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MODEL SERVICES CONTRACT

DATED 27 October **2023**

(1) THE SECRETARY OF STATE FOR JUSTICE

and

(2) G4S MONITORING TECHNOLOGIES LTD

CONTRACT

relating to

the provision of electronic monitoring devices and related services

Government Legal Department

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THIS CONTRACT is made on 27 October 2023

BETWEEN:

(1) **THE SECRETARY OF STATE FOR JUSTICE** whose office is at 8th Floor, 102 Petty France, London SW1H 9AJ (the "**Authority**"); and

(2) **G4S MONITORING TECHNOLOGIES LTD** a company registered in England and Wales under company number 02626613 whose registered office is at 46 Gillingham Street, London SW1V 1HU (the "**Supplier**")

(each a "**Party**" and together the "**Parties**").

INTRODUCTION

A The Authority issued a contract notice and invitation to participate on 24 August 2022. In response, detailed proposals and final tenders in respect of the products and services described in this Contract were submitted on behalf of the Supplier in response to the Authority's invitation.

B The Authority wishes to enter into this Contract for the purposes of the provision of electronic monitoring equipment and related services.

C The Supplier is required to collaborate with the FMS Supplier(s) appointed by the Authority within the scope of the Authority's operating model for the provision of electronic monitoring and related services.

D As part of the consideration for the Authority entering into this Contract, the Supplier has in conjunction with this Contract also entered into the Collaboration Agreement with the Authority and the FMS Supplier on the same date as this Contract as part of the Supplier's commitment to deliver the Services.

IT IS AGREED as follows:

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 Interpretation is as set out in Schedule 1 (Definitions).

1.3 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

(a) the Clauses and Schedule 1 (Definitions);

(b) Schedules 2 (Services Description) and 3 (Performance Levels) and their Annexes;

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(c) any other Schedules and their Annexes (other than Schedule 8 (*Supplier Solution*) and its Annexes); and

(d) Schedule 8 (*Supplier Solution*) and its Annexes (if any).

1.4 The Schedules and their Annexes form part of this Contract.

1.5 In entering into this Contract the Authority is acting as part of the Crown.

2 DUE DILIGENCE

2.1 The Supplier acknowledges that, subject to the Allowable Assumptions:

(a) the Authority 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;

(b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;

(c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to:

(i) the Authority Requirements;

(ii) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;

(iii) the operating processes and procedures and the working methods of the Authority;

(iv) the ownership, functionality, capacity, condition and suitability for use in the Services of the Authority Assets; and

(v) 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

(d) it has advised the Authority in writing of:

(i) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;

(ii) the actions needed to remedy each such unsuitable aspect; and

(iii) a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,

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and such actions, timetable and costs are fully reflected in this Contract, including the Services Description and/or Authority 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:

(a) any unsuitable aspects of the Operating Environment;

(b) any misinterpretation of the Authority Requirements;

(c) any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or

(d) any assumptions made by the Supplier in respect of the Services other than the Allowable Assumptions.

2.3 The Parties shall comply with the provisions of Paragraph 6 of Part C of Schedule 15 (*Charges and Invoicing*) in relation to the verification of any Allowable Assumptions.

3 WARRANTIES

3.1 The Authority represents and warrants that:

(a) it has full capacity and authority to enter into and to perform this Contract;

(b) this Contract is executed by its duly authorised representative;

(c) 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

(d) 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:

(a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;

(b) it has full capacity and authority to enter into and to perform this Contract;

(c) this Contract is executed by its duly authorised representative;

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(d) it has all necessary consents and regulatory approvals to enter into this Contract;

(e) it has notified the Authority 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;

(f) 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;

(g) 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);

(h) 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 Invitation to Submit a Request to Participate (including the selection questionnaire), Invitation to Participate in Dialogue (ITPD) and Invitation to Submit a Final Tender (ITSFT) (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 Authority in writing prior to the date of this Contract;

(i) it has notified the Authority 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;

(j) 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 Authority which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Authority;

(k) the Initial Financial Model 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;

(l) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;

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(m) 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

(n) 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 Authority 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.

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THE SERVICES

4 TERM

4.1 This Contract shall:

(a) come into force on the Effective Date, save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 19 (*Confidentiality*), 20 (*Transparency and Freedom of Information*), 22 (*Publicity and Branding*), 23 (*Limitations on Liability*), 37 (*Waiver and Cumulative Remedies*), 38 (*Relationship of the Parties*), 40 (*Severance*), 42 (*Entire Agreement*), 43 (*Third Party Rights*), 44 (*Notices*), 45 (*Disputes*) and 46 (*Governing Law and Jurisdiction*), which shall be binding and enforceable as between the Parties from the date of signature; and

(b) unless terminated at an earlier date by operation of Law or in accordance with Clause 33 (*Termination Rights*), terminate:

(i) at the end of the Initial Term; or

(ii) if the Authority elects to extend the Initial Term in accordance with Clause 4.2 below, at the end of the final Extension Period.

4.2 The Authority may, at its sole discretion and upon giving six (6) months' written notice to the Supplier, extend the Term of this Contract for further periods of any duration up to a maximum of two (2) years in the aggregate (any such extension period being an **"Extension Period"**).

Condition Precedent

4.3 Save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 19 (*Confidentiality*), 20 (*Transparency and Freedom of Information*), 22 (*Publicity and Branding*), 23 (*Limitations on Liability*), 37 (*Waiver and Cumulative Remedies*), 38 (*Relationship of the Parties*), 40 (*Severance*), 42 (*Entire Agreement*), 43 (*Third Party Rights*), 44 (*Notices*), 45 (*Disputes*) and 46 (*Governing Law and Jurisdiction*), this Contract is conditional upon the valid execution and delivery to the Authority of the Guarantee and the Collaboration Agreement (the "**Conditions Precedent**"). The Authority may in its sole discretion at any time agree to waive compliance with the Conditions Precedent by giving the Supplier notice in writing.

4.4 The Supplier shall satisfy, or procure the satisfaction of, the Conditions Precedent as soon as possible. In the event that the Conditions Precedent is not satisfied within twenty (20) Working Days after the date of this Contract then, unless the Conditions Precedent is waived by the Authority in accordance with Clause 4.3:

(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.

4.5 The Supplier shall consult with the Authority in relation to the steps it takes to satisfy the conditions set out in Clause 4.3 and shall keep the Authority fully informed of its

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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 Clause 4.4.

5 SERVICES

Standard of Services

5.1 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.

5.2 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 Authority 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 Authority 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 Authority in respect of the Relevant Preceding Services in the twelve (12) month' period immediately prior to the relevant Operational Service Commencement Date.

5.3 The Supplier shall:

(a) perform its obligations under this Contract, including in relation to the supply of the Services and any Goods in accordance with:

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(i) all applicable Law and the laws of the land in which Services are delivered;

(ii) Good Industry Practice;

(iii) the Standards;

(iv) the Baseline Security Requirements;

(v) the Quality Plans;

(vi) the Authority 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 5.3(a)(i) to 5.3(a)(vi); and

(b) deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.

5.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.3(a)(i) to 5.3(a)(vi), the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

Supplier covenants

5.5 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 Authority 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 Authority which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Authority;

(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

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address Malicious Software or to comply with the requirements of Schedule 5 (*Security Management*)) shall notify the Authority three (3) months before the release of any new Software or Upgrade;

(iii) 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 Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Authority 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 Authority);

(d) minimise any disruption to the Services, the IT Environment and/or the Authority's operations when carrying out its obligations under this Contract;

(e) ensure that any Documentation and training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;

(f) without prejudice to the Supplier’s obligations under the Collaboration Agreement, co-operate with any Other Supplier notified to the Supplier by the Authority from time to time by providing:

(i) reasonable information (including any Documentation);

(ii) advice; and

(iii) reasonable assistance,

in connection with the Services to any such Other Supplier to enable such Other 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 Authority and/or to any Replacement Supplier in accordance with the following collaborative working principles:

(A) proactively leading on, mitigating and contributing to the resolution of problems or issues irrespective of its contractual obligations, acting in accordance with the principle of "fix first, settle later";

(B) being open, transparent and responsive in sharing relevant and accurate information with such Other Suppliers;

(C) where reasonable, adopting common working practices, terminology, standards and technology and a collaborative

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approach to service development and resourcing with such Other Suppliers;

(D) providing reasonable cooperation, support, information and assistance to such Other Suppliers in a proactive, transparent and open way and in a spirit of trust and mutual confidence; and

(E) identifying, implementing and capitalising on opportunities to improve deliverables and deliver better solutions and performance throughout the relationship lifecycle;

(g) to the extent it is legally able to do so, hold on trust for the benefit of the Authority, 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 Authority may notify from time to time;

(h) unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 5.5(g);

(i) provide the Authority with such assistance as the Authority 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 Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Contract;

(k) notify the Authority 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 Authority 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 Authority or otherwise brings the Authority 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 Authority;

(n) manage closure or termination of Services and end of life of Goods to take account of the Authority's disposal requirements, including recycling and scope for re-use, and all applicable Standards; and

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(o) co-operate with the Service Recipients and any third party suppliers to the Service Recipients, including using commercially reasonable endeavours to:

(i) actively work with all applicable suppliers to ensure that the Services are in line with Good Industry Practice and are provided so as to meet or exceed the Performance Indicators;

(ii) co-ordinate its Services with the services performed by other third parties to minimise delays and disruption;

(iii) provide such information relating to the Services as necessary for Service Recipients to receive the benefit of the Services; and

(iv) co-ordinate the Services so that any end-to-end processes, of which the Services and Service Recipient and other third party supplier processes are a part, continue to function seamlessly and without disruption.

5.6 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.

5.7 Without prejudice to Clauses 17.2 and 17.3 (*IPRs Indemnity*) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:

(a) remedy any breach of its obligations in Clauses 5.5(b) to 5.5(d) inclusive following becoming aware of the breach or being notified of the breach by the Authority where practicable, within the below timescales:

(i) five (5) Working Days in relation to Implementation Services;

(ii) other than in relation to Implementation Services, three (3) Working Days; or

such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);

(b) remedy any breach of its obligations in Clause 5.5(a) and Clauses 5.5(e) to 5.5(j) inclusive within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by the Authority; 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 5.7(a) or Clause 5.7(b) within the specified or agreed timeframe shall constitute a Notifiable Default.

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Specially Written Software warranty

5.8 Without prejudice to Clauses 5.5 (*Supplier Covenants*) and 5.7 (*Services*) and any other rights and remedies of the Authority howsoever arising, the Supplier warrants to the Authority that all components of the Specially Written Software shall:

(a) be free from material design and programming errors;

(b) perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution and Documentation; and

(c) not infringe any Intellectual Property Rights.

Continuing obligation to provide the Services

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

(a) any withholding of the Service Charges by the Authority pursuant to Clause 7.2(d)(ii) (*Performance Failures*);

(b) the existence of an unresolved Dispute; and/or

(c) any failure by the Authority to pay any Charges,

unless the Supplier is entitled to terminate this Contract under Clause 33.3(a) (*Termination by the Supplier*) for failure to pay undisputed Charges.

Agency

5.10 By way of security for the performance of its obligations under Clauses 5.5(g) and 5.5(h) (*Supplier covenants*) the Supplier hereby irrevocably appoints the Authority as its agent 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 provided that the Authority should only exercise its rights under this Clause 5.13 in the event of a Default by the Supplier or an Insolvency Event in respect of the Supplier and to delegate one or more of the powers conferred on it by this Clause 5.13 (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time.

Authority Responsibilities

5.11 The Authority shall comply with its responsibilities set out in Schedule 7 (*Authority Responsibilities*).

Service Recipients

5.12 This Contract and the Services (including but not limited to any documentation, materials, equipment and software) provided by or on behalf of the Supplier are for the benefit of the Authority and, where applicable, the Service Recipients.

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5.13 The Supplier acknowledges and agrees that the Services provided by the Supplier under this Contract may be made available by the Authority for the other Service Recipients. To the extent that the Authority makes available any part or all of the Services to one of more Service Recipients, the obligation to pay for the Services shall remain with the Authority, except where the Parties agree otherwise. For the purposes of this Contract, all such Service Recipients shall receive the benefit of the Services provided under this Contract, but shall not be responsible for any obligations owed by the Authority to the Supplier.

5.14 In this Contract, unless the context requires otherwise:

(a) references to the Authority receiving the Services will include, to the extent that they are receiving the Services, the Service Recipients;

(b) reference to the Authority's:

(i) Assets, Equipment, data, systems, premises, operations and the like; and

(ii) suppliers, contractors, advisors and other similar third parties,

will include, to the extent that they are receiving the Services, those of the Service Recipients;

(c) references to the Authority providing or receiving an item (including data or information) pursuant to this Contract will include items provided by or to Service Recipients;

(d) for the purposes of the following provisions, references to the Authority shall be construed as references to the Authority and/or any Service Recipients as the context requires: Clauses 5.5(m), 14.1(a); 14.1(b)(iii); 14.1(c); 14.2; 20.7; 20.8 and paragraphs 3.1(b) and 3.1(c) of Schedule 32 (*Intellectual Property Rights*); and

(e) other references to the Authority will include the Service Recipients where such reference relates to a right of the Authority which the Service Recipients also require the benefit of in order to receive equivalent benefit in relation to the Services, or as otherwise reasonably designated by the Authority.

5.15 The Parties agree that the Authority, on its own behalf and as agent for each of the Service Recipients, shall:

(a) have conduct of all claims and Disputes and the Authority shall procure that the Service Recipients do not bring any claim under the Contract directly;

(b) have the right to enforce the terms, conditions, undertakings, representations, warranties and other provisions of this Contract; and/or

(c) recover loss suffered by any of the Service Recipients as if such loss were suffered or incurred by the Authority.

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5.16 Any instructions received by the Supplier directly from a Service Recipient must be notified by the Supplier to the Authority and confirmed in writing by the Authority prior to the Supplier undertaken any action linked to such instructions.

No exclusivity

5.17 This Contract is non-exclusive. The Authority may at any time during the Term purchase goods and services similar or equivalent to the Goods and Services from a third party.

In-bound Contracts

5.18 The Parties shall comply with their respective obligations set out in Schedule 34 (*Management of Inbound Contracts*).

6 IMPLEMENTATION

Quality Plans

6.1 The Supplier shall develop, within sixty (60) 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**").

6.2 The Supplier shall obtain the Authority 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 Authority'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.

6.3 Following the approval by the Authority 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.

Implementation Plan and Delays

6.4 The Parties shall comply with the provisions of Schedule 13 (*Implementation Plan*) in relation to the agreement and maintenance of the Detailed Implementation Plan.

6.5 The Supplier shall:

(a) comply with the Implementation Plan; and

(b) ensure that each Milestone is Achieved on or before its Milestone Date.

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

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(a) it shall:

(i) notify the Authority in accordance with Clause 27.1 (*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; and

(b) if the Delay or anticipated Delay relates to a Key Milestone, the provisions of Clause 28 (*Delay Payments*) shall apply.

Testing and Achievement of Milestones

6.7 The Parties shall comply with the provisions of Schedule 14 (*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:

(a) provide the Operational Services in such a manner so as to meet or exceed the Target Performance Level for each Performance Indicator from the relevant Operational Services Commencement Date; and

(b) comply with the provisions of Schedule 3 (*Performance Levels*) in relation to the monitoring and reporting on its performance against the Performance Indicators.

Performance Failures

7.2 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 15 (*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(a));

(c) a PI Failure occurs, the Supplier shall notify the Authority 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

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(ii) the Authority may withhold a proportionate amount of the Service Charges in accordance with the process set out in Clause 10.8 (*Set Off and Withholding*) until the relevant Material PI Failure is rectified to the reasonable satisfaction of the Authority, at which point the Authority shall pay the amount withheld.

7.3 Service Credits shall be the Authority's exclusive financial remedy for a KPI Failure except where:

(a) a Critical Performance Failure has occurred;

(b) the KPI Failure:

(i) breaches the relevant KPI Service Threshold;

(ii) has arisen due to the wilful default by the Supplier or any Supplier Personnel; and/or

(iii) results in:

(A) the corruption or loss of any Authority Data (in which case the remedies under Clause 18.7 (*Authority Data and Security Requirements*) shall also be available); and/or

(B) the Authority being required to make a compensation payment to one or more third parties;

(c) the Supplier has fraudulently misreported its performance against any Performance Indicator; and/or

(d) the Authority is otherwise entitled to or does terminate the relevant Services or this Contract pursuant to Clause 33.1(b) (*Termination by the Authority*).

Unacceptable KPI Failure

7.4 If in any Service Period an Unacceptable KPI Failure occurs:

(a) the Authority shall (subject to the Service Credit Cap set out in Clause 23.5(b) (*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

(b) if the Authority 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 7.4 shall be without prejudice to any right which the Authority may have to terminate this Contract and/or to claim damages from the Supplier as a result of such Unacceptable KPI Failure.

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7.5 The Supplier:

(a) agrees that the application of Clause 7.4 is commercially justifiable where an Unacceptable KPI Failure occurs; and

(b) acknowledges that it has taken legal advice on the application of Clause 7.4 and has had the opportunity to price for that risk when calculating the Service Charges.

Critical Performance Failure

7.6 If a Critical Performance Failure occurs, the Authority may exercise its rights to terminate this Contract in whole or in part pursuant to Clause 33.1 or 33.2 (*Termination by the Authority*).

Changes to Performance Indicators and Service Credits

7.7 Not more than once in each Contract Year the Authority may, on giving the Supplier at least 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 Authority 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).

7.8 The Supplier shall not be entitled to object to any changes made by the Authority under Clause 7.7, or increase the Service Charges as a result of such changes provided that:

(a) the total number of Key Performance Indicators does not exceed nine;

(b) the principal purpose of the change is to reflect changes in the Authority's business requirements and/or priorities or to reflect changing industry standards; 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 Service Delivery Board at least once every twelve (12) months and shall provide quarterly updates to the Service Delivery Board to the most recent report on:

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(a) 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 Authority which the Parties may wish to adopt;

(b) 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;

(c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or reduction of operational risk;

(d) 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 Authority; and/or

(e) 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 Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.

8.3 If the Authority wishes to incorporate any improvement identified by the Supplier the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.

9 EQUIPMENT AND MAINTENANCE

Supplier Equipment

9.1 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Authority 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 and the Authority Premises, including the cost of packing, carriage and making good the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.

9.2 All the Supplier’s property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Authority shall be liable for loss of or damage to any of the Supplier’s property located on Authority Premises which is due to the negligent act or omission of the Authority.

9.3 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.

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Maintenance

9.4 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 Authority (and the Authority shall act reasonably in relation to maintenance associated with SAAS cognisant that maintenance schedules are generally determined by the SAAS Supplier). Once the Maintenance Schedule has been agreed with the Authority Representative, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.

9.5 The Supplier shall give as much notice as is reasonably practicable to the Authority Representative prior to carrying out any Emergency Maintenance.

9.6 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.

Supply of Goods

9.7 In respect of Goods sold by the Supplier, as part of the Services, to the Authority:

(a) the relevant Goods and their prices shall be as set out in Schedule 15 (*Charges and Invoicing*);

(b) the Supplier shall supply the Goods in accordance with the relevant specification;

(c) the Supplier shall ensure that the Goods are free from material defects in design, materials and workmanship and remain so for the relevant Warranty Period;

(d) if following inspection or testing the Authority or a third party acting on behalf of the Authority (including, without limitation, the FMS Supplier) considers that the Goods do not conform with the relevant specification, the Authority and/or the FMS Supplier (or Other Supplier acting on behalf of the Authority) shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance with its obligations under Clause 9.8; and

(e) without prejudice to any other rights or remedies of the Authority:

(i) risk in the Goods shall pass to the Authority at the time of delivery to the designated warehouse of the FMS Supplier or Other Supplier (as the case may be); and

(ii) ownership of the Goods shall pass to the Authority at the time of payment.

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9.8 Where any Goods are found to be defective during the relevant Warranty Period, the Supplier will promptly upon request and free of charge to the Authority and any relevant Other Supplier (including the FMS Supplier) provide to the FMS Supplier or Other Supplier designated by the Authority a replacement item in circumstances where the defect is caused by:

(a) the defective design or manufacture of the Goods and/or any defective component part(s) of the Goods; or

(b) a failure on the part of the Supplier to comply with any of its obligations under this Contract, including (but not limited to) its obligation to supply Goods which comply with the relevant specification and which are free from material defects in design, materials and workmanship.

9.9 Where a replacement item is provided to the Authority pursuant to Clause 9.7(d) above, without prejudice to any other rights or remedies of the Authority:

(a) risk and ownership in the replacement goods shall pass to the Authority at the time of delivery;

(b) risk in the item being replaced shall pass to the Supplier at the time of collection by or delivery to the Supplier (as appropriate); and

(c) in consideration of the provision of the replacement goods, ownership of the item being replaced shall pass to the Supplier at the same time as ownership in the replacement goods passes to the Authority as set out in Clause 9.9(a).

9.10 The provisions of this Clause 9 are without prejudice to the other rights and remedies of the Authority under this Contract in respect of any defect in the Goods.

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PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

10 FINANCIAL AND TAXATION MATTERS

Charges and Invoicing

10.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 15 (*Charges and Invoicing*).

10.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.7 (*Testing and Achievement of Milestones*), 12 (*Records, Reports, Audits and Open Book Data*), 20 (*Transparency and Freedom of Information*), 21 (*Protection of Personal Data*) and, to the extent specified therein, Clause 29 (*Remedial Adviser*) and Clause 30 (*Step-In Rights*).

10.3 If the Authority 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.

10.4 For the avoidance of doubt, the Charges represent all of the charges that can be levied by the Supplier in respect of the provision of the Services in accordance with this Contract, and the Supplier shall, at no additional cost to the Authority, be responsible for providing any services, functions and responsibilities that are both necessary for and incidental to the proper performance by the Supplier of the Services, unless there is an express right for the Supplier to vary or levy additional charges.

VAT

10.5 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.

10.6 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority 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 10.6 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

Set-off and Withholding

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

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10.8 If the Authority wishes to:

(a) set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier pursuant to Clause 10.7; or

(b) exercise its right pursuant to Clause 7.2(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 Authority's reasons for withholding or retaining the relevant Charges.

Benchmarking

10.9 The Parties shall comply with the provisions of Schedule 17 (*Benchmarking*) in relation to the benchmarking of any or all of the Services.

Financial Distress

10.10 The Parties shall comply with the provisions of Schedule 18 (*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.

Promoting Tax Compliance

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

(a) notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and

(b) promptly provide to the Authority:

(i) 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

(ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

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CONTRACT GOVERNANCE

11 GOVERNANCE

11.1 The Parties shall comply with the provisions of Schedule 21 (*Governance*) in relation to the management and governance of this Contract.

Representatives

11.2 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.

11.3 The initial Supplier Representative shall be the person named as such in Schedule 29 (*Key Personnel*). Any change to the Supplier Representative shall be agreed in accordance with Clause 14 (*Supplier Personnel*).

11.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within five (5) Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

12 RECORDS, REPORTS, AUDITS & OPEN BOOK DATA

12.1 The Supplier shall comply with the provisions of:

(a) Schedule 24 (*Reports and Records Provisions*) in relation to the maintenance and retention of Records; and

(b) Part A of Schedule 19 (*Financial Reports and Audit Rights*) in relation to the maintenance of Open Book Data.

12.2 The Parties shall comply with the provisions of:

(a) Part B of Schedule 19 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and

(b) Part C of Schedule 19 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

13 CHANGE AND PROJECTS

Change Control Procedure

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

Change in Law

13.2 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

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(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.

13.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 13.2(b)), the Supplier shall:

(a) notify the Authority 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 Authority 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.

13.4 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(b)) shall be implemented in accordance with the Change Control Procedure.

13.5 The Parties shall comply with the provisions of Schedule 33 (Projects) in relation to the initiation, management and acceptance of Projects during the Term of the Contract.

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SUPPLIER PERSONNEL AND SUPPLY CHAIN

14 SUPPLIER PERSONNEL

14.1 The Supplier shall:

(a) Provide in advance of any admission to Authority 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 Authority may reasonably require;

(b) ensure that all Supplier Personnel:

(i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;

(ii) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2 (*Services Description*) and Schedule 5 (*Security Management*); and

(iii) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 5 (*Security Management*);

(c) subject to Schedule 28 (*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 Authority;

(d) 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;

(e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;

(f) 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;

(g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and

(h) procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Contract.

14.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:

(a) refuse admission to the relevant person(s) to the Authority Premises; and/or

(b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

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Key Personnel

14.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 29 (*Key Personnel*) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.

14.4 The Authority 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.

14.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:

(a) requested to do so by the Authority;

(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 Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

14.6 The Supplier shall:

(a) notify the Authority 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;

(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.

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Employment Indemnity

14.7 The Parties agree that:

(a) the Supplier shall both during and after the Term indemnify the Authority and any Service Recipient against all Employee Liabilities that may arise as a result of any claims brought against the Authority and any Service Recipients by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel; and

(b) the Authority 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 Authority or any of the Authority's employees, agents, consultants and contractors.

Income Tax and National Insurance Contributions

14.8 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:

(a) 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

(b) indemnify the Authority and any Service Recipient 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.

Staff Transfer

14.9 The Parties agree that:

(a) where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 28 (*Staff Transfer*) shall apply as follows:

(i) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A and Part D of Schedule 28 (*Staff Transfer*) shall apply;

(ii) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B and Part D of Schedule 28 (*Staff Transfer*) shall apply;

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(iii) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A, B and D of Schedule 28 (*Staff Transfer*) shall apply; and

(iv) Part C of Schedule 28 (*Staff Transfer*) shall not apply;

(b) 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 28 (*Staff Transfer*) shall apply, Part D of Schedule 28 may apply and Parts A and B of Schedule 28 (*Staff Transfer*) shall not apply; and

(c) Part E of Schedule 28 (*Staff Transfer*) shall apply on the expiry or termination of the Services or any part of the Services.

15 SUPPLY CHAIN RIGHTS AND PROTECTIONS

Advertising Sub-contract Opportunities

15.1 The Supplier shall:

(a) subject to Clauses 15.3 and 15.4, 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 twenty-five thousand pounds sterling (£25,000) 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 15.1(c) to the Authority in the format and frequency as reasonably specified by the Authority; and

(e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

15.2 Each advert referred to in Clause 15.1 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.

15.3 The obligation at Clause 15.1 shall only apply in respect of Sub-contract opportunities arising after the Effective Date.

15.4 Notwithstanding Clause 15.1 the Authority may, by giving its prior written approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

Appointment of Sub-contractors

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15.5 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 Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Contract.

15.6 Prior to sub-contracting any of its obligations under this Contract, the Supplier shall notify the Authority 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 Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.

15.7 If requested by the Authority within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.6, the Supplier shall also provide:

(a) subject to Clause 15.8 below, a copy of the proposed Sub-contract; and

(b) any further information reasonably requested by the Authority.

15.8 Where the Authority requests a copy of the proposed Sub-contract pursuant to Clause 15.7 above, the Supplier may provide a redacted copy of such Sub-contract provided that the Authority can review the information of (or understand the lack of clauses relating to) the type referred to in Clause 15.14 even in respect of Sub-contracts which are not Key Sub-contracts and provided that the Authority can review information required in order to enable the Authority to exercise its rights elsewhere under this Contract.

15.9 The Authority may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.6 (or, if later, receipt of any further information requested pursuant to Clause 15.7), 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 Authority;

(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;

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(d) the proposed Sub-contractor should be excluded in accordance with Clause 15.24 (*Termination of sub-contracts*);

(e) the provisions of Clause 15.28 apply, and/or

(f) the technical or professional ability of the Sub-contractor is such that it will be unable to meet any requirements of this Contract, but only where and to the extent that those requirements are applicable to the performance by the proposed Sub-contractor of its obligations under the proposed Sub-contract,

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

15.10 If:

(a) the Authority 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 15.6; and

(ii) any further information requested by the Authority pursuant to Clause 15.7; and

(b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 15.11 (*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 Authority that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of Schedule 11 (*Third Party Contracts*).

15.11 The Authority has approved the appointment of the Sub-contractors listed in Schedule 10 (*Notified Key Sub-contractors*).

Appointment of Key Sub-contractors

15.12 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority 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 Authority;

(b) the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;

(c) the proposed Key Sub-contractor employs unfit persons;

(d) the proposed Key Sub-contractor should be excluded in accordance with Clause 15.24 (*Termination of sub-contracts*);

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(e) the provisions of Clause 15.28 apply, and/or

(f) the technical or professional ability of the Sub-contractor is such that it will be unable to meet any requirements of this Contract, but only where and to the extent that those requirements are applicable to the performance by the proposed Sub-contractor of its obligations under the proposed Sub-contract.

15.13 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 10 (*Notified Sub-contractors*).

15.14 Except where the Authority 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 Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;

(c) a provision enabling the Authority 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 Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;

(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 18 (Authority *Data and Security Requirements*) and 21 (*Protection of Personal Data*);

(ii) FOIA requirements set out in Clause 20 (*Transparency and Freedom of Information*);

(iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute by engaging in an act or omission which is reasonably likely to diminish the trust that the public places in the Authority, whether or not such act or omission is related to the Supplier's obligations under this Contract set out in Clause 5.5(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 19 (*Financial Reports and Audit Rights*);

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(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 Authority under Clauses 33.1(a) (*Termination by the Authority*) and 34.4 (*Payments by the Authority*) and Schedule 16 (*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 Authority;

(h) a provision enabling the Supplier or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 29 (*Remedial Adviser*);

(i) a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 30 (*Step-in Rights*);

(j) a provision requiring the Key Sub-contractor to participate in, and if required by the Authority 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 Authority 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 Authority in order to give full effect to the provisions of Schedule 18 (*Financial Distress*), including meeting with the Supplier and the Authority 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(b)(ii) of Schedule 18 (*Financial Distress*).

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

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Supply chain protection

15.16 The Supplier shall ensure that all Sub-contracts (which in this Sub-Clause means any contract in the Supplier's supply chain entered into after the Effective Date 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 15.16(b), the invoice shall be regarded as valid and undisputed for the purpose of Clause 15.16(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 Authority 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 15.15 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.

15.17 The Supplier shall take reasonable endeavours to ensure that all Sub-contracts (which in this Sub-Clause means any contract in the Supplier's supply chain entered into before the Effective Date 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 15.16(b), the invoice shall be regarded as valid and undisputed for the purpose of Clause 15.16(d) after a reasonable time has passed;

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(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 Authority 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 15.16 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.

15.18 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 Balanced Scorecard Report produced by it pursuant to Schedule 3 (*Performance Levels*) a summary of its compliance with Clause 15.17(a), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

15.19 Without prejudice to Clause 15.17(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 Balanced Scorecard Report produced by it pursuant to Schedule 3 (Performance Levels) a summary of its compliance with Clause 15.18(a), such data to be certified every six (6) months by a director of the Supplier as being accurate and not misleading.

15.20 If any Balanced Scorecard Report 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 of submission of the latest Balanced Scorecard Report 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;

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(b) actions to address each of the causes set out in Clause 15.19(a); and

(c) mechanism for and commitment to regular reporting on progress to the Supplier's Board.

15.21 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.

15.22 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.

15.23 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 Authority 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).

15.24 Notwithstanding any provision of Clauses 19 (*Confidentiality*) and 22 (*Publicity and Branding*), if the Supplier notifies the Authority (whether in a Balanced Scorecard Report or otherwise) 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 Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Termination of Sub-contracts

15.25 The Authority 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 Authority's right of termination pursuant to Clause 33.1(b) (*Termination by the Authority*);

(ii) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, 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

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(iv) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 15.28; and

(b) a Key Sub-contract where there is a change of Control of the relevant Key Sub-contractor, unless:

(i) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or

(ii) the Authority 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 Authority was given notice of the change of Control.

Competitive Terms

15.26 If the Authority 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 Authority may require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item.

15.27 If the Authority exercises its option pursuant to Clause 15.25, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.

Retention of Legal Obligations

15.28 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.

Exclusion of Sub-contractors

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

(a) if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor; and

(b) if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

Reporting SME/VCSE Sub-contracts

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15.30 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 Reports to the Authority 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 24 (*Reports and Records Provisions*) Annex 4 and in accordance with any guidance issued by the Authority from time to time.

15.31 The Authority 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.

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INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

16 INTELLECTUAL PROPERTY RIGHTS

16.1 The Parties agree that the terms set out in Schedule 32 (*Intellectual Property Rights*) shall apply to this Contract.

16.2 The Supplier shall on the occurrence of a Financial Distress Event and at any time on request by the Authority, have the Supplier Software, and use reasonable endeavours to have the Third Party Software, used exclusively for providing Services to the Authority placed in escrow with a recognised escrow agent on terms to be agreed by the Parties and in absence of agreement, on the standard terms of the escrow agent.

16.3 The Supplier agrees that trigger events to be included in the agreement with the escrow agent referred to in Clause 16.2 shall include the following:

(a) a Supplier breach has created a material interruption or disruption in the provision of the Services;

(b) a regulator advises that step in is necessary or desirable;

(c) the occurrence of a Financial Distress Event; and

(d) the Supplier suffering an Insolvency Event.

17 IPRs INDEMNITY

17.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority 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.

17.2 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:

(a) procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or

(b) replace or modify the relevant item with non-infringing substitutes provided that:

(i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

(ii) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;

(iii) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and

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(iv) the terms and conditions of this Contract shall apply to the replaced or modified Services.

17.3 If the Supplier elects to procure a licence in accordance with Clause 17.2(a) or to modify or replace an item pursuant to Clause 17.2(b), but this has not avoided or resolved the IPRs Claim, then:

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

(b) without prejudice to the indemnity set out in Clause 17.1, 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.

18 AUTHORITY DATA AND SECURITY REQUIREMENTS

18.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

18.2 The Supplier shall not store, copy, disclose, or use the Authority 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 Authority.

18.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2 (*Services Description*).

18.4 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.

18.5 The Supplier shall perform secure back-ups of all Authority 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 Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than six (6) monthly intervals (or such other intervals as may be agreed in writing between the Parties).

18.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Baseline Security Requirements.

18.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:

(a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 26 (*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 Authority’s notice; and/or

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(b) itself restore or procure the restoration of Authority 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 26 (*Service Continuity Plan and Corporate Resolution Planning*).

18.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.

18.9 The Supplier shall comply with the requirements of Schedule 5 (*Security Management*).

18.10 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.

18.11 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.

18.12 Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 18.11 the Supplier shall continue to perform the Services in accordance with its existing obligations.

18.13 The Supplier shall indemnify and keep indemnified and hold harmless the Authority against all costs, claims, damages, fines or expenses (including reasonable legal fees) incurred by the Authority due to failure by the Supplier to comply with its obligations under Schedule 5 (*Security Management*), including the cost of re-procurement by the Authority in the event of termination of this Contract due to a material breach of the Security Requirements.

19 CONFIDENTIALITY

19.1 For the purposes of this Clause 19, 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.

19.2 Except to the extent set out in this Clause 19 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:

(a) 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) which meets the requirements of this Contract, including in particular, Schedule 5 (*Security Management*);

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(b) 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;

(c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract; and

(d) 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.

19.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

(a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 20 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;

(b) the need for such disclosure arises out of or in connection with:

(i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Contract;

(ii) the examination and certification of the Authority'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 Authority is making use of any Services provided under this Contract; or

(iii) the conduct of a Central Government Body review in respect of this Contract and/or a major projects review and/or any such similar assurance review carried out by or on behalf of HMG in respect of this Contract; or

(c) 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.

19.4 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.

19.5 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:

(a) 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;

(b) its auditors; and

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(c) its professional advisers for the purposes of obtaining advice in relation to this Contract.

Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 19.5, 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.

19.6 The Authority may disclose the Confidential Information of the Supplier:

(a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;

(b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

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

(d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 19.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Contract;

(e) 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 30 (*Step-In Rights*), its rights to appoint a Remedial Adviser pursuant to Clause 29 (*Remedial Adviser*) and Exit Management rights; or

(f) 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; or

(g) excluding any Commercially Sensitive Information which the Authority determines in its absolute discretion is exempt from disclosure in accordance with the provisions of FOIA, as part of the Authority's re-procurement process for the Services, on a confidential basis and subject to an appropriate confidentiality agreement to bidders for the purposes of undertaking due diligence and/or to a Replacement Supplier for the purposes of providing Replacement Services,

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 Authority under this Clause 19.

19.7 Nothing in this Clause 19 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.

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19.8 The provisions in this Clause 19 shall:

(a) remain in force without limit in time in respect of Confidential Information which comprises Personal Data, sensitive Personal Data or which relates to national security; and

(b) shall not apply in respect of any information, other than that set out at Clause 19.6, 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 performance under this Contract.

20 TRANSPARENCY AND FREEDOM OF INFORMATION

20.1 The Parties acknowledge that:

(a) the Transparency Reports;

(b) the content of this Contract, including any changes to this Contract agreed from time to time, except for –

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

(ii) Commercially Sensitive Information; and

(c) the Publishable Performance Information

(together the "**Transparency Information**") are not Confidential Information.

20.2 Notwithstanding any other provision of this Contract, the Supplier hereby gives its consent for the Authority 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 Authority 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.

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20.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 24 (*Reports and Records Provisions*).

20.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority 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 Authority 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.

20.5 The Authority 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.

20.6 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 Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 19.6(c)) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within five (5) Working Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.

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

(a) provide all necessary assistance and cooperation as reasonably requested by the Authority, at no additional cost to the Authority, to enable the Authority to comply with its obligations under the FOIA and EIRs;

(b) transfer to the Authority 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;

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

(d) not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.

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20.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority 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 Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

21 PROTECTION OF PERSONAL DATA

Status of the Parties

21.1 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:

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

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

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

(d) "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 Schedule 31 (*Processing Personal Data*) which scenario or scenarios are intended to apply under this Contract.

Where one Party is Controller and the other Party its Processor

21.2 Where a Party is a Processor, the only processing that it is authorised to do is listed in Schedule 31 (*Processing Personal Data*) by the Controller.

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

21.4 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;

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(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.

21.5 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 Schedule 31 (*Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 18 (*Authority 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 Schedule 31 (*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 21, Clauses 19 (*Confidentiality*) and 18 (*Authority 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;

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(d) where the Personal Data is subject to UK GDPR, not transfer such Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

(i) the transfer is in accordance with Article 45 of the UK GDPR (or section 73 of DPA 2018);

(ii) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75) as determined by the Controller which could include relevant parties entering into the International Data Transfer Agreement or International Data Transfer Agreement Addendum to the European Commission's SCCs as published by the Information Commissioner's Office, as well as any additional measures determined by the Controller;

(iii) the Data Subject has enforceable rights and effective legal remedies;

(iv) 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

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

(e) where the Personal Data is subject to EU GDPR, not transfer such Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

(i) the transfer is in accordance with Article 45 of the EU GDPR;

(ii) the Controller or the Processor has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the Controller which could include relevant parties entering into Standard Contractual Clauses in the European Commission's decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time as well as any additional measures determined by the Controller;

(iii) the Data Subject has enforceable rights and effective legal remedies;

(iv) the Processor complies with its obligations under the EU GDPR 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

(v) 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

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(f) 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.

21.6 Subject to Clause 21.7, 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.

21.7 The Processor’s obligation to notify under Clause 21.6 shall include the provision of further information to the Controller in phases, as details become available.

21.8 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 21.6 (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 other regulatory authority, or any consultation by the Controller with the Information Commissioner's Office or any other regulatory authority.

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21.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 21. 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 UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or

(c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

21.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

21.11 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.

21.12 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 21 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.

21.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

21.14 The Authority may, at any time on not less than thirty (30) Working Days' notice, revise this Clause 21 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).

21.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority 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.

Where the Parties are Independent Controllers of Personal Data

21.16 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.

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21.17 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.

21.18 Where a Party has provided Personal Data to the other Party in accordance with Clause 21.16, 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.

21.19 The Parties shall be responsible for their own compliance with Articles 13 and 14 of the UK GDPR in respect of the processing of Personal Data for the purposes of this Contract.

21.20 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);

(c) where the Personal Data is subject to UK GDPR and where the provision of Personal Data from one Party to another involves transfer of such data to outside the UK, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:

(i) the transfer is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 73;

(ii) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75) as determined by the non-transferring Party which could include the International Data Transfer Agreement or International Data Transfer Agreement Addendum to the European Commission's SCCs as published by the Information Commissioner's Office, as well as any additional measures determined by the non-transferring Party;

(iii) the Data Subject has enforceable rights and effective legal remedies;

(iv) the transferring Party 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 non- transferring Party in meeting its obligations); and

(v) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data;

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(d) where the Personal Data is subject to EU GDPR and where the provision of Personal Data from one Party to another involves transfer of such data to outside the EU, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:

(i) the transfer is in accordance with Article 46 of the EU GDPR;

(ii) the transferring Party has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the non-transferring Party which could include relevant parties entering into Standard Contractual Clauses in the European Commission's decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time as well as any additional measures determined by the non-transferring Party;

(iii) the Data Subject has enforceable rights and effective legal remedies;

(iv) the transferring Party 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 non- transferring Party in meeting its obligations); and

(v) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and

(e) where it has recorded it in Schedule 31 (*Processing Personal Data*).

21.21 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 UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.

21.22 A Party processing Personal Data for the purposes of this Contract shall maintain a record of its processing activities in accordance with Article 30 of the UK GDPR and shall make the record available to the other Party upon reasonable request.

21.23 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

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(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.

21.24 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 or any other regulatory authority 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.

21.25 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 Schedule 31 (*Processing Personal Data*).

21.26 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 Schedule 31 (*Processing Personal Data*).

21.27 Notwithstanding the general application of Clauses 21.2 to 21.15 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 21.16 to 21.26.

UK Adequacy Decision

21.28 It is noted that on 28 June 2021 the European Commission made an implementing decision pursuant to Article 45 of the EU GDPR on the adequate protection of personal data by the United Kingdom which contains carve-outs for certain transfers outside of the EU to the UK of certain types of Personal Data (the "**UK Adequacy Decision**"). If any transfer of Personal Data which is subject to EU GDPR pursuant

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to this Contract is not covered by the UK Adequacy Decision or at any time during the term of the Contract the UK Adequacy Decision is:

(a) withdrawn, invalidated, overruled or otherwise ceases to have effect, or

(b) amended in such a way as to affect the transfers of Personal Data outside of the EU which are contemplated under this Contract,

Clauses 21.29 to 21.30 below shall apply.

21.29 The Parties agree:

(a) that without any further action being required they have entered into the Standard Contractual Clauses in the European Commission's decision 2021/914/EU in respect of data transfers by the Supplier outside of the EU to the UK;

(b) that, where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Contract (and to which Chapter V of the EU GDPR applies) will be transferred in accordance with those Standard Contractual Clauses as of the date the Parties entered into those Standard Contractual Clauses;

(c) 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

(d) that if there is any conflict between this Contract and the Standard Contractual Clauses the terms of the Standard Contractual Clauses shall apply.

21.30 In the event that the European Commission updates, amends, substitutes, adopts or publishes new Standard Contractual Clauses from time to time, the Parties agree:

(a) that the most up to date Standard Contractual Clauses from time to time shall be automatically incorporated in place of those in Annex 4 to Schedule 31 (*Processing Personal Data*) and that such incorporation is not a Change;

(b) that where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Contract (and to which Chapter V of the EU 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 European Commission decision regarding such new Standard Contractual Clauses becomes effective;

(c) 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

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(d) 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.

Service Recipients

21.31 Where the Supplier is providing Services to, or for the benefit of, a Service Recipient, the provisions of this Clause 21 shall apply between the Supplier and that Service Recipient as if the Service Recipient was a Party to this Contract (and references to “Party” or “Parties” in this Clause 21 and Schedule 31 (*Processing Personal Data*) shall be construed accordingly in such instance(s)). In these circumstances such Service Recipient shall have the right to enforce the provisions of Clause 21 and Schedule 31 (*Processing Personal Data*) against the Supplier in respect of the processing of Personal Data of which it is Controller, Joint Controller or Independent Controller.

22 PUBLICITY AND BRANDING

22.1 The Supplier shall not:

(a) make any press announcements or publicise this Contract or its contents in any way; or

(b) use the Authority's name or brand in any promotion or marketing or announcement of orders;

without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

22.2 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 Authority System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

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SECTION G - LIABILITY, INDEMNITIES AND INSURANCE

23 LIMITATIONS ON LIABILITY

Authority Loss

23.1 The Supplier acknowledges that, subject to the remainder of this Clause 23, any Losses suffered by a Service Recipient that are caused by a Default of the Supplier shall be deemed to be Losses that have been suffered by, and which are recoverable by, the Authority.

Unlimited Liability

23.2 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.

23.3 The Supplier's liability in respect of the indemnities in Clause 10.6 (*VAT*), Clause 14.7 (*Employment Indemnity*), Clause 14.8 (*Income Tax and National Insurance Contributions*), Clause 17 (*IPRs Indemnity*), Clause 18.13 (*Authority Data and Security Requirements*), Schedule 28 (*Staff Transfer*) and the Annexes to Schedule 28 (*Staff Transfer*) shall be unlimited.

23.4 The Authority's liability in respect of the indemnities in Clause 14.7 (*Employment Indemnity*), Schedule 28 (*Staff Transfer*) and the Annexes to Schedule 28 (*Staff Transfer*) shall be unlimited.

Financial and other limits

23.5 Subject to Clauses 23.2 and 23.3 (*Unlimited Liability*) and Clauses 23.8 (*Consequential losses*):

(a) the Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority (including the Goods (following transfer of ownership to the Authority), technical infrastructure, assets or equipment but excluding any loss or damage to the Authority'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 REDACTED [redacted];

(b) the Supplier's aggregate liability in respect of loss of or damage to Authority Data or Losses incurred by the Authority due to breach of Data Protection Legislation that is caused by Default of the Supplier occurring in each and

any Contract Year shall in no event exceed REDACTED ;

(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; and

(d) the Supplier's aggregate liability in respect of all other Losses incurred by the Authority 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 relating to the Implementation Services, an amount equal to the greater of:

(A) REDACTED; and

(B) an amount equal to REDACTED of the total Charges paid or payable for the Implementation Services;

(ii) in relation to Defaults relating to the Operational Services:

(A) for Defaults occurring in first Operational Services Contract Year, an amount equal to the greater of:

- REDACTED; and
- REDACTED of the Estimated Year 1 Charges;

(B) for Defaults occurring in any subsequent Contract Year, an amount equal to the greater of:

- REDACTED; and
- REDACTED of the Charges paid and due to be paid to the Supplier under this Contract in such Contract Year immediately preceding the occurrence of the Default;

(iii) in relation to Defaults occurring after the end of the Term, the greater of:

(A) REDACTED; and

(B) an amount equal to REDACTED 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,

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provided that where any Losses referred to this Clause 23.5(d) have been incurred by the Authority 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 REDACTED shall be deemed to be references to t REDACTED.

23.6 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 23.5(c).

23.7 Subject to Clauses 23.2 and 23.4 (*Unlimited Liability*) and Clause 23.8 (*Consequential Losses*) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:

(a) the Authority'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 Authority pursuant to Clause 33.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 33.3(a) (*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 16 (*Payments on Termination*);

(ii) in relation to the Breakage Costs Payment, the amount set out in Paragraph 3.2 of Schedule 16 (*Payments on Termination*); and

(iii) in relation to the Compensation Payment, the amount set out in Paragraph 6 of Schedule 16 (*Payments on Termination*); and

(b) the Authority'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 Authority 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.

Consequential Losses

23.8 Subject to Clauses 23.2, 23.3 and 23.4 (*Unlimited Liability*) and Clause 23.9, neither Party shall be liable to the other Party for:

(a) any indirect, special or consequential Loss; or

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(b) any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

23.9 Notwithstanding Clause 23.8 but subject to Clause 23.5, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority 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 Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

(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 the Authority;

(e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty;

(f) any additional costs and expenses incurred by the Authority resulting from a delay in transitioning Services to the Authority to one or more Replacement Suppliers, including costs and expenses incurred by Service Recipients; and

(g) any anticipated savings identified in Schedule 20 (*Anticipated Savings*).

Conduct of indemnity claims

23.10 Where under this Contract one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 27 (*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.

Mitigation

23.11 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.

Service Recipients

23.12 The Supplier acknowledges and agrees that the Authority may act as agent for Service Recipients and bring claims of such Service Recipients on behalf of such Service Recipients and further may treat losses of Service Recipients as losses of the Authority and to the extent such losses of the Authority would be recoverable

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under this Contract, such losses of Service Recipients shall also be recoverable by the Authority.

24 C:\Users\huntere\Downloads\Core Terms v1.1 (MDSS).docx - _bookmark118**INSURANCE**

24.1 The Supplier shall comply with the provisions of Schedule 6 (*Insurance Requirements*) in relation to obtaining and maintaining insurance.

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SECTION H - REMEDIES AND RELIEF

25 FIX FIRST

25.1 Notwithstanding any other provision in this Contract (save for Clause 31), in the event of a Default by the Supplier (or an anticipated Default by the Supplier), the Supplier shall:

(a) in the case of an anticipated Default, take action to avoid the Default occurring;

(b) (if the Default occurs) remedy the Default as soon as possible; and

(c) use all reasonable endeavours to eliminate or mitigate the consequences or delay of any such Default or anticipated Default on the Authority at no cost to the Authority.

26 SERVICE IMPROVEMENT PLAN

26.1 In the event that there is, or is reasonably likely to be, an Improvement Plan Trigger Event which, the Supplier shall notify the Authority of the Improvement Plan Trigger Event as soon as practicable but in any event within three (3) Working Days of becoming aware of the Improvement Plan Trigger Event, detailing the actual or anticipated effect of the Improvement Plan Trigger Event and, unless the Improvement Plan Trigger Event also constitutes a Notifiable Default (in which case Clause 27 applies) then:

(a) the Supplier shall attend services improvement meetings no more frequently than weekly in order to discuss the impact and potential resolution to the Improvement Plan Trigger Event;

(b) the Supplier shall submit a draft Services Improvement Plan even if the Supplier disputes that it is responsible for the Service Improvement Trigger Event.

26.2 The draft Service Improvement Plan shall set out:

(a) full details of the Improvement Plan Trigger Event that has occurred, including a root cause analysis;

(b) the actual or anticipated effect of the Improvement Plan Trigger Event; and

(c) the steps which the Supplier proposes to take to rectify the Improvement Plan Trigger Event (if applicable) and to prevent such Improvement Plan Trigger Event from recurring, including timescales for such steps and for the rectification of the Improvement Plan Trigger Event (where applicable).

26.3 In preparing a draft Service Improvement Plan, the Supplier shall take account of, and ensure that the draft Service Improvement Plan is compliant with, all policies and procedures applicable to the rectification of the relevant Improvement Plan Trigger Event(s).

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26.4 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Service Improvement Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 23 (*Dispute Resolution Procedure*).

Agreement of the Service Improvement Plan

26.5 The Authority may reject the draft Service Improvement Plan by notice to the Supplier if, acting reasonably, it considers that the draft Service Improvement Plan is inadequate, for example because the draft Service Improvement 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 Improvement Plan Trigger Event; and/or

(d) will rectify the Improvement Plan Trigger Event but in a manner which is unacceptable to the Authority.

26.6 The Authority shall notify the Supplier whether it consents to the draft Service Improvement Plan as soon as reasonably practicable. If the Authority rejects the draft Service Improvement Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Service Improvement Plan. The Supplier shall submit the revised draft of the Service Improvement Plan to the Authority for review within five (5) Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft. If the Authority consents to the Service Improvement Plan the Supplier shall immediately start work on the actions set out in the Service Improvement Plan.

27 RECTIFICATION PLAN PROCESS

27.1 In the event that:

(a) there is, or is reasonably likely to be, a Delay; and/or

(b) in any Service Period there has been:

(i) a Material KPI Failure; and/or

(ii) a Material PI Failure; and/or

(c) the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default); and/or

(d) the Supplier commits a breach of its obligations in: Clause 18 (*Authority Data and Security Requirements*); Clause 19 (*Confidentiality*); Clause 20

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(*Transparency and Freedom of Information*); Clause 21 (*Protection of Personal Data*) and/or Schedule 5 (*Security Management*),

(each a "**Notifiable Default**"), the Supplier shall notify the Authority of the Notifiable Default as soon as practicable but in any event within three (3) Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event, the Authority may not terminate this Contract in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process, and/or

(e) the Parties have been unable to agree a Service Improvement Plan or a Service Improvement Plan has been agreed but:

(i) the Supplier has followed the Service Improvement Plan but the Service Improvement Trigger Event has not been resolved; or

(ii) the Supplier has failed to follow the Service Improvement Plan,

Notification

27.2 If:

(a) the Supplier notifies the Authority pursuant to Clause 27.1 that a Notifiable Default has occurred; or

(b) the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, unless the Notifiable Default also constitutes a Supplier Termination Event and the Authority serves a Termination Notice, the Supplier shall comply with the Rectification Plan Process.

27.3 The "**Rectification Plan Process**" shall be as set out in Clauses 27.4 (*Submission of the draft Rectification Plan*) to 27.10 (*Agreement of the Rectification Plan*).

Submission of the draft Rectification Plan

27.4 The Supplier shall submit a draft Rectification Plan to the Authority 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) after the original notification pursuant to Clause 27.2 (*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

27.5 The draft Rectification Plan shall set out:

(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; and

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(c) the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including costs and timescales for such steps and for the rectification of the Notifiable Default (where applicable).

27.6 In preparing a draft Rectification Plan, the Supplier shall take account of, and ensure that the draft Rectification Plan is compliant with, all policies and procedures applicable to the rectification of the relevant Notifiable Default(s).

27.7 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 23 (*Dispute Resolution Procedure*).

Agreement of the Rectification Plan

27.8 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, 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 or cost the Authority too much to complete;

(c) will not prevent reoccurrence of the Notifiable Default; and/or

(d) will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.

27.9 The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within five (5) Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.

27.10 If the Authority consents to the Rectification Plan:

(a) the Supplier shall immediately start work on the actions set out in the Rectification Plan; and

(b) the Authority 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.

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28 DELAY PAYMENTS

28.1 If a Key Milestone has not been Achieved by its relevant Milestone Date, the provisions of Paragraph 1 of Part C of Schedule 15 (*Charges and Invoicing*) shall apply in relation to the payment of Delay Payments.

28.2 Delay Payments shall be the Authority's exclusive financial remedy for the Supplier's failure to Achieve a Key Milestone by its Milestone Date except where:

(a) the Authority is entitled to or does terminate this Contract pursuant to Clause 33.1(b) (*Termination by the Authority*); or

(b) the Delay exceeds the Delay Deduction Period.

29 REMEDIAL ADVISER

29.1 If:

(a) any of the Intervention Trigger Events occur; or

(b) the Authority reasonably believes that any of the Intervention Trigger Events are likely to occur,

(each an "**Intervention Cause**"), the Authority may give notice to the Supplier (an "**Intervention Notice**") giving reasonable details of the Intervention Cause and requiring:

(i) a meeting between the Authority Representative and the Supplier Representative to discuss the Intervention Cause; and/or

(ii) the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 29.

For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Authority has no obligation to exercise its rights under this Clause 29.1 prior to or instead of exercising its right to terminate this Contract.

29.2 If the Authority gives notice that it requires the appointment of a Remedial Adviser:

(a) the Remedial Adviser shall be:

(i) a person selected by the Supplier and approved by the Authority; or

(ii) if none of the persons selected by the Supplier have been approved by the Authority (or no person has been selected by the Supplier) within ten (10) Working Days following the date on which the Intervention Notice is given, a person identified by the Authority;

(b) the terms of engagement, which shall include confidentiality provisions substantially similar to those imposed on the Supplier in Clause 19 (*Confidentiality*), and start date agreed with the Remedial Adviser must be approved by the Authority; and

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(c) any right of the Authority to terminate this Contract pursuant to Clause 33.1(b) (*Termination by the Authority*) 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) (the "**Intervention Period**").

29.3 The Remedial Adviser's overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) 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:

(a) 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;

(b) gather any information the Remedial Adviser considers relevant in the furtherance of its objective;

(c) write reports and provide information to the Authority in connection with the steps being taken by the Supplier to remedy the Intervention Cause;

(d) make recommendations to the Authority and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or

(e) take any other steps that the Authority and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.

29.4 The Supplier shall:

(a) work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;

(b) ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;

(c) submit to such monitoring as the Authority and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;

(d) implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Authority within the timescales given by the Remedial Adviser; and

(e) not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Authority (such consent not to be unreasonably withheld).

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29.5 The Supplier shall be responsible for:

(a) the costs of appointing, and the fees charged by, the Remedial Adviser; and

(b) its own costs in connection with any action required by the Authority and/or the Remedial Adviser pursuant to this Clause 29.

29.6 If:

(a) the Supplier:

(i) fails to perform any of the steps required by the Authority in an Intervention Notice; and/or

(ii) is in Default of any of its obligations under Clause 29.4; and/or

(b) the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a "**Remedial Adviser Failure**"), the Authority shall be entitled to terminate this Contract pursuant to Clause 33.1(b) (*Termination by the Authority*).

30 STEP-IN RIGHTS

30.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a "**Step-In Notice**") that it will be taking action under this Clause 30 (*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 19 (*Confidentiality*)). The Step- In Notice shall set out the following:

(a) the action the Authority wishes to take and in particular the Services that it wishes to control (the "**Required Action**");

(b) the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier's Default;

(c) the date on which it wishes to commence the Required Action;

(d) the time period which it believes will be necessary for the Required Action;

(e) whether the Authority will require access to the Supplier's premises and/or the Sites; and

(f) to the extent practicable, the impact that the Authority 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.

30.2 Following service of a Step-In Notice, the Authority shall:

(a) 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;

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(b) keep records of the Required Action taken and provide information about the Required Action to the Supplier;

(c) co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and

(d) act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this Clause 30.

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

(a) the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;

(b) 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 30.4 shall apply to Deductions from Charges in respect of other Services; and

(c) the Authority shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Authority's costs of taking the Required Action.

30.4 If the Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:

(a) the degradation of any Services not subject to the Required Action; or

(b) the non-Achievement of a Milestone,

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

30.5 Before ceasing to exercise its step in rights under this Clause 30 the Authority shall deliver a written notice to the Supplier (a "**Step-Out Notice**"), specifying:

(a) the Required Action it has actually taken; and

(b) the date on which the Authority plans to end the Required Action (the "**Step-Out Date**") subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 30.6.

30.6 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 Authority'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.

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30.7 If the Authority does not approve the draft Step-Out Plan, the Authority 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 Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

30.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause 30, provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:

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

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

31 AUTHORITY CAUSE

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

(a) Achieve a Milestone by its Milestone Date;

(b) provide the Operational Services in accordance with the Target Performance Levels; and/or

(c) 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 Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause 31):

(i) 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 Authority Cause;

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

(A) to terminate this Contract pursuant to Clause 33.1(b) (*Termination by the Authority*); or

(B) to take action pursuant to Clauses 29 (*Remedial Adviser*) or 30 (*Step-In*);

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

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

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(B) if the Authority, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause;

(C) if the Milestone is a Key Milestone, the Supplier shall have no liability to pay any Delay Payments associated with the Key Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Authority Cause; and

(D) 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 15 (*Charges and Invoicing*); and/or

(iv) where the Supplier Non-Performance constitutes a Performance Failure:

(A) the Supplier shall not be liable to accrue Service Credits;

(B) the Authority shall not be entitled to withhold any of the Service Charges pursuant to Clause 7.2(d)(ii) (*Performance Failures*);

(C) the Authority shall not be entitled to withhold and retain any Compensation for Unacceptable KPI Failure pursuant to Clause 7.4(a) (*Unacceptable KPI Failure*); and

(D) the Supplier shall be entitled to invoice for the Service Charges for the relevant Operational Services affected by the Authority Cause,

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

31.2 In order to claim any of the rights and/or relief referred to in Clause 31.1, the Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a "**Relief Notice**") setting out details of:

(a) the Supplier Non-Performance;

(b) the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Contract;

(c) any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause;

(d) the relief and/or compensation claimed by the Supplier;

(e) the reasonable and necessary steps taken by the Supplier in accordance with its obligations set out in 2.1.11 of Schedule 2 (*Services Description*) and

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where applicable the steps taken in accordance with Clause 3.11 of the Collaboration Agreement; and

(f) where applicable, the steps taken (or to be taken) by the Supplier to eliminate or mitigate the consequences and impact of such Authority Cause.

31.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary. For the avoidance of doubt where the Supplier has failed to demonstrate the steps taken pursuant to Clause 31.2(e), the Relief Notice will be rejected by the Authority.

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

31.5 Without prejudice to Clause 5.9 (Continuing obligation to provide the Services), if a Dispute arises as to:

(a) whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or

(b) 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.

31.6 Any Change that is required to the Implementation Plan or to the Charges pursuant to this Clause 31 shall be implemented in accordance with the Change Control Procedure.

32 FORCE MAJEURE

32.1 Subject to the remaining provisions of this Clause 32 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*)), a Party may claim relief under this Clause 32 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.

32.2 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

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obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

32.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 32 to the extent that consequences of the relevant Force Majeure Event:

(a) are capable of being mitigated, but the Supplier has failed to do so;

(b) 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

(c) 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).

32.4 Subject to Clause 32.5, 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.

32.5 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.

32.6 Where, as a result of a Force Majeure Event:

(a) an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:

(i) 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 33.1(c) (*Termination by the Authority*) or Clause 33.3(b) (*Termination by the Supplier*); and

(ii) neither Party shall be liable for any Default arising as a result of such failure;

(b) the Supplier fails to perform its obligations in accordance with this Contract:

(i) the Authority shall not be entitled:

(A) during the continuance of the Force Majeure Event to exercise its rights under Clause 29 (*Remedial Adviser*) and/or Clause 30 (*Step-in Rights*) as a result of such failure;

(B) to receive Delay Payments pursuant to Clause 28 (*Delay Payments*) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and

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(C) to receive Service Credits, to withhold any of the Service Charges pursuant to Clause 7.2(d)(ii) (*Performance Failures*) or withhold and retain any of the Service Charges as compensation pursuant to Clause 7.4(a) (*Unacceptable KPI Failure*) to the extent that a Performance Failure has been caused by the Force Majeure Event; and

(ii) 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.

32.7 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.

32.8 Relief from liability for the Affected Party under this Clause 32 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 32.7.

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SECTION I - TERMINATION AND EXIT MANAGEMENT

33 TERMINATION RIGHTS

Termination by the Authority

33.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier:

(a) for convenience at any time;

(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.

33.2 Where the Authority:

(a) is terminating this Contract under Clause 33.1(b) due to the occurrence of either limb (b),(h) and/or (i) 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 33.1(b) or Clause 33.1(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.

Termination by the Supplier

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

(a) this Contract if the Authority fails to pay an undisputed sum due to the Supplier under this Contract which in aggregate exceeds REDACTED and such amount remains outstanding forty (40) Working Days after the receipt by the Authority of a notice of non-payment from the Supplier; or

(b) 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

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operation of Clause 33.3(b) would result in a Partial Termination, the provisions of Clause 33.4 (*Partial Termination*) shall apply.

Partial Termination

33.4 If the Supplier notifies the Authority pursuant to Clause 33.3(b) (*Termination by the Supplier*) that it intends to terminate this Contract in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority 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 33.4, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.

33.5 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.

34 CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

34.1 The provisions of Clauses 5.8 (*Specially Written Software warranty*), 10.5 and 10.6 (*VAT*), 10.7 and 10.8 (*Set-off and Withholding*), 12 (*Records, Reports, Audits and Open Book Data*), 14.7 (*Employment Indemnity*), 14.8 (*Income Tax and National Insurance Contributions*), 16 (*Intellectual Property Rights*), 17.1 (*IPRs Indemnity*), 19 (*Confidentiality*), 20 (*Transparency and Freedom of Information*), 21 (*Protection of Personal Data*), 23 (*Limitations on Liability*), 34 (*Consequences of Expiry or Termination*), 40 (*Severance*), 42 (*Entire Agreement*), 43 (*Third Party Rights*), 45 (*Disputes*) and 46 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 15 (*Charges and Invoicing*), 16 (*Payments on Termination*), 19 (*Financial Reports and Audit Rights*), 23 (*Dispute Resolution Procedure*), 24 (*Reports and Records Provisions*), 25 (*Exit Management*), 28 (*Staff Transfer*), and 32 (*Intellectual Property Rights)*, and such other provisions which are expressly or by implication required to survive termination or expiry, shall survive the termination or expiry of this Contract.

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Exit Management

34.2 The Parties shall comply with the provisions of Schedule 25 (*Exit Management*) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Supplier.

Payments by the Authority

34.3 If this Contract is terminated by the Authority pursuant to Clause 33.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 33.3(a) (*Termination by the Supplier*), the Authority 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(a) of Part D of Schedule 15 (*Charges and Invoicing*) applies, deemed given) by the Authority pursuant to Clause 33.1(a) (*Termination by the Authority*)) to (and including) the Termination Date; or

(ii) the period from (and including) the date of the non-payment by the Authority referred to in Clause 33.3(a) (*Termination by the Supplier*) to (and including) the Termination Date,.

and the Parties agree that in the event of a Partial Termination by the Authority pursuant to Clause 33.4 or by the Supplier pursuant to Clause 33.1(c) the Authority shall pay the Supplier the proportion of the payments set out above referable to those Services that are subject to that Partial Termination calculated by reference to the provisions of Schedule 15 (*Charges and Invoicing*).

34.4 If this Contract is terminated (in part or in whole) by the Authority pursuant to Clauses 33.1(b), 33.1(c)file:///C:/Users/huntere/Downloads/Core Terms v1.1 (MDSS).docx and/or 33.2 (*Termination by the Authority*), or the Term expires, the only payments that the Authority 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 25 (Exit Management); and

(b) payments in respect of unpaid Charges for Services received up until the Termination Date.

34.5 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

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33.1(c)file:///C:/Users/huntere/Downloads/Core Terms v1.1 (MDSS).docx or 33.2(b) (*Termination by the Authority*) or 33.3(b)file:///C:/Users/huntere/Downloads/Core Terms v1.1 (MDSS).docx (*Termination by the Supplier*); or

(b) the Authority terminates this Contract under Clause 33.1(d) (*Termination by the Authority*) or the Authority partially terminates this Contract under Clause 33.4.

Payments by the Supplier

34.6 In the event of termination or expiry of this Contract, the Supplier shall repay to the Authority 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.

34.7 If this Contract is terminated (in whole or in part) by the Authority pursuant to Clause 33.1(b) (*Termination by the Authority*) prior to Achievement of one or more CPP Milestones, the Authority 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 Authority an amount equal to the aggregate Milestone Adjustment Payment Amounts in respect of each CPP Milestone to which the Milestone Adjustment Payment Notice relates.

34.8 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 Authority 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 Authority 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.

34.9 The Supplier shall within ten (10) Working Days of receipt of a Milestone Adjustment Payment Notice, in each case as applicable:

(a) notify the Authority whether it agrees that the Retained Deliverables which the Authority 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 Authority of the Supplier's proposed amount of the Allowable Price Adjustment and the basis for its approval;

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(c) provide the Authority 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 Authority with such supporting information as the Authority may require.

34.10 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.

34.11 If the Authority issues a Milestone Adjustment Payment Notice pursuant to Clause 34.7:

(a) the Authority 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 Authority) 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 by the Supplier pursuant to Schedule 32 (*Intellectual Property Rights*) 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.

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SECTION J - MISCELLANEOUS AND GOVERNING LAW

35 COMPLIANCE

Health and Safety

35.1 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 Authority Premises.

35.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority 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.

Employment Law

35.3 The Supplier must perform its obligations meeting the requirements of all applicable Law regarding employment.

Equality and Diversity

35.4 The Supplier shall:

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

(i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

(ii) the Authority's equality and diversity policy as provided to the Supplier from time to time; and

(iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and

(b) take all necessary steps, and inform the Authority 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).

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Official Secrets Act and Finance Act

35.5 The Supplier shall comply with the provisions of:

(a) the Official Secrets Acts 1911 to 1989; and

(b) section 182 of the Finance Act 1989.

Conflicts of Interest

35.6 The Supplier:

(a) must take action to ensure that neither the Supplier nor the Supplier Personnel are placed in the position of an actual, potential or perceived Conflict of Interest; and

(b) must promptly notify and provide details to the Authority if an actual, potential or perceived Conflict of Interest happens or is expected to happen.

35.7 The Authority will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Authority, such measures do not or will not resolve an actual or potential Conflict of Interest, the Authority may terminate this Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest.

Modern Slavery

35.8 The Supplier:

(a) shall not use, nor allow its sub-contractors to use forced, bonded or involuntary prison labour;

(b) shall not require any Supplier Personnel or the personnel of any sub-contractors to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;

(c) warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;

(d) warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;

(e) shall make reasonable enquires to ensure that its officers, employees and sub-contractors have not been convicted of slavery or human trafficking offences anywhere around the world;

(f) shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its sub-contractors anti-slavery and human trafficking provisions;

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(g) shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;

(h) shall prepare and deliver to the Authority, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;

(i) shall not use, nor allow its employees or sub-contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or sub-contractors;

(j) shall not use or allow child or slave labour to be used by its sub-contractors;

(k) shall report the discovery or suspicion of any slavery or trafficking by it or its sub-contractors to the Authority and the Modern Slavery Helpline/;

(l) shall comply with any request by the Authority to complete the Modern Slavery Assessment Tool within sixty (60) days of such request;

(m) shall, if the Supplier or the Authority identifies any occurrence of modern slavery connected to this Contract, comply with any request of the Authority to follow the Rectification Plan Process to submit a remedial action plan which follows the form set out in Annex D of the guidance *Tackling Modern Slavery in Government Supply Chains*, which can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/830150/September_2019_Modern_Slavery_Guidance.pdf

and such remedial action plan shall be deemed to be a Rectification Plan;

(n) shall comply with any request by the Authority to provide a Supply Chain Map within fourteen (14) days of such request;

(o) shall comply with any request by the Authority to provide a copy of any reports of any sub-contractor regarding any or all of workforce conditions, working or employment practices and recruitment practices within fourteen (14) days of such request;

(p) shall carry out due diligence to ensure workers in its business and its supply chains are not paying illegal or exploitative recruitment fees to secure employment, and where these fees are uncovered shall ensure that workers are remedied; and

(q) shall report the discovery or suspicion of any slavery, forced labour, child labour, involuntary prison labour or labour rights abuses in its operations and supply chains to the Authority and relevant national or local law enforcement agencies.

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35.9 The following shall be added Paragraph 1.1 of Part C of Schedule 19 (*Financial Reports and Audit Rights*) immediately after limb (u):

"(v) to carry out an unannounced or semi-announced inspection of any Site and speak directly to any Supplier Personnel in a confidential manner and in the native language of such Supplier Personnel in respect of workforce conditions, working or employment practices and recruitment practices;"

35.10 For the purposes of an audit carried out pursuant to limb (v) of the definition of "Audit", in addition to any other rights under the Contract, the Authority may instruct the Supplier to carry out such an audit of any Sub-Contractor by an independent third party and, if so instructed, the Supplier shall deliver a report to the Authority within ninety (90) days of such instruction.

35.11 If the Supplier notifies the Authority pursuant to Clause 35.13 it shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with the Contract.

35.12 If the Supplier is in Default under Clause 35.8 the Authority may by notice:

(a) require the Supplier to remove from performance of the Contract any Sub-Contractor, Supplier Personnel or other persons associated with it whose acts or omissions have caused the Default; or

(b) immediately terminate the Contract.

Whistleblowing

35.13 As soon as it is aware of it the Supplier and Supplier Personnel must report to the Authority any actual or suspected breach of:

(a) Law;

(b) Clauses 35.1 to 35.8 or 35.14; or

(c) Clause 39.

35.14 The Supplier must not retaliate against any of the Supplier Personnel who in good faith reports a breach listed in this Clause to the Authority or a Prescribed Person.

36 ASSIGNMENT AND NOVATION

36.1 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 Authority.

36.2 The Authority 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:

(a) any Central Government Body; or

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(b) 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 Authority,

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 36.2.

36.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 36.4) affect the validity of this Contract and this Contract shall be binding on any successor body to the Authority.

36.4 If the Authority 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 Authority (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 Authority 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).

37 WAIVER AND CUMULATIVE REMEDIES

37.1 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.

37.2 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.

38 RELATIONSHIP OF THE PARTIES

38.1 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.

39 PREVENTION OF FRAUD AND BRIBERY

39.1 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:

(a) 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

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(b) 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.

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

(a) commit a Prohibited Act; and/or

(b) do or suffer anything to be done which would cause the Authority or any of the Authority'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.

39.3 The Supplier shall during the term of this Contract:

(a) 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;

(b) 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;

(c) keep appropriate records of its compliance with its obligations under Clause 39.3(a) and make such records available to the Authority on request; and

(d) 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.

39.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 39.1 and/or 39.2, or has reason to believe that it has or any of the Supplier Personnel have:

(a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

(b) 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

(c) 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.

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39.5 If the Supplier makes a notification to the Authority pursuant to Clause 39.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 12 (*Records, Reports, Audits and Open Book Data*).

39.6 If the Supplier is in Default under Clauses 39.1 and/or 39.2, the Authority may by notice:

(a) require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the Default; or

(b) immediately terminate this Contract.

39.7 Any notice served by the Authority under Clause 39.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Contract shall terminate).

40 SEVERANCE

40.1 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.

40.2 In the event that any deemed deletion under Clause 40.1 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.

40.3 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 40.2, the matter shall be dealt with in accordance with Paragraph 4 (*Commercial Negotiation*) of Schedule 23 (*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 40.3.

41 FURTHER ASSURANCES

41.1 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.

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42 ENTIRE AGREEMENT

42.1 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.

42.2 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.

42.3 Nothing in this Clause 42 shall exclude any liability in respect of misrepresentations made fraudulently.

43 THIRD PARTY RIGHTS

43.1 The provisions of Clauses 5.15 to 5.17 inclusive (*Service Recipients*), 14.7(a) (*Employment Indemnity*), 14.8(b) (*Income Tax and National Insurance Contributions*), 17.1 (*IPRs Indemnity*) and 21.31 (*Processing Personal Data – Service Recipients*), 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 28 (*Staff Transfer*) and the provisions of Paragraph 6.9 of Schedule 25 (*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.

43.2 Subject to Clause 43.1, 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.

43.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.

43.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 43.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

44 NOTICES

44.1 Any notices sent under this Contract must be in writing.

44.2 Subject to Clause 44.4, 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

44.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Contract:

	Supplier	**Authority**
Contact	REDACTED	REDACTED
Address	REDACTED [redacted]	REDACTED [redacted]
Email	REDACTED [redacted]	REDACTED [redacted]

44.4 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 44.2:

(a) Step-In Notices;

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(b) Force Majeure Notices;

(c) notices issued by the Supplier pursuant to Clause 33.3 (*Termination by the Supplier*);

(d) Termination Notices; and

(e) Dispute Notices.

44.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 44.4 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 44.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

44.6 This Clause 44 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 23 (*Dispute Resolution Procedure*)).

45 DISPUTES

45.1 The Parties shall resolve Disputes arising out of or in connection with this Contract in accordance with the Dispute Resolution Procedure.

45.2 The Supplier shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

46 GOVERNING LAW AND JURISDICTION

46.1 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.

46.2 Subject to Clause 45 (*Disputes*) and Schedule 23 (*Dispute Resolution Procedure*) (including the Authority'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.

46.3 This Agreement may be executed in any number of counterparts, and by the parties as separate counterparts but will not be effective until each party has executed at least one counterpart.

46.4 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same Agreement.

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This Contract has been duly executed by the Parties on the date which appears at the head of its page 1.

SIGNED for and on behalf of G4S Monitoring Technologies Ltd by a director:)
)

Signature: REDACTED

Name (block capitals): REDACTED

Managing Director

SIGNED for and on behalf of the Secretary of State for Justice:)
)

Signature: REDACTED

Name (block capitals): REDACTED

Position: REDACTED