

- 9.2.1 The Supplier shall create and maintain a rolling schedule of planned maintenance to the IT Environment (the "**Maintenance Schedule**") which shall be agreed with the Buyer. Once the Maintenance Schedule has been agreed with the Buyer, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.
- 9.2.2 The Supplier shall give as much notice as is reasonably practicable to the Buyer Representative prior to carrying out any Emergency Maintenance.
- 9.2.3 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the IT Environment or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the IT Environment and the Services.

9.3 Supply of Goods

Where, as part of the Services, the Supplier is to sell goods or equipment ("**Goods**") to the Buyer:

- 9.3.1 the relevant Goods and their prices shall be as set out in the Order Form;
- 9.3.2 the Supplier shall supply and, where relevant, install the Goods in accordance with the relevant specification;
- 9.3.3 the Supplier shall ensure that the Goods are free from material defects in design, materials and workmanship and remain so for twelve (12) months after delivery;
- 9.3.4 if following inspection or testing the Buyer considers that the Goods do not conform with the relevant specification, the Buyer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance; and
- 9.3.5 without prejudice to any other rights or remedies of the Buyer:
 - (a) risk in the Goods shall pass to the Buyer at the time of delivery; and
 - (b) ownership of the Goods shall pass to the Buyer at the time of payment.

PART 3 – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

10 FINANCIAL AND TAXATION MATTERS

10.1 Charges and Invoicing

- 10.1.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Services, the Buyer shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*).
- 10.1.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.3 (*Testing and Achievement of Milestones*), 12 (*Records, Reports, Audits & Open Book Data*), 24 (*Transparency and Freedom of Information*), 25 (*Protection of Personal Data*) and, to the extent specified therein, Clause 32 (*Remedial Adviser*) and Clause 33 (*Step-In Rights*).
- 10.1.3 If the Buyer fails to pay any undisputed Charges properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

10.2 VAT

- 10.2.1 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Buyer following delivery of a valid VAT invoice.
- 10.2.2 The Supplier shall indemnify the Buyer on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Buyer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due under this Clause 10.2.2 shall be paid in cleared funds by the Supplier to the Buyer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Buyer.

10.3 Set-off and Withholding

- 10.3.1 The Buyer may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Buyer) against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Buyer.

10.3.2 If the Buyer wishes to:

- (a) set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Buyer) against any amount due to the Supplier pursuant to Clause 10.3.1; or
- (b) exercise its right pursuant to Clause 7.2.1(d)(ii) (*Performance Failures*) to withhold payment of a proportion of the Service Charges,

it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Buyer's reasons for withholding or retaining the relevant Charges.

10.4 **Benchmarking**

The Parties shall comply with the provisions of Schedule 7.3 (*Benchmarking*) in relation to the benchmarking of any or all of the Services.

10.5 **Financial Distress**

The Parties shall comply with the provisions of Schedule 7.4 (*Financial Distress*) in relation to the assessment of the financial standing of the Supplier and other specified entities and the consequences of a change to that financial standing.

10.6 **Promoting Tax Compliance**

If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

- 10.6.1 notify the Buyer in writing of such fact within five (5) Working Days of its occurrence; and
- 10.6.2 promptly provide to the Buyer:
 - (a) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Buyer may reasonably require.

Compensation and Goodwill Payments

- 10.7 The Supplier hereby indemnifies the Buyer against all Compensation and Goodwill Payments arising from the Services in accordance with Paragraph 4 of Part C of Schedule 7.1 (*Charges and Invoicing*) and which are paid or payable by the Buyer (or by its nominated lead on its behalf).
- 10.8 If in any month a Compensation and Goodwill Payment is made in accordance with Paragraph 4 of Part C of Schedule 7.1 (*Charges and Invoicing*) and it is determined to be attributable to the Supplier, the Compensation Credits shall be deducted from the Service Charges in accordance with Paragraph 4. of Part C of Schedule 7.1 (*Charges and Invoicing*).
- 10.9 The Supplier shall comply with the Rectification Plan Process in order to address the underlying cause giving rise to a Compensation and Goodwill Payment attributable to the Services in accordance with Paragraph 4 of Part C of Schedule 7.1 (*Charges and Invoicing*).

PART 4 - CONTRACT GOVERNANCE

11 GOVERNANCE

The Parties shall comply with the provisions of Schedule 8.1 (*Governance*) in relation to the management and governance of this Contract.

11.1 **Representatives**

- 11.1.1 Each Party shall have a representative for the duration of this Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Contract.
- 11.1.2 The initial Supplier Representative shall be the person named as such in the Order Form. Any change to the Supplier Representative shall be agreed in accordance with Clause 14 (*Supplier Personnel*).
- 11.1.3 The initial Buyer Representative shall be the person named as such in the Order Form. The Buyer may, by written notice to the Supplier, revoke or amend the authority of the Buyer Representative or appoint a new Buyer Representative.

12 **RECORDS, REPORTS, AUDITS & OPEN BOOK DATA**

12.1 The Supplier shall comply with the provisions of:

- 12.1.1 Schedule 8.4 (*Reports and Records Provisions*) in relation to the maintenance and retention of Records; and
- 12.1.2 Part A of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the maintenance of Open Book Data.

12.2 The Parties shall comply with the provisions of:

- 12.2.1 Part B of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and
- 12.2.2 Part C of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by the Buyer or any Audit Agents.

12.3 The Supplier shall comply with the provisions of Schedule 7.6 (*Risk, Regulatory Compliance and Financial Crime*) in relation to delivery of Services in accordance with relevant regulatory and compliance frameworks and in relation to the Supplier's fraud and financial crime investigation and recovery and engagement with other financial institutions.

13 **CHANGE**

13.1 **Change Control Procedure**

Any requirement for a Change shall be subject to the Change Control Procedure.

13.2 **Change in Law**

- 13.2.1 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Charges as the result of:
 - (a) a General Change in Law; or
 - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.
- 13.2.2 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 13.2.1(b)), the Supplier shall:
 - (a) notify the Buyer as soon as reasonably practicable of the likely effects of that change, including:

- (i) whether any Change is required to the Services, the Charges or this Contract; and
 - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Target Performance Levels; and
- (b) provide the Buyer with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (*Services Improvement*), has been taken into account in amending the Charges.

13.2.3 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 13.2.2) shall be implemented in accordance with the Change Control Procedure.

13.3 For the purposes of Clause 13.2, a Change in Law which affects Relevant Third Party Suppliers or Sub-contractors (either of the Supplier, Buyer or Relevant Third Party Suppliers) which requires a change to the Services or the Contract shall be deemed a General Change in Law.

PART 5 – SUPPLIER PERSONNEL AND SUPPLY CHAIN

14 SUPPLIER PERSONNEL

14.1 The Supplier shall:

- 14.1.1 provide in advance of any admission to Buyer Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Buyer may reasonably require;
- 14.1.2 ensure that all Supplier Personnel:
 - (a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (b) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Attachment 2.1 (*Services Description*) of the Order Form and Schedule 2.4 (*Security Management*); and
 - (c) comply with all reasonable requirements of the Buyer concerning conduct at the Buyer Premises, including the security requirements as set out in Schedule 2.4 (*Security Management*);
- 14.1.3 subject to Schedule 9.1 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Buyer;
- 14.1.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Contract shall be a Default by the Supplier;
- 14.1.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;

- 14.1.6 replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
 - 14.1.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
 - 14.1.8 procure that the Supplier Personnel shall vacate the Buyer Premises immediately upon the termination or expiry of this Contract.
- 14.2 If the Buyer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:
- 14.2.1 refuse admission to the relevant person(s) to the Buyer Premises; and/or
 - 14.2.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).
- 14.3 **Key Personnel**
- 14.3.1 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Attachment 9.2 (*Key Personnel*) of the Order Form lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.
 - 14.3.2 The Buyer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
 - 14.3.3 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
 - (a) requested to do so by the Buyer;
 - (b) the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave;
 - (c) the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
 - (d) the Supplier obtains the Buyer's prior written consent (such consent not to be unreasonably withheld or delayed).
 - 14.3.4 The Supplier shall:
 - (a) notify the Buyer promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - (b) ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Working Days' notice. The Buyer shall have the right to review (including interviewing a prospective replacement), reject or request the replacement of any member of Key Personnel;
 - (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to

transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and

- (e) ensure that any replacement for a Key Role:
 - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

14.4 Employment Indemnity

The Parties agree that:

- 14.4.1 the Supplier shall both during and after the Term indemnify the Buyer against all Employee Liabilities that may arise as a result of any claims brought against the Buyer by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel; and
- 14.4.2 the Buyer shall both during and after the Term indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of the Buyer or any of the Buyer's employees, agents, consultants and contractors.

14.5 Income Tax and National Insurance Contributions

Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:

- 14.5.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- 14.5.2 indemnify the Buyer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

14.6 Staff Transfer

The Parties agree that:

- 14.6.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 9.1 (*Staff Transfer*) shall apply as follows:
 - (a) where the Relevant Transfer involves the transfer of Transferring Buyer Employees, Part A and Part D of Schedule 9.1 (*Staff Transfer*) shall apply;
 - (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B and Part D of Schedule 9.1 (*Staff Transfer*) shall apply;
 - (c) where the Relevant Transfer involves the transfer of Transferring Buyer Employees and Transferring Former Supplier Employees, Parts A, B and D of Schedule 9.1 (*Staff Transfer*) shall apply; and
 - (d) Part C of Schedule 9.1 (*Staff Transfer*) shall not apply;

- 14.6.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 9.1 (*Staff Transfer*) shall apply, Part D of Schedule 9.1 may apply and Parts A and B of Schedule 9.1 (*Staff Transfer*) shall not apply; and
- 14.6.3 Part E of Schedule 9.1 (*Staff Transfer*) shall apply on the expiry or termination of the Services or any part of the Services.

14.7 Real Living Wage

- 14.7.1 Unless otherwise agreed with the Buyer, from the Effective Date and throughout the Term, the Supplier shall:
- (a) pay all Supplier employees based in the UK the current Real Living Wage (or a local or regionally-recognised equivalent scheme) as a minimum rate;
 - (b) encourage and promote to its Sub-contractors a commitment to the Real Living Wage and associated principles; and
 - (c) promptly provide all such information as may be requested by the Buyer from time to time regarding the Supplier's compliance with this Clause 14.7.
- 14.7.2 If it is agreed with the Buyer under Clause 14.7 that the Supplier is not a Real Living Wage employer at the Effective Date, the Supplier shall commit to a timescale and plan for introducing the Real Living Wage across its organisation and also to commit to promoting a similar commitment through its Sub-contractors. Such plan must be agreed by the Buyer and reviewed at regular intervals. Failure to implement the agreed plan shall constitute a Notifiable Default under Clause 30.1.3.

15 SUPPLY CHAIN RIGHTS AND PROTECTIONS

15.1 Advertising Sub-contract Opportunities

- 15.1.1 The Supplier shall:
- (a) subject to Clauses 15.2.3 and 15.2.4, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the Goods and/or Services and/or Works above a minimum threshold of £25,000 (twenty five thousand pounds) that arise during the Term;
 - (b) within ninety (90) days of awarding a Sub-contract to a Sub-contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;
 - (c) monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
 - (d) provide reports on the information at Clause (c) to the Buyer in the format and frequency as reasonably specified by the Buyer; and
 - (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 15.1.2 Each advert referred to in Clause 15.1.1 above shall provide a full and detailed description of the Sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 15.1.3 The obligation at Clause 15.1.1 shall only apply in respect of Sub-contract opportunities arising after the Effective Date.

- 15.1.4 Notwithstanding Clause 15.1.1 the Buyer may, by giving its prior written approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

15.2 Appointment of Sub-contractors

- 15.2.1 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:

- (a) manage any Sub-contractors in accordance with Good Industry Practice;
- (b) comply with its obligations under this Contract in the delivery of the Services; and
- (c) assign, novate or otherwise transfer to the Buyer or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Contract.

- 15.2.2 Prior to sub-contracting any of its obligations under this Contract, the Supplier shall notify the Buyer in writing of:

- (a) the proposed Sub-contractor's name, registered office and company registration number;
- (b) the scope of any Services to be provided by the proposed Sub-contractor; and
- (c) where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Buyer that the proposed Sub-contract has been agreed on "arm's-length" terms.

- 15.2.3 If requested by the Buyer within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.2.2, the Supplier shall also provide:

- (a) a copy of the proposed Sub-contract; and
- (b) any further information reasonably requested by the Buyer.

- 15.2.4 The Buyer may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.2.2 (or, if later, receipt of any further information requested pursuant to Clause 15.2.3), object to the appointment of the relevant Sub-contractor if it considers that:

- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Buyer;
- (b) the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
- (c) the proposed Sub-contractor employs unfit persons; and/or
- (d) the proposed Sub-contractor should be excluded in accordance with Clause 15.5 (*Termination of sub-contracts*);

in which case, the Supplier shall not proceed with the proposed appointment.

- 15.2.5 If:

- (a) the Buyer has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of ten (10) Working Days of receipt of:
 - (i) the Supplier's notice issued pursuant to Clause 15.2.2; and

- (ii) any further information requested by the Buyer pursuant to Clause 15.2.3; and
- (b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of CCS and the Buyer in accordance with Clause 15.3 (*Appointment of Key Sub-contractors*),

the Supplier may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services, may notify the Buyer that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of Attachment 4.4 (*Third Party Contracts*) of the Order Form.

15.3 Appointment of Key Sub-contractors

- 15.3.1 The Supplier shall only be entitled to sub-contract its obligations to the Key Sub-contractors listed in Framework Schedule 7 (*Key Sub-Contractors*) where such Key Sub-contractors are set out in the Order Form.
- 15.3.2 Where during the Term the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of CCS and the Buyer, such consent not to be unreasonably withheld or delayed. For these purposes, CCS and/or the Buyer may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:
 - (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Buyer;
 - (b) the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
 - (c) the proposed Key Sub-contractor employs unfit persons; and/or
 - (d) the proposed Key Sub-contractor should be excluded in accordance with Clause 15.5 (*Termination of Sub-contracts*).
- 15.3.3 The Buyer consents to the appointment of the Key Sub-contractors listed in Attachment 4.3 (*Notified Key Sub-contractors*).
- 15.3.4 Except where the Buyer has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:
 - (a) provisions which will enable the Supplier to discharge its obligations under this Contract;
 - (b) a right under CRTPA for the Buyer to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Buyer;
 - (c) a provision enabling the Buyer to enforce the Key Sub-contract as if it were the Supplier;
 - (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Buyer or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Buyer;
 - (e) obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Contract in respect of:
 - (i) data protection requirements set out in Clauses 22 (*Buyer Data and Security Requirements*) and 25 (*Protection of Personal Data*);

- (ii) FOIA requirements set out in Clause 24 (*Transparency and Freedom of Information*);
 - (iii) the obligation not to embarrass the Buyer or otherwise bring the Buyer into disrepute set out in Clause 5.2.1(m) (*Services*);
 - (iv) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
 - (v) the conduct of Audits set out in Part C of Schedule 7.5 (*Financial Reports and Audit Rights*);
- (f) provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Buyer under Clauses 36.1.1 (*Termination by the Buyer*) and 37.3 (*Payments by the Buyer*) and Schedule 7.2 (*Payments on Termination*) of this Contract;
- (g) a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Buyer;
- (h) a provision enabling the Supplier or the Buyer to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 32 (*Remedial Adviser*);
- (i) a provision enabling the Supplier, the Buyer or any other person on behalf of the Buyer to step-in on substantially the same terms as are set out in Clause 33 (*Step-in Rights*);
- (j) a provision requiring the Key Sub-contractor to participate in, and if required by the Buyer in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and
- (k) a provision requiring the Key Sub-contractor to:
- (i) promptly notify the Supplier and the Buyer in writing of any of the following of which it is, or ought to be, aware:
 - A. the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
 - B. any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,

and in any event, provide such notification within ten (10) Working Days of the date on which the Key Sub-contractor first becomes aware of such; and
 - (ii) co-operate with the Supplier and the Buyer in order to give full effect to the provisions of Schedule 7.4 (*Financial Distress*), including meeting with the Supplier and the Buyer to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Remediation Plan, and providing the information specified at Paragraph 4.3.2(b) of Schedule 7.4 (*Financial Distress*);
- (l) a provision requiring the Key Sub-contractor to enter into a direct confidentiality agreement with the Buyer on the same terms as set out in Clause 23 (*Confidentiality*);

- (m) a provision requiring the Key Sub-contractor to comply with the obligations set out in Clause 38.2 (*Equality and Diversity*);
- (n) a provision requiring the Key Sub-contractor to comply with the obligations substantially the same as those set out in Clause 43 (*Conflicts of Interest*);
- (o) a provision requiring the Key Sub-contractor to have in place an appropriate exit and migration plan which enables it to comply (and will enable to the Supplier to comply) with the requirements of this Contract, to put such plan into effect on any termination or expiry of the Sub-contract and otherwise to ensure that any such termination or expiry will not affect the continuity of Services;
- (p) a provision requiring the Key Sub-contractor to notify the Buyer promptly in writing of any material non-payment or late payment of any sums properly due to the Key Sub-contractor from the Supplier under a valid invoice under the Key Sub-contract and not subject to a genuine dispute; and
- (q) the following wording (amended only as appropriate to conform with the layout of and definitions in the Key Sub-contract):

“The Key Sub-contractor shall not exercise any right to terminate the Key Sub-contract without having first given the Buyer at least six (6) months’ advance notice in writing. In any situation where either (1) the Key Sub-contractor has the right to terminate the Key Subcontract otherwise than for convenience or (2) the Buyer has the right to terminate this Contract other than by reason of convenience or step into this Contract pursuant to Clause 33 (*Step-In Rights*), then the Buyer may require that the rights and obligations of the Supplier under the Key Sub-contract to be assigned or novated to the Buyer either permanently or for such a period as the Buyer may specify and the Key Sub-contractor shall consent to such assignment or novation and continue to perform the Key Sub-Contract directly for the benefit of the Buyer.”

15.3.5 In the event that the Buyer has a right to terminate this Contract otherwise than for convenience or to step-in to the performance of the Services pursuant to Clause 33 (*Step-in Rights*), the Buyer may enter into an agreement with the Key Sub-contractor which has the effect of assigning or novating any or all of the Supplier's rights and obligations under the relevant Key Sub-contract pursuant to Clause 15.3.4(d) without the Supplier's prior written consent and the Supplier shall enter into such agreement and/or deed in accordance with Clause 45 (*Further Assurances*) as the Buyer reasonably requires so as to give effect to such assignment or novation. If the Buyer does require an assignment or novation pursuant to this Clause 15.3.5, the Supplier shall automatically be relieved to that extent of its obligations to provide Services under this Contract and the Buyer's obligations to pay the Charges shall be reduced proportionately.

15.3.6 The Supplier shall not terminate or materially amend the terms of any Key Sub-contract without the Buyer's prior written consent, which shall not be unreasonably withheld or delayed.

15.4 Supply chain protection

15.4.1 The Supplier shall ensure that all Sub-contracts (which in this Clause 15.4.1 includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract) contain provisions:

- (a) giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;
- (b) requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;

- (c) that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause (b), the invoice shall be regarded as valid and undisputed for the purpose of Clause (d) after a reasonable time has passed;
- (d) requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
- (e) giving the Buyer a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (f) requiring the Sub-contractor to include a clause to the same effect as this Clause 15.4 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.

15.4.2 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed;
- (b) include within the Dashboard produced by it pursuant to Schedule 2.2 (*Performance Levels*) a summary of its compliance with Clause (a), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

15.4.3 Without prejudice to Clause 15.4.2(a), the Supplier shall:

- (a) pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
 - (i) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
 - (ii) the date that falls sixty (60) days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
- (b) include within the Dashboard produced by it pursuant to Schedule 2.2 (*Performance Levels*) a summary of its compliance with Clause 15.4.3(a), such data to be certified every six (6) months by a director of the Supplier as being accurate and not misleading.

15.4.4 If the Dashboard shows that in either of the last two six (6) month periods the Supplier failed to pay ninety five percent (95%) or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, the Supplier shall upload to the Virtual Library within fifteen (15) Working Days an action plan (the "**Action Plan**") for improvement. The Action Plan shall include, but not be limited to, the following:

- (a) identification of the primary causes of failure to pay ninety five percent (95%) or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt;
- (b) actions to address each of the causes set out in Clause (a); and
- (c) mechanism for and commitment to regular reporting on progress to the Supplier's Board.

- 15.4.5 The Action Plan shall be certificated by a director of the Supplier and the Action Plan or a summary of the Action Plan published on the Supplier's website within ten (10) Working Days of the date on which the Action Plan is uploaded to the Virtual Library.
- 15.4.6 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.
- 15.4.7 The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors which is required to be submitted to the Buyer as part of the procurement process and such action plan shall be included as part of the Supplier's Solution (to the extent it is not already included).
- 15.4.8 Notwithstanding any provision of Clauses 23 (*Confidentiality*) and 26 (*Publicity and Branding*), if the Supplier notifies the Buyer that the Supplier has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt or that it has failed to pay ninety five percent (95%) or above of its Sub-Contractors or Unconnected Sub-contractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for payment, or the Buyer otherwise discovers the same, the Buyer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

15.5 Termination of Sub-contracts

- 15.5.1 The Buyer may require the Supplier to terminate:
- (a) a Sub-contract where:
 - (i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Buyer's right of termination pursuant to Clause 36.1 (*Termination by the Buyer*);
 - (ii) the relevant Sub-contractor or any of its Affiliates have embarrassed the Buyer or otherwise brought the Buyer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Buyer, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
 - (iii) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or
 - (iv) the Buyer has found grounds for exclusion of the Sub-contractor in accordance with Clause 15.8.1; and
 - (b) a Key Sub-contract where there is a Change of Control of the relevant Key Sub-contractor, unless:
 - (i) the Buyer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Buyer has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Buyer was given notice of the Change of Control.

15.6 Competitive Terms

- 15.6.1 If the Buyer is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods,

software or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Buyer may:

- (a) require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Buyer in respect of the relevant item; or
- (b) enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.

15.6.2 If the Buyer exercises either of its options pursuant to Clause 15.6.1, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.

15.6.3 The Buyer's right to enter into a direct agreement for the supply of the relevant items is subject to:

- (a) the Buyer making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
- (b) any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

15.7 Retention of Legal Obligations

Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 15, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. In respect of any element of the Services delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Contract, shall include an obligation on the Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.

15.8 Exclusion of Sub-contractors

Where the Buyer considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:

- 15.8.1 if the Buyer finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;
- 15.8.2 if the Buyer finds there are non-compulsory grounds for exclusion, the Buyer may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

15.9 Reporting SME/VCSE Sub-contracts

15.9.1 In addition to any other Management Information requirements set out in this Contract, the Supplier agrees that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Information Reports to the Buyer thirty (30) days prior to the end of each financial year by providing all of the information described in the Supply Chain Transparency Information Template in the format set out in the Schedule 8.4 (*Reports and Records Provisions*) Annex 4 and in accordance with any guidance issued by the Buyer from time to time.

15.9.2 The Buyer may update the Supply Chain Transparency Information Template from time to time (including the data required and/or format) by issuing a replacement version with at least thirty (30) days' notice and specifying the date from which it must be used.

PART 6 - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

16 INTELLECTUAL PROPERTY RIGHTS

16.1 Except as expressly set out in this Contract:

16.1.1 the Buyer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:

- (a) the Supplier Software;
- (b) the Third Party Software;
- (c) the Third Party IPRs; and
- (d) the Supplier Background IPRs; and

16.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Buyer or its licensors, including:

- (a) the Buyer Software;
- (b) the Buyer Data; and
- (c) the Buyer Background IPRs;
- (d) Specially Written Software and Project Specific IPRs (except for any Know-How, trade secrets or Confidential Information contained therein) shall be the property of the Buyer.

16.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 16.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

16.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

16.4 Unless the Buyer otherwise agrees in advance in writing:

16.4.1 all Specially Written Software and any software element of Project Specific IPRs shall be created in a format, or able to be converted into a format, which is suitable for publication by the Buyer as open source software; and

16.4.2 where the Specially Written Software and any software element of Project Specific IPRs are written in a format that requires conversion before publication as open source software, the Supplier shall also provide the converted format to the Buyer.

16.5 Where the Buyer agrees that any Specially Written Software and/or any software element of Project Specific IPRs should be excluded from Open Source publication, the Supplier shall as soon as reasonably practicable provide written details of the impact that such exclusion will have on the Buyer's ability to publish other Open Source software under Clause 21 (*Open Source Publication*).

17 TRANSFER AND LICENCES GRANTED BY THE SUPPLIER

17.1 Specially Written Software and Project Specific IPRs

Subject to Clause 17.12 (*Patents*) the Supplier hereby agrees to transfer to the Buyer, or shall procure the transfer to the Buyer of, all rights (subject to Clause 16.1.1 (*Intellectual Property Rights*)) in the Specially Written Software and the Project Specific IPRs including (without limitation):

- 17.1.1 the Documentation, Source Code and the Object Code of the Specially Written Software; and
- 17.1.2 all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the **"Software Supporting Materials"**),

but not including any Know-How, trade secrets or Confidential Information.

17.2 The Supplier:

17.2.1 shall:

- (a) inform the Buyer of all Specially Written Software and any element of Project Specific IPRs that constitutes a modification or enhancement to Supplier Software or Third Party Software; and
- (b) deliver to the Buyer the Specially Written Software and the software element of Project Specific IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Buyer; and
- (c) without prejudice to Clause 17.10.1 (*Third Party Software and Third Party IPRs*), provide full details to the Buyer of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs;

17.2.2 acknowledge and agree that the ownership of the media referred to in Clause 17.2.1(b) shall vest in the Buyer upon their receipt by the Buyer; and

17.2.3 shall execute all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly transferred to the Buyer.

17.3 **Supplier Software and Supplier Background IPRs**

17.4 The Supplier shall not use any Supplier Non-COTS Software or Supplier Non-COTS Background IPR in the provision of the Services unless it is detailed in Attachment 5 (*Software and Trademarks*) of the Order Form or sent to the Transformation Committee for review and approval granted by the Buyer.

17.5 The Supplier hereby grants to the Buyer:

17.5.1 subject to the provisions of Clause 17.12 (*Patents*) and Clause 37.4.6(b) (*Consequences of expiry or termination*), perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):

- (a) the Supplier Non-COTS Software for which the Supplier delivers a copy to the Buyer for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Buyer's (or any other Central Government Body's) business or function; and
- (b) the Supplier Non-COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Buyer's (or any other Central Government Body's) business or function;

- 17.5.2 unless otherwise specified in Schedule 5 (*Software and Trade Marks*), a perpetual, royalty free, non-exclusive licence to use the Supplier COTS Software for which the Supplier delivers a copy to the Buyer and Supplier COTS Background IPRs on the licence terms identified in a letter in or substantially in the form set out in Annex 1 to Schedule 5 (*Software and Trade Marks*) and signed by or on behalf of the Parties on or before the Effective Date provided always that the Buyer shall remain entitled to sub-license and to assign and novate the Supplier COTS Software and Supplier COTS Background IPRs on equivalent terms to those set out in Clauses 17.8 (*Buyer's right to sub-licence*) and 17.9 (*Buyer's right to assign/novate sub-licences*) in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs; and
- 17.5.3 a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.
- 17.6 At any time during the Term or following termination or expiry of this Contract, where the Buyer has granted a sub-licence pursuant to Clause 17.8 (*Buyer's right to sub-licence*) in respect of the Supplier Non-COTS Software under Clause 17.5.1(a) or in respect of the Supplier Non-COTS Background IPRs under Clause 17.5.1(b), the Supplier may terminate such sub-licence by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if the relevant person to whom the Buyer grants a sub-licence pursuant to Clause 17.8 (*Buyer's right to sub-licence*) commits any material breach of the terms of Clause 17.5.1(a) or 17.5.1(b) or 17.8.1(b) (as the case may be) which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.
- 17.7 In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Clause 17.6, the Buyer shall procure that the relevant person to whom the Buyer grants a sub-licence pursuant to Clause 17.8 (*Buyer's right to sub-licence*):
- 17.7.1 immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);
- 17.7.2 at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within six (6) months of the termination of the licence, the relevant person to whom the Buyer grants a sub-licence pursuant to Clause 17.8 (*Buyer's right to sub-licence*) may destroy the documents and other tangible materials that contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs (as the case may be); and
- 17.7.3 ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Buyer or the relevant person to whom the Buyer grants a sub-licence pursuant to Clause 17.8 (*Buyer's right to sub-licence*)) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs.
- 17.8 Buyer's right to sub-licence**
- Subject to Clause 17.12 (*Patents*) the Buyer may sub-licence:
- 17.8.1 the rights granted under Clause 17.5.1 (*Supplier Software and Supplier Background IPRs*) to a third party (including for the avoidance of doubt, any Replacement Supplier or Relevant Third Party Supplier) provided that:
- (a) the sub-licence is on terms no broader than those granted to the Buyer;
- (b) the sub-licence authorises the third party to use the rights licensed in Clause 17.5.1 (*Supplier Software and Supplier Background IPRs*) only for purposes

relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Buyer's (or any other Central Government Body's) business or function; and

- (c) the sub-licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Annex 2 to Schedule 5 (*Software and Trade Marks*); and

17.8.2 the rights granted under Clause 17.5.1 (*Supplier Software and Supplier Background IPRs*) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:

- (a) the sub-licence is on terms no broader than those granted to the Buyer; and
- (b) the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5 (*Software and Trade Marks*) duly executed by the Approved Sub-Licensee.

17.9 Buyer's right to assign/novate licences

17.9.1 The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 17.5.1 (*Supplier Software and Supplier Background IPRs*) to:

- (a) a Central Government Body; or
- (b) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer.

17.9.2 Any change in the legal status of the Buyer which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 17.5.1 (*Supplier Software and Supplier Background IPRs*). If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licence granted in Clause 17.5 (*Supplier Software and Supplier Background IPRs*).

17.9.3 If a licence granted in Clause 17.5 (*Supplier Software and Supplier Background IPRs*) is novated under Clause 17.9 (*Buyer's right to assign/novate licences*) or there is a change of the Buyer's status pursuant to Clause 17.9.2, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Buyer.

17.10 Third Party Software and Third Party IPRs

17.10.1 The Supplier shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless detailed in Attachment 5 (*Software and Trademarks*) of the Order Form or approval is granted by the Buyer following a review by the Transformation Committee and has in each case either:

- (a) first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Buyer on a royalty-free basis to the Buyer and on terms no less favourable to the Buyer than those set out in Clauses 17.5.1 and 17.6 (*Supplier Software and Supplier Background IPRs*) and Clause 17.9 (*Buyer's right to assign/novate licences*); or
- (b) complied with the provisions of Clause 17.10.2.

17.10.2 If the Supplier cannot obtain for the Buyer a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Clause 17.10.1(a), the Supplier shall:

- (a) notify the Buyer in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
- (b) use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Buyer has first approved in writing the terms of the licence from the relevant third party.

17.10.3 The Supplier shall:

- (a) notify the Buyer in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
- (b) unless instructed otherwise in writing by the Buyer in any case within twenty (20) Working Days of notification pursuant to Clause 17.10.2(a), use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Buyer on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

17.10.4 Should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights for which the Buyer does not have a suitable licence, then the Supplier must notify the Buyer within ten (10) days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in.

17.11 Termination and Replacement Suppliers

17.11.1 For the avoidance of doubt, the termination or expiry of this Contract shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 17.

17.11.2 The Supplier shall, if requested by the Buyer in accordance with Schedule 8.5 (*Exit Management*) and at the Supplier's cost:

- (a) grant (or procure the grant) to any Replacement Supplier of:
 - (i) a licence to use any Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to the Buyer in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Clause 17 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5 (*Software and Trade Marks*) duly executed by the Replacement Supplier;
 - (ii) a licence to use any Supplier COTS Software and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and/or
- (b) use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than

those on which such software is usually made commercially available by the relevant third party.

17.12 Patents

Where a patent owned by the Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs by the Buyer or any Replacement Supplier, the Supplier hereby grants to the Buyer and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Contract.

18 ESCROW

18.1 The Supplier shall deposit the Source Code, of such part of the Software that the Buyer, acting reasonably requires the Supplier to place in escrow (the “**Deposited Software**”), with the NCC on the standard NCC Software Escrow Terms not less than ten (10) Working Days of the Buyer’s request. The Supplier shall ensure that the deposited version of the Source Code is the current version of the Deposited Software and that the deposited version is kept up-to-date as the Deposited Software is modified or upgraded. The Supplier shall pay the initial deposit and storage fees under the escrow agreement and the Buyer shall be responsible for paying the release fees.

18.2 Where the Supplier is unable to procure compliance with the provisions of this Clause 18 in respect of any Third Party Software, it shall provide the Buyer with written evidence of its inability to comply with these provisions and shall agree with the Buyer a suitable alternative to escrow that affords the Buyer the nearest equivalent protection. The Supplier shall be excused from its obligations under this Clause 18 only to the extent that the parties have agreed on a suitable alternative.

18.3 In circumstances where the Buyer obtains the release of the Source Code from escrow, the Supplier hereby grants (or shall procure the grant) to the Buyer a perpetual, royalty-free and non-exclusive licence, with a right to sub-license, to use and support the Source Code version of the Deposited Software to the extent necessary for the receipt of the Services or any Replacement Services.

19 LICENCES GRANTED BY THE BUYER

19.1 The Buyer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Buyer Software, the Buyer Background IPRs, the Specially Written Software, the Project Specific IPRs and the Buyer Data solely to the extent necessary for performing the Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:

19.1.1 any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 23 (*Confidentiality*); and

19.1.2 the Supplier shall not, without the Buyer’s prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Buyer.

19.2 The Buyer hereby grants to the Supplier (and to any Key Sub-contractors approved in accordance with Clause 15.3.2) a royalty-free, non-exclusive, non-transferable licence in the Territory during the Term to use the Trade Marks in relation to the provision of the Services from the Effective Date and subject to the terms of use set out in Schedule 5 (*Software and Trade Marks*).

19.3 The Buyer may terminate any licence to the Trade Marks (or part thereof) and require the Supplier to cease use of or replace any of the Trade Marks at any time for any reason by immediate written notice.

19.4 For the avoidance of doubt, the Buyer may also terminate any licence to the Trade Marks (or part thereof) by immediate written notice in the event that the Supplier:

19.4.1 commits a breach of the terms of the Trade Mark Licence;

19.4.2 challenges the validity of the Trade Marks or any of them; and/or

- 19.4.3 tries to take any steps to allow others to try to register, use or cancel any of the Trade Marks or any trade mark similar to any of them.
- 19.5 If the Buyer exercises its rights to terminate the Trade Mark Licence (in whole or in part) pursuant to either Clause 19.3 or Clause 19.4 the Supplier shall:
 - 19.5.1 immediately cease all use of the Trade Marks (or the relevant Trade Marks as the case may be);
 - 19.5.2 promptly make any necessary updates in respect of the use of the relevant Trade Marks or replacement Trade Marks for all Customer-facing materials;
 - 19.5.3 at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Trade Marks, provided that if the Buyer has not made an election within six (6) months of the termination, the Supplier may destroy the documents and other tangible materials that contain any of the Trade Marks (as the case may be); and
 - 19.5.4 ensure, so far as reasonably practicable, that any copies of the Trade Marks that are held in electronic, digital or other machine readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing copies of such Trade Marks.
- 19.6 If the Buyer exercises its rights to terminate the Trade Mark Licence as a whole or does not confirm a revised or a replacement Trade Mark for use in the case of a partial termination, the parties shall meet and discuss in good faith the implications such termination will have on the provision of the Services.
- 19.7 In the event of the termination or expiry of this Contract, the licence granted pursuant to Clause 19.1, including any Trade Mark Licence and any sub-licence granted by the Supplier in accordance with Clause 19.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:
 - 19.7.1 immediately cease all use of the Buyer Software, the Buyer Background IPRs and the Buyer Data (as the case may be);
 - 19.7.2 at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer Software, the Buyer Background IPRs and the Buyer Data, provided that if the Buyer has not made an election within six (6) months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Buyer Software, the Buyer Background IPRs and the Buyer Data (as the case may be); and
 - 19.7.3 ensure, so far as reasonably practicable, that any Buyer Software, Buyer Background IPRs and Buyer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Buyer Software, Buyer Background IPRs and/or Buyer Data.

20 IPRS INDEMNITY

- 20.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Buyer and each other Indemnified Person, and keep the Buyer and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- 20.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
 - 20.2.1 procure for the Buyer or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or

- 20.2.2 replace or modify the relevant item with non-infringing substitutes provided that:
- (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (b) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
 - (c) there is no additional cost to the Buyer or relevant Indemnified Person (as the case may be); and
 - (d) the terms and conditions of this Contract shall apply to the replaced or modified Services.

20.3 If the Supplier elects to procure a licence in accordance with Clause 20.2.1 or to modify or replace an item pursuant to Clause 20.2.2, but this has not avoided or resolved the IPRs Claim, then:

20.3.1 the Buyer may terminate this Contract (if subsisting) with immediate effect by written notice to the Supplier; and

20.3.2 without prejudice to the indemnity set out in Clause 20.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

21 OPEN SOURCE PUBLICATION

21.1 The Supplier agrees that the Buyer may at its sole discretion publish as Open Source Software all or part of the Specially Written Software and any software element of the Project Specific IPRs after the Operational Service Commencement Date.

21.2 The Supplier hereby warrants that the Specially Written Software and any software element of the Project Specific IPRs:

21.2.1 are suitable for release as Open Source and that any release will not allow a third party to use the Open Source software to in any way compromise the operation, running or security of the Specially Written Software, the Project Specific IPRs or the Buyer System;

21.2.2 shall not cause any harm or damage to any party using anything published as Open Source and that the Specially Written Software and the Project Specific IPRs do not contain any Malicious Software;

21.2.3 do not contain any material which would bring the Buyer into disrepute upon publication as Open Source;

21.2.4 do not contain any IPR owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and the Project Specific IPRs ("**Non-Party IPRs**"); and

21.2.5 will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the Operational Service Commencement Date.

21.3 The Supplier shall ensure that the Open Source Publication Material provided to the Buyer does not include any Supplier Software or Supplier Background IPRs save that which the Supplier is willing to allow to be included in any Open Source publication. In such a case, the Supplier hereby acknowledges that any such Supplier Software or Supplier Background IPRs will become Open Source and will be licensed and treated as such following publication by the Buyer and any third party that uses the Open Source Publication Materials on the terms of the Open Source licence used by the Buyer when publishing as Open Source.

- 21.4 The Supplier hereby indemnifies the Buyer against all claims in which the Buyer is, or is threatened to be, a party for any alleged infringement of any Non-Party IPRs arising from publication of the Specially Written Software and any software element of the Project Specific IPRs as Open Source under Clause 21.1.

22 BUYER DATA AND SECURITY REQUIREMENTS

- 22.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Buyer Data.
- 22.2 The Supplier shall not store, copy, disclose, or use the Buyer Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Buyer.
- 22.3 To the extent that Buyer Data is held and/or processed by the Supplier, the Supplier shall supply that Buyer Data to the Buyer as requested by the Buyer in the format specified in Attachment 2.1 (*Services Description*) of the Order Form.
- 22.4 The Supplier shall preserve the integrity of Buyer Data and prevent the corruption or loss of Buyer Data at all times that the relevant Buyer Data is under its control or the control of any Sub-contractor.
- 22.5 The Supplier shall perform secure back-ups of all Buyer Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Service Continuity Plan. The Supplier shall ensure that such back-ups are available to the Buyer (or to such other person as the Buyer may direct) at all times upon request and are delivered to the Buyer at no less than six (6) monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 22.6 The Supplier shall ensure that any system on which the Supplier holds any Buyer Data, including back-up data, is a secure system that complies with the Security Requirements.
- 22.7 If the Buyer Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Buyer may:
- 22.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Buyer Data to the extent and in accordance with the requirements specified in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*) and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Buyer's notice; and/or
 - 22.7.2 itself restore or procure the restoration of Buyer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*).
- 22.8 If at any time the Supplier suspects or has reason to believe that Buyer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Buyer immediately and inform the Buyer of the remedial action the Supplier proposes to take.
- 22.9 The Supplier shall comply with the requirements of Schedule 2.4 (*Security Management*).
- 22.10 The Buyer shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- 22.11 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.

- 22.12 Until and/or unless a change to the Charges is agreed by the Buyer pursuant to Clause 22.11 the Supplier shall continue to perform the Services in accordance with its existing obligations.
- 22.13 Where a Buyer has notified the Supplier that the award of this Contract by the Buyer shall be conditional upon the Supplier having an accredited security facility and a number of UK national security cleared personnel, the Supplier shall have:
- 22.13.1 (or be willing obtain within such period as agreed between the Parties) an accredited secure facility environment in accordance with HMG Security Policy Framework May 2018 and/or any future variations to the policy (commonly referred to as List X). Further information on List X accreditation can be found at: <https://www.gov.uk/government/publications/security-policy-framework>; and
- 22.13.2 a number of UK national security cleared personnel prior to the Effective Date.
- 22.14 If the Supplier fails to comply with Clause 22.13 above, then without prejudice to the Buyer's other rights and remedies (if any), the Buyer shall be entitled to terminate this Contract for material Default in accordance with Clause 36.1.1.

23 CONFIDENTIALITY

- 23.1 For the purposes of this Clause 23, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 23.2 Except to the extent set out in this Clause 23 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:
- 23.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
- 23.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner's prior written consent;
- 23.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract; and
- 23.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 23.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- 23.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that Clause 24 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
- 23.3.2 the need for such disclosure arises out of or in connection with:
- (a) any legal challenge or potential legal challenge against the Buyer arising out of or in connection with this Contract;
- (b) the examination and certification of the Buyer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer is making use of any Services provided under this Contract; or

(c) the conduct of a Central Government Body review in respect of this Contract; or

23.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

23.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

23.5 The Supplier may disclose the Confidential Information of the Buyer (or Confidential Information of a Relevant Third Party Supplier in accordance with the Collaboration Agreement) on a confidential basis only to:

23.5.1 Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Contract;

23.5.2 its auditors; and

23.5.3 its professional advisers for the purposes of obtaining advice in relation to this Contract.

Where the Supplier discloses Confidential Information of the Buyer pursuant to this Clause 23.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.

23.6 The Buyer may disclose the Confidential Information of the Supplier:

23.6.1 on a confidential basis to any Central Government Body for any proper purpose of the Buyer or of the relevant Central Government Body;

23.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

23.6.3 to the extent that the Buyer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

23.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 23.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract and/or a Relevant Third Party Supplier pursuant to the Collaboration Agreement;

23.6.5 on a confidential basis for the purpose of the exercise of its rights under this Contract, including the Audit Rights, its step-in rights pursuant to Clause 33 (*Step-In Rights*), its rights to appoint a Remedial Adviser pursuant to Clause 32 (*Remedial Adviser*) and Exit Management rights; or

23.6.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Buyer under this Clause 23.

23.7 Nothing in this Clause 23 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

24 TRANSPARENCY AND FREEDOM OF INFORMATION

24.1 The Parties acknowledge that:

24.1.1 the Transparency Reports;

24.1.2 the content of this Contract, including any changes to this Contract agreed from time to time, except for:

(a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and

(b) Commercially Sensitive Information; and

24.1.3 the Publishable Performance Information,

(together the “**Transparency Information**”) are not Confidential Information.

24.2 Notwithstanding any other provision of this Contract, the Supplier hereby gives its consent for the Buyer to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Buyer shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

24.3 The Supplier shall assist and co-operate with the Buyer to enable the Buyer to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 8.4 (*Reports and Records Provisions*).

24.4 If the Buyer believes that publication of any element of the Transparency Information would be contrary to the public interest, the Buyer shall be entitled to exclude such information from publication. The Buyer acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Buyer acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

24.5 The Buyer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Contract is being performed, having regard to the context of the wider commercial relationship with the Supplier.

24.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Buyer on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Buyer may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 23.6.3) and Open Book Data) publish such Information. The Supplier shall provide to the Buyer within five (5) Working Days (or such other period as the Buyer may reasonably specify) any such Information requested by the Buyer.

24.7 The Supplier acknowledges that the Buyer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

24.7.1 provide all necessary assistance and cooperation as reasonably requested by the Buyer to enable the Buyer to comply with its obligations under the FOIA and EIRs;

24.7.2 transfer to the Buyer all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

24.7.3 provide the Buyer with a copy of all Information held on behalf of the Buyer which is requested in a Request For Information and which is in its possession or control in the form that the Buyer requires within five (5) Working Days (or such other period as the Buyer may reasonably specify) of the Buyer's request for such Information; and

24.7.4 not respond directly to a Request For Information addressed to the Buyer unless authorised in writing to do so by the Buyer.

24.8 The Supplier acknowledges that the Buyer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Buyer shall take reasonable steps to notify the Supplier 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 Contract) the Buyer 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 EIRs.

25 PROTECTION OF PERSONAL DATA

25.1 Status of the Controller

The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Contract will determine the status of each Party under the Data Protection Legislation. A Party may act as:

25.1.1 **"Controller"** (where the other Party acts as the **"Processor"**);

25.1.2 **"Processor"** (where the other Party acts as the **"Controller"**);

25.1.3 **"Joint Controller"** (where both Parties are considered to jointly control the same Personal Data);

25.1.4 **"Independent Controller"** of the Personal Data where the other Party is also **"Controller"** of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in Attachment 11 (*Processing Personal Data*) of the Order Form which scenario or scenarios are intended to apply under this Contract.

25.2 Where one Party is Controller and the other Party its Processor

25.2.1 Where a Party is a Processor, the only processing that it is authorised to do is listed in Attachment 11 (*Processing Personal Data*) of the Order Form by the Controller.

25.2.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

25.2.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

(a) a systematic description of the envisaged processing operations and the purpose of the processing;

(b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

(c) an assessment of the risks to the rights and freedoms of Data Subjects; and

- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

25.2.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with Attachment 11 (*Processing Personal Data*) of the Order Form, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Buyer before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, including in the case of the Controller the measures set out in Clause 22 (*Buyer Data and Security Requirements*), which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that :
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Attachment 11 (*Processing Personal Data*));
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - A are aware of and comply with the Processor's duties under this Clause, Clauses 23 (*Confidentiality*) and 22 (*Buyer Data and Security Requirements*);
 - B are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - C are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - D have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - (iii) it does not transfer Personal Data outside of the UK, other than to the Controller, unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - A the destination country has been recognised as adequate by the UK government in accordance with Article 45 UK GDPR or section 74A of the DPA 2018;

B the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with the UK GDPR Article 46 or section 75 of the DPA 2018 (for Personal Data within the scope of the UK GDPR) or comparable enacting legislation (for Personal Data within the scope of the EU GDPR)) as determined by the Controller which could include relevant parties entering into:

1. where the transfer is subject to UK GDPR;

the UK International Data Transfer Agreement as set out in Attachment 11 (Processing Personal Data) or such updated version of such UK International Data Transfer Agreement as published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 from time to time; or

the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time ("EU SCCs") together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "Addendum") as published by the Information Commissioner's Office from time to time; and or

2. where the transfer is subject to EU GDPR, the EU SCCs,

as well as any additional measures determined by the Controller being implemented by the importing Party.

C the Data Subject has enforceable rights and effective legal remedies;

D the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

E the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and

(iv) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

25.2.5 Subject to Clause 25.2.6, the Processor shall notify the Controller immediately if it:

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

- 25.2.6 The Processor's obligation to notify under Clause 25.2.5 shall include the provision of further information to the Controller in phases, as details become available.
- 25.2.7 Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 25.2.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event; and/or
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 25.2.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 25.2. This requirement does not apply where the Processor employs fewer than two hundred and fifty (250) staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 25.2.9 The Processor shall allow for Audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 25.2.10 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 25.2.11 Each Party shall designate its own data protection officer if required by Data Protection Legislation.
- 25.2.12 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 25 such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

- 25.2.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 25.2.14 The Buyer may, at any time on not less than thirty (30) Working Days' notice, revise this Clause 25.2.14 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 25.2.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Buyer may on not less than thirty (30) Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

25.3 Where the Parties are Joint Controllers of Personal Data

In the event that the Parties are Joint Controllers in respect of Personal Data under this Contract, the Parties shall implement Clauses that are necessary to comply with GDPR Article 26 based on the terms set out in Schedule 11 (*Processing Personal Data*).

25.4 Where the Parties are Independent Controllers of Personal Data

- 25.4.1 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.
- 25.4.2 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 25.4.3 Where a Party has provided Personal Data to the other Party in accordance with Clause 25.4.1, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 25.4.4 The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the processing of Personal Data for the purposes of this Contract.
- 25.4.5 The Parties shall only provide Personal Data to each other:
- (a) to the extent necessary to perform the respective obligations under this Contract;
 - (b) in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
 - (c) where it has recorded it in Attachment 11 (*Processing Personal Data*) of the Order Form.
- 25.4.6 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.
- 25.4.7 A Party processing Personal Data for the purposes of this Contract shall maintain a record of its processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.

- 25.4.8 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Contract ("the **Request Recipient**");
- (a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
 - (b) where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
 - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and
 - (ii) provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 25.4.9 Each party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to this Contract and shall:
- (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
 - (b) implement any measures necessary to restore the security of any compromised Personal Data;
 - (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
 - (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 25.4.10 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Contract as specified in Attachment 11 (*Processing Personal Data*).
- 25.4.11 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Contract which is specified in Attachment 11 (*Processing Personal Data*) of the Order Form.

Notwithstanding the general application of Clauses 25.2.1 to 25.2.11 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Clause 25.3 to 25.4.11.

Standard Contractual Clauses

- 25.5 Subject always to the Controller's prior written consent in accordance with Clause 25.2.4, in the event that the Supplier is processing outside of the UK in a country which is not subject to an adequacy decision under section 17A of the Data Protection Act 2018, the Parties acknowledge that the transfer of the Personal Data is a "restricted transfer" for the purposes of the UK GDPR and the Parties agree:
- 25.5.1 to enter into the Standard Contractual Clauses issued by the Information Commissioner and laid before Parliament in accordance with s119A of the Data Protection Act 2018 set out in Annex 1 to Attachment 11 in respect of data transfers by the Supplier outside of the UK;

- 25.5.2 that, where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Contract (and to which Chapter V of the UK GDPR applies) will be transferred in accordance with those Standard Contractual Clauses as of the date the Parties entered into those Standard Contractual Clauses;
 - 25.5.3 to use best endeavours to complete the annexes to the Standard Contractual Clauses promptly and at their own cost for the purpose of giving full effect to them; and
 - 25.5.4 that if there is any conflict between this Contract and the Standard Contractual Clauses the terms of the Standard Contractual Clauses shall apply.
- 25.6 In the event that the UK updates, amends, substitutes, adopts or publishes new Standard Contractual Clauses from time to time, the Parties agree:
- 25.6.1 that the most up to date Standard Contractual Clauses from time to time shall be automatically incorporated in place of those in Annex 1 to Attachment 11 (as the context requires) and that such incorporation is not a Change;
 - 25.6.2 that where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Contract (and to which Chapter V of the UK GDPR applies) will be transferred in accordance with the relevant form of the most up to date Standard Contractual Clauses as of the date the UK decision regarding such new Standard Contractual Clauses becomes effective;
 - 25.6.3 to use best endeavours to complete any part of the most up to date Standard Contractual Clauses that a Party must complete promptly and at their own cost for the purpose of giving full effect to them; and
 - 25.6.4 that if there is any conflict between this Contract and the most up to date Standard Contractual Clauses the terms of the most up to date Standard Contractual Clauses shall apply.

26 PUBLICITY AND BRANDING

- 26.1 The Supplier shall not:
- 26.1.1 make any press announcements or publicise this Contract or its contents in any way; or
 - 26.1.2 use the Buyer's name or brand in any promotion or marketing or announcement of orders,
- without the prior written consent of the Buyer, which shall not be unreasonably withheld or delayed.
- 26.2 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Supplier System and the Buyer System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

PART 7 - LIABILITY, INDEMNITIES AND INSURANCE

27 LIMITATIONS ON LIABILITY

27.1 Unlimited liability

- 27.1.1 Neither Party limits its liability for:
- (a) death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
 - (b) fraud or fraudulent misrepresentation by it or its employees;

(c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

(d) any liability to the extent it cannot be limited or excluded by Law.

27.1.2 The Supplier's liability in respect of the indemnities in Clause 10.2 (VAT), Clause 14.4 (*Employment Indemnity*), Clause 14.5 (*Income Tax and National Insurance Contributions*), Clause 20.1 (*IPRs Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*) shall be unlimited.

27.1.3 The Buyer's liability in respect of the indemnities in Clause 14.4 (*Employment Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*) shall be unlimited.

27.2 Financial and other limits

27.2.1 Subject to Clauses 27.1.1 and 27.1.2 (*Unlimited Liability*), Clause 27.2.1(e) and Clause 27.3 (*Consequential losses*):

(a) the Supplier's aggregate liability in respect of loss of or damage to the Buyer Premises or other property or assets of the Buyer (including technical infrastructure, assets or equipment but excluding any loss or damage to the Buyer's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed £10,000,000 (ten million pounds);

(b) the Supplier's aggregate liability in respect of:

(i) loss of or damage to Buyer Data; and

(ii) breach of the Data Protection Legislation,

that is caused by Default of the Supplier occurring in each and any Contract Year shall in no event exceed £70,000,000 (seventy million pounds) and, in the aggregate during the Term, shall in no event exceed £210,000,000 (two hundred and ten million pounds);

(c) the Supplier's aggregate liability in respect of all:

(i) Service Credits; and

(ii) Compensation for Unacceptable KPI Failure,

incurred in any rolling period of twelve (12) months shall be subject to the Service Credit Cap;

(d) the Supplier's aggregate liability in respect of all other Losses incurred by the Buyer under or in connection with this Contract as a result of Defaults by the Supplier shall in no event exceed:

(i) in relation to Defaults occurring in the first Contract Year, an amount equal to one hundred and fifty percent (150%) of the Estimated Year 1 Charges;

(ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to one hundred and fifty percent (150%) of the Charges paid and/or due to be paid to the Supplier under this Contract in the Contract Year immediately preceding the occurrence of the Default; and

(iii) in relation to Defaults occurring after the end of the Term, an amount equal to one hundred and fifty percent (150%) of the Charges paid and/or due to be

paid to the Supplier in the twelve (12) month period immediately prior to the last day of the Term,

provided that where any Losses referred to this Clause 27.2.1(d) have been incurred by the Buyer as a result of the Supplier's abandonment of this Contract or the Supplier's wilful default, wilful breach of a fundamental term of this Contract or wilful repudiatory breach of this Contract, the references in such Clause to one hundred and fifty percent (150%) shall be deemed to be references to two hundred percent (200%); and

- (e) notwithstanding Clauses 27.2.1 (a) to (d),
 - (i) in the event that the Buyer has incurred Losses under or in connection with this Contract; and
 - (ii) to the extent that the Supplier can demonstrate that such Losses have been caused by or contributed to by the Hyperscaler and/or the element of the Services provided by the Hyperscaler,

the Supplier's liability in respect of that element of such Losses shall in no event exceed an amount equal to one hundred and twenty five percent (125%) of the amounts that are recovered or recoverable by the Supplier from such Hyperscaler in relation to such Losses. For the avoidance of doubt, where such Losses are only contributed to in part by Hyperscaler rather than being fully or wholly attributable to the Hyperscaler, only those Losses which are attributable to the act or omission of the Hyperscaler shall be subject to the one hundred and twenty five percent (125%) cap as set out in this Clause 27.2.1(e). To the extent that any such other Losses are caused or contributed to by a Default of the Supplier or other representatives or third parties where the Supplier would otherwise be responsible to the Buyer under this Contract, the provisions of this Clause 27 shall apply in full force and effect. In the event of a Dispute on the sums recovered or recoverable or in relation to whether such Losses are, or the extent to which they are, attributable to the Hyperscaler, such Dispute shall be referred to Expert Determination in accordance with Paragraph 6 of Schedule 8.3 (*Dispute Resolution Procedure*).

27.2.2 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 27.2.1(c).

27.2.3 Subject to Clauses 27.1.1 and 27.1.3 (*Unlimited Liability*) and Clause 27.3.1 (*Consequential Losses*) and without prejudice to the Buyer's obligation to pay the Charges as and when they fall due for payment:

- (a) the Buyer's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Contract as a result of early termination of this Contract by the Buyer pursuant to Clause 36.1.1 (*Termination by the Buyer*) or by the Supplier pursuant to Clause 36.2.1 (*Termination by the Supplier*) shall in no event exceed the following amounts:
 - (i) in relation to the Unrecovered Payment, the amount set out in Paragraph 4 of Schedule 7.2 (*Payments on Termination*);
 - (ii) in relation to the Breakage Costs Payment, the amount set out in Paragraph 3.2 of Schedule 7.2 (*Payments on Termination*); and
 - (iii) in relation to the Compensation Payment, the amount set out in Paragraph 6 of Schedule 7.2 (*Payments on Termination*); and
- (b) the Buyer's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Contract as a result of Defaults of the Buyer shall in no event exceed:

- (i) in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Charges;
- (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Charges paid and/or due to be paid under this Contract in the Contract Year immediately preceding the occurrence of the Default; and
- (iii) in relation to Defaults occurring after the end of the Term, an amount equal to the total Charges paid and/or due to be paid to the Supplier in the twelve (12) month period immediately prior to the last day of the Term.

27.3 Consequential Losses

27.3.1 Subject to Clauses 27.1.1, 27.1.2 and 27.1.3 (*Unlimited Liability*) and Clause 27.3.2, neither Party shall be liable to the other Party for:

- (a) any indirect, special or consequential Loss; or
- (b) any loss of profits, turnover (in each case whether direct or indirect).

27.3.2 Notwithstanding Clause 27.3.1 but subject to Clause 27.2.1, the Supplier acknowledges that the Buyer may, amongst other things, recover from the Supplier the following Losses incurred by the Buyer to the extent that they arise as a result of a Default by the Supplier:

- (a) any additional operational and/or administrative costs and expenses incurred by the Buyer, including costs relating to time spent by or on behalf of the Buyer in dealing with the consequences of the Default under this Contract and/or the Collaboration Agreement (which may include those costs incurred by a Relevant Third Party Supplier);
- (b) any wasted expenditure or charges;
- (c) the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Contract;
- (d) any compensation or interest paid to a third party by or on behalf of the Buyer including:
 - (i) payments to Customers for reimbursement of Customer funds;
 - (ii) payments made in accordance with the Buyer's Compensation and Goodwill Policy; and
 - (iii) payments or fines imposed by a regulatory body including the Financial Services Ombudsman or the Information Commissioners Office,

save where such Losses arise from an incorrect instruction issued by the Buyer;

- (e) Customer overpayments save where such loss arises from an incorrect instruction issued by the Buyer;
- (f) any fine or penalty incurred by the Buyer pursuant to Law and any costs incurred by the Buyer in defending any proceedings which result in such fine or penalty;
- (g) Losses arising from any loss or corruption of data, including the costs of reconstituting such lost or corrupted data; and

- (h) advertising costs or other communication costs reasonably incurred to limit damage caused to the reputation or integrity of the Buyer or any Product arising out of a Default of the Supplier.

27.4 Conduct of indemnity claims

Where under this Contract one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 8.7 (*Conduct of Claims*) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

28 MITIGATION

Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Contract.

29 INSURANCE

- 29.1 Without limitation to the generality of Clause 29.2, the Supplier shall ensure that it maintains the policy or policies of insurance referred to in the Order Form.
- 29.2 Notwithstanding the benefit to the Buyer of the policy or policies of insurance referred to in Framework Schedule 14 (*Insurance Requirements*), the Supplier shall effect and maintain any such further policy or policies of insurance or extensions to such existing policy or policies of insurance procured by under the Framework in respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Contract.

PART 8 – REMEDIES AND RELIEF

30 RECTIFICATION PLAN PROCESS

- 30.1 In the event that:
 - 30.1.1 there is, or in the Buyer's opinion is reasonably likely to be, a Delay; and/or
 - 30.1.2 in any Service Period there has been:
 - (a) a Material KPI Failure; and/or
 - (b) a Material PI Failure; and/or
 - 30.1.3 the Supplier commits or in the Buyer's opinion is reasonably likely to commit, a Default (including, without limitation, obligations set out in Schedule 7.6 (*Risk, Regulatory Compliance and Financial Crime*)) that has or may have an adverse effect on the provision of the Services or the ability of the Buyer to fulfil its obligations (contractual, regulatory and/or statutory) that is capable of remedy;
 - 30.1.4 the Supplier commits or in the Buyer's opinion is reasonably likely to commit, a Default that has or may have an adverse effect on the provision of the services to be provided by any Relevant Third Party Supplier that is capable of remedy;
 - 30.1.5 the Supplier fails to comply, or in the Buyer's opinion is reasonably likely to fail to comply, with any of its obligations under the Collaboration Agreement (including without limitation, its obligations in Clauses 5, 6 and 7) which the Buyer considers, acting reasonably, has an adverse impact including Delay on the provision of any of the Services of the Supplier or adverse impact on any Relevant Third Party Supplier; or
 - 30.1.6 the Supplier becomes aware of a failure by any Relevant Third Party Supplier or the Buyer which may lead to a Supplier or Buyer Default,

(each a “**Notifiable Default**”), the Supplier shall notify the Buyer of the Notifiable Default as soon as practicable but in any event within two (2) Working Days of becoming aware (including following a notification from the Buyer) of the Notifiable Default. Such notification from the Supplier shall detail the actual or anticipated effect of the Notifiable Default on itself, the Relevant Third Party Suppliers and the Buyer. Unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event, the Buyer may not terminate this Contract in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process. Where the Notifiable Default relates to the acts or omissions of the Relevant Third Party Suppliers, the Supplier must still comply with its obligation to notify the Buyer under this Clause 30.1 (and, if applicable, any other notification obligation under the Collaboration Agreement), and in such situation the Buyer shall determine whether a Rectification Plan Process is appropriate on a case-by-case basis.

30.2 **Notification**

30.2.1 If:

- (a) the Supplier notifies the Buyer pursuant to Clause 30.1 that a Notifiable Default has occurred; or
- (b) the Buyer becomes aware of the Notifiable Default before the Supplier has notified the Buyer pursuant to Clause 30.1, the Buyer may notify the Supplier that it considers that a Notifiable Default has occurred (setting out detail of the matter and what the Supplier has to rectify),

then, the Supplier shall comply with the Rectification Plan Process, provided that Clause 30.2 shall not apply where the Notifiable Default also constitutes a Supplier Termination Event and the Buyer serves a Termination Notice, and the Parties agree that the Notifiable Default could not be rectified before the Termination Notice expires.

30.3 For the avoidance of doubt, the Supplier shall still have an obligation to mitigate and, where possible, rectify Notifiable Defaults during the Term of the Agreement regardless of the Rectification Plan Process being followed.

30.4 If the Supplier does not notify the Buyer pursuant to Clause 30.1 that a Notifiable Default has occurred, without prejudice to the Buyer's right to notify the Supplier under Clause 30.2, or the Notifiable Default is irremediable then the Buyer may, as soon as becoming aware of the Notifiable Default, terminate this Contract in whole or in part by a Termination Notice to the Supplier on the grounds of the Notifiable Default without first following the Rectification Plan Process.

30.5 **Submission of the draft Rectification Plan**

30.5.1 The Supplier shall submit a draft Rectification Plan to the Buyer for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties but noting the Parties are not obliged to agree any extension) after the date of the original notification pursuant to Clause 30.2 (*Notification*). The Supplier shall submit a draft Rectification Plan to the Buyer even if the Supplier disputes that it is responsible for the Notifiable Default.

30.5.2 The draft Rectification Plan issued pursuant to Clause 30.5 or 30.8 shall set out as a minimum:

- (a) full details of the Notifiable Default that has occurred, including a root cause analysis;
- (b) the actual or anticipated effect of the Notifiable Default, including the effect on Relevant Third Party Suppliers and the Buyer;
- (c) the steps which the Supplier proposes to take to rectify the Notifiable Default and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default; and

- (d) any Dependencies the Supplier has on the Buyer or Relevant Third Party Suppliers to enable the Supplier to remedy the Notifiable Default (if any).
- 30.5.3 The Supplier shall promptly provide to the Buyer any further documentation that the Buyer reasonably requires to assess the Supplier's root cause analysis and/or other draft Rectification Plan details. If the Parties do not agree on the root cause and/or any other Rectification Plan detail set out in the draft Rectification Plan, the Buyer can reject the draft Rectification Plan in accordance with Clause 30.8.
- 30.6 Where the root cause analysis identifies the root cause to be with a Relevant Third Party Supplier, the Supplier shall immediately notify the Buyer on becoming aware of this and the Buyer shall, at its sole discretion, either:
 - 30.6.1 agree and cancel the Notifiable Default notice;
 - 30.6.2 require the Supplier to work jointly with the Relevant Third Party Supplier(s) to develop a joint Rectification Plan in accordance with this Clause 30; or
 - 30.6.3 reject the root cause finding and require the Supplier continues to produce a Draft Rectification Plan in accordance with Clause 30.3.
- 30.7 Where the Buyer requires, the Supplier shall work in good faith with one or more Relevant Third Party Suppliers in preparing a draft Rectification Plan notwithstanding that there has not been a Notifiable Default initiated under this Clause 30.
- 30.8 **Agreement of the Rectification Plan**
 - 30.8.1 The Buyer may reject the draft Rectification Plan by notice to the Supplier if it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
 - (a) is insufficiently detailed to be capable of proper evaluation;
 - (b) will take too long to complete;
 - (c) will not prevent reoccurrence of the Notifiable Default;
 - (d) will rectify the Notifiable Default but in a manner which is unacceptable to the Buyer; and/or
 - (e) does not provide the information required pursuant to Clause 30.5.2.
 - 30.8.2 The Buyer shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Buyer rejects the draft Rectification Plan pursuant to Clause 30.6.1, the Buyer shall give reasons for its decision and the Supplier shall resolve the Buyer's reasons in the preparation of a revised Rectification Plan. The right to revise the draft Rectification Plan shall only apply on the first submission of such a draft Rectification Plan. The Supplier shall submit the first revised draft of the Rectification Plan to the Buyer for review within five (5) Working Days (or such other period as agreed between the Parties but noting the Parties are not obliged to agree any extension) of the date of the Buyer's notice rejecting the first draft.
 - 30.8.3 On receipt of the revised draft Rectification Plan pursuant to Clause 30.6.2, the Buyer shall undertake a further review in accordance with Clause 30.6.1, to be escalated and undertaken by an individual of appropriate seniority. In the event that, following the further review, the Buyer rejects the revised draft Rectification Plan, the Buyer may, in its sole discretion:

- (a) permit the Supplier to further revise the draft Rectification Plan, in which case the terms of Clause 30.6.2 shall apply, save that the review shall be further escalated to and undertaken by a sufficiently senior level of management; or
 - (b) terminate this Contract in whole or in part by a Termination Notice to the Supplier.
- 30.8.4 If the Buyer consents to the draft Rectification Plan, this shall become the agreed Rectification Plan and:
 - (a) the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
 - (b) the Buyer may no longer terminate this Contract in whole or in part on the grounds of the relevant Notifiable Default save in the event of a Rectification Plan Failure or other Supplier Termination Event; and
- 30.8.5 all costs:
 - (a) incurred by the Supplier; or
 - (b) reasonably incurred and evidenced by Relevant Third Party Suppliers and the Buyer in supporting the delivery of a Rectification Plan Process, where the notifiable Default originated with the Supplier,

shall be borne by the Supplier.

31 NOT USED

32 REMEDIAL ADVISER

- 32.1 If:
 - 32.1.1 any of the Intervention Trigger Events occur; or
 - 32.1.2 the Buyer believes that any of the Intervention Trigger Events have occurred or are likely to occur,

(each an “**Intervention Cause**”), the Buyer may give notice to the Supplier (an “**Intervention Notice**”) giving details of the Intervention Cause and requiring:

 - (a) a meeting between the Buyer Representative and the Supplier Representative and, where appropriate, Relevant Third Party Supplier representatives, to discuss the Intervention Cause; and/or
 - (b) where the Buyer requires a Remedial Adviser to be appointed, the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 32.

For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Buyer has no obligation to exercise its rights under this Clause 32.1 prior to or instead of exercising its right to terminate this Contract.

If the Supplier fails to attend the meeting in accordance with the notice given by the Buyer under Clause 32.1, the Supplier will automatically be obligated to appoint a Remedial Adviser in accordance this Clause 32 regardless of whether the notice required such appointment or not.

- 32.2 If the Buyer gives notice that it requires the appointment of a Remedial Adviser:
 - 32.2.1 the Remedial Adviser shall be:

- (a) a person selected by the Supplier and approved by the Buyer; or
 - (b) if none of the persons selected by the Supplier have been approved by the Buyer (or no person has been selected by the Supplier) within ten (10) Working Days following the date on which the Intervention Notice is deemed served, a person identified by the Buyer;
- 32.2.2 the terms of engagement agreed with the Remedial Adviser must be approved by the Buyer;
- 32.2.3 the Remedial Adviser start date within the terms of engagement shall be a date specified by the Buyer; and
- 32.2.4 any right of the Buyer to terminate this Contract pursuant to Clause 36.1.1(b) (*Termination by the Buyer*) for the occurrence of that Intervention Cause shall be suspended for sixty (60) Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties but noting the Parties are not obliged to agree any extension) (the “**Intervention Period**”).
- 32.3 The Remedial Adviser’s overall objective shall be to advise the Supplier and provide recommendations to the Supplier of how to mitigate the effects of, and (to the extent capable of being remedied) to recommend steps to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Supplier’s responsibilities under this Contract), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:
 - 32.3.1 observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
 - 32.3.2 gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
 - 32.3.3 write reports and provide information to the Buyer in connection with the steps being taken by the Supplier to remedy the Intervention Cause;
 - 32.3.4 make recommendations to the Buyer and/or the Supplier as to how the Intervention Cause might be remedied and mitigated or avoided in the future; and/or
 - 32.3.5 any other steps that the Buyer and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause,

provided that any recommendations shall be subject to the Buyer’s approval prior to being adopted.
- 32.4 During the Remedial Adviser’s appointment the Supplier shall support and co-operate with the Remedial Adviser including, without limitations:
 - 32.4.1 work alongside, provide information to, co-operate in good faith with and adopt any methodology in providing the Services recommended by the Remedial Adviser; and
 - 32.4.2 ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets.
- 32.5 Following the Buyer’s approval, the Supplier shall comply with the recommendations made by the Remedial Adviser including by, without limitations:
 - 32.5.1 implementing such additional monitoring as the Buyer and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;

- 32.5.2 implementing any recommendations made by the Remedial Adviser (such recommendations to be practicable and proportionate in the circumstances for the Supplier to adopt) that have been approved by the Buyer within the timescales given by the Remedial Adviser; and
 - 32.5.3 engaging and co-operating with the Relevant Third Party Suppliers to accommodate the Remedial Adviser's recommendations.
- 32.6 Where the Buyer does not provide its approval of the Remedial Adviser's recommendations in accordance with Clause 32.3 the following steps shall be followed:
- 32.6.1 the Buyer shall give notice to the Remedial Adviser of its reasoning for not approving the recommendations and, at the Buyer's sole discretion, the Buyer may include suggested changes within the notice;
 - 32.6.2 the Remedial Adviser shall then have five (5) Working Days to revise its recommendations taking into consideration the Buyer's reasons provided under Clause 32.6.1 before resubmitting to the Buyer for approval; and
 - 32.6.3 if the Buyer still does not approve of the recommendations, the Buyer (at its complete discretion) may either:
 - (a) request the resubmission of further revised recommendations in accordance with Clause 32.6.2; or
 - (b) inform the Supplier to terminate the Remedial Adviser's appointment and appoint a new Remedial Adviser in accordance with Clause 32.2.
- 32.7 The Supplier shall not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Buyer (such consent not to be unreasonably withheld).
- 32.8 The Supplier shall be responsible for:
- 32.8.1 the costs of appointing, and the fees charged by, the Remedial Adviser; and
 - 32.8.2 its own costs and those reasonably incurred and evidenced by Relevant Third Party Suppliers in connection with any action required by the Buyer and/or the Remedial Adviser pursuant to this Clause 32.
- 32.9 If:
- 32.9.1 the Supplier:
 - (a) fails to perform any of the steps in this Clause 32 or otherwise required by the Buyer in an Intervention Notice; and/or
 - (b) is in Default of any of its obligations under Clause 32.4; and/or
 - 32.9.2 the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,
- (each a "**Remedial Adviser Failure**"), the Buyer shall be entitled to terminate this Contract pursuant to Clause 36.1.1(b) (*Termination by the Buyer*).

33 STEP-IN RIGHTS

- 33.1 On the occurrence of a Step-In Trigger Event, the Buyer may serve notice on the Supplier (a "**Step-In Notice**") that it will be taking action under this Clause 33 (*Step-in Rights*), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a

confidentiality undertaking equivalent to Clause 23 (*Confidentiality*)). The Step-In Notice shall set out the following:

- 33.1.1 the action the Buyer wishes to take and in particular the Services that it wishes to control (the “**Required Action**”);
- 33.1.2 the Step-In Trigger Event that has occurred and whether the Buyer believes that the Required Action is due to the Supplier's Default;
- 33.1.3 the date on which it wishes to commence the Required Action;
- 33.1.4 the time period which it believes will be necessary for the Required Action;
- 33.1.5 whether the Buyer will require access to the Supplier's premises and/or the Sites; and
- 33.1.6 to the extent practicable, the impact that the Buyer anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.

33.2 Following service of a Step-In Notice, the Buyer shall:

- 33.2.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
- 33.2.2 keep records of the Required Action taken and provide information about the Required Action to the Supplier;
- 33.2.3 co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Buyer is not assuming control; and
- 33.2.4 act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Buyer's rights under this Clause 33.

33.3 For so long as and to the extent that the Required Action is continuing, then:

- 33.3.1 the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
- 33.3.2 no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 33.4 shall apply to Deductions from Charges in respect of other Services; and
- 33.3.3 the Buyer shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Buyer's costs of taking the Required Action.

33.4 If the Supplier demonstrates to the reasonable satisfaction of the Buyer that the Required Action has resulted in:

- 33.4.1 the degradation of any Services not subject to the Required Action; or
- 33.4.2 the non-Achievement of a Milestone,

beyond that which would have been the case had the Buyer not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.

33.5 Before ceasing to exercise its step in rights under this Clause 33 the Buyer shall deliver a written notice to the Supplier (a “**Step-Out Notice**”), specifying:

- 33.5.1 the Required Action it has actually taken; and

33.5.2 the date on which the Buyer plans to end the Required Action (the “**Step-Out Date**”) subject to the Buyer being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 33.6.

33.6 The Supplier shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the Step-Out Date, develop for the Buyer's approval a draft plan (a “**Step-Out Plan**”) relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Contract.

33.7 If the Buyer does not approve the draft Step-Out Plan, the Buyer shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Buyer for the Buyer's approval. The Buyer shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

33.8 The Supplier shall bear its own costs in connection with any step-in by the Buyer under this Clause 33, provided that the Buyer shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Buyer under:

33.8.1 limbs (c) or (d) of the definition of a Step-In Trigger Event; or

33.8.2 limbs (e) or (f) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Buyer serving the Step-In Notice is identified as not being the result of the Supplier's Default).

34 BUYER CAUSE

34.1 Notwithstanding any other provision of this Contract, if the Supplier has failed to:

34.1.1 Achieve a Milestone by its Milestone Date;

34.1.2 provide the Operational Services in accordance with the Target Performance Levels; and/or

34.1.3 comply with its obligations under this Contract,

(each a “**Supplier Non-Performance**”), and can demonstrate that the Supplier Non-Performance would not have occurred but for an Buyer Cause, then (subject to the Supplier fulfilling its obligations in this Clause 34):

(a) the Supplier shall not be treated as being in breach of this Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Buyer Cause;

(b) the Buyer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:

(i) to terminate this Contract pursuant to Clause 36.1.1(b) (*Termination by the Buyer*); or

(ii) to take action pursuant to Clauses 32 (*Remedial Adviser*) or 33 (*Step-In*);

(c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:

(i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Buyer Cause;

- (ii) if the Buyer, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Buyer Cause; and
- (iii) the Supplier shall be entitled to claim compensation subject to and in accordance with the principles set out in Paragraph 2 of Part C of Schedule 7.1 (*Charges and Invoicing*); and/or
- (d) where the Supplier Non-Performance constitutes a Performance Failure:
 - (i) the Supplier shall not be liable to accrue Service Credits;
 - (ii) the Buyer shall not be entitled to withhold any of the Service Charges pursuant to Clause 7.2.1(d)(ii) (*Performance Failures*);
 - (iii) the Buyer shall not be entitled to withhold and retain any Compensation for Unacceptable KPI Failure pursuant to Clause 7.3.1 (*Unacceptable KPI Failure*); and
 - (iv) the Supplier shall be entitled to invoice for the Service Charges for the relevant Operational Services affected by the Buyer Cause,

in each case, to the extent that the Supplier can demonstrate that the Performance Failure was caused by the Buyer Cause.

34.2 In order to claim any of the rights and/or relief referred to in Clause 34.1, the Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that a Buyer Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Buyer notice (a “**Relief Notice**”) setting out details of:

34.2.1 the Supplier Non-Performance;

34.2.2 the Buyer Cause and its effect, or likely effect, on the Supplier’s ability to meet its obligations under this Contract;

34.2.3 any steps which the Buyer can take to eliminate or mitigate the consequences and impact of such Buyer Cause; and

(a) the relief and/or compensation claimed by the Supplier.

34.3 Following the receipt of a Relief Notice, the Buyer shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Buyer Cause and whether it agrees with the Supplier’s assessment set out in the Relief Notice as to the effect of the relevant Buyer Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary.

34.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Buyer Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

34.5 Without prejudice to Clause 5.4 (*Continuing obligation to provide the Services*), if a Dispute arises as to:

34.5.1 whether a Supplier Non-Performance would not have occurred but for an Buyer Cause; and/or

34.5.2 the nature and/or extent of the relief and/or compensation claimed by the Supplier,

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

- 34.6 Any Change that is required to the Implementation Plan or to the Charges pursuant to this Clause 34 shall be implemented in accordance with the Change Control Procedure.

35 FORCE MAJEURE

- 35.1 Subject to the remaining provisions of this Clause 35 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*)), a Party may claim relief under this Clause 35 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 35.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 35.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 35 to the extent that consequences of the relevant Force Majeure Event:
- 35.3.1 are capable of being mitigated, but the Supplier has failed to do so;
 - 35.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract; or
 - 35.3.3 are the result of the Supplier's failure to comply with its Service Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Service Continuity Plan).
- 35.4 Subject to Clause 35.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 35.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 35.6 Where, as a result of a Force Majeure Event:
- 35.6.1 an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:
 - (a) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure other than pursuant to Clause 36.1.1(c) (*Termination by the Buyer*) or Clause 36.2.2 (*Termination by the Supplier*); and
 - (b) neither Party shall be liable for any Default arising as a result of such failure;
 - 35.6.2 the Supplier fails to perform its obligations in accordance with this Contract:
 - (a) the Buyer shall not be entitled:

- (i) during the continuance of the Force Majeure Event to exercise its rights under Clause 32 (*Remedial Adviser*) and/or Clause 33 (*Step-in Rights*) as a result of such failure;
 - (ii) to receive Service Credits, to withhold any of the Service Charges pursuant to Clause 7.2.1(d)(ii) (*Performance Failures*) or withhold and retain any of the Service Charges as compensation pursuant to Clause 7.3.1 (*Unacceptable KPI Failure*) to the extent that a Performance Failure has been caused by the Force Majeure Event; and
- (b) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.

35.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.

35.8 Relief from liability for the Affected Party under this Clause 35 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 35.7.

PART 9 – TERMINATION AND EXIT MANAGEMENT

36 TERMINATION RIGHTS

36.1 Termination by the Buyer

36.1.1 The Buyer may terminate this Contract by issuing a Termination Notice to the Supplier:

- (a) for convenience at any time, including where the Contract should not have been entered into in view of a serious infringement of obligations under the Public Contracts Regulations 2015;
- (b) if a Supplier Termination Event occurs;
- (c) if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or
- (d) if the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

and this Contract shall terminate on the date specified in the Termination Notice.

36.1.2 Where the Buyer:

- (a) is terminating this Contract under Clause 36.1.1(b) due to the occurrence of either limb (b) and/or (g) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
- (b) has the right to terminate this Contract under Clause 36.1.1(b) or Clause 36.1.1(c), it may, prior to or instead of terminating the whole of this Contract, serve a Termination Notice requiring the partial termination of this Contract to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

36.2 Termination by the Supplier

The Supplier may, by issuing a Termination Notice to the Buyer, terminate:

- 36.2.1 this Contract if the Buyer fails to pay an undisputed sum due to the Supplier under this Contract which in aggregate exceeds £ [REDACTED] ([REDACTED]) and such amount remains outstanding forty (40) Working Days after the receipt by the Buyer of a notice of non-payment from the Supplier; or
- 36.2.2 any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Contract or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice). If the operation of Clause 36.2.2 would result in a Partial Termination, the provisions of Clause 36.3 (*Partial Termination*) shall apply.

36.3 Partial Termination

- 36.3.1 If the Supplier notifies the Buyer pursuant to Clause 36.2.2 (*Termination by the Supplier*) that it intends to terminate this Contract in part and the Buyer, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Buyer Requirements, then the Buyer shall be entitled to terminate the remaining part of this Contract by serving a Termination Notice to the Supplier within one (1) month of receiving the Supplier's Termination Notice. For the purpose of this Clause 36.3.1, in assessing the significance of any part of the Buyer Requirements, regard shall be had not only to the proportion of that part to the Buyer Requirements as a whole, but also to the importance of the relevant part to the Buyer.
- 36.3.2 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:
 - (a) the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;
 - (b) any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and
 - (c) the Supplier shall not be entitled to reject the Change.

37 CONSEQUENCES OF EXPIRY OR TERMINATION

37.1 General Provisions on Expiry or Termination

The provisions of Clauses 5.3 (*Specially Written Software warranty*), 10.2.1 and 10.2.2 (*VAT*), 10.3.1 and 10.3.2 (*Set-off and Withholding*), 12 (*Records, Reports, Audits & Open Book Data*), 14.4 (*Employment Indemnity*), 14.5 (*Income Tax and National Insurance Contributions*), 16 (*Intellectual Property Rights*), 17 (*Transfer and Licences Granted by the Supplier*), 20 (*IPRs Indemnity*), 23 (*Confidentiality*), 24 (*Transparency and Freedom of Information*), 25 (*Protection of Personal Data*), 27 (*Limitations on Liability*), 37 (*Consequences of Expiry or Termination*), 44 (*Severance*), 46 (*Entire Agreement*), 47 (*Third Party Rights*), 49 (*Disputes*) and 50 (*Governing Law and Jurisdiction*), and the provisions of Schedule 1 (*Definitions*), 7.1 (*Charges and Invoicing*), 7.2 (*Payments on Termination*), 7.5 (*Financial Reports and Audit Rights*), 8.3 (*Dispute Resolution Procedure*), 8.4 (*Reports and Records Provisions*), 8.5 (*Exit Management*), and 9.1 (*Staff Transfer*), shall survive the termination or expiry of this Contract.

37.2 Exit Management

The Parties shall comply with the provisions of Schedule 8.5 (*Exit Management*) and any current Exit Plan in relation to orderly transition of the Services to the Buyer or a Replacement Supplier.

37.3 Payments by the Buyer

37.3.1 If this Contract is terminated by the Buyer pursuant to Clause 36.1.1(a) (*Termination by the Buyer*) or by the Supplier pursuant to Clause 36.2.1 (*Termination by the Supplier*), the Buyer shall pay the Supplier the following payments (which shall be the Supplier's sole remedy for the termination of this Contract):

- (a) the Termination Payment; and
- (b) the Compensation Payment, if either of the following periods is less than three hundred and sixty five (365) days:
 - (i) the period from (but excluding) the date that the Termination Notice is given (or, where Paragraph 2.1.1 of Part D of Schedule 7.1 (*Charges and Invoicing*) applies, deemed given) by the Buyer pursuant to Clause 36.1.1(a) (*Termination by the Buyer*) to (and including) the Termination Date; or
 - (ii) the period from (and including) the date of the non-payment by the Buyer referred to in Clause 36.2.1 (*Termination by the Supplier*) to (and including) the Termination Date.

37.3.2 If this Contract is terminated (in part or in whole) by the Buyer pursuant to Clauses 36.1.1(b), 36.1.1(c) and/or 36.1.2 (*Termination by the Buyer*), or the Term expires, the only payments that the Buyer shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:

- (a) payments in respect of any Assets or apportionments in accordance with Schedule 8.5 (*Exit Management*); and
- (b) payments in respect of unpaid Charges for Services received up until the Termination Date.

37.3.3 The costs of termination incurred by the Parties shall lie where they fall if:

- (a) either Party terminates or partially terminates this Contract for a continuing Force Majeure Event pursuant to Clauses 36.1.1(c) or 36.1.2(b) (*Termination by the Buyer*) or 36.2.2 (*Termination by the Supplier*); or
- (b) the Buyer terminates this Contract under Clause 36.1.1(d) (*Termination by the Buyer*).

37.4 Payments by the Supplier

37.4.1 In the event of termination or expiry of this Contract, the Supplier shall repay to the Buyer all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.

37.4.2 If this Contract is terminated (in whole or in part) by the Buyer pursuant to Clause 36.1.1(b) (*Termination by the Buyer*) prior to Achievement of one or more CPP Milestones, the Buyer may at any time on or within twelve (12) months of the issue of the relevant Termination Notice by issue to the Supplier of written notice (a "**Milestone Adjustment Payment Notice**") require the Supplier to repay to the Buyer an amount equal to the aggregate Milestone Adjustment Payment Amounts in respect of each CPP Milestone to which the Milestone Adjustment Payment Notice relates.

- 37.4.3 A Milestone Adjustment Payment Notice shall specify:
- (a) each CPP Milestone to which it relates;
 - (b) in relation to each such CPP Milestone, each Deliverable relating to that CPP Milestone that the Buyer wishes to retain, if any (each such Deliverable being a **"Retained Deliverable"**); and
 - (c) those Retained Deliverables, if any, the Allowable Price for which the Buyer considers should be subject to deduction of an adjusting payment on the grounds that they do not or will not perform in all material respects in accordance with their specification (such adjusting payment being an **"Allowable Price Adjustment"**),
- and may form part of a Termination Notice.
- 37.4.4 The Supplier shall within ten (10) Working Days of receipt of a Milestone Adjustment Payment Notice, in each case as applicable:
- (a) notify the Buyer whether it agrees that the Retained Deliverables which the Buyer considers should be subject to an Allowable Price Adjustment as specified in the relevant Milestone Adjustment Payment Notice should be so subject; and
 - (b) in relation to each such Retained Deliverable that the Supplier agrees should be subject to an Allowable Price Adjustment, notify the Buyer of the Supplier's proposed amount of the Allowable Price Adjustment and the basis for its approval; and/or
 - (c) provide the Buyer with its calculation of the Milestone Adjustment Payment Amount in respect of each CPP Milestone the subject of the relevant Milestone Adjustment Payment Notice using its proposed Allowable Price Adjustment, including details of:
 - (i) all relevant Milestone Payments; and
 - (ii) the Allowable Price of each Retained Deliverable; and
 - (d) provide the Buyer with such supporting information as the Buyer may require.
- 37.4.5 If the Parties do not agree the calculation of a Milestone Adjustment Payment Amount within twenty (20) Working Days of the Supplier's receipt of the relevant Milestone Adjustment Payment Notice, either Party may refer the Dispute to the Dispute Resolution Procedure.
- 37.4.6 If the Buyer issues a Milestone Adjustment Payment Notice pursuant to Clause 37.4.2:
- (a) the Buyer shall:
 - (i) securely destroy or return to the Supplier all Non-retained Deliverables that are in tangible form; and
 - (ii) ensure that all Non-retained Deliverables that are held in electronic, digital or other machine-readable form cease to be readily accessible (other than by the information technology staff of the Buyer) from any computer, word processor, voicemail system or any other device containing such all Non-retained Deliverables,
- in each case as soon as reasonably practicable after repayment of the aggregate Milestone Adjustment Payment Amounts repayable pursuant to that Milestone Adjustment Payment Notice; and

- (b) all licences granted pursuant to Clause 17 (*Transfer and Licences granted by the Supplier*) in respect of Specially Written Software and Project Specific IPRs and any Supplier Non-COTS Software and/or Supplier Background IPRs shall terminate upon such repayment to the extent that they relate to the Non-retained Deliverables.

PART 10 - MISCELLANEOUS AND GOVERNING LAW

38 COMPLIANCE

38.1 Health and Safety

38.1.1 The Supplier shall perform its obligations under this Contract (including those in relation to the Services) in accordance with:

- (a) all applicable Law regarding health and safety; and
- (b) the Health and Safety Policy whilst at the Buyer Premises.

38.1.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Buyer Premises of which it becomes aware and which relate to or arise in connection with the performance of this Contract. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

38.2 Equality and Diversity

The Supplier shall:

38.2.1 perform its obligations under this Contract (including those in relation to the Services) in accordance with:

- (a) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
- (b) the Buyer's equality and diversity policy as provided to the Supplier from time to time; and
- (c) any other requirements and instructions which the Buyer reasonably imposes in connection with any equality obligations imposed on the Buyer at any time under applicable equality Law; and

38.2.2 take all necessary steps, and inform the Buyer of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

38.3 Official Secrets Act and Finance Act

The Supplier shall comply with the provisions of:

38.3.1 the Official Secrets Acts 1911 to 1989; and

38.3.2 section 182 of the Finance Act 1989.

39 ASSIGNMENT AND NOVATION

39.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without the prior written consent of the Buyer.

39.2 The Buyer may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Contract and/or any associated licences to:

39.2.1 any Central Government Body; or

39.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Buyer,

and the Supplier shall, at the Buyer's request, enter into a novation agreement in such form as the Buyer shall reasonably specify in order to enable the Buyer to exercise its rights pursuant to this Clause 39.2.

39.3 A change in the legal status of the Buyer such that it ceases to be a Central Government Body shall not (subject to Clause 39.4) affect the validity of this Contract and this Contract shall be binding on any successor body to the Buyer.

39.4 If the Buyer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Contract to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Buyer (any such body a "**Successor Body**"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Buyer under limb (k) of the definition of Supplier Termination Event (as if references in that limb (k) to the Supplier and the Guarantor were references to the Successor Body).

40 WAIVER AND CUMULATIVE REMEDIES

40.1 The rights and remedies under this Contract may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Contract or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

40.2 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

41 RELATIONSHIP OF THE PARTIES

Except as expressly provided otherwise in this Contract, nothing in this Contract, nor any actions taken by the Parties pursuant to this Contract, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

42 PREVENTION OF FRAUD AND BRIBERY

42.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:

42.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

42.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

42.2 The Supplier shall not during the term of this Contract:

42.2.1 commit a Prohibited Act; and/or

- 42.2.2 do or suffer anything to be done which would cause the Buyer or any of the Buyer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 42.3 The Supplier shall during the term of this Contract:
- 42.3.1 establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
 - 42.3.2 have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;
 - 42.3.3 keep appropriate records of its compliance with its obligations under Clause 42.3.1 and make such records available to the Buyer on request; and
 - 42.3.4 take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with section 47 of the Criminal Finances Act 2017.
- 42.4 The Supplier shall immediately notify the Buyer in writing if it becomes aware of any breach of Clause 42.1 and/or 42.2, or has reason to believe that it has or any of the Supplier Personnel have:
- 42.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 42.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 42.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 42.5 If the Supplier makes a notification to the Buyer pursuant to Clause 42.4, the Supplier shall respond promptly to the Buyer's enquiries, co-operate with any investigation, and allow the Buyer to Audit any books, Records and/or any other relevant Documentation in accordance with Clause 12 (Records, Reports, Audits & Open Book Data).
- 42.6 If the Supplier is in Default under Clauses 42.1 and/or 42.2, the Buyer may by notice:
- 42.6.1 require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the Default; or
 - 42.6.2 immediately terminate this Contract.
- 42.7 Any notice served by the Buyer under Clause 42.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Buyer believes has committed the Prohibited Act and the action that the Buyer has elected to take (including, where relevant, the date on which this Contract shall terminate).
- 43 CONFLICTS OF INTEREST**
- 43.1 The Supplier undertakes at all times during the Term to avoid creating a conflict of interest as provided for in this Clause 43 (*Conflicts of Interest*). For these purposes, the Supplier acknowledges and agrees that a conflict of interest shall arise where:

- 43.1.1 in its provision of the Services, the Supplier is required to advise upon or select the provision of any goods or services (including software) from any third party; and
 - 43.1.2 the Supplier's advice or selection is either made as a consequence of its consideration of, or is materially influenced by, factors other than the Buyer's best interests; or
 - 43.1.3 in the circumstances set out in Clause 43.2, the Supplier fails to adhere to the procedures described in that Clause,
- (each a "**Conflict of Interest**").
- 43.2 If the Supplier wishes to submit a tender to the Buyer in relation to any re-tender of the Services or tender for new services, the Supplier shall if requested, demonstrate to the Buyer's or Service Recipients' reasonable satisfaction and otherwise ensure at all material times that:
- 43.2.1 such tender is not made with the benefit of any of the Buyer Confidential Information;
 - 43.2.2 unless otherwise agreed in writing by the Buyer or Service Recipients, those Supplier Personnel who are providing the Services and who receive the Buyer Confidential Information (the "**Business as Usual Team**") are not involved (and have not been involved) in the tender process in any way and do not directly or indirectly discuss with, or provide such information to, persons involved in the tender during the tender process (the "**Bid Team**");
 - 43.2.3 any Buyer Confidential Information is not available to the Bid Team and that such Buyer Confidential Information is stored on separate computer systems or segregated areas of the Supplier's computer systems which cannot be accessed by any member of the Bid Team;
 - 43.2.4 the Bid Team and the Business as Usual Team have an appropriate level of physical separation and are, so far as practicable, located in different offices, or different floors of the same offices, of the Supplier; and
 - 43.2.5 the Bid Team and the Business as Usual Team have, so far as is reasonable, separate reporting and management lines unless otherwise agreed in writing by the Buyer or Service Recipient.
- 43.3 The Supplier shall make any selection or acquisition of any goods or services for the Buyer pursuant to this Contract and give advice relating to such selection or acquisition in the best interests of the Buyer, irrespective of (whether arising directly or indirectly from such selection or acquisition) any interests of and potential benefits for the Supplier, the Sub-contractors and all members of the Supplier Group and all Sub-contractor Groups. For the purposes of this Clause 43, 'benefit' shall include in respect of any such goods or services the receipt of either any consideration or any other benefit which is not passed on to the Buyer.
- 43.4 If the Supplier becomes aware of any Conflict of Interest (whether such existed before the Effective Date or afterwards) it shall immediately notify the Buyer of the Conflict of Interest and provide full details of the Conflict of Interest together with any additional information which the Buyer may require in connection with such matter.
- 43.5 If the Buyer reasonably considers that the Conflict of Interest notified to the Buyer under Clause 43.4 is capable of being avoided or removed, the Buyer may require the Supplier to take such steps as are necessary to avoid or, as the case may be, remove such Conflict of Interest in accordance with the provisions in Clause 30 (*Rectification Plan Process*).
- 43.6 If:
- 43.6.1 the Supplier fails to remedy such Conflict of Interest as required in Clause 43.5; or
 - 43.6.2 such Conflict of Interest cannot be remedied; or

43.6.3 the Buyer considers that a Conflict of Interest existed at the Effective Date, such matter shall be deemed to constitute a material Default.

44 SEVERANCE

- 44.1 If any provision of this Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Contract shall not be affected.
- 44.2 In the event that any deemed deletion under Clause 44.1 is so fundamental as to prevent the accomplishment of the purpose of this Contract or materially alters the balance of risks and rewards in this Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 44.3 If the Parties are unable to agree on the revisions to this Contract within five (5) Working Days of the date of the notice given pursuant to Clause 44.2, the matter shall be dealt with in accordance with Paragraph 4 (*Commercial Negotiation*) of Schedule 8.3 (*Dispute Resolution Procedure*) except that if the representatives are unable to resolve the Dispute within thirty (30) Working Days of the matter being referred to them, this Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Contract is terminated pursuant to this Clause 44.3.

45 FURTHER ASSURANCES

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Contract.

46 ENTIRE AGREEMENT

- 46.1 This Contract constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 46.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.
- 46.3 Nothing in this Clause 46 shall exclude any liability in respect of misrepresentations made fraudulently.

47 THIRD PARTY RIGHTS

- 47.1 The provisions of Clause 20.1 (*IPRs Indemnity*), Paragraphs 2.1 and 2.6 of Part A, Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, Paragraphs 2.1 and 2.3 of Part C, Part D and Paragraphs 1.4, 2.3 and 2.8 of Part E of Schedule 9.1 (*Staff Transfer*) and the provisions of Paragraph 6.9 of Schedule 8.5 (*Exit Management*) (together "**Third Party Provisions**") confer benefits on persons named or identified in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 47.2 Subject to Clause 47.1, a person who is not a Party to this Contract has no right under the CRTPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 47.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Buyer, which may, if given, be given on and subject to such terms as the Buyer may determine.

- 47.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 47.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

48 NOTICES

- 48.1 Any notices sent under this Contract must be in writing.
- 48.2 Subject to Clause 48.4, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending.	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt
Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

- 48.3 Notices For the purposes of this Clause 48, the address and email address of each Party shall be the address and email address set out in the Order Form.
- 48.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 48.2:
- 48.4.1 Step-In Notices;
 - 48.4.2 Force Majeure Notices;
 - 48.4.3 notices issued by the Supplier pursuant to Clause 36.2 (*Termination by the Supplier*);
 - 48.4.4 Termination Notices; and
 - 48.4.5 Dispute Notices.
- 48.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 48.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 48.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 48.6 This Clause 48 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.3 (*Dispute Resolution Procedure*)).

49 DISPUTES

- 49.1 The Parties shall resolve Disputes arising out of or in connection with this Contract in accordance with the Dispute Resolution Procedure.
- 49.2 The Supplier shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

50 GOVERNING LAW AND JURISDICTION

- 50.1 This Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 50.2 Subject to Clause 49 (*Disputes*) and Schedule 8.3 (*Dispute Resolution Procedure*) (including the Buyer's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

SCHEDULE 1 - DEFINITIONS

Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below:

Access Permission means access rights for users to access and use the Virtual Library;

Accounting Reference Date means in each year the date to which the Supplier prepares its annual audited financial statements;

Achieve means:

- (a) in respect of a Test, to successfully pass a Test without any Test Issues; and
- (b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule 6.2 (*Testing Procedures*),

and “**Achieved**” and “**Achievement**” shall be construed accordingly;

Acquired Rights Directive means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;

Affected Party means the Party seeking to claim relief in respect of a Force Majeure Event;

Affiliate means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;

Allowable Assumptions means the assumptions agreed and set out in the Pricing Response Template in Attachment 7.1 (*Charges*) of the Order Form;

Allowable Price means in relation to the Retained Deliverables relating to a CPP Milestone, if any, an amount determined in accordance with the formula:

$A - B$

where:

- (a) A is an amount equal to the Costs incurred by the Supplier in providing or developing the relevant Retained Deliverables as reflected in the Financial Model together with an amount equal to the Anticipated Contract Life Profit Margin thereon; and
- (b) B is an amount equal to the Allowable Price Adjustment relating to the relevant Retained Deliverables, if any, or if there is no such Allowable Price Adjustment, zero,

provided that the Allowable Price for any Retained Deliverables shall in no circumstances exceed the aggregate amount of the Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that CPP Milestone;

Allowable Price Adjustment has the meaning given in Clause 37.4.3(c) (*Payments by the Supplier*);

Annual Contract Report has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights*);

Annual Revenue means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology:

- (a) figures for accounting periods of other than twelve (12) months should be scaled pro rata to produce a proforma figure for a twelve (12) month period; and
- (b) where the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date;

Anticipated Contract Life Profit Margin has the meaning given in Schedule 7.1 (*Charges and Invoicing*);

Approved Sub-Licensee means any of the following:

- (a) a Central Government Body;
- (b) any third party providing services to a Central Government Body; and/or
- (c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer;

Attachment means an attachment to the Order Form;

Assets means all assets and rights used by the Supplier to provide the Services in accordance with this Contract but excluding the Buyer Assets;

Assisted Digital means the provision of support to Customers unable to self-serve digitally, to guide them through their Digital Self-Service journey or operate it on their behalf;

Associated Person has the meaning given to it in section 44(4) of the Criminal Finances Act 2017;

Associates means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between twenty percent (20%) and fifty percent (50%) of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;

Assurance means written confirmation from a Relevant Buyer to the Supplier that the CRP Information is approved by the Relevant Buyer;

ATP Milestone means the Milestone linked to Authority to Proceed for the relevant Operational Services set out in the Implementation Plan;

Audit means any exercise by the Buyer of its Audit Rights pursuant to Clause 12 (*Records, Reports, Audit & Open Book Data*) and Schedule 7.5 (*Financial Reports and Audit Rights*);

Audit Agents means:

- (a) the Buyer's internal and external auditors;
- (b) the Buyer's statutory or regulatory auditors;
- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (d) HM Treasury or the Cabinet Office;
- (e) any party formally appointed by the Buyer to carry out audit or similar review functions;
- (f) as defined in Schedule 7.5 (*Financial Reports and Audit Rights*); and
- (g) successors or assigns of any of the above;

Audit Rights means the audit and access rights referred to in Schedule 7.5 (*Financial Reports and Audit Rights*);

Authority to Proceed or **ATP** means the authorisation to the Supplier to commence the provision of the relevant Operational Services to the Buyer, provided by the Buyer in the form of a Milestone Achievement Certificate in respect of the ATP Milestone;

Baseline Security Requirements means the Buyer's baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 2.4 (*Security Management*), as updated from time to time by the Buyer and notified to the Supplier;

Board means the Supplier's board of directors;

Board Confirmation means the written confirmation from the Board in accordance with Paragraph 8 of Schedule 7.4 (*Financial Distress*);

Breakage Costs Payment has the meaning given in Schedule 7.2 (*Payments on Termination*);

Buyer means the entity identified as such in the Order Form;

Buyer Assets means the Buyer Materials, the Buyer infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision or receipt of the Services, details of which are set out in the Order Form;

Buyer Background IPRs means:

- (a) IPRs owned by the Buyer before the Effective Date, including IPRs contained in any of the Buyer's Know-How, documentation, processes and procedures;
- (b) IPRs created by the Buyer independently of this Contract; and/or
- (c) Crown Copyright which is not available to the Supplier otherwise than under this Contract;

but excluding IPRs owned by the Buyer subsisting in the Buyer Software;

Buyer Cause means any material breach by the Buyer of any of the Buyer Responsibilities, except to the extent that such breach is:

- (a) the result of any act or omission by the Buyer to which the Supplier has given its prior consent; or
- (b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;

Buyer Data means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
 - (i) supplied to the Supplier by or on behalf of the Buyer; and/or
 - (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract; or
- (b) any Personal Data for which the Buyer is the Data Controller;

Buyer IT Strategy means the Buyer's IT policy in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Change Control Procedure;

Buyer Materials means the Buyer Data together with any materials, documentation, information, programs and codes supplied by the Buyer to the Supplier, the IPRs in which:

- (a) are owned or used by or on behalf of the Buyer; and
- (b) are or may be used in connection with the provision or receipt of the Services,

but excluding any Project Specific IPRs, Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third Party Software;

Buyer Premises means premises owned, controlled or occupied by the Buyer and/or any Central Government Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);

Buyer Representative means the representative appointed by the Buyer (as may be changed from time to time in accordance with Clause 11.1.3), the details of which as at the Effective Date are set out in the Order Form;

Buyer Requirements means the requirements of the Buyer set out in Attachment 2.1 (*Services Description*), Schedule 2.2 (*Performance Levels*), Attachment 2.2 (*Key Performance Indicators and Subsidiary Performance Indicators Tables*), Schedule 2.3 (*Standards*), Attachment 2.3 (*Environmental Requirements*), Schedule 2.4 (*Security Management*), the Order Form in respect of insurance, Schedule 6.1 (*Implementation Plan*), Attachment 6.1 (*Outline Implementation Plan*), Schedule 8.4 (*Reports and Records Provisions*), Attachment 8.4 (*Transparency Reports and Records to Upload to Virtual Library*), Schedule 8.5 (*Exit Management*) and Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);

Buyer Responsibilities means the responsibilities of the Buyer specified in Attachment 3 (*Buyer Responsibilities*) of the Order Form;

Buyer Software means software which is owned by or licensed to the Buyer (other than under or pursuant to this Contract) and which is or will be used by the Supplier for the purposes of providing the Services;

Buyer System means the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by the Buyer or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Services;

Buyer's Appetite for Risk has the meaning set out in the Buyer's Risk Management Framework Handbook;

Buyer's Risk Management Framework Handbook means the document detailing the Buyer's approach to the management of risk;

Cabinet Office Markets and Suppliers Team means the UK Government's team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;

Call Off Terms means these terms and conditions;

CCS means Crown Commercial Service, the authority to the Framework;

Central Government Body means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

Certificate of Costs has the meaning given in Schedule 7.1 (*Charges and Invoicing*);

Change means any change to this Contract, the Collaboration Agreement, or such other change which is the subject to Schedule 8.2 (*Change Control Procedure*) as the context requires;

Change Authorisation Note means a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2 of Schedule 8.2 (*Change Control Procedure*);

Change Control Procedure means the procedure for changing this Contract set out in Schedule 8.2 (*Change Control Procedure*);

Change in Law means any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;

Change Proposal has the meaning given in Schedule 8.2 (*Change Control Procedure*);

Change Request means a written request for a Contract Change substantially in the form of Annex 1 of Schedule 8.2 (*Change Control Procedure*);

Charges means the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 7.1 (*Charges and Invoicing*) and Attachment 7.1 (*Charges*) of the Order Form, including any Milestone Payment or Service Charge;

Class 1 Transaction has the meaning set out in the listing rules issued by the UK Listing Buyer;

CNI means Critical National Infrastructure;

Collaboration Agreement means the form of collaboration agreement set out in Attachment 12 of the Order Form or the Supplier-executed version;

Commercially Sensitive Information means the information listed in Attachment 4.2 (*Commercially Sensitive Information*) of the Order Form comprising the information of a commercially sensitive nature relating to:

- (a) the pricing of the Services;
- (b) details of the Supplier's IPRs; and
- (c) the Supplier's business and investment plans,

which the Supplier has indicated to the Buyer that, if disclosed by the Buyer, would cause the Supplier significant commercial disadvantage or material financial loss;

Comparable Supply means the supply of services to another customer of the Supplier that are the same or similar to any of the Services including both other government customers and non-government customers working in the financial services industry;

Compensation Credits means credits payable by the Supplier or any Relevant Third Party Supplier to the Buyer as a result of any Compensation and Goodwill Payments being attributed to that Relevant Third Party Supplier by the Supplier in a Service Period, calculated in accordance with Part C, Paragraph 4.5 of Schedule 7.1 (*Charges and Invoicing*);

Compensation and Goodwill Payment means a payment made to a Customer following receipt of a complaint, in accordance with the Buyer's Compensation and Goodwill Policy and following the procedure set out in Part C, Paragraph 4 of Schedule 7.1 (*Charges and Invoicing*);

Compensation and Goodwill Payments Report has the meaning given in Part C, Paragraph 4.3 of Schedule 7.1 (*Charges and Invoicing*);

Compensation for Unacceptable KPI Failure has the meaning given in Clause 7.3.1 (*Unacceptable KPI Failure*);

Compensation Payment has the meaning given in Schedule 7.2 (*Payments on Termination*);

Condition Precedent has the meaning given in Clause 4.2 (*Condition Precedent*);

Confidential Information means:

- (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Contract that relates to:
 - (i) the Disclosing Party Group; or
 - (ii) the operations, business, affairs, developments, Intellectual Property Rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;
- (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Contract that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Contract;
- (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Contract and all matters arising therefrom; and
- (d) Information derived from any of the above,

but not including any Information which:

- (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
- (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
- (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality;
- (iv) was independently developed without access to the Confidential Information; or
- (v) relates to the Supplier's:
 - (1) performance under this Contract; or

- (2) failure to pay any Sub-contractor as required pursuant to Clause 15.4.1 (*Supply Chain Protection*);

Conflict of Interest has the meaning given in Clause 43.1 (*Conflicts of Interest*);

Contract means the contract between the Buyer and the Supplier (entered into pursuant to the terms of the Framework) consisting of:

- (a) the Order Form; and
- (b) the Call Off Terms;

Contract Change means any change to this Contract other than an Operational Change;

Contract Inception Report means the initial financial model in the form of the Pricing Response Template, as agreed by the Supplier and the Buyer in writing on or before the Effective Date;

Contract Finder means the online government portal which allows suppliers to search for information about contracts worth over £10,000 (ten thousand pounds) (excluding VAT) as prescribed by Part 4 of the Public Contract Regulations 2015;

Contract Year means:

- (a) a period of twelve (12) months commencing on the Effective Date; or
- (b) thereafter a period of twelve (12) months commencing on each anniversary of the Effective Date;

provided that the final Contract Year shall end on the expiry or termination of the Term;

Control means the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly;

Controller has the meaning given in the GDPR;

Corporate Change Event means:

- (a) any change of Control of the Supplier or a Parent Undertaking of the Supplier;
- (b) any change of Control of any member of the Supplier Group which, in the reasonable opinion of the Buyer, could have a material adverse effect on the Services;
- (c) any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of the Buyer, could have a material adverse effect on the Services;
- (d) a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;
- (e) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;
- (f) payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding twenty five percent (25%) of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any twelve (12) month period;

- (g) an order is made or an effective resolution is passed for the winding up of any member of the Supplier Group;
- (h) any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group;
- (i) the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or
- (j) any process or events with an effect analogous to those in Paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;

Corporate Resolution Planning Information means, together, the:

- (a) Group Structure Information and Resolution Commentary; and
- (b) UK Public Sector and CNI Contract Information;

Costs has the meaning given in Schedule 7.1 (*Charges and Invoicing*);

CPP Milestone means a contract performance point as set out in the Implementation Plan, being the Milestone at which the Supplier has demonstrated that the Supplier Solution or relevant Service is working satisfactorily in its operating environment in accordance with Schedule 6.2 (*Testing Procedures*) and Paragraph 2 of Attachment 6 (*Test Success Criteria*) of the Order Form;

Critical National Infrastructure means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in:

- (a) major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or
- (b) significant impact on the national security, national defence, or the functioning of the UK;

Critical Performance Failure means:

- (a) the Supplier accruing in aggregate two hundred and twelve (212) or more Service Points (in terms of the number of points allocated) in any period of three (3) months; or
- (b) the Supplier accruing Service Credits or Compensation for Unacceptable KPI Failure which meet or exceed the Service Credit Cap;

Critical Service Contract means the overall status of the Services provided under this Contract as determined by the Buyer and specified in Paragraph 1.1 of Part B to Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);

CRP Information means the Corporate Resolution Planning Information;

CRTPA means the Contracts (Rights of Third Parties) Act 1999;

Customer means an individual or organisation who is either:

- (a) an existing, prospective or past holder of a Product; or

- (b) a third party acting on behalf of a Customer (for example a “Responsible Person” as defined in the Product Terms and Conditions, a financial advisor, solicitor or executor); or
- (c) an existing, prospective or past Service Recipient;

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

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

Data Protection Legislation means:

- (a) the GDPR, the LED and any applicable national implementing Laws as amended from time to time;
- (b) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and/or
- (c) all applicable Law about the processing of personal data and privacy;

Data Subject has the meaning given in the GDPR;

Data Subject Request means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to their Personal Data;

Deductions means all Service Credits, Compensation for Unacceptable KPI Failure, or any other deduction which is paid or payable to the Buyer under this Contract;

Default means any breach of the obligations of the relevant Party (including abandonment of this Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:

- (a) in the case of the Buyer, of its employees, servants, agents; or
- (b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel,

in connection with or in relation to the subject-matter of this Contract (including the Collaboration Agreement) and in respect of which such Party is liable to the other;

Defect means:

- (a) any error, damage or defect in the manufacturing of a Deliverable; or
- (b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or
- (c) any failure of any Deliverable to provide the performance, features and functionality specified in the Buyer Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria; or
- (d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the Buyer Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria;

Definition Phase has the meaning given in Schedule 8.2 (*Change Control Procedure*);

Delay means:

- (a) a delay in the Achievement of a Milestone by its Milestone Date; or
- (b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;

Deliverable means an item or feature delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Contract;

Dependencies has the meaning given in the Collaboration Agreement;

Dependent Parent Undertaking means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Contract, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Contract;

Detailed Implementation Plan means the plan developed and revised from time to time in accordance with Paragraphs 3 and 4 of Schedule 6.1 (*Implementation Plan*);

Disclosing Party has the meaning given in Clause 23.1 (*Confidentiality*);

Disclosing Party Group means:

- (a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and
- (b) where the Disclosing Party is the Buyer, the Buyer and any Central Government Body with which the Buyer or the Supplier interacts in connection with this Contract;

Dispute means any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure, save where in relation to the allocation of Compensation and Goodwill Payments (which shall be dealt with in accordance with the provisions of Paragraph 4 of Part C of Schedule 7.1 (*Charges and Invoicing*));

Dispute Notice means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;

Dispute Resolution Procedure means the dispute resolution procedure set out in Schedule 8.3 (*Dispute Resolution Procedure*);

Documentation means descriptions of the Services and Performance Indicators, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) Source Code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:

- (a) is required to be supplied by the Supplier to the Buyer under this Contract;
- (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services;

- (c) is required by the Supplier in order to provide the Services; and/or
- (d) has been or shall be generated for the purpose of providing the Services;

DOTAS means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

DPA means the Data Protection Act 2018;

Due Diligence Information means any information supplied to the Supplier by or on behalf of the Buyer prior to the Effective Date;

Effective Date means the later of:

- (a) the date on which the Order Form is signed by both Parties; and
- (b) the date on which the Condition Precedent has been satisfied or waived in accordance with Clause 4.2 (*Condition Precedent*);

EIRs means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;

Emergency Maintenance means ad hoc and unplanned maintenance provided by the Supplier where:

- (a) the Buyer reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or
- (b) the Supplier reasonably suspects that the IT Environment or the Services, or any part the IT Environment or the Services, has or may have developed a fault;

Employee Liabilities means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;

- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

Employment Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;

End to End Service means the Services and the Related Services delivering an end to end solution to the Buyer by the Supplier and any Relevant Third Party Supplier;

Estimated Year 1 Charges means the estimated Charges payable by the Buyer during the first Contract Year, as set out in the Financial Model;

Estimated Initial Service Charges means the estimated Service Charges payable by the Buyer during the period of twelve (12) months from the first Operational Service Commencement Date, as set out in the Financial Model;

EU GDPR means the General Data Protection Regulation (EU) 2016/679 as it remains in force in the European Union;

Executive Committee has the meaning given in Schedule 8.1 (*Governance*);

Exit Management means services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Buyer and/or a Replacement Supplier, as set out or referred to in Schedule 8.5 (*Exit Management*);

Exit Plan means the plan produced and updated by the Supplier during the Term in accordance with Paragraph 5 of Schedule 8.5 (*Exit Management*);

Expedited Dispute Timetable means the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 8.3 (*Dispute Resolution Procedure*);

Expert has the meaning given in Schedule 8.3 (*Dispute Resolution Procedure*);

Expert Determination means the process described in Paragraph 6 of Schedule 8.3 (*Dispute Resolution Procedure*);

Extension Period means a period set out in the Order Form (in years) from the end of the Initial Term;

Financial Distress Event means the occurrence of one or more of the events listed in Paragraph 3.1 of Schedule 7.4 (*Financial Distress*);

Financial Distress Remediation Plan means a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Contract in the event that a Financial Distress Event occurs;

Financial Model has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights*);

Financial Reports has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights*);

Financial Transparency Objectives has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights*);

FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act;

Force Majeure Event means any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier's or a Sub-contractor's supply chain;

Force Majeure Notice means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;

Former Supplier has the meaning given in Schedule 9.1 (*Staff Transfer*);

Framework means the framework agreement reference RM6100 between the Supplier and CCS;

GDPR means the UK GDPR and/or EU GDPR as relevant, considering the context of the Personal Data Processing;

General Anti-Abuse Rule means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

General Change in Law means a Change in Law where the change is of a general legislative nature including:

- a) taxation or duties of any sort affecting the Supplier or which affects or relates to a Comparable Supply;
- b) any Law relating generally to government or financial services, including private sector financial services;
- c) any changes to the laws, regulations and guidance identified in Schedule 7.6 (*Risk, Regulatory Compliance and Financial Crime*); or
- d) which affects or relates to a Comparable Supply;

Good Industry Practice means at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services or part of them (as appropriate to the context in which this expression is used) similar to the Services to a customer like the Buyer, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;

Group Structure Information and Resolution Commentary means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 2 to 4 and Annex 1 of Part B of Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);

Guarantee means the deed of guarantee in favour of the Buyer entered into by the Guarantor on or about the date of this Contract (which is in the form set out in Schedule 10 (*Guarantee*)), or any guarantee acceptable to the Buyer that replaces it from time to time;

Guarantor means IBM International Group B.V., a company incorporated under the laws of the Netherlands, registered in the Netherlands, and whose registered office is at Johan Huizingalaan 765, Amsterdam NL-NH NL 1066 VH;

Halifax Abuse Principle means the principle explained in the CJEU Case C-255/02 Halifax and others;

Health and Safety Policy means the health and safety policy of the Buyer and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;

HMRC means HM Revenue & Customs;

Hyperscaler means Amazon Web Services EMEA SARL, UK Branch, registered under UK establishment number BR019315, with UK establishment offices at 1 Principal Place, London, Worship Street, EC2A 2FA;

Impact Assessment has the meaning given in Schedule 8.2 (*Change Control Procedure*);

Implementation Plan means the Outline Implementation Plan or (if and when approved by the Buyer pursuant to Paragraph 3 of Schedule 6.1 (*Implementation Plan*)) the Detailed Implementation Plan as updated in accordance with Paragraph 4 of Schedule 6.1 (*Implementation Plan*) from time to time;

Implementation Services means the implementation services described as such in the Services Description;

Implementation Services Commencement Date means the date on which the Supplier is to commence provision of the first of the Services, being the Effective Date;

Indemnified Person means the Buyer and each and every person to whom the Buyer (or any direct or indirect sub-licensee of the Buyer) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Contract;

Independent Control means where a Controller has provided Personal Data to another Party which is neither a Processor or Joint Controller because the recipient itself determines the purposes and means of processing but does so separately from the Controller providing it with Personal Data;

Information means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);

Initial Term means the period set out in the Order Form from and including the Effective Date;

Initial Upload Date means the occurrence of an event detailed in Part B of Attachment 8.4 (*Transparency Reports and Records to Upload to the Virtual Library*) of the Order Form which requires the Supplier to provide its initial upload of the relevant information to the Virtual Library;

Insolvency Event with respect to any person, means:

- (a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:
 - (i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;
- (b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;

- (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;
- (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days;
- (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) where that person is a company, a LLP or a partnership:
 - (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
 - (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;
 - (iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or
 - (iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or
- (g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

Intellectual Property Rights or IPRs means:

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- (c) all other rights having equivalent or similar effect in any country or jurisdiction;

Intervention Cause has the meaning given in Clause 32.1 (*Remedial Adviser*);

Intervention Notice has the meaning given in Clause 32.1 (*Remedial Adviser*);

Intervention Period has the meaning given in Clause 32.2.4 (*Remedial Adviser*);

Intervention Trigger Event means:

- (a) any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event;
- (b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;

- (c) the Supplier accruing in aggregate one hundred and twenty (120) or more Service Points (in terms of the number of points allocated) in any period of three (3) months;
- (d) the Supplier accruing Service Credits which meet or exceed seventy five percent (75%) of the Service Credit Cap;
- (e) the Supplier not Achieving a Key Milestone within seventy five (75) days of its relevant Milestone Date; and/or
- (f) a Default by the Supplier under the Collaboration Agreement that materially prevents or delays the performance of any of the services or obligations of a Relevant Third Party Supplier;

IPRs Claim means any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Buyer Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Contract or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Contract;

IT means information and communications technology;

IT Environment means the Buyer System and the Supplier System;

Joint Controllers means where two or more Controllers jointly determine the purposes and means of processing;

Key Milestone means the Milestones identified in the Implementation Plan as key milestones to include Milestone 5 and Milestone 7;

Key Performance Indicator means the key performance indicators set out in Paragraph 1 of Attachment 2.2 (*Key Performance Indicators and Subsidiary Performance Indicators Tables*) of the Order Form;

Key Personnel means those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Attachment 9.2 (*Key Personnel*) of the Order Form against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 14.3.3 and 14.3.4 (*Key Personnel*);

Key Roles means a role described as a Key Role in Attachment 9.2 (*Key Personnel*) of the Order Form and any additional roles added from time to time in accordance with Clause 14.3 (*Key Personnel*);

Key Sub-contract means each Sub-contract with a Key Sub-contractor;

Key Sub-contractor means any Sub-contractor:

- (a) which, in the opinion of CCS or the Buyer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or
- (b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten percent (10%) of the aggregate Charges forecast to be payable under this Contract (as set out in the Financial Model);

Know-How means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party's possession before this Contract;

KPI Failure means a failure to meet the Target Performance Level in respect of a Key Performance Indicator;

KPI Service Threshold shall be as set out against the relevant Key Performance Indicator in Paragraph 1 of Attachment 2.2 (*Key Performance Indicators and Subsidiary Performance Indicators Tables*) of the Order Form;

Law means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply or the Buyer is bound to comply or which the Buyer has decided voluntarily to comply, including but not limited to those identified in Schedule 7.6 (*Risk, Regulatory Compliance and Financial Crime*);

LED means Law Enforcement Directive (*Directive (EU) 2016/680*);

Licensed Software means all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to the Buyer for the purposes of or pursuant to this Contract, including any Supplier Software, Third Party Software and/or any Specially Written Software;

Long Stop Date means the latest date(s) by which the Operational Services must be fully available and functional as set out in Schedule 6.1 (*Implementation Plan*);

Losses means losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;

Maintenance Schedule shall have the meaning set out in Clause 9.2 (*Maintenance*);

Malicious Software means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

Management Information means the management information specified in Schedule 2.2 (*Performance Levels*), Schedule 7.1 (*Charges and Invoicing*) and Schedule 8.1 (*Governance*) to be provided by the Supplier to the Buyer;

Material KPI Failure means:

- (a) a Serious KPI Failure;
- (b) a Severe KPI Failure; or
- (c) a failure by the Supplier to meet a KPI Service Threshold;

Material PI Failure means:

- (a) a failure by the Supplier to meet the PI Service Threshold in respect of twenty five percent (25%) or more of the Subsidiary Performance Indicators that are measured in that Service Period; and/or
- (b) a failure by the Supplier to meet the Target Performance Level in respect of fifty percent (50%) or more of the Subsidiary Performance Indicators that are measured in that Service Period;

Measurement Period means in relation to a Key Performance Indicator or Subsidiary Performance Indicator, the period over which the Supplier's performance is measured (for example, a Service Period if measured monthly or a twelve (12) month period if measured annually);

Milestone means an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date;

Milestone Achievement Certificate means the certificate to be granted by the Buyer when the Supplier has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 3 of Schedule 6.2 (*Testing Procedures*);

Milestone Adjustment Payment Amount means in respect of each CPP Milestone the subject of a Milestone Adjustment Payment Notice, an amount determined in accordance with the formula:

$A - B$

where:

- (a) A is an amount equal to the aggregate sum of all Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that CPP Milestone; and
- (b) B is an amount equal to the aggregate Allowable Price for the Retained Deliverables relating to that CPP Milestone or, if there are no such Retained Deliverables, zero;

Milestone Adjustment Payment Notice has the meaning given in Clause 37.4 (*Payments by the Supplier*);

Milestone Date means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;

Milestone Payment means a payment identified in the Milestones tab of the Pricing Response Template;

Minor KPI Failure shall be as set out against the relevant Key Performance Indicator in Paragraph 1 of Attachment 2.2 (*Key Performance Indicators and Subsidiary Performance Indicators Tables*) of the Order Form;

Monitored Suppliers has the meaning given in Paragraph 2 of Part A of Attachment 7.4 (*Financial Distress*);

month means a calendar month and "monthly" shall be interpreted accordingly;

Multi-Party Dispute Resolution Procedure has the meaning given in Paragraph 8.1 of Schedule 8.3 (*Dispute Resolution Procedure*);

Multi-Party Procedure Initiation Notice has the meaning given in Paragraph 8.3 of Schedule 8.3 (*Dispute Resolution Procedure*);

NCSC means the National Cyber Security Centre or any replacement or successor body carrying out the same function;

New Releases means an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;

Non-trivial Customer Base means a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;

Non-retained Deliverables means in relation to a CPP Milestone Payment Notice and each CPP Milestone the subject of that CPP Milestone Payment Notice, Deliverables provided to the Buyer which relate to the relevant CPP Milestone(s) and which are not Retained Deliverables;

Notifiable Default shall have the meaning given in Clause 30.1 (*Rectification Plan Process*);

Object Code means Software and/or data in machine-readable, compiled object code form;

Occasion of Tax Non-Compliance means:

- (a) any tax return of the Supplier submitted to a Relevant Tax Buyer on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
 - (i) a Relevant Tax Buyer successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Buyer under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Supplier submitted to a Relevant Tax Buyer on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;

Open Book Data has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights*);

Open Source means computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;

Operating Environment means the Buyer System and the Sites;

Operational Change has the meaning given to it in Paragraph 3.1.1 of Schedule 8.2 (*Change Control Procedure*);

Operational Service Commencement Date means in relation to an Operational Service, the later of:

- (a) the date identified in the Operational Services Implementation Plan upon which the Operational Service is to commence; and
- (b) where the Implementation Plan states that the Supplier must have Achieved the relevant ATP Milestone before it can commence the provision of that Operational Service, the date upon which the Supplier Achieves the relevant ATP Milestone;

Operational Services means the operational services described as such in the Services Description;

Optional Services means the services described as such in Attachment 2.1 (*Services Description*) of the Order Form which are to be provided by the Supplier if required by the Buyer in accordance with Clause 5.5 (*Optional Services*), including the on boarding of Relevant Third Party Suppliers, which are to be provided by the Supplier if required by the Buyer, in accordance with Clause 5.5 (*Optional Services*).

Optional Services Implementation Plan means the implementation plan to effect the Optional Services agreed between the Parties prior to the Effective Date and, if not agreed prior to the Effective Date, to be developed by the Supplier and approved by the Buyer;

Order means the order placed by the Buyer with the Supplier for the provision of the Services in accordance with the Framework and under the terms of this Contract;

Order Form means the form (based on the template included at Annex 1 to Framework Schedule 4 (*Template Order Form* and *Template Call Off Terms*)) together with any Attachments, as completed and forming part of this Contract, which contains details of an Order together with other information in relation to such Order, including the description of the Services to be provided;

Other Supplier means any supplier to the Buyer (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;

Outline Implementation Plan means the outline plan set out in Attachment 6.1 (*Outline Implementation Plan*) of the Order Form;

Overhead has the meaning given in Schedule 7.1 (*Charges and Invoicing*);

Parent Undertaking has the meaning set out in section 1162 of the Companies Act 2006;

Partial Termination means the partial termination of this Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 36.1.2(b) (*Termination by the Buyer*) or 36.3.1 (*Termination by the Supplier*) or otherwise by mutual agreement by the Parties;

Parties and **Party** have the meanings respectively given on page 1 of this Contract;

Performance Failure means a KPI Failure or a PI Failure;

Performance Indicators means the Key Performance Indicators and the Subsidiary Performance Indicators;

Permitted Maintenance has the meaning given in Clause 9.2 (*Maintenance*);

Performance Monitoring Report has the meaning given in Schedule 2.2 (*Performance Levels*);

Personal Data has the meaning given in the GDPR;

Personal Data Breach has the meaning given in the GDPR;

PI Failure means a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator;

PI Service Threshold shall be as set out against the relevant Subsidiary Performance Indicator in Paragraph 2 of Attachment 2.2 (*Key Performance Indicators and Subsidiary Performance Indicators Tables*) of the Order Form;

Pricing Response Template has the meaning given to it in Schedule 7.1 (*Charges and Invoicing*);

Processor has the meaning given to it under the GDPR;

Processor Personnel means all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract;

Prohibited Act means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Buyer a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or

- (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- (c) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts; or
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Buyer (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

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

Project Specific IPRs means:

- (a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or
- (b) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Contract;

but shall not include the Supplier Background IPRs or the Specially Written Software;

Public Sector Dependent Supplier means a supplier where that supplier, or that supplier's group has Annual Revenue of £50,000,000 (fifty million pounds) or more of which over fifty percent (50%) is generated from UK Public Sector Business;

Public Sector and **CNI Contract Information** means the information requirements set out in accordance with Paragraph 2 of Part A, Paragraph 2 of Part B and Annexes 1 and 2 of Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);

Publishable Performance Information means any of the information in the Performance Monitoring Report as it relates to a Performance Indicator where it is expressed as publishable in the tables in Attachment 2.2 (*Key Performance Indicators and Subsidiary Performance Indicators Tables*) of the Order Form which shall not constitute Commercially Sensitive Information;

Quality Plans has the meaning given in Clause 6.1 (*Quality Plans*);

Quarter means the first three (3) Service Periods and each subsequent three (3) Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Contract);

Real Living Wage means the UK wage rate calculated according to the actual costs of living, as monitored, certified and updated from time to time by the Living Wage Foundation (<https://www.livingwage.org.uk/what-real-living-wage>);

Recipient has the meaning given in Clause 23.1 (*Confidentiality*);

Records has the meaning given in Schedule 8.4 (*Reports and Records Provisions*);

Rectification Plan means a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;

Rectification Plan Failure means:

- (a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Buyer within the timescales specified in Clauses 30.5 (*Submission of the draft Rectification Plan*) or 30.8.2 (*Agreement of the Rectification Plan*);
- (b) the Buyer, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 30.8 (*Agreement of the Rectification Plan*);
- (c) the Supplier failing to rectify a material Default which is capable of remedy within the later of:
 - (i) thirty (30) Working Days of a notification made pursuant to Clause 30.2 (*Notification*); and
 - (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default;
- (d) the Supplier failing to start the Rectification Plan in accordance with Clause 30.5.1;
- (e) a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the three (3) Measurement Periods subsequent to the Measurement Period in which the initial Material KPI Failure occurred;
- (f) the Supplier not Achieving a Key Milestone by the revised date identified in the Rectification Plan; and/or
- (g) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of six (6) months for the same (or substantially the same) root cause as that of the original Notifiable Default;

Rectification Plan Process means the process set out in Clauses 30.5 (*Submission of the draft Rectification Plan*) to 30.8 (*Agreement of the Rectification Plan*);

Registers has the meaning given in Schedule 8.5 (*Exit Management*);

Reimbursable Expenses has the meaning given in Schedule 7.1 (*Charges and Invoicing*);

Related Services means those services being delivered by Relevant Third Party Suppliers as part of the End to End Service;

Relevant Buyer or **Relevant Authorities** means the Buyer and the Cabinet Office Markets and Suppliers Team or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;

Relevant IPRs means IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Buyer or a third party in the fulfilment of the Supplier's obligations under this Contract including IPRs in the Specially Written Software, the Supplier Non-COTS Software, the Supplier Non-COTS Background IPRs, the Third Party Non-COTS Software and the Third Party Non-COTS IPRs but excluding any IPRs in the Buyer Software, the Buyer Background IPRs, the Trade Marks, the Supplier COTS Software, the Supplier COTS Background IPRs, the Third Party COTS Software and/or the Third Party COTS IPRs;

Relevant Preceding Services has the meaning given in Clause 5.1.2(b) (*Standard of Services*);

Relevant Requirements means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

Relevant Tax Buyer means HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;

Relevant Third Party Supplier means a third party supplier providing Related Services;

Relevant Transfer means a transfer of employment to which the Employment Regulations applies;

Relief Notice has the meaning given in Clause 34.2 (*Buyer Cause*);

Remedial Adviser means the person appointed pursuant to Clause 32.2 (*Remedial Adviser*);

Remedial Adviser Failure has the meaning given in Clause 32.9 (*Remedial Adviser*);

Replacement Services means any services which are the same as or substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Contract, whether those services are provided by the Buyer internally and/or by any third party;

Replacement Supplier means any third party service provider of Replacement Services appointed by the Buyer from time to time (or where the Buyer is providing replacement Services for its own account, the Buyer);

Request For Information means a Request for Information under the FOIA or the EIRs;

Required Action has the meaning given in Clause 33.1.1 (*Step-In Rights*);

Retained Deliverables has the meaning given in Clause 37.4.3(b) (*Payments by the Supplier*);

Risk Data means the data relating to risk including key risks and controls, open audit actions and results of control testing, which the Supplier is required to deliver to the Buyer including under Schedule 7.5 (*Financial Reports and Audit Rights*), Part C (*Audit Rights*) and Part A (*Risk*) of Attachment 7.6 (*Risk, Regulatory Compliance and Financial Crime*);

Risk Register means the register of risks and contingencies that have been factored into any Costs due under this Contract, contained within the Pricing Response Template (as defined within Attachment 7.1 (*Charges*) of the Order Form);

Security Management Plan has the meaning given to it in Schedule 2.4 (*Security Management*);

Serious KPI Failure shall be as set out against the relevant Key Performance Indicator in Paragraph 1 of Attachment 2.2 (*Key Performance Indicators and Subsidiary Performance Indicators Tables*) of the Order Form;

Service Charges means the periodic payments made in accordance with Schedule 7.1 (*Charges and Invoicing*) in respect of the supply of the Operational Services;

Service Continuity Plan means any plan prepared pursuant to Paragraph 3 of Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*) as may be amended from time to time;

Service Continuity Services means the business continuity, disaster recovery and insolvency continuity services set out in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);

Service Credit Cap means:

- (a) in the period of twelve (12) months from the first Operational Service Commencement Date to occur after the Effective Date, fifteen percent (15%) of the Estimated Initial Service Charges; and
- (b) during the remainder of the Term, fifteen (15%) of the Service Charges paid and/or due to be paid to the Supplier under this Contract in the period of twelve (12) months immediately preceding the Service Period in respect of which Service Credits are accrued;

Service Credits means credits payable by the Supplier due to the occurrence of one (1) or more KPI Failures, calculated in accordance with Paragraph 3 of Part C of Schedule 7.1 (*Charges and Invoicing*);

Service Period means a calendar month, save that:

- (a) the first service period shall begin on the first Operational Service Commencement Date and shall expire at the end of the calendar month in which the first Operational Service Commencement Date falls; and
- (b) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term;

Service Points means in relation to a KPI Failure, the points that are set out against the relevant Key Performance Indicator in the fifth column of the table in Paragraph 1 of Attachment 2.2 (*Key Performance Indicators and Subsidiary Performance Indicators Tables*) of the Order Form;

Services means any and all of the services to be provided by the Supplier under this Contract, including those set out in Attachment 2.1 (*Services Description*) of the Order Form;

Service Recipients means any individual, Customer or other organisation which receives services including recipients of the B2B Services;

Service Transfer Date has the meaning given in Schedule 9.1 (*Staff Transfer*);

Services Description means the services description set out in Attachment 2.1 (*Services Description*) of the Order Form;

Severe KPI Failure shall be as set out against the relevant Key Performance Indicator in Paragraph 1 of Attachment 2.2 (*Key Performance Indicators and Subsidiary Performance Indicators Tables*) of the Order Form;

Sites means any premises (including the Buyer Premises, the Supplier's premises, Relevant Third Party Suppliers or other third party premises):

- (a) from, to or at which:
 - (i) the Services are (or are to be) provided; or
 - (ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or
 - (iii) the Supplier Equipment is used or deployed; or
- (b) where:
 - (i) any part of the Supplier System is situated; or
 - (ii) any physical interface with the Buyer System takes place;

details of which are set out in the Order Form;

SME means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;

Social Value means the social, economic or environmental benefits set out in the Buyer's Requirements;

Software means Specially Written Software, Supplier Software and Third Party Software;

Software Supporting Materials has the meaning given in Clause 17.1.2 (*Specially Written Software and Project Specific IPRs*);

Source Code means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;

Specially Written Software means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Contract;

Specific Change in Law means a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply;

Staffing Information has the meaning given in Schedule 9.1 (*Staff Transfer*);

Standard Contractual Clauses means the clauses set out in Annex 1 of Attachment 11 (*Processing Personal Data*);

Standards means the standards, policies and/or procedures identified in Schedule 2.3 (*Standards*);

Step-In Notice has the meaning given in Clause 33.1 (*Step-In Rights*);

Step-In Trigger Event means:

- (a) any event falling within the definition of a Supplier Termination Event;
- (b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;
- (c) the Buyer considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Contract;
- (d) the Buyer being advised by a regulatory body that the exercise by the Buyer of its rights under Clause 33 (*Step-In Rights*) is necessary;
- (e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or
- (f) a need by the Buyer to take action to discharge a statutory duty;

Step-Out Date has the meaning given in Clause 33.5.2 (*Step-In Rights*);

Step-Out Notice has the meaning given in Clause 33.5 (*Step-In Rights*);

Step-Out Plan has the meaning given in Clause 33.6 (*Step-In Rights*);

Strategic Supplier means those suppliers to government listed at <https://www.gov.uk/government/publications/strategic-suppliers>;

Sub-contract means any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;

Sub-contractor means any third party with whom:

- (a) the Supplier enters into a Sub-contract; or
- (b) a third party under (a) above enters into a Sub-contract,

or the servants or agents of that third party;

Sub-processor means any third party appointed to process Personal Data on behalf of the Supplier related to this Contract;

Subsidiary Performance Indicator means the performance indicators set out in Paragraph 2 of Attachment 2.2 (*Key Performance Indicators and Subsidiary Performance Indicators Tables*) of the Order Form;

Subsidiary Undertaking has the meaning set out in section 1162 of the Companies Act 2006;

Successor Body has the meaning given in Clause 39.4 (*Assignment and Novation*);

Supplier means the entity identified as such in the Order Form;

Supplier Background IPRs means:

- (a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or
- (b) Intellectual Property Rights created by the Supplier independently of this Contract,

which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;

Supplier COTS Background IPRs means any embodiments of Supplier Background IPRs that:

- (a) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and
- (b) has a Non-trivial Customer Base;

Supplier COTS Software means Supplier Software (including open source software) that:

- (a) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and

(b) has a Non-trivial Customer Base;

Supplier Equipment means the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from the Buyer) for the provision of the Services;

Supplier Group means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;

Supplier Non-COTS Background IPRs means any embodiments of Supplier Background IPRs that have been delivered by the Supplier to the Buyer and that are not Supplier COTS Background IPRs;

Supplier Non-COTS Software means Supplier Software that is not Supplier COTS Software;

Supplier Non-Performance has the meaning given in Clause 34.1 (*Buyer Cause*);

Supplier Personnel means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier's obligations under this Contract;

Supplier Profit has the meaning given in Schedule 7.1 (*Charges and Invoicing*);

Supplier Profit Margin has the meaning given in Schedule 7.1 (*Charges and Invoicing*);

Supplier Representative means the representative appointed by the Supplier (as may be changed from time to time in accordance with Clause 11.1.3), the details of which as at the Effective Date are set out in the Order Form;

Supplier Software means software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 (*Software and Trade Marks*);

Supplier Solution means the Supplier's solution for the Services set out in Attachment 4.1 (*Supplier Solution*) of the Order Form including any Annexes of that Attachment;

Supplier System means the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System);

Supplier Termination Event means:

- (a) the Supplier's level of performance constituting a Critical Performance Failure;
- (b) the Supplier committing a material Default which is irremediable;
- (c) as a result of the Supplier's Default, the Buyer incurring Losses in any Contract Year which exceed eighty percent (80%) of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 27.2.1 (*Financial and other Limits*);
- (d) a Remedial Adviser Failure;
- (e) a Rectification Plan Failure;
- (f) where a right of termination is expressly reserved in this Contract, including pursuant to:
 - (i) Clause 20 (*IPRs Indemnity*);
 - (ii) Clause 42.6.2 (*Prevention of Fraud and Bribery*);

- (iii) Paragraph 6 of Schedule 7.4 (*Financial Distress*); and/or
- (iv) Paragraph 3 of Part B to Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
- (g) the representation and warranty given by the Supplier pursuant to Clause 3.2.9 (*Warranties*) being materially untrue or misleading;
- (h) the Supplier committing a material Default under Clause 10.6 (*Promoting Tax Compliance*) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 10.6 (*Promoting Tax Compliance*) which in the reasonable opinion of the Buyer are acceptable;
- (i) the Supplier committing a material Default under any of the following Clauses:
 - (i) Clause 5.2.1(j) (*Services*);
 - (ii) Clause 25 (*Protection of Personal Data*);
 - (iii) Clause 24 (*Transparency and Freedom of Information*);
 - (iv) Clause 23 (*Confidentiality*); and
 - (v) Clause 38 (*Compliance*); and/or
 - (vi) in respect of any security requirements set out in Attachment 2.1 (*Services Description*) of the Order Form, Schedule 2.4 (*Security Management*) or the Baseline Security Requirements; and/or
 - (vii) in respect of any requirements set out in Schedule 9.1 (*Staff Transfer*);
- (j) any failure by the Supplier to implement the changes set out in a Benchmark Report as referred to in Paragraph 5.9 of Schedule 7.3 (*Benchmarking*);
- (k) an Insolvency Event occurring in respect of the Supplier or the Guarantor;
- (l) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Buyer with the Guarantor or with another guarantor which is acceptable to the Buyer);
- (m) a change of Control of the Supplier or a Guarantor unless:
 - (i) the Buyer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Buyer has not served its notice of objection within six (6) months of the later of the date on which the Change of Control took place or the date on which the Buyer was given notice of the Change of Control;
- (n) a change of Control of a Key Sub-contractor unless, within six (6) months of being notified by the Buyer that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Buyer pursuant to Clause 15.3 (*Appointment of Key Sub-contractors*);
- (o) any failure by the Supplier to enter into or to comply with an Admission Contract under Annex D1 to Part D of Schedule 9.1 (*Staff Transfer*);

- (p) the Buyer has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;
- (q) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law; or
- (r) in relation to Schedule 2.4 (*Security Requirements*):
 - (i) the Buyer has issued two rejection notices in respect of the Risk Management Document Set under Paragraph 6.5.2 as the case may be;
 - (ii) the Supplier fails to implement a change required by the Required Changes Register in accordance with the timescales set out in the Required Changes Register;
 - (iii) Supplier COTS Software and Third Party COTS Software is not within mainstream support unless the Buyer has agreed in writing;
 - (iv) the Supplier fails to patch vulnerabilities in accordance with the Security Requirements; and/or
 - (v) the Supplier fails to comply with the Incident Management Process;

Supply Chain Transparency Report means the report provided by the Supplier to the Buyer in the form set out in Annex 4 of Schedule 8.4 (*Reports and Records Provisions*);

Target Performance Level means the minimum level of performance for a Performance Indicator which is required by the Buyer, as set out against the relevant Performance Indicator in the tables in Attachment 2.2 (*Key Performance Indicators and Subsidiary Performance Indicators Tables*) of the Order Form;

Term means the period commencing on the Effective Date and ending on the expiry of the Initial Term, any Extension Period, or the Termination Assistance Period (whichever is later) or on earlier termination of this Contract;

Termination Assistance Notice has the meaning given in Paragraph 6.1 of Schedule 8.5 (*Exit Management*);

Termination Assistance Period means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 6.3 of Schedule 8.5 (*Exit Management*);

Termination Date means the date set out in a Termination Notice on which this Contract (or a part of it as the case may be) is to terminate;

Termination Notice means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract (or any part thereof) on a specified date and setting out the grounds for termination;

Termination Payment means the payment determined in accordance with Schedule 7.2 (*Payments on Termination*);

Termination Services means the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 8.5 (*Exit Management*), and any other services required pursuant to the Termination Assistance Notice;

Territory has the meaning given within Paragraph 3 of Attachment 5 (*Software and Trade Marks*);

Test Issues has the meaning given in Schedule 6.2 (*Testing Procedures*);

Tests and **Testing** means any tests required to be carried out under this Contract, as further described in Schedule 6.2 (*Testing Procedure*) and “**Tested**” shall be construed accordingly;

Test Success Criteria has the meaning given in Schedule 6.2 (*Testing Procedures*);

Third Party Auditor means an independent third party auditor as appointed by the Buyer from time to time to confirm the completeness and accuracy of information uploaded to the Virtual Library in accordance with the requirements outlined in Schedule 8.4 (*Reports and Records Provisions*);

Third Party Beneficiary has the meaning given in Clause 47.1 (*Third Party Rights*);

Third Party Contract means those third party contracts which the Supplier enters into exclusively for the purpose of delivering the Services, as set out in Schedule 4.4 (*Third Party Contracts*);

Third Party COTS IPRs means Third Party IPRs that:

- (a) the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and
- (b) has a Non-trivial Customer Base;

Third Party COTS Software means Third Party Software (including open source software) that:

- (a) the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and
- (b) has a Non-trivial Customer base;

Third Party IPRs means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;

Third Party Non-COTS IPRs means Third Party IPRs that are not Third Party COTS IPRs;

Third Party Non-COTS Software means Third Party Software that is not Third Party COTS Software;

Third Party Provisions has the meaning given in Clause 47.1 (*Third Party Rights*);

Third Party Software means software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 (*Software and Trade Marks*);

Trade Mark has the meaning given within Part 3 of Attachment 5 (*Software and Trademarks*) of the Order Form;

Trade Mark Licence means the terms of the licence granted by the Buyer to the Supplier for use of the Trade Marks pursuant to Clause 19 and those terms set out in Paragraph 3 of Attachment 5 (*Software and Trade Marks*) of the Order Form;

Transferring Assets has the meaning given in Paragraph 7.2.1 of Schedule 8.5 (*Exit Management*);

Transferring Buyer Employees has the meaning given in Schedule 9.1 (*Staff Transfer*);

Transferring Former Supplier Employees has the meaning given in Schedule 9.1 (*Staff Transfer*);

Transferring Supplier Employees has the meaning given in Schedule 9.1 (*Staff Transfer*);

Transformation Committee means the body described in Paragraph 8 of Schedule 8.1 (*Governance*);

Transparency Information has the meaning given in Clause 24.1 (*Transparency and Freedom of Information*);

Transparency Reports has the meaning given in Schedule 8.4 (*Reports and Records Provisions*);

UK means the United Kingdom;

UK GDPR has the meaning given in section 3(10) of the Data Protection Act 2018, supplemented by section 205(4);

UK Public Sector Business means any goods, service or works provision to UK public sector bodies, including Central Government Departments and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations;

UK Public Sector / CNI Contract Information means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraph 2 of Part A, Paragraph 2 of Part B and Annexes 1 and 2 of Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);

Unacceptable KPI Failure means the Supplier failing to achieve the KPI Service Threshold in respect of more than fifty (50%) of the Key Performance Indicators that are measured in that Service Period;

Unconnected Sub-contract means any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017;

Unconnected Sub-contractor means any third party with whom the Supplier enters into an Unconnected Sub-contract;

Unrecovered Payment has the meaning given in Schedule 7.2 (*Payments on Termination*);

Updates means in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;

Update Requirement means the occurrence of an event detailed in Part B of Attachment 8.4 (*Transparency Reports and Records to Upload to the Virtual Library*) which requires the Supplier to update the relevant information hosted on the Virtual Library;

Upgrades means any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term;

User means any person who is an authorised end user of the Services, the Supplier's System or other information system or application required to be provided as set out in the Buyer Requirements;

Valid means in respect of an Assurance, has the meaning given to it in Paragraph 2.7 of Part B to Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);

VAT means value added tax as provided for in the Value Added Tax Act 1994;

VCSE means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;

Virtual Library means the data repository hosted by the Supplier containing the information about this Contract and the Services provided under it in accordance with Schedule 8.4 (*Reports and Records Provisions*) and Part B of Attachment 8.4 (*Transparency Reports and Records to Upload to the Virtual Library*) of the Order Form; and

Working Day means any day other than a Saturday, Sunday or public holiday in England and Wales.