

OFFICIAL - SENSITIVE - COMMERCIAL

HMRC Standard Goods and Services Model Contract
TERMS AND CONDITIONS

DATED

26/07/2021□

(1) *THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS*

and

(2) **BOTTOMLINE TECHNOLOGIES LIMITED**

AGREEMENT

relating to

FINANCIAL TRANSACTION REPORTING

HMRC Standard Goods and Services Model Contract v1.0

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THIS AGREEMENT is made on

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BETWEEN:

- (1) **THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS** of 100 Parliament Street, Westminster, London SW1A 2BQ (the "**Authority**"); and
- (2) **BOTTOMLINE TECHNOLOGIES LIMITED** a company registered in England and Wales under company number 08098450 whose registered office is at 1600 Arlington Business Park, Theale, Berkshire RG7 4SA (the "**Supplier**"),

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

IT IS AGREED as follows:

SECTION A - PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Agreement, unless the context otherwise requires:
 - (a) the singular includes the plural and vice versa;
 - (b) reference to a gender includes the other gender and the neuter;
 - (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
 - (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time including any implementing or successor legislation;
 - (e) the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
 - (f) references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - (g) the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;

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- (h) unless otherwise provided,
 - (i) references to Clauses and Schedules are references to the clauses and schedules of this Agreement;
 - (ii) references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and
 - (i) references to this Agreement are references to this Agreement as amended from time to time.
- 1.3 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Agreement with a reference to the replacement hyperlink.
- 1.4 If there is any conflict or inconsistency between the Clauses and the Schedules and/or any Annexes to the Schedules and/or any other documents referred to in this Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Clauses and Schedule 1 (*Definitions*);
 - (b) Schedules 2.1 (*Services Description*) and 2.2 (*Performance Levels*) and their Annexes;
 - (c) Schedule 2.8 (*Data Processing and List of Sub-processors*), if such Schedule is used;
 - (d) any other Schedules and their Annexes (other than Schedule 4.1 (*Supplier Solution*) and its Annexes);
 - (e) Schedule 4.1 (*Supplier Solution*) and its Annexes (if any); and
 - (f) any other document referred to in this Agreement or any other document attached to this Agreement.
- 1.5 The Schedules and their Annexes form part of this Agreement.
- 1.6 In entering into this Agreement the Authority is acting as part of the Crown.

2 DUE DILIGENCE

- 2.1 The Supplier acknowledges that:
- (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 Agreement;
 - (b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;

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- (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 the processes and requirements of the Authority;
- (d) it has entered into this Agreement in reliance on its own due diligence.

2.2 The Authority acknowledges that:

- (a) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Supplier before the Effective Date) of all relevant details relating to the Services and Supplier Solution and the suitability thereof for the Authority's requirements prior to entering into this Agreement.

2.3 The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

- (a) any unsuitable aspects of the Authority System as it exists at the Operational Effective Date; ;
- (b) any misinterpretation of the Authority Requirements; and/or
- (c) any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

3 WARRANTIES

3.1 The Supplier represents and warrants that:

- (a) 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 Agreement;
- (b) this Agreement is executed by its duly authorised representative;
- (c) it has all necessary consents and regulatory approvals to enter into this Agreement and perform its obligations under this agreement;
- (d) 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 or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
- (e) the Supplier's tender response comprising the GRACE tender response Excel spreadsheet (including questionnaire) and the Supplier standard documentation and policies submitted, remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;

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- (f) in the three years prior to the Effective Date, it has been in full compliance with all applicable securities and Tax Laws and regulations in the United Kingdom and in the jurisdiction in which it is established;
 - (g) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation, enquiry or investigation in which it or its Subcontractors is/are (as appropriate) involved that is in connection with, or which may lead to any Occasion of Tax Non-Compliance;
 - (h) it has all necessary rights in and to the 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 Agreement and/or the receipt of the Services by the Authority;
 - (i) it is solely responsible for and liable in respect of all access to the Service by the Supplier through the Authority's login and password and shall ensure that private login names, passwords and other confidential information remain confidential.
 - (j) any Cost in the Cost Model is a true and accurate reflection of such Cost and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Cost Model
 - (k) 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 Agreement;
 - (l) no profit warnings, 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
 - (m) that neither the Supplier nor any of its officers, employees or Sub-contractors:
 - (i) has been convicted of any offence involving slavery and human trafficking; and
 - (ii) having made reasonable enquiries and to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 3.2 If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 3.1 has been breached, is untrue, or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.
- 3.3 The Authority represents and warrants that:
- (a) it has full right, power and authority to enter into and perform its obligations under this Agreement and has all licences, permits, authorisations and consents necessary to carry on its business and where applicable to be a SWIFT

user: and

- (b) it is solely responsible for and liable in respect of all access to and use of the Service by the Authority through the Authority's login and password and shall ensure that private login names, passwords and other confidential information remain confidential.
- 3.4 The parties respectively warrant that no information submitted to SWIFT or any other third party via the Services shall be accessed, interpreted or tampered with by the other party, except with the consent of the submitting party and that such information shall be treated as confidential by the parties and will not be disclosed to any third party, except as required by law or as necessary to provide or receive the Services.
- 3.5 Save as expressly set out in this Agreement, all warranties, conditions, representations, indemnities and guarantees, whether express or implied, arising by law, custom, oral or written statements of the Supplier, its employees, Sub-contractors, or its third party licensors or otherwise (including, without limitation, any warranties of merchantability, fitness for particular purpose, or of error-free and uninterrupted use) in respect of the Services and/or Supplier IT Environment, are hereby superseded, excluded and disclaimed to the fullest extent permitted by law and the Authority acknowledges that none of the foregoing have induced it to enter into this Agreement.
- 3.6 Without prejudice to the generality of Clause 3.3 above, the Supplier does not warrant or guarantee that: (i) information that was not originated by the Supplier and is transmitted or made available to the Authority by way of the Services and/or the Software; or (ii) information that was originated by the Authority, SWIFT or any other third party, will be:
 - (a) suitable for any particular purpose; or
 - (b) free of any inaccuracies of any kind or operate and be available without interruption.
- 3.7 The warranties given by the Supplier in Clauses 3.4, 3.5 and 3.6 above are made only to the Authority, and the Supplier will have no liability to any third party with respect to the Services and/or the Software as a result of such warranties. Except as provided in this Clause 3, the Company provides the Software "as is". The foregoing disclaimers will apply even if any warranty provided under this Agreement fails of its essential purpose.

SECTION B - THE SERVICES

4 TERM

- 4.1 This Agreement shall:
 - (a) come into force on the Effective Date; and

- (b) unless terminated at an earlier date by operation of Law or in accordance with Clause 33 (Termination Rights), terminate at the end of the Initial Term or any Extension Period (as applicable).

Extension of the Initial Term

- 4.2 The Authority shall have the right, at its sole discretion, to extend the Initial Term for periods of not more than twelve (12) months (each an "**Extension Period**"), for a maximum of two (2) years in the aggregate, by giving to the Supplier not less than three (3) months' written notice before the end of the Initial Term (or any Extension Period which has already been notified to the Supplier by the Authority, as appropriate).
- 4.3 The duration of any extension to the Term of this Agreement made in accordance with Clause 4.2 and the effect of extending the Initial Term (and any extension thereof) for the Extension Period shall be considered, documented and agreed by the Parties in accordance with the Change Control Procedure. Unless the Parties agree otherwise in writing, each Extension Period will take effect on the terms of this Agreement that subsist immediately prior to the Extension Period taking effect.

5 SERVICES

Standard of Services

- 5.1 The Supplier shall provide:
 - (a) any Mobilisation from (and including) the Mobilisation Commencement Date; and
 - (b) the Operational Services, in each case, from (and including) the the relevant Operational Service Commencement Date.
 - (c) Services support in accordance with the "Premier Plus support SLA forming part of Schedule 4.1 to the Authority in relation to the Services.
- 5.2 The Supplier reserves the right to increase or upgrade the Supplier's IT Environment, subject to the following:
 - (a) informing the Authority of such an upgrade as soon as reasonably practicable prior to the upgrade being carried out; and
 - (b) using all reasonable endeavours to carry out any such upgrades in such a way as to minimise the impact on the Authority and wherever possible any such upgrades shall be carried out outside of Operating Hours as defined in the SLA.
- 5.3 If the Supplier foresees that any such upgrade will have an impact on the Authority, the Supplier will consult with the Authority to agree what action is necessary to try to ensure that so far as is possible the Supplier maintains availability of the Services;

and for this purpose the Authority will provide all reasonable cooperation to the Supplier.

5.4 The Supplier shall use its Best Endeavours at any time to preserve the security and reliable operation of the Supplier's IT Environment and the Services, giving the Authority as much prior notice of any such action as is practicable.

5.5 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 Agreement,

and, without prejudice to Clause 1.4 (*order of precedence*), for the avoidance of doubt, where the Supplier Solution imposes obligations or requirements on the Supplier that are in excess of, or more onerous, than the Services Description, the Supplier shall perform those obligations and comply with those requirements in addition to the obligations and requirements set out in the Services Description.

5.6 The Supplier shall:

- (a) perform its obligations under this Agreement, including in relation to the supply of the Services and any Goods in accordance with:
 - (i) all applicable Law;
 - (ii) Good Industry Practice;
 - (iii) the Quality Standards;
 - (iv) the Baseline Security Requirements;
 - (v) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.6(a)(i) to 5.6(a)(iv);
- (b) where applicable, maintain accreditation with the relevant Quality Standards authorisation body; and
- (c) deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.

5.7 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.6(a)(i) to 5.6(a)(iv), 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

5.8 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 Agreement;
- (b) save to the extent that the Authority is expressly required to obtain and maintain the same under this Agreement and subject to Clause 13 (*Change*), obtain, and maintain throughout the duration of this Agreement, 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 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 Agreement and/or the receipt of the Services by the Authority; and
 - (ii) any products or services recommended or otherwise specified by the Supplier in the Services Description 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;
- (d) minimise any disruption to the Services, the IT Environment and/or the Authority's or any Other Suppliers' operations when carrying out its obligations under this Agreement;
- (e) ensure that any Documentation and training provided by the Supplier to the Authority and Other Suppliers are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) co-operate with any Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to provide services to the Authority and, (subject to Schedule 8.5 (Exit Management)) on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier;
- (g) provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- (h) subject to clause 12 (Records, Reports, Audits & Open Book Data) gather, collate and provide such information and co-operation as the Authority or Other Supplier may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;
- (i) notify the Authority in writing as soon as reasonably possible and in any event within 1 month of any change of Control taking place;

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- (j) 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 Agreement; and
 - (k) ensure that neither it, nor any of its Affiliates, brings 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 Supplier's obligations under this Agreement; and
 - (l) The Supplier undertakes to ensure that the Supplier, its employees or any authorised third party(ies) shall not abuse or make any fraudulent use of the Services which may include without limitation:
 - (a) any illegal or unlawful activity;
 - (b) the collection, development or distribution of malicious code;
 - (c) hacking, cracking, malicious computer crime or fraud, or to attempt unauthorised breach or attack on any computer systems;
 - (d) the circumvention of copy-protection mechanisms; assisting or allowing any third person to do any of the foregoing;
 - (e) accessing the service (other than for planned or unplanned maintenance) in such a manner as to unreasonably interfere with the use of or access to the Financial Messaging service by any other Authority or authorised person.
 - (m) The Supplier shall not do or permit anything to be done which will compromise or affect or jeopardise the security of the Authority's IT Environment.
- 5.9 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.
- 5.10 Without prejudice to Clauses 19.2 and 19.3 (*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 5.8(b) and Clause 5.8(d) inclusive within three (3) Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within 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 5.8(a) and Clauses 5.8(e) to 5.8(f) 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,

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and any failure of the Supplier to comply with its obligations under Clause 5.10(a) or Clause 5.10(b) within the specified or agreed timeframe shall constitute a Notifiable Default.

Software

- 5.11 The Supplier shall ensure that the Software (if any) complies with Good Industry Practice in all respects including in respect of availability, change, incident, knowledge, problem, release and deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management.

Continuing obligation to provide the Services

- 5.12 The Supplier shall continue to perform all of its obligations under this Agreement, and shall not suspend the supply of the Services, notwithstanding:
- (a) any withholding of the Service Charges due to deduction of any Deductions;
 - (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 Agreement under Clause 33.6(a) (*Termination by the Supplier*) for failure to pay undisputed Charges.

Optional Services

- 5.13 The Authority may require the Supplier to provide any or all of the Optional Services at any time by giving notice to the Supplier in writing. The Supplier acknowledges that the Authority is not obliged to take any Optional Services from the Supplier and that nothing shall prevent the Authority from receiving services that are the same as or similar to the Optional Services from any third party.
- 5.14 If a Change Request is submitted, the Supplier shall, as part of the Impact Assessment provided by the Supplier in relation to such Change Request, provide details of the impact (if any) that the proposed Contract Change will have on the relevant Optional Services.
- 5.15 Following receipt of the Authority's notice pursuant to Clause 5.13:
- (a) the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Change Control Procedure, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Optional Services have already been agreed;
 - (b) the Supplier shall mobilise and, if applicable, test the relevant Optional Services in accordance with a mobilisation plan which the Parties shall agree in respect of such Optional Services ("**Optional Services Mobilisation Plan**");
 - (c) any additional charges for the Optional Services shall be incorporated in the Charges as specified in Part B of Schedule 7.1 (*Charges and Invoicing*); and
 - (d) the Supplier shall, from the date agreed in the Optional Services Mobilisation

Plan for the Optional Services (or, if later, the date of Achievement of any Milestones associated with the commencement of the relevant Optional Services (if any)), provide the relevant Optional Services to meet or exceed the applicable Target Performance Level in respect of all KPIs applicable to the Optional Services as set out in Annex 1 of Schedule 2.2 (*Performance Levels*).

Scope

5.16 The Supplier acknowledges and agrees that:

- (a) its relationship with the Authority is not exclusive; and
- (b) the Authority may at any time during the Term contract with any third party to perform services which are the same as or similar to the Services.

Conflicts of Interest

- 5.17 The Supplier shall take appropriate steps to ensure that, to the best of its knowledge, neither the Supplier nor any Supplier Personnel is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or any member of the Supplier Personnel and the duties owed to the Authority under the provisions of the Contract. The Supplier shall disclose to the Authority full particulars of any such conflict of interest which may arise.
- 5.18 Where, in the reasonable opinion of the Authority, there is or may be a material actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of the Agreement, the Authority reserves the right to treat this as a material breach of this Agreement and, accordingly, a Supplier Termination Event.

6 MOBILISATION AND PROJECTS

Mobilisation Plan and Delays

- 6.1 The Parties shall comply with the Mobilisation Plan and provisions of Schedule 6.1 (*Mobilisation*) in relation to the agreement and maintenance of the Mobilisation Plan.
- 6.2 **The Supplier** shall use all reasonable endeavours to ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.3 If either Party becomes aware that there is, or there is reasonably likely to be, a Delay, Paragraph 9 (*Delays*) of Schedule 6.1 (*Mobilisation*) shall apply in respect of the steps to be taken by the Parties.

Testing and Achievement of Milestones

- 6.4 In respect of any Milestone Payments:
- (a) the Parties shall comply with the provisions of Schedule 6.2 (*Testing Procedures*) in relation to the procedures to determine whether a Milestone has been Achieved; and

- (b) no Milestone Payment shall be made by the Authority until after the Milestone Achievement Certificate has been issued.

Orders

- 6.5 The Authority may order Goods and/or Services in accordance with Schedule 6.3 (*Projects and Ordering*), if such Schedule is used.

Quality Plans

- 6.6 The Supplier shall provide Quality Plans in accordance with Schedule 2.3 (*Standards*), if such Schedule is used.

6A AUTHORITY RESPONSIBILITIES

- 6A 1 The Authority undertakes to comply with the specific obligations set out in Clause 19A (SWIFT) as applicable to the Services

- 6A 2 The Authority shall:

- (a) provide and maintain the Authority's IT Environment;
- (b) comply with all reasonable requests and/or instructions given by the Supplier which relate to the provision of the Services;
- (c) ensure that the Authority IT Environment is equipped and updated regularly with current industry-standard virus-scanning software and anti-virus definitions;
- (d) use all reasonable endeavours to advise the Supplier in advance of any known or expected significant increases in Services usage or daily message traffic volumes, where such increases would result in an uplift in Subscription Band (temporary or otherwise);
- (e) advise the Supplier of any changes in named personnel who have access to the Services.

- 6A 3 The Authority undertakes to ensure that the Authority, its employees or any authorised third party(ies) shall not abuse or make any fraudulent use of the Services which may include without limitation:

- (f) any illegal or unlawful activity;
- (g) the collection, development or distribution of malicious code;
- (h) hacking, cracking, malicious computer crime or fraud, or to attempt unauthorised breach or attack on any computer systems;
- (i) the circumvention of copy-protection mechanisms; assisting or allowing any third person to do any of the foregoing;
- (j) using the service in such a manner as to unreasonably interfere with the use of or access to the Financial Messaging service by any other Authority or authorised

person.

The Authority shall not do or permit anything to be done which will compromise or affect or jeopardise the security of the Supplier IT Environment.

7 PERFORMANCE INDICATORS

- 7.1 The Parties shall comply with the provisions of Schedule 2.2 (*Performance Levels*) in relation to KPIs and performance monitoring.

8 SERVICES IMPROVEMENT

- 8.1 The Supplier shall in accordance with Schedule 7.3 Part A throughout the Term, adopt a policy of continuous improvement in relation to the Services, which must include regular reviews with the Authority of the Services and the way it provides them, with a view to reducing the Authority's costs (including the Charges) and/or improving the quality and efficiency of the Services and/or identifying new or potential improvements to the provision of the Services. The Parties shall provide each other with any information reasonably required to meet this objective.
- 8.2 The Supplier shall, throughout the Term, identify new or potential improvements to the provision of the Services with a view to reducing the Authority's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables and their supply to the Authority.
- 8.3 The Parties shall comply with the provisions of Part A (but not Part B or part C which will not apply) of Schedule 7.3 (*Value for Money*), if such Schedule is used, in relation to the Supplier's ongoing obligation of continuous improvement.

9 ASSETS, EQUIPMENT, ACCOMMODATION AND SUPPLY OF GOODS.

Assets

- 9.1 The Supplier shall record all of the Assets that will be used at the Authority's premises as at the Commencement Date in Schedule 4.5 (*Assets*), if such Schedule is used, and shall maintain a Register of all of the Assets in accordance with Schedule 8.5 (*Exit Management*).

Supplier Equipment

- 9.2 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Authority Premises. On termination or expiry of this Agreement or of Supplier Equipment for a particular Authority user, the Authority shall be responsible for the removal and return to the Supplier of all relevant Supplier Equipment from the Sites and the Authority Premises, including the cost of packing, loading, carriage, associated decommissioning. All the Supplier's property, including Supplier Equipment (except when Supplier Equipment is in the Authority's possession in which case the Authority is responsible), shall remain at the sole risk and responsibility of the Supplier.
- 9.3 Subject to clause 32 (*Force Majeure*) or any express provision of any BCDC Plan to the contrary, the loss or destruction by the Supplier for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Agreement, including the Target Performance Levels.

Supply of Goods

- 9.4 Where, as part of the Services, the Supplier is to sell Goods to the Authority:
- (a) the relevant Goods and their prices shall be as set out in Schedule 7.1 (*Charges and Invoicing*);
 - (b) the Supplier shall supply and, where relevant, install 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 twelve (12) months after delivery;
 - (d) if following inspection or testing the Authority considers that the Goods do not conform with the relevant specification, the Authority shall promptly inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance; and
 - (e) without prejudice to any other rights or remedies of the Authority the risk and title in the Goods shall pass to the Authority at the time of delivery.

Accommodation - Clause 9.5 shall not apply to this Agreement.

- 9.5 Where, in the course of providing the Services, any Supplier Personnel are to be based at Authority Premises, the Parties shall comply with the provisions of Schedule 2.6 (*Accommodation*), if such Schedule is used.

SECTION C - PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

10 FINANCIAL AND TAXATION MATTERS

Charges and Invoicing

- 10.1 Subject to Clause 10.2 and Clause 10.4, in consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the Charges to the Supplier on receipt of a correct invoice no later than thirty (30) days from the date of such invoice, with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*).
- 10.2 Without prejudice to the generality of the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*), the Supplier shall:
- (a) comply with UK GAAP or the International Financial Reporting Standard; and
 - (b) provided that the Authority provides a valid purchase order in good time to permit invoicing in accordance with Schedule 7.1 (*Charges and invoicing*), include such purchase order numbers from the Authority for each Service and/or Order on the relevant invoices;
 - (c) The Authority acknowledges that any delay in timely production of a purchase order by the Authority shall not relieve the Authority from meeting its payment

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obligations hereunder or prevent the Supplier from raising and issuing invoices in accordance with these terms.

- (d) submit each invoice and any Supporting Documentation required to be submitted in accordance with this Clause 10, via the Authority's electronic transaction system.

- 10.3 At the end of each quarter, the Supplier shall implement the Truing-Up Process to review the Authority's usage against the Subscription Bands set out for Service(s) in Schedule 7.1. In the event that the Authority has exceeded or failed to meet the contracted volumes from its then current Subscription Band for both the second and third months in the quarter under review, the Supplier shall apply a Truing-Up Adjustment and shall invoice the Authority for the applicable Charge increment or reduction, as applicable, for the correct Subscription Band from beginning of the next month and thereafter.
- 10.4 To facilitate payment, the Supplier shall use the electronic transaction system chosen by the Authority and shall:
- (a) register for the electronic transaction system in accordance with the instructions of the Authority;
 - (b) allow the electronic transmission of purchase orders and submitting of electronic invoices via the electronic transaction system;
 - (c) designate a Supplier representative as the first point of contact with the Authority for system issues; and
 - (d) provide such data to the Authority as the Authority reasonably deems necessary for the effective operation of the system including, but not limited to, electronic catalogue information.
- 10.5 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.8 (Testing and Achievement of Milestones), 12 (Records, Reports, Audits and Open Book Data), 22 (Transparency and Freedom of Information), 23 (Protection of Personal Data) and Clause 30 (Step In Rights).
- 10.6 If the Authority fails to pay any Charges (unless disputed in writing for reasonable cause within thirty (30) days of receipt of the relevant invoice) properly invoiced under this Agreement, in addition to its termination rights for non-payment, 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.

Set-off and Withholding

- 10.7 The Authority may:

- (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 under this

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Agreement or under any other agreement between the Supplier and the Authority; and/or

- (b) exercise any right it may have pursuant to Schedule 2.2 (*Performance Levels*) to withhold payment of a proportion of the Service Charges as Compensation for Unacceptable KPI Failure,

Value For Money

- 10.8 The Parties shall comply with the provisions of Schedule 7.3 (*Value for Money*), if such Schedule is used, in relation to savings initiatives in relation to the provision of the Services.

Financial Distress

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

- 10.9 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.

- 10.10 The Supplier shall at all times comply with all other Laws and regulations relating to Tax.

- 10.11 The Supplier shall provide to the Authority the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Sub-contractor of the Supplier prior to the commencement of any work under this Agreement by that agent, supplier or Sub-contractor. Upon a request by the Authority, the Supplier shall not employ or will cease to employ any agent, supplier or sub-contractor or Sub-contractor in connection with this Agreement.

- 10.12 Where an amount of Tax, including any assessed amount, is due from the Supplier an equivalent amount may be deducted by the Authority from the amount of any sum due to the Supplier under this Agreement.

- 10.13 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs and or any litigation, enquiry or investigation in which it or its Sub-contractors is/are (as appropriate) involved that is in connection with, or which may lead to, any Occasion of Tax Non-Compliance, 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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- 10.14 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 Tax relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 10.14 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.
- 10.15 The Supplier shall on written request provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with its Tax obligations.
- 10.16 If the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions in Clauses 10.10 to 10.15 (inclusive) then this shall constitute a Supplier Termination Event.
- 10.17 The Authority may internally share any information which it receives under Clauses 10.2 to 10.13 (inclusive) and 10.15.

Use of Off-shore Tax Structures

- 10.18 Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall ensure that its Connected Companies, Key Sub-contractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Authority) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Authority under or pursuant to this Agreement or (in the case of any Key Sub-contractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Sub-contract ("**Prohibited Transactions**"). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Sub-contractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties' business.
- 10.19 The Supplier shall notify the Authority in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for any known proposal for a Key Sub-contractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Authority within a reasonable time to allow the Authority to consider the proposed Prohibited Transaction before it is due to be put in place.
- 10.20 In the event of a Prohibited Transaction being entered into in breach of Clause 10.18 above, or in the event that circumstances arise which may result in such a breach, the Supplier and/or the Key Sub-contractor (as applicable) shall discuss the situation with the Authority and, in order to ensure future compliance with the requirements of Clauses 10.18 and 10.19, the Parties (and the Supplier shall procure that the Key Sub-contractor, where applicable) shall agree (at no cost to the Authority) timely

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and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the Escalation Process.

- 10.21 Failure by the Supplier (or a Key Sub-contractor) to comply with the obligations set out in Clauses 10.19 and 10.20 shall constitute a Supplier Termination Event.

Competitive Terms

- 10.22 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 or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may:

- (a) terminate this Agreement in accordance with Section I and enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.

Payment of Sub-contractors

- 10.23 The Supplier shall 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;
- 10.24 Notwithstanding any provision of Clauses 21 (*Confidentiality*) and 24 (*Publicity and Branding*), if the Supplier notifies the Authority that the Supplier has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt, 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).
- 10.25 Failure by the Supplier (or a Key Sub-contractor) to comply with the obligations set out in Clauses 10.19 and 10.20 shall constitute a Supplier Termination Event.

SECTION D - CONTRACT GOVERNANCE

11 GOVERNANCE

- 11.1 The Parties shall comply with the provisions of Schedule 8.1 (*Governance*) in relation to the management and governance of this Agreement.
- 11.2 Each Party shall appoint a representative in accordance with this Clause 11 for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement and the management of the Services.
- 11.3 The initial Supplier Representative shall be the person named as contract manager for the Supplier in Schedule 8.1 (*Governance*). Any change to the Supplier Representative shall be agreed in accordance with Schedule 9.2 (*Key Personnel*), if such Schedule is used, or Schedule 8.1 (*Governance*).
- 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

Audit Rights

- 12.1 The Authority, acting by itself or through its Audit Agents, shall (being within the Authorities discretion to provide reasonable written notice, have the right during the Term and for a period of eighteen (18) months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Agreement, including for the following purposes:
- (a) to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments);
 - (b) to verify the Costs;
 - (c) to verify any certificate of costs required to be provided pursuant to Schedule 7.1 (Charges and Invoicing);
 - (d) to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
 - (e) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (f) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Sub-contractors or their ability to perform the Services;
 - (g) to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (h) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
 - (i) to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
 - (j) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - (k) to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
 - (l) to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;

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- (m) to inspect the service delivery environment (or any part of it);
- (n) to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures) and the Supplier's compliance with the Quality Standards;
- (o) to inspect the Authority Assets for the purposes of ensuring that the Authority Assets are secure and that any register of assets (including the Registers) is accurate, complete and up to date; and/or
- (p) to review the integrity, confidentiality and security of the Authority Data.

12.2 Except where:

- (a) an audit is imposed on the Authority by a regulatory body;
- (b) where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement; or
- (c) an audit is required to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security

the Authority may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.

12.3 Nothing in Clause 12.2 shall prevent or restrict the Authority's right to require that the Supplier provide financial Management Information at such frequency as mutually agreed in Schedules 2.2, 7.1 and 8.1 and on a free of charge basis,

12.4 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

Conduct of Audits

12.5 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

12.6 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:

- (a) all information requested by the Authority within the scope of the audit;
- (b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
- (c) access to the Supplier System; and

- (d) access to Supplier Personnel.
- 12.7 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable KPIs at a level of detail sufficient to verify compliance with the KPIs.
- 12.8 The Authority shall use all reasonable endeavours to provide at least fifteen (15) Working Days' prior written notice of its intention to conduct an audit and the parties shall mutually agree to the date and scope of such audit.
- 12.9 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under Clauses 12.1 to 12.11, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

Use of Supplier's Internal Audit Team

- 12.10 As an alternative to the Authority's right pursuant to Clause 12.1 to exercise an audit either itself or through its Audit Agents, the Authority may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Clause 12.1.
- 12.11 Following the receipt of a request from the Authority under Clause 12.10 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:
 - (a) the resultant audit reports; and
 - (b) all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

Response to Audits

- 12.12 If an audit undertaken pursuant to Clause 12.1 or Clause 12.10 identifies that:
 - (a) the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
 - (b) there is an error in a Model, the Supplier shall promptly rectify the error;
 - (c) the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
 - (i) the amount overpaid;
 - (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
 - (iii) the reasonable costs incurred by the Authority in undertaking the audit,

the Authority may exercise its right to deduct such amount from the Charges if it prefers; and

- (d) the Authority has underpaid any Charges, the Authority shall pay the amount of any such underpayment; and the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.

Reports, Records and Open Book Data

12.13 The Supplier shall comply with the provisions of:

- (a) Schedule 8.2 (*Reports and Records*) in relation to the production of reports and the maintenance and retention of Records.

13 CHANGE

Change Control Procedure

13.1 Any requirement for a Contract Change shall be subject to the Change Control Procedure as set out in Schedule 8.3 (*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 Agreement nor be entitled to an increase in the Charges as the result of a Change in Law.
- 13.3 Without prejudice to Clause 13.2, each Party shall monitor and shall keep the other Party informed in writing of any change in Law which may impact the Services and/or Deliverables. The Supplier shall provide the Authority with timely details of measures and changes it proposes to make to comply with any such changes wherever necessary, designed to eliminate (where possible) any potential operational disruption.

SECTION E - 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, BPSS and, where applicable, the security requirements set out in Schedule 2.1 (*Services*)

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Description) and Schedule 2.4 (*Security Management*);

- (iii) comply with all relevant policies and reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 2.4 (*Security Management*); and
 - (iv) meet the training and awareness requirements set out in Paragraph 1.2(e) of Schedule 2.8 (*Data Processing and List of Sub-Processors*);
 - (c) subject to Schedule 9.1 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the 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 Agreement 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 familiarisation and other costs associated with any replacement of any Supplier Personnel;
 - (h) procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement; and
 - (i) pay the Supplier Personnel not less than the Mandatory Wage as required by Law.
- 14.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Agreement, it may:
- (a) refuse admission to the relevant person(s) to the Authority Premises; and/or
 - (b) direct the Supplier in writing to end the involvement in the provision of the Services of the relevant person(s).

Key Personnel

14.3 The terms of Schedule 9.2 (*Key Personnel*) shall apply, if such Schedule is used.

Employment Indemnity

14.4 The Parties agree that:

- (a) the Supplier shall both during and after the Term indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority 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

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

- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other Laws and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other Laws and regulations relating to national insurance contributions, in respect of that consideration;
- (b) indemnify the Authority 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 for which the Supplier is not primarily liable to account to the Authority under the relevant Laws and regulations; and
- (c) provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with Clause 14.5(a) or why Clause 14.5(a) does not apply to the Supplier (including such specific information as the Authority may request),

and if the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions above in this Clause 14.5 then this shall constitute a Supplier Termination Event.

14.6 The Authority may internally share any information which it receives under Clause 14.5(c).

Staff Transfer

14.7 The Parties agree that:

- (d) where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 9.1 (*Staff Transfer*) shall apply as follows:
 - (i) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A of Schedule 9.1 (*Staff Transfer*) shall apply;
 - (ii) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 9.1 (*Staff Transfer*) shall apply;
 - (iii) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 9.1 (*Staff Transfer*) shall apply; and

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

15 SUPPLY CHAIN RIGHTS AND PROTECTIONS

- 15.1 The Parties shall comply with the provisions of Schedule 4.3 (*Notified and Key Sub-contractors*) in relation to the appointment of Sub-contractors and the terms of Sub-contracts.

Exclusion of Sub-contractors

- 15.2 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;
 - (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.

Exclusion of Key Sub-contractors

- 15.3 The Authority, at its sole discretion, may require the Supplier to terminate a Sub-contract where:
- (a) 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*);
 - (b) the relevant Sub-contractor or any of its Affiliates have embarrassed or are likely to embarrass 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;
 - (c) 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;
 - (d) the relevant Sub-contractor has failed to comply with the terms of its Sub-contract equivalent to those set out at Clauses 10.9 to 10.13 (inclusive) (*Promoting Tax Compliance*); and/or

- (e) the relevant Key Sub-contractor has failed to comply with the terms of its Sub-Contract equivalent to those set out at Clauses 10.18 to 10.21 (inclusive) (*Use of Off-shore Tax Structures*);
- (f) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 15.2 (*Exclusion of Sub-contractors*); and or
- (g) there is a change of Control of the relevant 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.

SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

16 INTELLECTUAL PROPERTY RIGHTS

16.1 Except as expressly set out in this Agreement:

- (a) the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors; and
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors.

Project Specific IPR

- 16.2 The Supplier hereby assigns to the Authority, with full title guarantee, title to and all rights and interest in the Project Specific IPRs.
- 16.3 The assignment under Clause 16.2 shall either take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs as appropriate.
- 16.4 The Supplier shall waive or procure a waiver of any moral rights in any copyright works assigned to the Authority under this Agreement.
- 16.5 If requested to do so by the Authority, the Supplier shall without charge to the Authority execute all documents and do all such further acts as the Authority may require to effect the assignment under Clause 16.2.
- 16.6 The Authority shall grant to the Supplier a non-exclusive royalty-free licence of the Project Specific IPRs to enable the Supplier to provide the Services during the Term.

17 LICENCES GRANTED BY THE SUPPLIER

- 17.1 The Supplier hereby grants to the Authority and the Government Controlled Company a royalty free and non-exclusive licence for the duration of the Term allowing them to use, load, execute, store, transmit, display and copy:

- (a) the Supplier Background IPR; and
 - (b) the Third Party IPR.
- 17.2 The Supplier shall extend the rights granted to the Authority and the Government Controlled Company under Clause 17.1 (including as to indemnification against IPRs Claims) to their respective contractors and sub-contractors for the duration of the Term solely for the purpose of providing services to the Authority or the Government Controlled Company.
- 17.3 The licences in Clause 17.1:
- (a) are granted for any purpose relating to the Services); or
 - (b) are granted for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function;
 - (c) includes the right to create an archival copy and a back-up copy;
 - (d) includes the right to sub-license the rights granted to it to a third party (excluding for the avoidance of doubt any Replacement Supplier) on no less favourable terms than granted to the Authority and the Government Controlled Company (including as to indemnification against IPRs Claims) for the benefit of the Authority and or the Government Controlled Company provided such third party is under a contractual obligation to the Authority to comply with confidentiality obligations that are substantially similar to those of the Authority pursuant to Clause 21 (Confidentiality);
 - (e) includes the right for the Authority to:
 - (i) assign, novate or otherwise dispose of its rights and obligations to any other body (including any other Central Government Body and or any private sector body) which substantially performs any of the functions that previously had been performed by the Authority; or
 - (ii) transfer the licences to other machines or users within the Authority.
- 17.4 For the avoidance of doubt any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 17.1 and the successor body to the Authority shall still be entitled to the benefit of the licences granted in Clause 17.1 (including as to indemnification against IPRs Claims).
- 17.5 The Supplier hereby grants to the Authority a non-exclusive licence to copy the Documentation for any purpose connected with the receipt of the Services or that is incidental to the exercise of the rights granted to the Authority under this Agreement.
- 17.6 For the avoidance of doubt all of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 17 shall terminate automatically upon termination of this Agreement for any reason.

- 17.7 The Authority will not otherwise copy, translate, modify, adapt, decompile, disassemble or reverse engineer the Software, except only when and to the limited extent that applicable law expressly permits such activity, irrespective of the limitations contained herein.

18 LICENCES GRANTED BY THE AUTHORITY

- 18.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use:

- (a) the Authority Background IPR;
- (b) the Authority's documentation, processes and procedures;
- (c) the Authority's Know-How; and
- (d) the Authority Data.

- 18.2 The licence granted in Clause 18.1:

- (a) includes the right to grant sub-licences to Sub-contractors provided that any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 21 (*Confidentiality*); and
- (b) is granted solely to the extent necessary for performing the Services in accordance with this Agreement. The Supplier shall not, and shall procure that the Sub-contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.

- 18.3 In the event of the termination or expiry of this Agreement, the licence referred to in Clause 18.1 and any sub-licence granted in accordance with Clause 18.2(a) shall terminate automatically and the Supplier and all Sub-contractors shall deliver to the Authority all material licensed to the Supplier pursuant to Clause 18.1 or Clause 18.2(a) in the Supplier's possession or control.

19 IPRs INDEMNITY

- 19.1 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.

- 19.2 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

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

19.3 The Supplier shall have no liability for any IPRs Claim based on: (a) the Authority's or an Indemnified Person's continued use of the Services or Software after written notification of a non-current release of the applicable Services or Software, so long as a current release was made available to the Authority without additional charge; (b) the Authority's or an Indemnified Person's use of the Services and/or Software other than in accordance with the rights granted under this Agreement; (c) the Authority's or an Indemnified Person's combination of the Services and/or Software with any other equipment or software not provided or authorised for use with the Services and/or Software by the Supplier, where such infringement would not have occurred but for such combination; or (d) IPRs owned by the Authority, or an Indemnified Person.

19.4 This Clause 19 states the Authority's and all Indemnified Persons sole remedy and Supplier's exclusive liability in the event that the Authority's or an Indemnified Person's use of any Services or Software provided under this Agreement infringes the Intellectual Property Rights of any third party.

19.5 If the Supplier elects to procure a licence in accordance with Clause 19.2(a) or to modify or replace an item pursuant to Clause 19.2(b), but this has not avoided or resolved the IPRs Claim, then:

- (a) the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; or
- (b) without prejudice to the indemnity set out in Clause 19.1, the Supplier shall be liable for all reasonable, substantiated and unavoidable costs of the substitute items and/or services including the additional costs of procuring and implementing the substitute items; and any additional costs for licence and maintaining the substitute items over and above those costs for the licence and maintenance of the originally supplied items replaced.

19A SWIFT

Insofar as any Services provided to the Authority include connectivity to the SWIFT network:

19A.1 The Authority accepts that in addition to the other terms of this Agreement, provision of and access to the Services is subject to its compliance with this clause 19A in direct relation to SWIFT.

19A.2 In connection therewith the Authority agrees:

- (c) to have in place a current agreement between SWIFT and the Authority during the term of this Agreement (for the avoidance of doubt failure to maintain such an agreement will be deemed a Services suspension event as set out in clause 19A.5); and
- (d) be responsible and liable for all applicable SWIFT membership charges and SWIFT traffic fees in accordance with its SWIFT user agreement; and
- (e) to comply with the policies stipulated by SWIFT for SWIFT users whether contained in SWIFT terms and conditions published from time to time or otherwise and shall notify the Supplier and SWIFT of any non-compliance with such rules and regulations and/or breach of any such conditions; and
- (f) to treat as confidential, any information relating to the Services, or SWIFT operations (including but not limited to the contents of messages passing through the Services), SWIFT technical documentation, SWIFT security tokens and SWIFT network information.

19A.3 The Authority undertakes to ensure that it, its employees or any authorised third party shall not abuse or make any fraudulent use of the SWIFT messaging service, which may include without limitation:

any illegal or unlawful activity;

the collection, development or distribution of malicious code;

hacking or cracking activities;

the circumvention of copy-protection mechanisms;

assisting or allowing any third person to do any of the foregoing.

- 19A.4 The Supplier shall provide the Authority (when requested within 10 working days), with detail of their SWIFT Shared Infrastructure Programme attestation
- 19A.5 The Supplier may suspend delivery under this Agreement in so far as it relates to any SWIFT related Services by immediate written notice if the Authority fails to comply with Clause 19A.2 (a).
- 19A.6 In the event that this Agreement is suspended in accordance with Clause 19A.5 above prior to termination of this Agreement, the Authority shall continue to pay to the Supplier its SWIFT related costs incurred in connection with the provision of the SWIFT related Service, for the remainder of the Initial Term.

19.B OPEN SOURCE PUBLICATION

- 19B.1 The Supplier agrees that the Authority may publish, at its sole discretion, as Open Source software all or part of the Project Specific IPRs that are in the nature of software.

20 AUTHORITY DATA AND SECURITY REQUIREMENTS

- 20.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 20.2 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 Agreement or as otherwise expressly authorised in writing by the Authority.
- 20.3 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 2.1 (*Services Description*).
- 20.4 The Supplier shall preserve the integrity, confidentiality and accessibility of Authority Data and prevent the unauthorised access, interception, 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.
- 20.5 The Supplier shall perform and maintain secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored in its secondary secure back-up location. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at no additional cost to the Authority, and that the data contained in the back-ups are available at all times upon request and are delivered to the Authority on request.
- 20.6 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 security requirements in this Agreement.

- 20.7 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 8.6 (*Business Continuity and Disaster Capability*) 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
 - (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 8.6 (*Business Continuity and Disaster Capability*).
- 20.8 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.
- 20.9 The Supplier shall and shall procure that its Sub-contractors shall comply with the requirements of Schedule 2.4 (*Security Management*).

Obligations under the Finance Act 1989, the Commissioners for Revenue and Customs Act 2005 and the Social Security Administration Act 1992

- 20.10 The Supplier undertakes that it will duly observe, and that it shall ensure that all Sub-contractors and Supplier Personnel shall duly observe:
- (a) the obligations set out in Section 182 of the Finance Act 1989 and Section 18 of the Commissioners for Revenue and Customs Act 2005 to maintain the confidentiality of Authority Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the aforesaid obligations may lead to a prosecution under Section 182 of the Finance Act 1989 and/or Section 19 of the Commissioners for Revenue and Customs Act 2005; and
 - (b) Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.
- 20.11 The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel in writing of the obligations upon Supplier Personnel set out in clause 20.10 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.
- 20.12 The Supplier shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data sign (or have previously signed) a declaration, in a form acceptable to the Authority, acknowledging that they understand and have been informed about the application and effect of Section 18 and 19 of the Commissioners for Revenue and Customs Act 2005. The Supplier shall provide a copy of each such signed declaration to the Authority upon demand.

21 CONFIDENTIALITY

- 21.1 For the purposes of this Clause 21, 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.
- 21.2 Except to the extent set out in this Clause 21 or where disclosure is expressly permitted elsewhere in this Agreement, 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);
 - (b) not disclose the Disclosing Party’s Confidential Information to any other person except as expressly set out in this Agreement 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 Agreement; 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.
- 21.3 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 22 (*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 Agreement;
 - (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 Agreement; or
 - (iii) the conduct of a Central Government Body review in respect of this Agreement; 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.
- 21.4 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.

21.5 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 Agreement;
- (b) its auditors; and
- (c) its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 21.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

21.6 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 21.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to Clause 30 (*Step-In Rights*) and Exit Management rights (but specifically excluding any disclosure to a Replacement Supplier; 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 Agreement,

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 21.

21.7 Nothing in this Clause 21 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement 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.

22 TRANSPARENCY AND FREEDOM OF INFORMATION

22.1 The Parties acknowledge that:

- (a) the Transparency Reports; and
- (b) the content of this Agreement, including any Contract Changes or Operational Changes 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;

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

22.2 Notwithstanding any other provision of this Agreement, 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.

22.3 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 Schedule 8.2 (*Reports and Records*).

22.4 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.

22.5 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 Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.

22.6 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 21.6(c)) and, publish such Information. The Supplier shall provide to the Authority within 10 working days (or such other period as the Authority may reasonably specify)

any such Information requested by the Authority.

22.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA, the Re-use of Public Sector Information Regulations 2015 and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to assist the Authority to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within five (5) 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.

22.8 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 Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

23 PROTECTION OF PERSONAL DATA

23.1 The Parties shall comply with Schedule 2.8 (*Data Processing and List of Sub-processors*) in relation to the processing of Personal Data, if such Schedule is used.

24 PUBLICITY AND BRANDING

24.1 The Supplier shall not:

- (a) make any press announcements or publicise this Agreement 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.

24.2 Each Party acknowledges to the other that nothing in this Agreement 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.

SECTION G - LIABILITY, INDEMNITIES AND INSURANCE

25 LIMITATIONS ON LIABILITY

Unlimited liability

25.1 Nothing in this Agreement shall exclude or limit:

- (a) either Party's liability for:
 - (i) death or personal injury caused by its negligence, or that of its employees, officers, agents or Sub-contractors (as applicable);
 - (ii) fraud or fraudulent misrepresentation by it or its employees;
 - (iii) 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
 - (iv) any liability to the extent it cannot be limited or excluded by Law;
- (b) the Supplier's liability in respect of the indemnities in Clause 10.14(VAT), Clause 14.4 (*Employment Indemnity*), Clause 14.5 (*Income Tax and National Insurance Contributions*), Clause 19 (*IPRs Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*);
- (c) the Supplier's liability for any regulatory losses, and/or expenses incurred by the Authority and any further costs incurred by the Authority in order to meet any additional requirements imposed by a relevant regulatory body as a direct result of the relevant Supplier breach of GDPR; or
- (d) the Authority's liability in respect of the indemnities in Clause 14.4 (*Employment Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*).

Financial and other limits

25.2 Subject to Clause 25.1 (*Unlimited Liability*) and Clauses 25.5 and 25.6 (*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 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:
 - (i) in relation to Defaults occurring in the first Contract Year, an amount of £1,000,000 per Default;
 - (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount of £1,000,000 per default; and

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- (b) the Supplier's aggregate liability in respect of all loss of or damage to the Authority that is caused by a Default of the Supplier in connection with Schedule 2.8 (Data Processing and List of Sub-processors) shall in no event exceed an amount of £2,000,000 per Default subject to the following exclusions:
 - (i) the liability specified in Clause 25.2 (b) above shall specifically exclude: (A) any and all regulatory fines and penalties imposed by a regulatory body following such Default. Each Party agrees that it shall bear sole liability for its own regulatory fines and penalties; and (B) reputational and/or brand damage and adverse publicity.
- (c) the Supplier's liability for data subject compensation claims pursuant to GDPR Article 82 shall be subject to the Authority using reasonable endeavours to mitigate claims for compensation; and providing reasonable and complete information to the Supplier at all stages of the compensation process.
- (d) the Supplier's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed an amount equal to one hundred and fifty per cent (150%) of the Charges paid or due to be paid or payable during the Contract Year in which the Default occurred,
- (e) provided that where any Losses referred to in this Clause have been incurred by the Authority as a result of the Supplier's abandonment of this Agreement (whether in whole or in part), or the Supplier's wilful default, wilful breach of a fundamental term of this Agreement, or wilful repudiatory breach of this Agreement, the references in such Clause to one hundred and fifty per cent (150%) shall be deemed to be references to two hundred per cent (200%).

25.3 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clauses 25.2(a) and 1.1(d).

25.4 Subject to Clause 25.1 (*Unlimited Liability*) and Clause 25.5 (*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 Agreement as a result of early termination of this Agreement by the Authority pursuant to Clause 33.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 33.6(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 7.2 (*Payments on Termination*); and
 - (ii) in relation to the Breakage Costs Payment, the amount set out in Paragraph 3.2 of Schedule 7.2 (*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 Agreement as a result of Defaults of the Authority shall in no event exceed an amount equal to one hundred per

cent (100%) of the total Charges paid, due to be paid or payable in the Contract Year in which the Default occurred.

Consequential Losses

25.5 Subject to Clause 25.1 (*Unlimited Liability*) and Clause 25.6, neither Party shall be liable to the other Party for:

- (a) any indirect, special or consequential Loss (including Loss or damage suffered by a Party as a result of any action brought by a third party) even if the other Party has been advised of the possibility of such Loss or damages; or
- (b) any loss of profits, turnover, business opportunities, business interruption, anticipated savings or damage to goodwill (in each case whether direct or indirect).

25.6 Notwithstanding Clause 25.5 but subject to Clause 25.2, 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 which are deemed to be a non-exhaustive list of direct and recoverable Losses:

- (a) the total amount of Tax Revenue which would have been collected and/or the total amount of any benefit or tax credit overpayment which would not have been made by or on behalf of the Authority had the Default not occurred;
- (b) notwithstanding clauses 25.6(c) and 25.6(h), any operational and/or administrative costs and expenses incurred by the Authority in connection with dealing with a loss of Tax Revenue and/or any overpayment of any benefit or tax credit made as a result of a Default;
- (c) 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;
- (d) any wasted expenditure or charges;
- (e) 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 Agreement;
- (f) any compensation or interest paid to a third party by the Authority;
- (g) 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;
- (h) without prejudice to Clause 20 (*Authority Data and Security Requirements*), any losses associated with corruption, loss or degradation to Authority Data; and

25.7 The Supplier shall not be liable to the Authority for the following loss or damage

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however caused and even if foreseeable arising from:

- (a) the Authority's failure to fulfil its responsibilities or any matter under the control of the Authority including any liability (including breach of warranty) which arises as a result of the misuse of the Subscription Services and/or Infrastructure Services and/or Equipment supplied hereunder, the data transmitted hereunder or use thereof in combination with any equipment and/or software not approved by the Supplier or as a result of any defect or error in any equipment and/or software not supplied by the Supplier;
- (b) any downtime, outage, interruption in, or unavailability of, the Supplier IT Environment or the Services as result of or attributable to any of the following causes:
 - (A) any breakdown of whatever nature and howsoever arising in any of the services provided by other service providers (except for services specifically subcontracted by the Supplier to a third party) or in any international services, remote mail services or remote mail servers; and
 - (B) the non-performance or unavailability, of whatever nature and howsoever arising, of external communications networks, other than a failure of the connectivity between the Supplier IT Environment and the network provider's network;
 - (C) the non-performance or unavailability of the Services due to the unavailability or any failures within the world-wide web;
 - (D) any breach of security by any third party or any breach of confidentiality by a third party or otherwise arising from any access howsoever obtained by a third party to the Authority's information, data, or messages or other traffic, other than where such breach or access occurs within the environment under the control of the Supplier or its contractors due to negligence or breach of this Agreement by the Supplier or its Sub-contractors;
 - (E) any damage, contamination or corruption of any kind of the Authority's data, material information, messages or other traffic howsoever occasioned, provided that any such damage, contamination or corruption occurs outside of the environment under the control of the Supplier or its Sub-contractors. For the avoidance of doubt, the Supplier shall be liable for damage, contamination or corruption of any kind of the Authority's data, material information, messages or other traffic within the environment under the control of the Supplier or its Sub-contractors due to its negligence or breach of this Agreement;
 - (F) the service, repairs maintenance, upgrades, modification, alterations or replacement of the Authority's equipment or hardware forming part of the Authority's IT Environment of whatever nature and whether carried out by the Authority or

any third party, except for the Supplier's Sub-contractors;

- (G) any illegal or unauthorised access to, or release of any Authority data from, any device whatsoever not under its control or that of its Sub-contractors connecting to the Services, including, but not limited to, any access or release of such data arising from the accessing of any Authority login credentials and/or login to Authority account(s) by malware, viruses, or worms, for malicious or criminal activities including, but not limited to, fraudulent payments or fraudulent funds transfer.
- (c) The parties acknowledge and agree that neither party will be permitted to recover the same loss resulting from a claim, or series of related claims, on more than one occasion pursuant to this Agreement.
- (d) The Authority shall be liable and shall indemnify the Supplier in full and on demand, against all claims, loss and damage incurred by the Supplier caused by the Authority's messages sent or passing through a SWIFT or other third party interface at the Supplier that originates from the Authority.

Conduct of indemnity claims

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

Mitigation

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

26 INSURANCE

The Supplier shall comply with the provisions of Schedule 2.5 (*Insurance Requirements*) in relation to obtaining and maintaining insurance.

SECTION H - REMEDIES AND RELIEF

27 RECTIFICATION PLAN PROCESS

- 27.1 Without limitation to this Clause 27 and without prejudice to the Authority's rights under this Agreement, if there is a KPI Failure or if the Supplier otherwise fails to perform its obligations under this Agreement, the Supplier will:
- (a) investigate, assemble and preserve pertinent information with respect to the cause(s) of the problem, including performing a root cause analysis of the problem;

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- (b) advise the Authority, as and to the extent reasonably requested by the Authority, of the status of remedial effort being undertaken with respect to such problem;
- (c) minimise the impact of and correct the problem and thereafter recommence performance in accordance with and so as to meet or exceed the Target Performance Level of all the KPIs as soon as possible; and
- (d) take appropriate preventative measures so that the problem does not reoccur.

27.2 In the event that:

- (a) there is, or is reasonably likely to be, a Delay;
- (b) in any Service Period there has been a KPI Failure;
- (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) following any audit conducted by the Authority in accordance with this Agreement, there is, or is reasonably likely to be, a Default;

(each a “**Notifiable Default**”), the Supplier shall notify the Authority of the Notifiable Default as soon as practicable but in any event within 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 Agreement in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process. Any notice provided pursuant to this Clause 27.2 must detail the actual or anticipated effect of the Notifiable Default.

Notification

27.3 If:

- (a) the Supplier notifies the Authority pursuant to Clause 27.2 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),
- (c) then unless the Notifiable Default also constitutes :
 - (i) a Supplier Termination Event or a Rectification Plan Failure and the Authority serves a Termination Notice;
 - (ii) an Escalation Process Trigger Event and the Authority serves an Escalation Notice; or
 - (iii) a Step-In Trigger Event and the Authority serves a Step-In Notice,

the Supplier shall comply with the Rectification Plan Process. If the Notifiable Default is a Delay, Paragraph 9 (*Delays*) of Schedule 6.1 (*Mobilisation*) shall also apply and if the Notifiable Delay is a KPI Failure, Paragraph 3 (*KPI Failure*) of Part A of Schedule 2.2 (*Performance Levels*) shall also apply.

- 27.4 The “**Rectification Plan Process**” shall be as set out in Clauses 27.5 (*Submission of the draft Rectification Plan*) to 27.9 (*Agreement of the Rectification Plan*).

Submission of the draft Rectification Plan

- 27.5 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 27.3(*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

- 27.6 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
- (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 timescales for such steps and for the rectification of the Notifiable Default (where applicable).

- 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 5 of Schedule 8.4 (*Dispute Resolution Procedure*).

Agreement of the Rectification Plan

- 27.8 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.

- 27.9 If the Authority consents to the Rectification Plan the Supplier shall immediately start work on the actions set out in the Rectification Plan.

28 DELAY PAYMENTS, SERVICE CREDITS AND COMPENSATION FOR UNACCEPTABLE KPI FAILURE

- 28.1 If a Key Milestone has not been Achieved by its relevant Milestone Date, Delay Payments may be payable in accordance with Part C of Schedule 7.1 (*Charges and Invoicing*).

28.2 If in any Service Period:

- (a) a KPI Failure occurs, Service Credits may be deductible from the Service Charges; and/or
 - (b) an Unacceptable KPI Failure occurs, Compensation for Unacceptable KPI Failure may be deductible from the Service Charges,
- in either case, in accordance with Schedule 2.2 (*Performance Levels*) and Schedule 7.1 (*Charges and Invoicing*).

29 ESCALATION PROCESS

- 29.1 Where an Escalation Process Trigger Event occurs, without prejudice to any other rights or remedies under this Agreement, the Authority may give not less than five (5) Working Days' notice ("**Escalation Notice**") to the Supplier requiring a meeting(s) between the Supplier Executive and the Authority ("**Escalation Meeting(s)**").
- 29.2 The Supplier shall ensure that the Supplier Executive is available to commit their full time capability to the Escalation Meeting(s).
- 29.3 The Parties agree and acknowledge that the Escalation Meeting(s) shall take place on Authority Premises and at times and durations as the Authority may determine.
- 29.4 Subject to Clause 29.5, the Escalation Meeting(s) shall continue until such time as the Escalation Process Trigger Event has been resolved to the reasonable satisfaction of the Authority.
- 29.5 Where the Escalation Meeting(s) have continued for more than five (5) Working Days, either of the Parties may treat the matter as a Dispute to be handled through the Dispute Resolution Procedure.
- 29.6 If the Supplier is in Default of any of its obligations under Clause 29 (Escalation Process), the Authority shall be entitled to terminate this Agreement 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 21 (*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;

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- (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;
- (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) without prejudice to any Deductions which may have accrued in respect of the period prior to the commencement of the Required Action, 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 provided that if the Authority's costs are greater than the Charges then, save for when the step-in action is taken by the Authority under:
 - (i) limbs (c) or (d) of the definition of a Step-In Trigger Event; or
 - (ii) limbs (e), (f) and (g) 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)

the Supplier shall pay the difference on demand to the Authority.

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 Agreement.
- 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 within five (5) Working Days 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), (f) and (g) 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 Agreement, if the Supplier
- (a) has failed to:
 - (i) Achieve a Milestone by its Milestone Date;
 - (ii) provide the Operational Services in accordance with the Target Performance Levels; and/or
 - (iii) comply with its obligations under this Agreement,
 (each a “**Supplier Non-Performance**”), and

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can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause then, subject to Clauses 31.2 and 31.4 the Supplier shall not be treated as being in breach of this Agreement, but only to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause.

31.2 In order to claim the 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 Agreement;
- (c) any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
- (d) the relief and/or compensation claimed by the Supplier.

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.

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 5.12 (*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.

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 8.6 (*Business Continuity and Disaster Capability*)), a Party may claim relief under this Clause 32 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force

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Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement 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 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 by any of the Services including any BCDC Services, but the Supplier has failed to do so; and/or
 - (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 Agreement.
- 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 Agreement, then during the continuance of the Force Majeure Event:
 - (i) the other Party shall not be entitled to exercise any rights to terminate this Agreement 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 33.6(c) (*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 Agreement:
 - (i) the Authority shall not be entitled during the continuance of the Force Majeure Event to exercise its rights under Clause 30 (*Step-in Rights*) as a result of such failure;
 - (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 Agreement 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 Agreement.
- 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 Agreement and shall not be dependent on the serving of notice under Clause 32.7.

SECTION I - TERMINATION AND EXIT MANAGEMENT

33 TERMINATION RIGHTS

Termination by the Authority

- 33.1 The Authority may terminate this Agreement (in whole or in part) by issuing a Termination Notice to the Supplier:
- (a) for convenience at any time, including where the Agreement should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU;
 - (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 Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,
- and this Agreement shall terminate on the date specified in the Termination Notice.
- 33.2 Where the Authority:
- (a) is terminating this Agreement under Clause 33.1(b) due to the occurrence of either limb (c) and/or (j) 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 Agreement under Clause 33.1(b) or Clause 33.1(c), it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the Partial Termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

Termination for Persistent Breach

- 33.3 If a Default by the Supplier has occurred on more than one occasion then without prejudice to any other right of the Authority to terminate this Agreement, the Authority may serve a notice ("**Termination Warning Notice**") on the Supplier:
- (a) specifying that it is a formal Termination Warning Notice;
 - (b) giving reasonable details of the Default; and
 - (c) stating that if such Default recurs or continues, it may result in termination of this Agreement for Persistent Breach.
- 33.4 If the Default specified in the Termination Warning Notice recurs after the date of service of the relevant Termination Warning Notice then the Authority may serve a further notice on the Supplier ("**Final Termination Warning Notice**"):
- (a) specifying that it is a Final Termination Warning Notice;
 - (b) stating that the specified Default has been the subject of a Termination Warning Notice served within the twelve (12) month period prior to the date of the Final Termination Warning Notice; and
 - (c) stating that if such Default continues or recurs on one or more occasion within the six (6) month period following the date of the Final Termination Warning Notice the Authority may serve written notice on the Supplier to terminate this Agreement for Persistent Breach (termination to take effect from the date set out in the notice).
- 33.5 Termination for Persistent Breach shall be treated in the same way as a termination following a Supplier Termination Event.

Termination by the Supplier

- 33.6 The Supplier may, by issuing a Termination Notice to the Authority, terminate:
- (a) this Agreement if the Authority fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds £1,000 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) the Authority commits a Default of clause 17; or
 - (c) 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 Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice). If the operation of Clause 33.6(c) would result in a Partial Termination, the provisions of Clause 33.8 (*Partial Termination*) shall apply.

- 33.7 Notwithstanding any other term of this Agreement, the Supplier may terminate without notice, or indefinitely suspend, this Agreement or any contractual provision herein as required to fulfil its obligations to comply with sanctions regulations.

Partial Termination

- 33.8 If the Supplier notifies the Authority pursuant to Clause 33.6(c) (*Termination by the Supplier*) that it intends to terminate this Agreement 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 Agreement 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 33.8, 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.
- 33.9 The Parties shall agree the effect of any Contract 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 Models 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 10.9 and 10.17 (*Promoting Tax Compliance*), 10.7 (*Set-off and Withholding*), 12 (*Records, Reports, Audits and Open Book Data*), 14.4 (*Employment Indemnity*), 14.5 (*Income Tax and National Insurance Contributions*), 16 (*Intellectual Property Rights*), 17 (*Licences Granted by the Supplier*), 19 (*IPRs Indemnity*), 21 (*Confidentiality*), 22 (*Transparency and Freedom of Information*), 23 (*Protection of Personal Data*), 25 (*Limitations on Liability*), 34 (*Consequences of Expiry or Termination*), 40 (*Severance*), 42 (*Entire Agreement*), 43 (*Third Party Rights*), 46 (*Disputes*) and 47 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 7.1 (*Charges and Invoicing*), 7.2 (*Payments on Termination*), 7.5 (*Financial Reports and Audit Rights*), 8.2 (*Reports and Records*), 8.4 (*Dispute Resolution Procedure*), 8.5 (*Exit Management*), and 9.1 (*Staff Transfer*), shall survive the termination or expiry of this Agreement.

Exit Management

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

Payments by the Authority

- 34.3 If this Agreement is terminated by the Authority pursuant to Clause 33.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 33.6(a) (*Termination by the Supplier*), the Authority shall pay the Supplier the Termination Payment (which shall be the Supplier's sole remedy for the termination of this Agreement).
- 34.4 If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clauses 33.1(b), 33.1(c) 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 8.5 (*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 Agreement for a continuing Force Majeure Event pursuant to Clauses 33.1(c) or 33.2(b) (*Termination by the Authority*) or 33.6(c) (*Termination by the Supplier*); or
 - (b) the Authority terminates this Agreement under Clause 33.1(d).

Payments by the Supplier

- 34.6 In the event of termination or expiry of this Agreement, 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.

SECTION J - MISCELLANEOUS AND GOVERNING LAW

35 COMPLIANCE

Health and Safety

- 35.1 The Supplier shall perform its obligations under this Agreement (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 Agreement. 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.

Equality and Diversity

- 35.3 The Supplier shall:

- (a) perform its obligations under this Agreement (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 by means of its own Supplier's Equality and Diversity Policy; 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).

Official Secrets Act

- 35.4 The Supplier shall comply with the provisions of the Official Secrets Acts 1911 to 1989.

Modern Slavery Act

- 35.5 In performing its obligations under the Agreement, the Supplier shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including the Modern Slavery Act 2015;
- (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015; and
- (c) notify the Authority as soon as it becomes aware, and in any event within five (5) working days, of any actual or suspected breach of its obligations under Clause 35.5(a) and/ or (b) including details of the breach and the mitigation action it has taken or intends to take in order to:
 - (i) remedy the breach; and
 - (ii) ensure future compliance with Clause 35.5(a) and (b).

- 35.6 If the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions in Clause 35.5 then this shall constitute a Supplier Termination Event.

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 Agreement 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 Agreement and/or any associated licences to:
- (a) any Central Government Body; or
 - (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 Agreement and this Agreement 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 Agreement 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 (i) of the definition of Supplier Termination Event (as if references in that limb (i) to the Supplier and the Guarantor and references to a Party in the definition of Insolvency Event were references to the Successor Body).

37 WAIVER AND CUMULATIVE REMEDIES

- 37.1 The rights and remedies under this Agreement 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 Agreement 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 Agreement, rights and remedies under this Agreement 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 Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, 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.
- 38.2 Save as otherwise expressly provided, the obligations of the Authority under the Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under the Agreement (howsoever arising) on the part of the Authority to the Supplier.

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

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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; 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 Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 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 Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
 - (b) immediately terminate this Agreement.
- 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 Agreement shall terminate).

40 SEVERANCE

- 40.1 If any provision of this Agreement (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 Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement 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 Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement 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 Agreement 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 8.4 (*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 Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 40.3.

41 **FURTHER ASSURANCES**

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

42 **ENTIRE AGREEMENT**

- 42.1 This Agreement 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 Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 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 Clause 19 (*IPRs Indemnity*), Clause 19A (SWIFT), 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 and the provisions of Paragraph 8.11 of Schedule 8.5 (*Exit Management*) (together “**Third Party Provisions**”) confer benefits on persons named 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 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.
- 43.3 Any amendments or modifications to this Agreement 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.
- 43.4 Subject to Clause 43.1 and, if such Schedule is used, Schedule 2.7 (*Service Recipients*) a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

44 **NOTICES**

- 44.1 Any notices sent under this Agreement 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 Agreement and the respective deemed time and proof of

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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™ 1 st 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 Agreement:

	Supplier	Authority
Contact	redacted	redacted
Address	redacted	redacted
Email	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;
- (b) Force Majeure Notices;
- (c) notices issued by the Supplier pursuant to Clause 33.6 (*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 8.4 (*Dispute Resolution Procedure*)).

45 NON-SOLICITATION

45.1 Except in respect of implementing any Relevant Transfer, neither Party shall, and the Supplier shall procure that any Sub-contractor shall not, during the Term and for 12 months following the termination or expiry of this Agreement either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away) from the employment of the other Party any person employed by the other Party in the provision of, or receipt and/or administration of the Services.

46 DISPUTES

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

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

47 GOVERNING LAW AND JURISDICTION

47.1 Each Party irrevocably agree that this Agreement 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 exclusively governed by and construed in accordance with the laws of England and Wales.

47.2 Subject to Clause 45 (*Disputes*) and Schedule 8.4 (*Dispute Resolution Procedure*) (including either Party's right to refer the dispute to arbitration), the Parties irrevocably 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 Agreement or its subject matter or formation.

IN WITNESS of which this Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.

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SIGNED for and on behalf of Bottomline
Technologies Limited

Signature:

Name (block capitals):

Position:

Date:

SIGNED for and on behalf of [*The
Commissioners for Her Majesty's Revenue
and Customs*]

Signature:

Name (block capitals):

Position:

Date:

SCHEDULE 1

Definitions

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

“Achieve”	has the meaning given in Schedule 6.2 (<i>Testing Procedures</i>);
“Acquired Rights Directive”	the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
“Affected Party”	the Party seeking to claim relief in respect of a Force Majeure Event;
“Affiliate”	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
“Agreement”	the clauses of this agreement together with the Schedules and annexes to it;
“Anticipated Contract Life Profit Margin”	[insert]%, which is the anticipated Supplier Profit Margin forecast by the Supplier over the Term;
“Assets”	all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Authority Assets;
“ATP Milestone”	the Milestone linked to Authority to Proceed for the relevant Operational Services set out in the Mobilisation Plan or a Project Plan;
“Audit”	any exercise by the Authority of its Audit Rights pursuant to Clause 12 (<i>Records, Reports, Audit and Open Book Data</i>);

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“Audit Agents”	<ul style="list-style-type: none">(a) the Authority’s internal and external auditors;(b) the Authority’s statutory or regulatory auditors;(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;(d) HM Treasury or the Cabinet Office;(e) any party formally appointed by the Authority to carry out audit or similar review functions; and(f) successors or assigns of any of the above;
“Audit Rights”	the audit and access rights referred to in Clause 12 (<i>Records, Reports, Audits & Open Book Data</i>);
“Authority Assets”	the Authority Materials, the Authority infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services;
“Authority Background IPRs”	<ul style="list-style-type: none">(a) IPRs owned by the Authority before the Effective Date, including IPRs contained in any of the Authority's Know-How, documentation, processes and procedures;(b) IPRs created by the Authority independently of this Agreement; and/or(c) Crown Copyright which is not available to the Supplier otherwise than under this Agreement;
“Authority Cause”	<p>any material Default by the Authority except to the extent that such Default is:</p> <ul style="list-style-type: none">(a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or(b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;

“Authority Data”

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
 - (i) supplied to the Supplier by or on behalf of the Authority; and/or
 - (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or
- (b) any Personal Data for which the Authority is the Controller, or any data derived from such Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified.

“Authority Materials”

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

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

but excluding any Project Specific IPRs;

“Authority Premises”

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

“Authority Representative”

the representative appointed by the Authority pursuant to Clause 11.4;

“Authority Requirements”

the requirements of the Authority set out in Schedules 2.1 (*Services Description*), 2.2 (*Performance Indicators*), 2.4 (*Security Management*), 2.5 (*Insurance Requirements*), 6.1 (*Mobilisation*), 8.2 (*Reports and Records*), 8.5 (*Exit Management*) and 8.6 (*Business Continuity and Disaster Capability*);

“Authority System”

the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Agreement (if any) which is owned by the Authority or licensed to it by a third party and which interfaces with the

	Supplier System or which is necessary for the Authority to receive the Services;
“Authority to Proceed” or “ATP”	the authorisation to the Supplier to commence the provision of the relevant Operational Services to the Authority, provided by the Authority in the form of a Milestone Achievement Certificate in respect of the ATP Milestone;
“Baseline Security Requirements”	the Authority's baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 2.4 (<i>Security Management</i>) as updated from time to time by the Authority and notified to the Supplier;
“BCDC Plan”	any plan prepared pursuant to Paragraph 2 of Schedule 8.6 (<i>Business Continuity and Disaster Capability</i>), if such Schedule is used;
“BCDC Services”	any services set out in Schedule 8.6 (<i>Business Continuity and Disaster Capability</i>), if such Schedule is used;
“Best Endeavours”	to take such action and make available such resources to the extent necessary to achieve the desired objective;
“BPSS”	the HMG Baseline Personnel Security Standard staff vetting procedures, issued by the Cabinet Office Security Policy Division and Corporate Development Group;
“Breakage Costs Payment”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Central Government Body”	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency;
“Change Authorisation Note”	a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2 of Schedule 8.3 (<i>Change Control Procedure</i>);

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“Change Control Procedure”	the procedure for changing this Agreement set out in Schedule 8.3 (<i>Change Control Procedure</i>);
“Change in Law”	any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
“Change Request”	a written request for a Contract Change substantially in the form of Annex 1 of Schedule 8.3 (<i>Change Control Procedure</i>);
“Charges”	the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>), including any Milestone Payment or Service Charge;
“Commercially Sensitive Information”	<p>the information listed in Schedule 4.2 (<i>Commercially Sensitive Information</i>) comprising the information of a commercially sensitive nature relating to;</p> <ul style="list-style-type: none">(a) the pricing of the Services;(b) the details of the Supplier's IPRs; and(c) the Supplier's business and investment plans; <p>which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;</p> <ul style="list-style-type: none">(d) the identity and location of the Supplier's Sub-contractors;
“Comparable Supply”	the supply of services to another customer of the Supplier that are the same or similar to any of the Services;
“Compensation for Unacceptable KPI Failure”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);

“Confidential Information”

- (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:
 - (i) the Disclosing Party Group; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how, pricing and/or personnel of the Disclosing Party Group;
- (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient’s attention or into the Recipient’s possession in connection with this Agreement;
- (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
- (d) Information derived from any of the above, but not including any Information which:
 - (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
 - (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient’s knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
 - (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of

	<p>this Agreement or breach of a duty of confidentiality;</p> <p>(iv) was independently developed without access to the Confidential Information; or</p> <p>(v) relates to the Supplier's:</p> <ol style="list-style-type: none">1. performance under this Agreement; or2. failure to pay any Sub-contractor as required pursuant to Clause 10.23 (<i>Supply Chain Protection</i>);
"Connected Company"	in relation to a company, entity or other person, the Affiliates of that company, entity or other person or any other person associated with such company, entity or other person;
"Contract Change"	any change to this Agreement, for the avoidance of doubt excluding any Operational Change;
"Contract Year"	<p>(a) a period of twelve (12) months commencing on the Effective Date; or</p> <p>(b) thereafter a period of twelve (12) months commencing on each anniversary of the Effective Date;</p> <p>provided that the final Contract Year shall end on the expiry or termination of the Term;</p>
"Control"	the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;
"Controller"	has the meaning given in the Relevant Data Protection Laws;
"Costs"	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
"Cost Model"	any model set out in Annex 4 (<i>Cost Model</i>) of Schedule 7.1 (<i>Charges and Invoicing</i>) as may be amended from time to time in accordance with this Agreement, which sets out the underlying principles which make up the Charges;
"Counter Notice"	has the meaning given in Schedule 8.4 (<i>Dispute Resolution Procedure</i>);

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“Critical KPI Failure”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Credit Rating Threshold”	has the meaning given in Schedule 7.4 (<i>Financial Distress</i>);
“CRTPA”	the Contracts (Rights of Third Parties) Act 1999;
“Deductions”	all Service Credits, Compensation for Unacceptable KPI Failure, Delay Payments or any other deduction, in each case which is paid or payable to the Authority under this Agreement;
“Default”	<p>any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:</p> <ul style="list-style-type: none"> (a) in the case of the Authority, of its employees, servants, agents; or (b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel, <p>in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other;</p>
“Delay”	<ul style="list-style-type: none"> (a) a delay in the Achievement of a Milestone by its Milestone Date; or (b) a delay in the design, development, testing or mobilisation of a Deliverable by the relevant date set out in the Mobilisation Plan or a Project Plan;
“Delay Deduction Period”	the period of one hundred (100) days commencing on the relevant Milestone Date;
“Delay Payments”	the amounts (if any) payable by the Supplier to the Authority in respect of a Delay in Achieving a Key Milestone as specified in Part C of Schedule 7.1 (<i>Charges and Invoicing</i>);
“Deliverable”	a part of the Services delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Agreement, as identified in the Mobilisation Plan or Project Plan;
“Detailed Mobilisation Plan”	has the meaning given in Schedule 6.1 (<i>Mobilisation</i>);

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“Disclosing Party”	has the meaning given in Clause 21.1 (<i>Confidentiality</i>);
“Disclosing Party Group”	<ul style="list-style-type: none"> (a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and (b) where the Disclosing Party is the Authority, the Authority and any Central Government Body with which the Authority or the Supplier interacts in connection with this Agreement;
“Dispute”	any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Notice”	a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
“Dispute Resolution Procedure”	the dispute resolution procedure set out in Schedule 8.4 (<i>Dispute Resolution Procedure</i>);
“Documentation”	<p>Comprises the following documents:</p> <ul style="list-style-type: none"> (a) User Manual (b) Processing Guide (c) High Level Install Guide (excludes third party products) (d) Process Flow Map (e) Process Schedule
“DOTAS”	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes or those who use them to tell HMRC of any notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992 and in Schedule 11A to the

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	Value Added Tax Act 1994 (as amended by Schedule 1 to the Finance (no. 2) Act 2005;
“Due Diligence Information”	any information supplied to the Supplier by or on behalf of the Authority prior to the Effective Date;
“Effective Date”	the date on which this Agreement is signed by both Parties;
“EIRs”	the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;
“Employee Liabilities”	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:</p> <ul style="list-style-type: none">(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;(b) unfair, wrongful or constructive dismissal compensation;(c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;(d) compensation for less favourable treatment of part-time workers or fixed term employees;(e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;(f) employment claims whether in tort, contract or statute or otherwise;(g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

“Employment Regulations”	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;
“Escalation Meeting”	has the meaning given in Clause 29.1
“Escalation Notice”	has the meaning given in Clause 29.1
“Escalation Process Trigger Event”	<ul style="list-style-type: none"> (a) any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event; (b) any event falling within limb (b) or (e) of the definition of Step-In Trigger Event; (c) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services; (d) the Supplier not Achieving a Key Milestone within seventy five (75) days of its relevant Milestone Date; and/ or (e) Rectification Plan Failure.
“Estimated Year 1 Charges”	the estimated Charges payable by the Authority during the first Contract Year, as set out in the Financial Model;
“Exit Management”	services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in Schedule 8.5 (<i>Exit Management</i>);
“Exit Plan”	the plan produced and updated by the Supplier during the Term in accordance with Paragraph 5 of Schedule 8.5 (<i>Exit Management</i>);
“Expedited Dispute Timetable”	the reduced timetable for the resolution of Disputes set out in Paragraph 2 of Schedule 8.4 (<i>Dispute Resolution Procedure</i>);
“Expert”	has the meaning given in Schedule 8.4 (<i>Dispute Resolution Procedure</i>);
“Expert Determination”	has the meaning given in Schedule 8.4 (<i>Dispute Resolution Procedure</i>);
“Extension Period”	has the meaning given in Clause 4.2;

“Final Termination Warning Notice”	has the meaning given in Clause 33.4;
“Financial Distress Event”	has the meaning given in Schedule 7.4 (<i>Financial Distress</i>);
“Financial Distress Service Continuity Plan”	has the meaning given in Schedule 7.4 (<i>Financial Distress</i>);
“Financial Model”	means the model in which the Charges are set out, as set out in Annex 1 (<i>Financial Model</i>) of Schedule 7.1 (<i>Charges and Invoicing</i>) as may be amended from time to time in accordance with this Agreement;
“FOIA”	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act;
“Force Majeure Event”	any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier’s or a Sub-contractor’s supply chain;
“Force Majeure Notice”	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
“Former Supplier”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“General Anti-Abuse Rule”	<ul style="list-style-type: none">(a) the legislation in Part 5 of the Finance Act 2013;(b) the legislation in sections 10 and 11 of the National Insurance Contributions Act 2014; and(c) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid any Tax;

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“Good Industry Practice”	at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
“Goods”	any goods or equipment to be supplied by the Supplier as part of the Services;
“Government Controlled Company”	any body governed by public law, including as created pursuant to Regulation 12 of the Public Contracts Regulations 2015 or such other body created through or derived through public law and controlled by the Authority.
“Guarantee”	the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of this Agreement (which is in the form set out in Schedule 10 (<i>Guarantee</i>)), or any guarantee acceptable to the Authority that replaces it from time to time;
[“Guarantor”	[<i>insert name</i>], a company registered in [<i>insert country</i>] with company number [<i>insert company number</i>] and whose registered office is at [<i>insert registered address</i>];
“Halifax Abuse Principle”	the principle explained in the CJEU Case C-255/02 Halifax and others;
“Health and Safety Policy”	the health and safety policy of the Authority and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;
“HMRC”	HM Revenue & Customs;
“Impact Assessment”	has the meaning given in Schedule 8.3 (<i>Change Control Procedure</i>);
"Incumbent Supplier"	any supplier to the Authority of services similar to the Services prior to the Mobilisation Commencement Date or Operational Service Commencement Date (as applicable);

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“Indemnified Person”	the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Agreement;
“Information”	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);
“Initial Term”	the period of five (5) years from and including the 8 th October 2021;
“Insolvency Event”	<ul style="list-style-type: none">(a) the other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:<ul style="list-style-type: none">(i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or(ii) (being a partnership) is deemed unable to pay its debts within the meaning of Section 222 of the Insolvency Act 1986;(b) the other Party commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;(c) a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;(d) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any

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part of the other Party's assets and such attachment or process is not discharged within fourteen (14) days;

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

“Intellectual Property Rights” or “IPRs”

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names,

	designs, Know-How, trade secrets and other rights in Confidential Information;
	(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
	(c) all other rights having equivalent or similar effect in any country or jurisdiction;
“IPRs Claim”	any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs in combination with any item not supplied or recommended by the Supplier pursuant to this Agreement or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Agreement;
“IT”	information and communications technology;
“IT Environment”	the Authority System and the Supplier System;
“Key Milestone”	the Milestones identified in the Mobilisation Plan or the Project Plan as key milestones (if any) and in respect of which Delay Payments may be payable in accordance with Part C of Schedule 7.1 (<i>Charges and Invoicing</i>) if the Supplier fails to Achieve the Milestone Date in respect of such Milestone;
“Key Personnel”	those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 9.2 (<i>Key Personnel</i>) against each Key Role as at the Effective Date or as amended from time to time in accordance with Schedule 9.2 (<i>Key Personnel</i>), if such Schedule is used;
“Key Roles”	any roles described as a Key Role in Schedule 9.2 (<i>Key Personnel</i>) and any additional roles added from time to time in accordance with that Schedule;
“Key Sub-contract”	each Sub-contract with a Key Sub-contractor;
“Key Sub-contractor”	any Sub-contractor: (a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or

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	(b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten per cent (10%) of the aggregate Charges forecast to be payable under this Agreement (as set out in the Financial Model);
“Know-How”	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party’s possession before this Agreement;
“KPI”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“KPI Failure”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Law”	any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
“Losses”	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
“Mandatory Wage”	the statutory minimum hourly rate of pay including the National Living Wage and National Minimum Wage as set by the Crown;
“Management Information”	any management information specified in Schedule 2.2 (<i>Performance Levels</i>), Schedule 7.1 (<i>Charges and Invoicing</i>), Schedule 7.5 (<i>Financial Reports and Audit Rights</i>) and/or Schedule 8.1 (<i>Governance</i>) to be provided by the Supplier to the Authority;
“Measurement Period”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);

“Milestone”	an event or task described in the Mobilisation Plan, a Project Plan or an Exit Plan which, if applicable, shall be completed by the relevant Milestone Date;
“Milestone Achievement Certificate”	the certificate to be granted by the Authority when the Supplier has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 3 of Schedule 6.2 (<i>Testing Procedures</i>);
“Milestone Date”	the target date set out against the relevant Milestone in the Mobilisation Plan or a Project Plan by which the Milestone must be Achieved;
“Milestone Payment”	a payment identified in Schedule 7.1 (<i>Charges and Invoicing</i>) to be made following the issue of a Milestone Achievement Certificate;
"Mobilisation"	the activities to be performed in accordance with Schedule 6.1 (<i>Mobilisation</i>) in order that the Supplier is able to commence the provision of the Operational Services in accordance with the terms of this Agreement;
"Mobilisation Plan"	has the meaning given in Schedule 6.1 (<i>Mobilisation</i>);
“Mobilisation Commencement Date”	has the meaning given in Schedule 6.1 (<i>Mobilisation</i>);
“Models”	the Financial Model and the Cost Model and “Model” shall be interpreted accordingly;
“Month”	a calendar month and “monthly” shall be interpreted accordingly;
"Non-Party IPRs"	any Intellectual Property Right owned or claimed to be owned by any third party which is found, or alleged to be found, in the Project Specific IPRs;
“Notifiable Default”	has the meaning given in Clause 27.2 (<i>Rectification Plan Process</i>);
“Occasion of Tax Non-Compliance”	<p>(a) any Tax return of the Supplier and/or its Subcontractor and/or any non-submission of a Tax return (whether deliberate or by omission) by the Supplier and/or its Subcontractor to the Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:</p> <p>(i) a Relevant Tax Authority successfully challenging the Supplier or relevant Sub-</p>

contractor under the General Anti Abuse Rule or the Halifax Abuse Principle or TAAR or under any Tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti Abuse Rule or the Halifax Abuse Principle or TAAR;

- (ii) the failure of an avoidance scheme which the Supplier or relevant Sub-contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or
- (b) the Tax affairs of the Supplier or any of its Sub-contractors have given rise to a criminal conviction in any jurisdiction for Tax related offences within the last five (5) years which is not spent at the Effective Date or to a civil penalty for fraud or evasion within the last three (3) years;
- (c) For these purposes :
 - (i) a return is "submitted" when it is first submitted to the Relevant Tax Authority and any subsequent amendments or re-submissions are to be ignored; and
 - (ii) a Relevant Tax Authority will not be deemed to have "successfully challenged" the Supplier or a Sub-contractor until an appeal against such challenge is no longer possible.

“Open Book Data”

has the meaning given in Part A of Schedule 7.5 (*Financial Reports and Audit Rights*), if such Schedule is used;

“Open Source”

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

“Operational Change”

any change in the Supplier's operational procedures which in all respects, when implemented:

- (a) will not affect the Charges and will not result in any other costs to the Authority;

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	<ul style="list-style-type: none">(b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services;(c) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and(d) will not require a change to this Agreement;
"Operational Service Commencement Date"	<p>in relation to an Operational Service, the later of:</p> <ul style="list-style-type: none">(a) the date identified in the Mobilisation Plan or a Project Plan for the Operational Services upon which the Operational Service is to commence; and(b) where the Mobilisation Plan or a Project Plan states that the Supplier must have Achieved the relevant ATP Milestone before it can commence the provision of that Operational Service, the date upon which the Supplier Achieves the relevant ATP Milestone;
"Operational Services"	the operational services described as such in the Services Description;
"Optional Services"	the services described as such in Schedule 2.1 (<i>Services Description</i>), if any, which are to be provided by the Supplier if required by the Authority in accordance with Clause 5.10 (<i>Optional Services</i>);
"Order"	any Goods or Services which have been ordered by the Authority in accordance with the procedures set out in Schedule 6.3 (<i>Projects and Ordering</i>) if such Schedule is used;
"Other Supplier"	any other third party which supplies services to the Authority but excluding the Incumbent Suppliers;
"Partial Termination"	the partial termination of this Agreement to the extent that it relates to the provision of any part of the Services as further provided for in Clause 33.2(b) (<i>Termination by the Authority</i>) or 33.6(c) (<i>Termination by the Supplier</i>);
"Parties" and "Party"	have the meanings respectively given on page 1 of this Agreement;
"Performance Monitoring Report"	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);

“Persistent Breach”	means a Default which continued or recurred on more than one occasion within a six (6) month period following the date of a Final Termination Warning Notice;
“Personal Data”	personal data (as defined in the Relevant Data Protection Laws) which is Processed by the Supplier or any Sub-contractor pursuant to or in connection with this Agreement;
“Process”	has the meaning given to it under the Relevant Data Protection Laws and “Processed” and “Processing” shall be construed accordingly;
“Prohibited Act”	<ul style="list-style-type: none">(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:<ul style="list-style-type: none">(i) induce that person to perform improperly a relevant function or activity; or(ii) reward that person for improper performance of a relevant function or activity;(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;(c) an offence:<ul style="list-style-type: none">(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);(ii) under legislation or common law concerning fraudulent acts; or(iii) defrauding, attempting to defraud or conspiring to defraud the Authority; or(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;
“Prohibited Transaction”	has the meaning given in Clause 10.18 (<i>Use of Off-shore Tax Structures</i>);
“Project Plan”	the agreed project plan for an Order set out in, attached to or included by reference in the relevant Order;

“Project Specific IPRs”	<p>(a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>(b) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Agreement;</p> <p>but shall not include the Supplier Background IPRs;</p>
“Quality Plans”	has the meaning given in Schedule 2.3 (<i>Standards</i>) if such Schedule is used;
“Quality Standards”	SOC 1 and SOC2 Reports (System and Organisation Controls Reports)
“Quarter”	the first three Service Periods and each subsequent three (3) Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement) and “quarterly” shall be interpreted accordingly;
“Rectification Plan”	a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
“Rectification Plan Failure”	<p>(a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 27.5 (<i>Submission of the draft Rectification Plan</i>) or 27.8 (<i>Agreement of the Rectification Plan</i>);</p> <p>(b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 27.8 (<i>Agreement of the Rectification Plan</i>);</p> <p>(c) the Supplier failing to rectify a material Default within the later of:</p> <p>(i) thirty (30) Working Days of a notification made pursuant to Clause 27.3 (<i>Notification</i>); and</p> <p>(ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by</p>

which the Supplier must rectify the material Default;

- (d) where a Rectification Plan has been implemented a KPI Failure re-occurring in respect of the same KPI and for the same (or substantially the same) root cause (in relation to which a Rectification Plan was implemented) on two or more occasions in the period ending on the date falling 6 months (or, where the relevant KPI has a Measurement Period longer than 6 months, at the end of the next complete Measurement Period) following the date set for the completion of the Rectification Plan (or, if later, the date that the Supplier indicates that the Rectification Plan is complete);
- (e) the Supplier not Achieving any Key Milestone by the expiry of the Delay Deduction Period; and/or
- (f) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of six (6) months for the same (or substantially the same) root cause as that of the original Notifiable Default;

“Rectification Plan Process”

the process set out in Clauses 27.5 (*Submission of the draft Rectification Plan*) to Clause 27.9 (*Agreement of the Rectification Plan*);

“Registers”

has the meaning given in Schedule 8.5 (*Exit Management*), if such definition is used;

“Reimbursable Expenses”

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

“Relevant Data Protection Laws”

- (a) the Data Protection Act 2018;
- (b) the GDPR, the Law Enforcement Directive (Directive EU 2016/680) and any applicable national implementing Laws as amended from time to time;
- (c) any other applicable Laws relating to the processing of personal data and privacy; and
- (d) all applicable guidance, standard terms, codes of practice and codes of conduct issued by the Information Commissioner and other relevant regulatory, supervisory and legislative bodies in relation to such Laws;

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“Relevant IPRs”	IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority or a third party in the fulfilment of the Supplier’s obligations under this Agreement but excluding any IPRs in the Authority Background IPRs;
“Relevant Requirements”	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
“Relevant Tax Authority”	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established, resident or liable to any Tax;
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relief Notice”	has the meaning given in Clause 31.2 (<i>Authority Cause</i>);
“Replacement Services”	any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Agreement, whether those services are provided by the Authority internally and/or by any third party;
“Replacement Supplier”	any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);
“Request For Information”	a Request for Information under the FOIA or the EIRs;
“Required Action”	has the meaning given in Clause 30.1(a) (<i>Step-In Rights</i>);
“Security Management Plan”	the Supplier’s response to the Authority’s security questionnaire as attached as Annex 2 of Schedule 2.4 (<i>Security Management</i>) and as may be subsequently developed and revised pursuant to Schedule 2.4 (<i>Security Management</i>);
“Service Charges”	the periodic payments made in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>) in respect of

	the supply of the Operational Services;
“Service Credit Cap”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Service Credits”	the credits (if any) payable by the Supplier due to the occurrence of one (1) or more KPI Failures in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>);
“Service Period”	a calendar month, save that: <ul style="list-style-type: none"> (a) the first service period shall begin on the first Operational Service Commencement Date and shall expire at the end of the calendar month in which the first Operational Service Commencement Date falls; and (b) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term;
“Service Points”	in relation to a KPI Failure, the points that are set out against the relevant KPI in the fifth column of the table in Annex 1 of Schedule 2.2 (<i>Performance Levels</i>), if such Annex is used;
“Service Recipient”	if such Schedule is used, those third parties listed in Paragraph 2 of Schedule 2.7 (<i>Service Recipients</i>) (as such Schedule is amended from time to time by the Authority), being Other Government Departments and any other third party other than the Authority to which the Supplier shall provide all or part of the Services;
“Services”	any and all of the services to be provided by the Supplier under this Agreement, including those set out in Schedule 2.1 (<i>Services Description</i>) and including the provision of any Goods and Supplier Equipment;
“Services Description”	the services description set out in Schedule 2.1 (<i>Services Description</i>);
“Service Transfer Date”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Sites”	any premises (including the Authority Premises, the Supplier’s premises or third party premises): <ul style="list-style-type: none"> (a) from, to or at which: <ul style="list-style-type: none"> (i) the Services are (or are to be) provided;

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or

- (ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or

(b) where:

- (i) any part of the Supplier System is situated; or
- (ii) any physical interface with the Authority System takes place;

“SLA”

Means the Service Level Agreement specified in Schedule 4.1;

“Software”

any software which is proprietary to the Supplier or to a third party (or an Affiliate of the Supplier) or any open source software which, in any case, is or will be used by the Supplier for the purposes of providing the Services and any Project Specific IPRs which are software;

“Staffing Information”

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

“Step-In Notice”

has the meaning given in Clause 30.1 (*Step-In Rights*);

“Step-In Trigger Event”

- (a) any event falling within the definition of a Supplier Termination Event;
- (b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;
- (c) the Authority acting reasonably considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Agreement;
- (d) the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause 30 (*Step-In Rights*) is necessary;
- (e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or
- (f) a need by the Authority to take action to discharge a statutory duty;

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“Step-Out Date”	has the meaning given in Clause 30.5(b) (<i>Step-In Rights</i>);
“Step-Out Notice”	has the meaning given in Clause 30.5 (<i>Step-In Rights</i>);
“Step-Out Plan”	has the meaning given in Clause 30.6 (<i>Step-In Rights</i>);
“Sub-contract”	any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
“Sub-contractor”	<p>any third party with whom:</p> <ul style="list-style-type: none">(a) the Supplier enters into a Sub-contract; or(b) a third party under (a) above enters into a Sub-contract, <p>or the servants or agents of that third party;</p>
“Subscription Band(s)”	means the Services usage bands (varied from time to time in accordance with this Agreement) specified in the table in Schedule 7.1 and which reflects the Authority’s Services usage from time to time.
“Successor Body”	has the meaning given in Clause 36.4 (<i>Assignment and Novation</i>);
“Supplier Background IPRs”	<ul style="list-style-type: none">(a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier’s standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier’s Know-How or generic business methodologies; and/or(b) Intellectual Property Rights created by the Supplier independently of this Agreement, <p>which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services;</p>
“Supplier Equipment”	the security token equipment supplied by the

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	Supplier and used by the Authority (but not hired, leased or loaned from the Authority) for the provision of the Services;
"Supplier Executive"	means the Supplier Personnel listed as level 3 escalation point in Schedule 8.1 (<i>Governance</i>);
"Supplier Non-Performance"	has the meaning given in Clause 31 (<i>Authority Cause</i>);
"Supplier Personnel"	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier's obligations under this Agreement;
"Supplier Profit"	in relation to a period or a Milestone (as the context requires), the difference between the total Charges (in nominal terms but excluding any Deductions) and total Costs (in nominal terms) for the relevant period or in relation to the relevant Milestone;
"Supplier Profit Margin"	in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage
"Supplier Representative"	the representative appointed by the Supplier pursuant to Clause 11.3;
"Supplier Solution"	the Supplier's solution for the Services set out in Schedule 4.1 (<i>Supplier Solution</i>) including any Annexes of that Schedule;
"Supplier System"	any information and communications technology system used by the Supplier in implementing and performing the Services including the Software and the Supplier Equipment (but excluding the Authority System);
"Supplier Termination Event"	<ul style="list-style-type: none"> (a) the Supplier's level of performance constituting an Unacceptable KPI Failure or a Critical KPI Failure; (b) the Supplier's level of performance constitutes a Persistent Breach; (c) the Supplier committing a material Default which is irremediable; (d) as a result of the Supplier's Default, the Authority incurring Losses in any Contract Year which exceed eighty per cent (80)% of the value

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- of the aggregate annual liability cap for that Contract Year as set out in Clause 25.4(a) (*Financial Limits*);
- (e) a Rectification Plan Failure;
- (f) where a right of termination is expressly reserved in this Agreement, including pursuant to:
 - (i) Clause 10.16 (*Tax Compliance*);
 - (ii) Clause 10.21 (*Use of Off-shore Tax Structures*);
 - (iii) Clause 14.5 (*Income Tax and National Insurance Contributions*);
 - (iv) Clause 19 (*IPRs Indemnity*);
 - (v) Clause 29 (*Escalation Process*);
 - (vi) Clause 35.5 (*Modern Slavery Act*);
 - (vii) Clause 39.6(b) (*Prevention of Fraud and Bribery*);
 - (viii) Paragraph 5.8 of Part C (*Benchmarking*) of Schedule 7.3 (*Value for Money*), if such Part is used; or
 - (ix) Paragraph 3 of Schedule 7.4 (*Financial Distress*); and/or
- (g) the representation and warranty given by the Supplier pursuant to Clause 3.1(e) (*Warranties*) being materially untrue or misleading;
- (h) the Supplier committing a material Default or failing to provide details of steps being taken and mitigating factors pursuant to Clauses 10.10 to 10.17 (*Promoting Tax Compliance*) which in the reasonable opinion of the Authority are acceptable;
- (i) the Supplier committing a material Default under any of the following:
 - (i) Clause 5.8(f) (*Services*);
 - (ii) Clauses 10.10 to 10.17 (inclusive) (*Promoting Tax Compliance*);
 - (iii) Clauses 10.18 and 10.21 (*Use of Off-shore Tax Structures*);
 - (iv) Clause 23 (*Protection of Personal Data*);
 - (v) Clause 22 (*Transparency and Freedom of Information*);
 - (vi) Clause 21 (*Confidentiality*);

- (vii) Clause 35 (*Compliance*);
- (vi) in respect of any security requirements set out in Schedule 2.1 (*Services Description*), Schedule 2.4 (*Security Management*) or the Baseline Security Requirements; and/or
- (j) an Insolvency Event occurring in respect of the Supplier or the Guarantor;
- (k) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority with the Guarantor or with another guarantor which is acceptable to the Authority);
- (l) a change of Control of the Supplier or a Guarantor 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 on which the Change of Control took place or the date on which the Authority was given notice of the change of Control;
- (m) a change of Control of a Key Sub-contractor unless, within six (6) months of being notified by the Authority that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Authority pursuant to Schedule 4.3 (*Notified and Key Sub-contractors*);
- (n) the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Agreement;
- (o) the Supplier:
 - (i) commits an irremediable breach of the Admission Agreement; or
 - (ii) commits a breach of the Admission Agreement which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28

days of the date of a notice giving particulars of the breach and requiring the Supplier to remedy it; or

- (p) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law.

“SWIFT”

means The Society for Worldwide Interbank Financial Telecommunication whose Head Office is located at Avenue Adele 1, B-1310 La Hulpe, Belgium.

“TAAR” or “Targeted Anti-Avoidance Rule”

provision(s) in any legislation which seeks to prevent avoidance of any Tax;

“Target Performance Level”

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

“Tax”

- (a) all forms of tax whether direct or indirect;
- (b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;
- (c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and
- (d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,

in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;

“Tax Revenue”

any Tax, levy or duty due to be collected by the Authority and/or any reimbursement of Tax, levy or duty, correctly paid to the Authority, as a result of a Default by the Supplier;

“Term”

the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement;

“Termination Assistance Notice”

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

“Termination Assistance Period”

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

“Termination Date”	the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;
“Termination Notice”	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination;
“Termination Payment”	has the meaning given to it in Schedule 7.2 (<i>Payments on Termination</i>);
“Termination Warning Notice”	has the meaning given to it in Clause 33.3;
“Third Party Contract”	a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services;
“Third Party IPRs”	Intellectual Property Rights owned by a third party which are or will be used (or otherwise made available) by the Supplier before or during the Term for designing, testing implementing or providing the Services;
“Third Party Provisions”	has the meaning given in Clause 43.1 (<i>Third Party Rights</i>);
“Transferring Authority Employees”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Truing-Up Adjustment”	means uplifting or decreasing the Authority’s Subscription Band (as set out in a Change Request or resulting from a previous Truing- Up Process) and related Charges on a pro-rated basis for the remainder of the then current year. Such uplift being the result of a Truing- Up Process;
“Truing-Up Process”	means the quarterly in arrears process of measuring the Customer’s actual daily usage of the Services for the last two months of each quarter;
“UK”	the United Kingdom;
“UK GAAP”	the Generally Accepted Accounting Practice in the UK which is the body of accounting standards and other guidance published from time to time by the UK’s Financial Reporting Council;

“Unacceptable KPI Failure”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Unrecovered Payment”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“VAT”	value added tax as provided for in the Value Added Tax Act 1994;
“Working Day”	any day other than a Saturday, Sunday or public holiday in England and Wales.